

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA**

**NORTH FORT MYERS POST
NO. 10127 VETERANS OF FOREIGN
WARS OF THE UNITED STATES, INC.,**
a Florida Not for Profit Corporation,
Plaintiff,

vs.

CASE: 19-CA-3794

**STATE OF FLORIDA DEPARTMENT OF
BUSINESS AND PROFESSIONAL
REGULATION DIVISION OF ALCOHOLIC
BEVERAGES AND TOBACCO,**

Defendant _____/

**ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT, PARTIAL SUMMARY
JUDGMENT OR, ALTERNATIVELY, MOTION FOR ADJUDICATION OF FACTS
NOT AT ISSUE AND INITIAL RESPONSE TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT WITH MEMORANDUM OF LAW**

THIS CAUSE having come before this Court on Defendant's Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment, Partial Summary Judgment or, alternatively, Motion for Adjudication of Facts Not At Issue and Initial Response to Defendant's Motion for Summary Judgment with Memorandum of Law, and the Court, after review of the pleadings, affidavits submitted by Plaintiff, review of the Court file, argument of counsel and being otherwise fully apprised in the premises, the Court finds as follows:

I. FINDINGS OF FACT

1. Initially, the Court accepts the fact that both Plaintiff and Defendant acknowledged to this Court that there are certain facts that are not in dispute.

2. The Court acknowledges that although Defendant is a moving party for its Summary Judgment and is opposing the Cross Motion for Summary Judgment, Defendant has

not provided this Court any affidavits in support of its position that the electronic equipment being utilized by the Plaintiff is a “*slot machine*.” Further, Defendant has not submitted any affidavits in opposition to the Plaintiff’s Cross Motion for Summary Judgment. The Court also recognizes that Defendant has not filed a counterclaim for the relief it is seeking and has not filed any affirmative defenses in opposition to Plaintiff’s complaint and has engaged in no discovery.

The Court recognizes the standard set forth in Holl v Tolcott, 191 So 2d 40 (Fla 1966):

“It is not sufficient in defense of a motion for summary judgment to rely on the paper issues created by the pleadings, but it is incumbent upon the party moved against to submit evidence to rebut the motion for summary judgment and affidavits in support thereof or the court will presume that he had gone as far as he could and a summary judgment could be properly entered.”

3. Plaintiff, however, presented the affidavits of C. Frederic Anderson, Emilio Galasso and Paul Baldwin in support of both its Motion for Summary Judgment and in opposition to Defendant’s Motion for Summary Judgment. Based upon the fact that this is the only evidence presented to this Court, and has not been challenged, much less refuted, the Court accepts these three (3) affidavits for purposes of the Motion for Summary Judgment and all facts contained therein. Plaintiff has engaged in discovery obtaining from Defendant nine (9) admissions to Requests for Admissions served by Plaintiff. The Court shall only consider that record evidence that was of record and before it at the summary judgment hearing conducted on May 13, 2020 and will not accept Defendant’s oral references to issues outside of the record.

4. As represented by both counsel, while the facts are not in dispute, the parties dispute the characterization of the facts and application of the facts to the applicable law.

5. This Court has reviewed the facts in the record in this matter and has adjudicated

the following:

- a. Plaintiff is a not-for-profit corporation authorized to conduct business in the State of Florida and is conducting business in Lee County at 996 Pondella Road, North Fort Myers, Florida 33903.
- b. Defendant is the state agency authorized to regulate alcoholic beverage licensees and to administer and enforce chapters 561 through 565, 567, and 568, Florida Statutes, collectively referred to as “The Beverage Law.”
- c. On June 5, 2019, Defendant conducted an inspection of Plaintiff’s premises and observed the Instant Bingo Systems in operation at that location.
- d. Defendant issued Plaintiff an Official Notice and the manager of the location was provided a copy of Attorney General Opinion 2008-35.
- e. Plaintiff is authorized to lawfully conduct bingo and instant bingo games pursuant to section 849.0931(2)(a), Florida Statutes, when such conduct is in compliance with the provisions of the Bingo Statute.
- f. Plaintiff utilizes the Instant Bingo System to manufacture and dispense instant bingo tickets.
- g. The Instant Bingo System operates upon insertion of currency in differing amounts up to \$1.00.
- h. Once activated, the Instant Bingo System manufactures the instant bingo tickets by printing the tickets on blank thermal paper.
- i. The Instant Bingo System’s ticket server generates deals of 4,000 instant bingo tickets, and each deal is generated from a flare which is also stored in the server.

- j. Some of the tickets are designated in advance as prize winners.
- k. Once the ticket is manufactured and dispensed to the player, the player must open and remove a cover to reveal if the ticket has a prize value.
- l. Losing tickets are marked with the words “PLAY AGAIN” and winning tickets display a prize amount.

6. Further, the Court finds after review of the three (3) uncontested Affidavits of the Plaintiff, the following:

m. Plaintiff is a 501(c) Corporation and has otherwise met all conditions precedent set forth in Florida Statute §849.0931(the “Bingo Statute”).

n. Plaintiff conducts Bingo pursuant to the provisions of Florida Statute §849.0931(1)(a) which states:

“(a) “Bingo game” means and refers to the activity, commonly known as “bingo,” in which participants pay a sum of money for the use of one or more bingo cards. When the game commences, numbers are drawn by chance, one by one, and announced. The players cover or mark those numbers on the bingo cards which they have purchased until a player receives a given order of numbers in sequence that has been preannounced for that particular game. This player calls out “bingo” and is declared the winner of a predetermined prize. More than one game may be played upon a bingo card, and numbers called for one game may be used for a succeeding game or game.”

o. Plaintiff does not utilize a representative/attendant to draw the bingo numbers by chance. Rather, the numbers are selected by an electronic device (a designed piece of equipment that selects each winning number) which randomly selects the numbers. The randomly selected number is then posted on an electronic display board for the attendees/players. The winning number is announced by use of a public address system/microphone to the audience. Some members of the audience utilize electronic devices to track their bingo cards and electronically

monitor the progress of the game and the results of the multiple cards certain of the players use to track more than one bingo card.

p. Plaintiff, based upon meeting all the conditions precedent as set forth in Florida Statute §849.0931 for the conduct of bingo at their fraternal establishment, and, as a qualifying organization, is also authorized by the statute to engage in the conduct of *Instant Bingo* as defined under the Bingo Statute.

q. Instant Bingo, under Florida Statute §849.0931, is defined as:

“a form of bingo that is played at the same location as bingo, using tickets by which a player wins a prize by opening and removing a cover from the ticket to reveal a set of numbers, letters, objects, or patterns, some of which have been designated in advance as prize winners.”
Florida Statute §849.0931(1)(f)

r. Plaintiff has implemented the use of electronic equipment to act as a technological aid to dispense the Instant Bingo tickets just as it uses electronic equipment to conduct Bingo as set forth above.

s. Plaintiff’s Instant Bingo tickets are dispensed through a computer system and video monitor which tracks each and every play, displays the necessary notifications via an electronic flare to each player and limits each ticket dispensed to no more than \$1.00 (the “Instant Bingo System”).

t. Plaintiff’s electronic device provides accurate accounting of the results of each play as required by Florida Statute §849.0931(13)(g) and as identified by the affidavits, the electronic device accurately records and maintains the record of the Instant Bingo Game being played as specified and required in the statute:

“(g) Each manufacturer and distributor that sells or distributes instant bingo tickets in this state to charitable, nonprofit, or veterans’ organizations shall prepare an invoice that contains the following information:

- 1. Date of sale.**
- 2. Form number and serial number of each deal sold.**
- 3. Number of instant bingo tickets in each deal sold.**
- 4. Name of distributor or organization to whom each deal is sold.**
- 5. Price of each deal sold.**

All information contained on an invoice must be maintained by the distributor or manufacturer for 3 years.”

7. In addition, Defendant has admitted nine (9) separate and distinct facts based upon two sets of Request for Admissions. Pursuant to Fla.R.Civ.P. 1.370 an admission by a party to a formal Request for Admissions deems those admissions admitted and the Court considers those admissions binding. Accordingly, the following additional facts are not in dispute and those facts are:

- u. That a copy of the correspondence, attached to the Request for Admissions as Exhibit “1” is a true and correct copy of the correspondence that was sent to and received by counsel for Defendant on April 8, 2019.
- v. That a copy of the correspondence, attached to the Request for Admissions as Exhibit “2” is a true and correct copy of the correspondence that was sent by counsel for Defendant on April 8, 2019.
- w. That a copy of the correspondence, attached to the Request for Admissions as Exhibit “3” is a true and correct copy of the correspondence that was sent to and received by counsel for Defendant on April 30, 2019.
- x. That a copy of the correspondence, attached to the Request for Admissions as Exhibit “4” is a true and correct copy of the correspondence that was sent by counsel for Defendant on May 17, 2019.

- y. That a copy of the correspondence, attached to the Second Request for Admissions as Exhibit “1” is a true and correct copy of the correspondence that was sent to and received by counsel for Defendant on May 23, 2019.
- z. That a copy of the correspondence, attached to the Second Request for Admissions as Exhibit “2” is a true and correct copy of the correspondence that was sent to and received by counsel for Defendant on June 7, 2019.
- aa. That a copy of the correspondence, attached to the Second Request for Admissions as Exhibit “3” is a true and correct copy of the correspondence that was sent by counsel for Defendant on June 9, 2019.
- bb. That the Defendant, through its representatives, issued the Citations attached the Second Request for Admissions as Composite Exhibit “4.”
- cc. That the Instant Bingo System being utilized in the locations as cited on Composite Exhibit “4,” to the Second Request for Admissions, are the same Instant Bingo Systems that are being utilized by Plaintiff.

8. These Request for Admissions clearly reflect that there is a case in controversy between Plaintiff and Defendant and that Plaintiff is seeking declaratory relief based upon the actions being advanced by Defendant, which includes Defendant advancing a claim before this Court and seeking a declaration in its Motion for Summary Judgment that Plaintiff is engaging in an illegal gambling as the machine at issue in this case is a “*slot machine.*” The Court finds that the matter is properly before this Court.

II. CONCLUSION OF LAW

9. There is no dispute that Plaintiff is a veteran’s organization allowed to lawfully conduct Bingo and Instant Bingo on its premises pursuant to and in compliance with section

849.0931, Florida Statutes. The sole issue is whether the use of an automated machine to dispense the instant bingo tickets violates the provisions enumerated within Florida Statute §849.0931.

10. Defendant requests that this Court determine that the utilization of an electronic device by Plaintiff for Instant Bingo constitutes a “*slot machine*” within the meaning of Florida Statute §849.15 and, therefore, is prohibited under Florida Statute §849.16. This Court notes that Defendant failed to provide this Court any affidavit or record evidence that would reflect that Plaintiff’s electronic aid qualifies as a “*slot machine*” prohibited by Florida Statute §849.15 or Florida Statute §849.16 or any verified statement from a representative of Defendant or an expert that the electronic device being utilized by Plaintiff, the Instant Bingo System, is an illegal “*slot machine*”.

11. Even assuming that Defendant’s arguments were considered, the evidence in this case is overwhelming that the electronic device in this case is not a “*slot machine*” as defined by the line of cases cited by Plaintiff.

12. Florida Statute §849.16, has been construed by the Florida Supreme Court in the case of Deeb vs. Stoutamire, 53 So. 2d 873 (Fla. 1951) which indicated in pertinent part as follows:

“The law denouncing slot machines defines them as devices so adapted that "as a result of the insertion" of a coin they are "caused to operate or may be operated, and by reason of any element of chance or of other outcome of such operation unpredictable by him, the user may receive or become entitled to receive any * * * thing of value" or anything which may be exchanged for something of value, such as money or merchandise, "or the user may secure additional * * * rights" to play, "even though [the machine] may, in addition to any element of chance or unpredictable outcome" deliver merchandise or entertainment. 849.16, Florida Statutes 1941, and F.S.A.”

13. In this particular case, there is no record evidence supporting the Defendant’s position that Plaintiff’s device contains any element of chance in the Instant Bingo System, a

requirement for the determination of a “*slot machine*” and certainly a requirement if this Court was to consider the Attorney General Opinion 2008-35.

14. Rather, the evidence submitted is to the contrary and shows that the tickets dispensed by the Instant Bingo System meet the exact requirements for Instant Bingo as set forth in §849.0931 and meet with specific detail each and every requirement imposed by the statute for the Plaintiff to engage in Instant Bingo and specifically as required by the statute there is a 4,000 ticket deal of tickets dispensed in accordance with the statute. Therefore, without clear evidence in support of the contention of Defendant that the Instant Bingo System is an illegal “*slot machine*” such contention, which was not presented to this Court other than by argument of counsel for Defendant, this Court declines to adopt Defendant’s interpretation of the electronic device at issue as a “*slot machine*” and does not find the Attorney General Opinion 2008-35 persuasive to the facts of this case.

15. In its Notice of Intent to Rely on Supplemental Authority, Defendant cites Gator Coin II, Inc. v. Florida Dep’t of Bus. & Prof’l Regulations, Div of Alcoholic Beverages & Tobacco, 254 So. 3d 1113 (Fla. 1st DCA 2018). The Court finds this case distinguishable as there are no facts in the record that would support Defendant’s position that the game at issue is a game of chance but rather, as argued by Plaintiff, the player is simply provided information by the machine that would otherwise be dispensed by an individual; the machine simply provides the mechanism to transmit the information.

16. This Court declines to make the finding that the Plaintiff’s electronic aid/Instant Bingo System is an illegal “*slot machine*” and rejects Defendant’s arguments that should the electronic aid be prohibited under Florida Statute §849.0931, then axiomatically Florida Statute §849.16 is the remedy.

17. Fundamentally, this Court is persuaded by Plaintiff's arguments regarding the applicability and statutory immunities contained within Florida Statute §849.0931 which protect the conduct of Plaintiff if it is in compliance with the requirements of Florida Statute §849.0931. Defendant argues that in the event that this Court finds a violation of any provision of Florida Statute §849.0931 exists, the remedies contained with Florida Statute §849.15 and §849.16 must apply. Defendant makes the analogy that because Florida Statute §849.15 does not reference Florida Statute §849.0931 as the Lottery Statute in §849.09 does, Florida Statute §849.15 allows an open-ended application of that statute, notwithstanding the safe harbor and statutory immunities afforded to Plaintiff under Florida Statute §849.0931.

18. This Court rejects Defendant's arguments on this point.

19. This Court agrees with Plaintiff's arguments that Florida Statute §849.0931 is a self-contained statute. This Court cannot overlook the clear language of Florida Statute §849.0931 and disregard the criminal sanctions enumerated in Florida Statute §849.0931 and impose remedies contained in other statutes as advocated by Defendant. In fact, as cited by Plaintiff and Defendant, the Court in Bradenton Group v. Dep't of Legal Affairs, 701 So. 2d 1170 (Fla. 5th DCA 1997) addressed the very issue as to whether or not a violation of the Bingo Statute would subject one to other criminal remedies, such as RICO. The Court in Bradenton rejected that argument and this Court finds the analysis controlling. Even AGO 2008-35 upon which Defendant relies, adopts this same reasoning, but arrives at a different conclusion and states:

“Bingo has been recognized as gambling within the terms of section 849.01, Florida Statutes.[5] Section 849.0931, Florida Statutes, removes bingo from the scope of Chapter 849, Florida Statutes, provided the bingo is conducted within certain statutorily defined limits. The effect of section 849.0931, Florida Statutes, is merely to eliminate bingo from the gambling chapter when played within the limits of the statute.[6]” (emphasis supplied)

“[6] See *Perlman v. State, supra*; and *Greater Loretta Improvement Association v. State ex rel. Boone*, 234 So. 2d 665, 669 (Fla. 1970) (“[g]ambling in its various forms, and lotteries, are illegal under present law. Bingo or Guest games do not violate this statute, if played within the restrictions imposed by the Legislature.”).” Op. Att’y Gen. Fla. 2008-35 July 8, 2008 (emphasis supplied).

20. Therefore, this Court finds that Florida Statute §849.0931 governs the facts and circumstances of this case and the use of the Instant Bingo System by Plaintiff. The facts and circumstances clearly show that the Instant Bingo game conducted by Plaintiff is “*conducted with certain statutorily defined limits*” and does not violate other sections of the gambling statute if Bingo and Instant Bingo is “*conducted with the restrictions imposed by the Legislature.*”. As such, this Court declines to look to and apply other criminal remedies contained within other sections of Florida Statute Chapter 849 Florida’s gambling statute, as requested by Defendant.

21. Next, this Court is requested by Defendant to find that the utilization of the electronic aid in the implementation of Instant Bingo is a violation of Florida Statute §849.0931 and, therefore, subjects Plaintiff to the criminal penalties contained with Florida Statute §849.0931. Based upon the undisputed facts in this matter and the evidence presented by Plaintiff, this Court finds that the use of the Instant Bingo System does not violate Florida Statute §849.0931.

22. In rendering its decision, this Court looks at the plain language of the Bingo and Instant Bingo Statute. Defendant requests that this Court accept Defendant’s position with respect to how this Court should interpret Florida Statute §849.0931. Defendant argues that under §849.46, which is titled *Exercise of Police Power*, the statute states that the provisions of Chapter 849 are to be liberally construed to carry out the purposes of efficient and proper enforcement of the prohibitions on lotteries and gambling. