

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

HARRINGTON RACEWAY, INC., :  
 : C.A. No. 01J-03-024  
Plaintiff, :  
 :  
v. :  
 :  
MICHAEL VAUTRIN, :  
 :  
Defendant. :

Submitted: June 14, 2001  
Decided: August 31, 2001

**ORDER**

Upon Plaintiff's Motion for  
Entry of Judgment. Granted.

Richard H. Cross, Jr., Young Conaway Stargatt & Taylor, LLP, Wilmington,  
Delaware, attorneys for the Plaintiff.

John W. Paradee, Prickett Jones & Elliott, Dover, Delaware, attorneys for the  
Defendant.

WITHAM, J.

**Harrington Raceway v. Michael Vautrin**  
**C.A. No. 01J-03-024**  
**August 31, 2001**

Plaintiff Harrington Raceway, Inc. brought this action for entry of judgment by confession, pursuant to Superior Court Civil Rule 58.1, against Defendant Michael Vautrin. The Defendant objected to the entry of judgment and requested a hearing for a judicial determination whether he properly waived his right to notice and a hearing before judgment was entered. Pursuant to Superior Court Civil Rule 58.1(g)(3), a hearing was held on June 14, 2001. Based on the record from that hearing the Court finds that:

**Background**

On August 11, 2000, Harrington Raceway, Inc. (“Harrington Raceway” or “Plaintiff”) issued checks totaling \$55,000.00 to Defendant Michael Vautrin (“Vautrin”). At the time, Mr. Vautrin held a managerial position with Gaming Entertainment Delaware (“GED”) and was a vice president and manager for Midway Slots and Simulcast.<sup>1</sup> The canceled checks were presented to the Court, which showed that two Harrington Raceway checks, one for \$30,000.00 and a second for \$25,000.00, were issued to Michael Vautrin on August 11, 2000. Plaintiff also presented the Court with a judgment note containing a confession of judgment clause on the last page which was signed by Defendant Vautrin on September 7, 2000. According to the Judgment Note, the loan was for a relatively short period of time as

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<sup>1</sup> **Neither party made it clear to the Court, but it would appear that Harrington Raceway contracts with GED to manage the business operations of Midway Slots. The exact nature of this relationship (financially and otherwise) is not entirely clear. Understanding the corporate makeup of the Plaintiff is not critical to this decision; therefore, this missing information shall remain a mystery.**

**Harrington Raceway v. Michael Vautrin**  
**C.A. No. 01J-03-024**  
**August 31, 2001**

both the principal and interest were to be paid back by February 1, 2001. Not mentioned in the Note itself and disputed by the parties is the role Defendant's annual performance bonus would play in the repayment of the loan. Plaintiff characterizes the bonus as **collateral** for the loan, but the Defendant characterizes the loan as an **advance** on his annual performance bonus. Based on the testimony at the hearing, the performance bonus is not vested as it can be retained if the employee is terminated or resigns. The Note fails to shed light on this dispute. In response to Plaintiff's Rule 58.1 pleadings, Mr. Vautrin claims that by the time the money was advanced to him, he had already earned approximately \$45,000.00 of his projected \$72,000 performance bonus for calendar year 2000. Mr. Vautrin also claims that the parties intended the \$55,000 advance to be collected without interest from his performance bonus in February, 2001. At the Hearing, the Court was presented with two completely different versions of the circumstances involved in the loan authorization and signing of the Judgment Note.

According to Jack Walls, president and CEO of Harrington Raceway, Mr. Vautrin approached Harrington Raceway in early August, 2000, to ask if he could borrow \$55,000. Before seeking the approval of the Harrington Raceway Board, Mr. Walls claims that Harrington Raceway discussed with Mr. Vautrin the terms under which the loan would be made.<sup>2</sup> The terms included the following: the loan would be

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<sup>2</sup> **On cross examination, Mr. Walls testified that Mr. Bill DiMondi and Mr. Mike Monaco on behalf of Harrington Raceway led the negotiations involving this loan. Mr. DiMondi is a vice president of the Board of Harrington Raceway as well as a major shareholder. He is also head of the Midway Oversight Board that oversees the activities of**

**Harrington Raceway v. Michael Vautrin**  
**C.A. No. 01J-03-024**  
**August 31, 2001**

for a short time period—only until February 1, 2001; Mr. Vautrin would make regular payments until the beginning of February at which time any remaining balance owed would be taken from his annual performance bonus; and, Mr. Vautrin would have to sign a Judgment Note that included a confession of judgment clause. At the next regularly scheduled board meeting of August 15, 2000 (the third Tuesday of each month), the Harrington Raceway Board agreed to loan Defendant the money. According to Mr. Walls, at the end of the Board's closed door meeting, Mr. Vautrin was brought into the room, informed that the loan was approved and given the Judgment Note to be signed and returned. Mr. Walls claims that neither he nor the Board knew that the checks for the \$55,000 loan had already been issued. The Note was returned to Mr. Walls a few weeks later, presumably after Mr. Vautrin had taken the time to review it and sign it on September 7, 2000.<sup>3</sup> In summary, Mr. Walls

