

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LAKE STREET GAMING, LLC,  
Plaintiffs

v.

IGAMES ENTERTAINMENT, INC.,  
and MONEY CENTERS OF  
AMERICA, INC.,  
Defendants

CIVIL ACTION

No. 04-4965

**OPINION**

June 8, 2006

Plaintiff Lake Street Gaming (“Lake Street”) initiated this suit in October 2004 against defendants iGames Entertainment, Inc. (“iGames”) and Money Centers of America, Inc. (“MCA”).<sup>1</sup> Plaintiff seeks to recover for various wrongs allegedly arising out of a contract with defendants for the sale of rights to a casino card game, known as “Table Slots,” developed by plaintiff.

Lake Street is a limited liability company based in New Jersey. Defendants’ principal place of business is Pennsylvania. When the contract at issue in this case was formed, iGames was a Nevada corporation with its principal place of business in Florida.

Defendants’ motion to dismiss plaintiff’s claim for fraudulent misrepresentation,

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<sup>1</sup>iGames and MCA merged in 2004, and iGames no longer exists as a separate corporate entity.

count III of plaintiff's amended complaint, is presently before this court. Defendants also argue that, even if plaintiff's claim for fraudulent misrepresentation survives dismissal, plaintiff's corresponding claim for punitive damages should be stricken from the amended complaint.

## I.

The facts summarized below are those alleged in plaintiff's amended complaint, and are accepted as true for the purpose of deciding defendants' motion to dismiss. "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." *Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts Inc.*, 140 F.3d 478, 483 (3d Cir. 1998).

In 2002, Lake Street developed and marketed a casino card game called "Table Slots." A representative of iGames approached Lake Street and inquired about buying all of Lake Street's rights and interests in the game. On February 14, 2003, Lake Street entered into an Asset Purchase Agreement ("Agreement") with iGames, providing iGames with all of Lake Street's rights, title, and interest in Table Slots.

The Agreement provided that Lake Street would sell, assign, transfer, deliver, and convey all of its rights, title, and interest in Table Slots to iGames for 300,000 shares of restricted common stock in iGames, at a purchase price of \$1.10 per share. According to the Agreement, fifty percent of those shares could be freely sold or transferred by Lake

Street ninety days after the closing of the Agreement,<sup>2</sup> while the remaining fifty percent could not be sold until one year after the closing. The Agreement also provided that if the fair market value of the latter 150,000 shares was less than \$1.10 per share after the one-year sales restriction, iGames would re-purchase that stock at the price of \$1.10 per share within thirty days of written notice from Lake Street (“repurchase provision”). The Agreement also entitled Lake Street to ongoing twenty percent royalties on the net revenues from the sale or lease by iGames of Table Slot game units.<sup>3</sup>

Pursuant to the Agreement, Lake Street sold fifty percent of its shares in iGames in 2003. One year after the Agreement’s closing, the fair market price for stock in iGames was \$0.85 per share. Lake Street notified iGames that it intended to exercise its rights under the repurchase provision. However, iGames refused to repurchase the shares.

## II.

Plaintiff’s amended complaint alleges that iGames’s failure to repurchase the shares tendered within thirty days of receiving notice of Lake Street’s intent to exercise its rights under the repurchase provision constituted breach of the Agreement. The

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<sup>2</sup> The closing under the Agreement took place on February 14, 2003.

<sup>3</sup> The Agreement included several other relevant provisions. Article 6 provided that in the event of default by one party, the non-defaulting party might terminate the Agreement or may require specific performance of the Agreement. In Article 8, iGames promised to indemnify Lake Street for losses due to iGames’s breach of the Agreement. Article 9 established that the prevailing party in any litigation arising under the Agreement would be entitled to recover reasonable attorneys’ fees and expense incurred in connection with such litigation at all levels, including before the filing of suit.

amended complaint also demands that, under the terms of the Agreement, defendants indemnify Lake Street for all attorney’s fees and related costs, including those incurred prior to the filing of this suit. Finally, the amended complaint includes a claim for fraudulent misrepresentation: Lake Street asserts that iGames knowingly, falsely represented that it would repurchase any remaining shares of common stock held by Lake Street for \$1.10 per share after the one-year sales restriction period. Lake Street further alleges that it justifiably relied upon this material misrepresentation when it entered into the Agreement, and asserts that iGames knew of and intended for this reliance to occur. Lake Street demands compensatory and punitive damages, costs and attorney’s fees and such other relief as this court deems proper to remedy defendants’ fraudulent misrepresentation.<sup>4</sup>

### **III.**

Defendants argue that plaintiff’s claim for fraudulent misrepresentation is barred by the economic loss rule. In accordance with the Agreement, this case is governed by Florida law.<sup>5</sup> The economic loss doctrine bars a contracting party from pursuing a tort

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<sup>4</sup>Plaintiff’s only demand for punitive damages arises in connection with count III of the amended complaint—the fraudulent misrepresentation claim. For the other counts, plaintiff’s amended complaint seeks compensatory damages plus interest, costs and attorney’s fees (including those incurred, in connection with the suit, prior to the filing of the complaint) and any other relief this court deems proper.

