

Bartle, III, Judge

According to Tropicana, participation in a promotion such as the Million Dollar Wheel cannot constitute consideration that would support the formation of an enforceable contract. We find the decision of the New Jersey Supreme Court in *Lucky Calendar Co. v. Cohen* to be on point. There, an advertising company brought a declaratory judgment action, seeking a determination that its promotional advertisement campaign for Acme Super Markets did not violate New Jersey's Lottery Act. The centerpiece of the campaign was a calendar that had Acme coupons bordering it, which was distributed by mass mailings. The calendar contained an explanation of the "Lucky Calendar Prize Contest." Entrants had the opportunity to win prizes in monthly drawings. All they had to do to enter was tear the entry form off the calendar, enter a name, address, and phone number, and have the form deposited in a box at any Acme store. There was no charge, and they were not required to be present for the drawing. The question in *Lucky Calendar* was whether there had been consideration for participation in the drawings. The Supreme Court of New Jersey noted that, assuming consideration was required in order for something to qualify as an illegal lottery, it need only be the minimum consideration that is necessary to form a contract. It explained:

The consideration in a lottery, as in any form of simple contract, need not be money or the promise of money. Nor need it be of intrinsic value; "a rose, a hawk or a peppercorn" will suffice, provided it is what is asked for by the promisor and is not illegal . . . Whether a "peppercorn" or the filling in and delivering of a coupon is sufficient consideration for a promise depends only on whether it was the requested detriment to the promisee induced by the promise.

The court determined that consideration was present "both in the form of a detriment or inconvenience to the promisee at the request of the promisor and of a benefit to the promisor. . . . Completing the coupon and arranging for the deposit of it in the box" at the store was the detriment to the promisee, and the "increase in volume of business" was the benefit to the promisor and its

customer, the owner of the Acme stores. As the court pointed out, "The motives of the plaintiff and its customer [in offering the Lucky Calendar Prize Contest] . . . are in nowise altruistic."

In *Cobaugh v. Klick-Lewis, Inc.*, the Superior Court of Pennsylvania decided that there was adequate consideration to form a binding contract where a golfer, who was participating in a tournament, shot a hole-in-one after seeing a contest announcement offering a new car to anyone who could ace the particular hole. The court noted that the promisor benefited from the publicity of the promotional advertising, and the golfer performed an act that he was under no legal obligation to perform.

Ms. Gottlieb had to go to the casino to participate in the promotion. She had to wait in line to spin the wheel. By presenting her Diamond Club card to the casino attendant and allowing it to be swiped into the casino's machine, she was permitting the casino to gather information about her gambling habits. Additionally, by participating in the game, she was a part of the entertainment that casinos, by their very nature, are designed to offer to all of those present. All of these detriments to Ms. Gottlieb were the requested detriments to the promisee induced by the promise of Tropicana to offer her a chance to win \$1 million. Tropicana's motives in offering the promotion were "in nowise altruistic." It offered the promotion in order to generate patronage of and excitement within the casino. In short, Ms. Gottlieb provided adequate consideration to form a contract with Tropicana.

Tropicana further challenges Ms. Gottlieb's breach of contract claim on the grounds that it is clear as a matter of law that she did not win the \$1 million prize. Tropicana points to computer records in support of its position that Ms. Gottlieb did not win the grand prize. Ms. Gottlieb relies in part on her own testimony and the testimony of her husband, who witnessed her spin of the promotional wheel. It is for the jury, and not for the court, to resolve this factual dispute.

Motion for summary judgment on the contract claim denied in favor of Ms. Gottlieb.

Gottlieb v. Tropicana Hotel and Casino
109 F. Supp. 2d 324 (U.S. Dist. Ct. E.D. Pa. 2000)

During the summer of 1999, Rena and Sheldon Gottlieb were vacationing in Atlantic City, New Jersey, and on July 24, they visited the Tropicana casino. Tropicana offers people membership in its "Diamond Club." To become a Diamond Club member, an individual must visit a promotional booth in the casino, obtain and fill out an application form, and show identification. There is no charge. The application form lists the person's name, address, telephone number, and e-mail address, and this information is entered into the casino's computer database. Each member receives a Diamond Club card that has a unique identification number. The member then presents or "swipes" the card in a machine each time he or she plays a game at the casino, and the casino obtains information about the member's gambling habits. The casino's marketing department then uses that information to tailor its promotions.

Rena Gottlieb was, and had been for a number of years, a member of the Diamond Club. When she entered the casino on July 24, she immediately went to the Fun House Million Dollar Wheel Promotion, which offers participants the chance to win a grand prize of \$1 million. Diamond Club members were entitled to one free spin of the Million Dollar Wheel each day. She presented her Diamond Club card, a casino operator swiped it through the card reader, she pressed a button to activate the wheel, and the wheel began spinning. Gottlieb claims that the wheel landed on the \$1 million grand prize, but when it did so, the casino attendant immediately swiped another card through the machine, reactivated the wheel, and the wheel landed on a prize of two show tickets. Tropicana denies that its attendant intervened and reactivated the wheel, and contends that the wheel simply landed on the lesser prize. Ms. Gottlieb sued Tropicana for breach of contract, among other theories, and Tropicana moved for summary judgment.