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**GED. Mr. Monaco is a vice president of Harrington Raceway and in charge of finance.**

<sup>3</sup> **Mr. Walls testified that there was no Board meeting scheduled for or held on September 7, 2000, as the Board did not meet again until the third Tuesday in September, the 19th.**

**Harrington Raceway v. Michael Vautrin**  
**C.A. No. 01J-03-024**  
**August 31, 2001**

testified that Mr. Vautrin was informed of the terms under which the loan would be made, given the Judgment Note on August 15th, returned the signed note on September 7th, and agreed to make regular payments with his performance bonus serving as collateral for the loan.

Defendant Vautrin tells a different tale. According to Mr. Vautrin, throughout July, 2000, he spoke with Bill DiMondi about his need to borrow \$55,000 so he could refinance his home due to his separation from his wife. He primarily dealt with Bill DiMondi and Mike Monaco not Jack Walls,<sup>4</sup> who approved the loan and were aware that he had loan funds distributed to himself on August 11, 2000.<sup>5</sup> In fact, Mr. Vautrin claims that the checks were not signed by Anthony Casdia and Maria Marina until Mike Monaco called Mr. Casdia and told him that the \$55,000 amount was authorized by Mr. DiMondi, Mr. Monaco and Mr. Walls. When the loan funds were dispersed, Vautrin claims to have placed a letter memorializing the agreement (the \$55,000, 9.5% interest rate and collection from his February performance bonus) in his personnel file.<sup>6</sup> According to Vautrin, this is the exact same procedure used for the

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<sup>4</sup> **Mr. Walls admitted this in cross examination at the hearing; the Court did not have the benefit of hearing from Mr. DiMondi or Mr. Monaco.**

<sup>5</sup> **Mr. Vautrin testified that his separation agreement was signed on July 25th or 27th and he told Bill DiMondi that he needed the funds to be distributed by August 10th.**

<sup>6</sup> **Because no such letter has been produced to the Court, the Court is not considering the contents of the letter, but is merely recalling each party's factual recollection of these events.**

**Harrington Raceway v. Michael Vautrin**  
**C.A. No. 01J-03-024**  
**August 31, 2001**

July, 1998, \$14,000 loan.<sup>7</sup> After having had the funds for a couple of weeks, Mr. Vautrin claims that Mr. DiMondi called him to let him know that the loan was discussed at a Board meeting and a more formalized written judgment note would be necessary. According to Mr. Vautrin he was presented with the Judgment Note at a Midway Oversight meeting, on September 7, 2000, and told that he had to sign it. Mr. Vautrin claims that he felt pressured to sign the Note because the people asking him to sign it were his employers. While describing this as pressure in his own mind, Mr. Vautrin admitted on cross examination that he willingly signed the Note containing the confession of judgment on September 7, 2000. Mr. Vautrin also testified that he did not read the Note because he was told he was signing a simple judgment note and the confession of judgment clause was never mentioned. Defendant Vautrin stated that he was surprised that he was sued for the \$55,000 because Harrington Raceway retained his performance bonus as collateral for the loan. In summary, Mr. Vautrin claims that after the transaction was completed Harrington Raceway decided to formalize it with a note. Harrington Raceway's attorney presented the note to him

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<sup>7</sup> **In July, 1998, Mr. Vautrin borrowed \$14,000 from Harrington Raceway to help with closing costs and renovations for the home he was purchasing. The \$14,000 was lent to Mr. Vautrin in January and collected from his annual performance bonus in February.**

**Harrington Raceway v. Michael Vautrin**  
**C.A. No. 01J-03-024**  
**August 31, 2001**

before a meeting which he signed without reading and without being informed of its contents, including the confession of judgment clause.

### **Findings of Fact and Conclusion**

As suggested by Mr. Cross, the issue of the performance bonus may be somewhat of a red herring. However, for purposes of this decision and based on the facts presented, it appears to the Court that the reason the performance bonus is not adequate collateral is because Mr. Vautrin never became entitled to this bonus. At the hearing, the Defendant testified that he was placed on administrative leave in September of 2000 and resigned from his position in December of 2000. Mr. Vautrin also testified that an employee had to remain with the company for the entire year to be eligible for the performance bonus. This is significant, since by Mr. Vautrin's own testimony he was not entitled to his performance bonus because he did not work the entire year. Therefore, the bonus could not have served as collateral for the \$55,000 he owed Harrington Raceway.