<sup>5</sup>Section 9.3 of the Agreement states that it “shall be governed and construed in accordance with the law of the state of Florida applicable to agreements made and to be performed entirely within such state, without regard to the conflicts of law principles of such state.”

claim against another contracting party where the essential nature of the claim is contractual. *See, e.g., Hotels of Key Largo v. RHI Hotels, Inc.*, 694 So. 2d 74, 77 (Fla. Dist. Ct. App. 1997) (holding that “where the alleged fraudulent misrepresentation is inseparable from the essence of the parties’ agreement, the economic loss rule applies and the parties are limited to pursuing their rights in contract”).

As Lake Street correctly notes, some tort claims survive the economic loss bar. In *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So. 2d 1238, 1239 (Fla. 1996), the Supreme Court of Florida explained that “[t]he economic loss rule has not eliminated causes of action based upon torts independent of the contractual breach even though there exists a breach of contract action. Where a contract exists, a tort action will lie for either intentional or negligent acts considered to be independent from acts that breached the contract.” Such independent torts generally include claims of fraudulent inducement. *See id.* (noting that fraudulent inducement requires proof of facts separate and distinct from breach of contract as it normally occurs earlier and applies a different standard of truthful representation to the defendant).

However, not every claim styled as fraudulent inducement is, in fact, an independent tort. *See Hotels of Key Largo*, 694 So. 2d at 77. Even where a claim is styled as one for fraudulent misrepresentation in the inducement—as in the case at bar—Florida law bars the claim if it is based solely on false promises to perform obligations undertaken in a contract. That is, a claim that a defendant induced entry into a

contract by falsely promising to perform in a manner memorialized in, and central to, the contract is barred by the economic loss doctrine. *See, e.g., id.* at 78.

Lake Street argues that because its fraudulent misrepresentation claim is based on iGames's knowing and intentional misleading of Lake Street during the formation of the Agreement regarding its intent to repurchase shares, the claim is separate and distinct from Lake Street's breach of contract claim based on defendants' subsequent failure to repurchase said shares in accordance with the terms of the Agreement.

This argument is unavailing. To borrow language from the Supreme Court of Florida, the fraud alleged by Lake Street is not "extraneous to the contract" but is "interwoven with the breach of contract." *HTP, Ltd.*, 685 So. 2d at 1240. The material representation at issue—that Lake Street would repurchase stocks in accordance with the repurchase provision in Section 2.1—was embodied in the parties' Agreement. *Cf. Excess Risk Underwriters, Inc. v. Lafayette Life Ins. Co.*, 208 F. Supp. 2d 1310, 1319 (S.D. Fla. 2002) (noting this in support of dismissal of fraudulent inducement claims under the economic loss rule); *Hotels of Key Largo*, 694 So. 2d at 77 (affirming dismissal of a fraudulent inducement claim under the economic loss rule because the alleged misrepresentations were "inseparably embodied in the parties' subsequent agreement" and related to the breaching party's performance of the contract).

In *Rosa v. Amoco Oil Co.*, a federal district court interpreting Florida law offered the following succinct analysis: "statements or misrepresentations made to induce an

individual to enter a contract, if later contained within terms of the actual contract, cannot constitute a basis on which to bring a fraud claim,” particularly where the contract contains a merger clause. 262 F. Supp. 2d 1364, 1366-67 (S.D. Fla. 2003); *see also Bates v. Rosique*, 777 So. 2d 980 (Fla. Dist. Ct. App. 2001) (noting the role of the merger clause as an impediment to a fraudulent inducement claim); *Hotels of Key Largo*, 694 So. 2d at 77 (same). Such is the case here: the alleged basis for fraudulent inducement was expressly included in the Agreement as the repurchase provision, and the Agreement also contained a merger and integration clause. Moreover, the alleged misrepresentation did not cause harm distinct from that caused by the breach of contract. *Cf. Eye Car Int’l, Inc. v. Underhill*, 92 F. Supp. 2d 1310, 1315 (M.D. Fla. 2000) (noting this in support of dismissal of fraud claims under the economic loss rule).

Because Lake Street has offered no basis for an independent cause of action in tort, count III will be dismissed in an order accompanying this opinion.

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**ORDER**

June 8, 2006

For the reasons stated in the foregoing opinion, it is hereby ORDERED that defendants' motion to dismiss Count III of the amended complaint (docket #7) is GRANTED. Accordingly, Count III of the Amended Complaint is DISMISSED with prejudice.

For the Court:

/s/ Louis H. Pollak

Pollak, J.