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District Court Judge Rules Against GVI and VIGL in Gambling Suit, Jeopardizing 2016 Agreement to Build Horseracing Facilities in Territory

Business / **Published On April 13, 2020 07:45 AM /**

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2016 renderings of the future horseracing facilities in the USVI By. THE MAPP ADMINISTRATION

An agreement ratified by the 31st Legislature in December 2016 and signed into law by former Governor Kenneth Mapp, which promised the [development of two state-of-the-art horseracing facilities](#) in the territory, has been thrown into question following the ruling of District Court Judge Curtis Gomez on Friday, which concluded that the government of the Virgin Islands and its partner, VIGL Operations, LLC, violated the contract clause of the United States Constitution when the Legislature, through Act 7952, granted VIGL authorization to operate slot machines in St. Thomas in contravention of an agreement the GVI had signed with Southland Gaming in 2003.

The judgement puts on hold VIGL's plan to build horseracing facilities territory-wide, said Senator Kurt Vialet in an interview with the Consortium Sunday. He said the operation of slot machines at the impending racino facilities represented one of the major revenue sources, including the funding of purses, for the new facilities.

The lawsuit was brought against VIGL and the GVI by Southland Gaming in December 2018. Southland Gaming in 2003 during the administration of former Governor Charles Turnbull, had negotiated a contract to “design, install and operate a video lottery control system, maintain and operate entertainment centers which primarily offers video lottery games and services and maintain video lottery terminals (VLTs) and other related equipment in all applicable locations” in the St. Thomas-St. John district." Critically, the 2003 contract said the GVI “shall not contract with any other party for delivery or management of [VLTs] . . . or any other video lottery services including any equipment, machines, software or operational services and [Southland Gaming] shall be the exclusive supplier to the [GVI] of such VLTs and related services.”

The contract was amended for extension in 2013 during the administration of former Governor John P. de Jongh. The extension lengthened Southland Gaming's St. Thomas-St. John District exclusivity to 2028.

At the crux of the matter was whether the “slot machines” contemplated in Virgin Islands Act No. 7952 and/or Virgin Islands Act No. 7953 are the functional equivalent of “video lottery terminals” contemplated in the July 29, 2003, agreement (or its 2013 amendment) between the Virgin Islands Government and Southland Gaming.

The video lottery terminals contract defined VLTs as "Any machine in which coins, credits or tokens are deposited in order to play any game of chance in which the results including options available to the player are randomly and immediately determined by the machine. A VLT may use spinning reels or video displays or both and may or may not dispense coins or tokens directly to winning players. VLTs may include a progressive jackpot either individually, in a linked cluster of machines in one location, or in a linked cluster of machines in multiple locations"

However in the VIGL contract, which was [signed into law in 2016](#), a slot machine is described as, "Any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive merchandise or any thing of value whatsoever, whether the payoff is made automatically from the machine or in any other manner whatsoever."

The GVI argued that VLTs are distinguishable from slot machines because a game on a slot machine may be won by the “application of the skill of the operator,” while a VLT is solely a “game of chance."

However in his judgment, Judge Gomez said "The GVI presumes that, because a player may apply some “skill” when playing a machine game that determines a winner through an algorithm, that this machine game cannot be a “game of chance.” The GVI’s reliance on this presumption is flawed. The term “game of chance” refers to a wide range of activities, including various games “played with dice, cards, slot machines, [and] video gaming devices or machines.” See 14 V.I.C. § 1224. Significantly, that a game is a “game of chance” does not mean the odds of winning cannot be somewhat altered by an application of skill. Indeed, state courts have overwhelmingly found

that video gaming devices that rely in part on skill are still “games of chance” under the relevant state law as long as chance is still a significant element in the game’s operation. See *United States v. Dobkin*, 423 S.E.2d 612, 614 (W. Va. 1992) (“[A]lthough there is some element of skill involved, poker or any electronic simulation thereof, is a game of chance.”)

See full ruling [here](#).

Judge Gomez added, "In sum, the machines utilized as VLTs and slot machines are both electronic machines that offer an opportunity to win a prize by playing a game of chance in exchange for money. VLTs and slot machines function in the same manner, are interchangeable, and in many cases are in fact identical machines. Accordingly, the Court holds that the slot machines contemplated in Virgin Islands Act No. 7952 and Virgin Islands Act No. 7953 are the functional equivalent of the VLTs contemplated in the VLT contract between the GVI and Southland," opined Judge Gomez. "The United States Constitution provides that “[n]o State shall pass any law impairing the Obligation of Contracts.”

He concluded: "The Court finds that there was a contract between the GVI and Southland, that Act 7952, which permitted the operation of slot machines on St. Thomas, constituted a substantial impairment of the parties’ relationship under that contract, and that this impairment was not reasonable or appropriate in light of any purpose served by Act 7952. By authorizing VIGL to operate slot machines on St. Thomas, the GVI impaired the exclusive contract that the GVI had with Southland, breaching the contract and violating the Contracts Clause of the United States Constitution."

The [bill](#) that led to [Act 7952](#) was sponsored by Senator Kurt Vialet and former Senators Neville James and Almando Liburd. The measure was hustled through the Senate even against the Legislature's legal counsel who said the bill had issues. It skipped the committee process and was special-ordered to the Senate floor during a Committee of the Whole session, passed and forwarded to former Governor Mapp, who signed the measure.

Asked about the bill's skipping of the committee process, Mr. Vialet said there was a case on whether video lottery terminals were the same as slot machines that preceded this latest lawsuit, where Southland Gaming argued that slot machines were different from video lottery terminals.

"Southland Gaming had actually put up a good case stating that VLTs were not slot machines, because they did not want to be regulated by the V.I. Casino Control Commission," Mr. Vialet said. He said Southland Gaming wanted the regulation to remain under the VI Lottery Commission, "so that is why I find this ruling a bit strange because a couple of years back they argued that VLTs were not slots."

The senator stated that based on the District Court's ruling, he was ready to move legislation that would bring the regulation of VLTs under the V.I.C.C.C. "Because you cannot have slot machines under the [Casino Control Commission] and then you have a whole next regulatory provision setup under VI Lottery for the same slot machines. So if the ruling is that they are slots, then they're going to need to be regulated under the Casino Commission," he said.

The senator added that lawmakers would also need to revisit Southland Gaming's contract to determine whether it has been paying the appropriate taxation for slot machines.