Superior Court Civil Rule 58.1 contains the procedure whereby the debtor waives his due process rights to notice and a hearing before having a civil judgment entered against him. The Delaware Supreme Court has stated that "the due process rights to notice and a hearing before a civil judgment are subject to waiver."<sup>8</sup> As the Supreme Court noted in *Mazik v. Decision Making, Inc.*, Rule 58.1(d)(5)<sup>9</sup> provides

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<sup>8</sup> *Mazik v. Decision Making, Inc.*, Del. Supr., 449 A.2d 202, 204 (1982).

<sup>9</sup> **Superior Court Civil Rule 58.1(d)(5):**  
**(5) That debtor may appear in Court, giving an address for said Court, on the second**

**Harrington Raceway v. Michael Vautrin**  
**C.A. No. 01J-03-024**  
**August 31, 2001**

some protection for a debtor's due process constitutional rights by providing the debtor an opportunity to demand a hearing to determine whether or not the waiver of those due process rights was effective.<sup>10</sup> To be effective, the waiver must be made voluntarily, knowingly and intelligently or be an intentional relinquishment of a known right.<sup>11</sup> The test for determining the validity of a debtor's waiver is whether under the totality of the circumstances the waiver was made voluntarily, knowingly and intelligently.<sup>12</sup>

In the Defendant's response to Plaintiff's Rule 58.1 pleadings, he claims that the Promissory Note containing the confession of judgment is null and void. Defendant raises the following challenges to the validity of the underlying Note: the Note was not supported by adequate consideration; the Note was executed under duress; the Note was executed without the advice of legal counsel; he was not given any meaningful opportunity to read, review and understand the terms of the Note; the

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**motion day following the date on which said notice letter was mailed, or any specified motion day subsequent thereto, at which time debtor may object to the entry of judgment and a hearing will be scheduled by the Court. At said hearing, the plaintiff will be required to prove that the debtor has effectively waived the debtor's right to notice and a hearing prior to the entry of judgment.**

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Pellaton v. Bank of New York*, Del. Supr., 592 A.2d 473, 476 (1991); *Mazik* at 204; *G&G Restaurant, Inc. v. New G&G Corporation*, Del. Super., C.A. No. 2868, Toliver, J. (March 4, 1991), Mem. Op. at 5-6; *Sussex Trust Co. v. Clifton Canning Co., Inc.*, Del. Super., C.A. No. 112, Chandler, J. (Nov. 2, 1988), Mem. Op. at 3, 6-7; *Nunan v. Servpro of Wilmington, Inc.*, Del. Super., C.A. No. 742, Martin, J. (Mar. 30, 1987), Order at 2-3.

**Harrington Raceway v. Michael Vautrin**  
**C.A. No. 01J-03-024**  
**August 31, 2001**

Note fails to memorialize the parties' agreement concerning the loan; and finally, that the Plaintiff did not tell him there was a confession of judgment clause in the Note or explain the implications of such a provision. At the hearing, the Defendant asked the Court to pay particular attention to two circumstances of the confession of judgment: first, that the Note came after the fact, and second, that the record is clearly disputed. On the other hand, Plaintiff argued that they loaned the Defendant money and he willingly signed the Note containing a confession of judgment clause; therefore, judgment should be entered against the Defendant.

The Court's determination of the validity of a waiver under the totality of the circumstances is subjective. One thing that became strikingly apparent at the hearing is the sloppiness of this transaction. However, despite the sloppiness, the Court finds the following. Mr. Vautrin borrowed the sum of \$55,000 from Harrington Raceway in August, 2000, which was to be repaid by February, 2001. Mr. Vautrin's claims of duress and inadequate time to read the Note fail because, even accepting his testimony as true, it was his choice not to read the Note before signing it.<sup>13</sup> During cross examination, Vautrin admitted that he willingly signed the Note. Under Delaware law, "a party's failure to read a contract [cannot] justify its avoidance."<sup>14</sup> Arguably, the debtor in the *Pellaton* case had more opportunity to read and understand the

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<sup>13</sup> He testified that he felt "pressured in his mind" to sign the Note, but did not testify that he was forced to sign the Note on the spot without having read its contents.

<sup>14</sup> *Pellaton* at 477.

**Harrington Raceway v. Michael Vautrin**  
**C.A. No. 01J-03-024**  
**August 31, 2001**

personal guarantees he signed, as Pellaton did not read the documents because he relied on the advice of his two attorneys. However, the Court cannot protect business people who decide to sign contracts and promissory notes without reading them. Based on his presentation at the hearing, Mr. Vautrin appears to be a relatively sophisticated businessman. While he now claims that the Judgment Note does not accurately memorialize his agreement with Harrington Raceway, he willingly signed the Note without even bothering to read it. The Court finds this course of action to be a knowing, intelligent and voluntary waiver. Therefore, the Court finds that Mr. Vautrin waived his due process rights to notice and a hearing and judgment will be entered against him accordingly. The Plaintiff will present an order to this Court for the purpose of entering judgment. IT IS SO ORDERED.

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J.

dmh

oc: Prothonotary

xc: Order Distribution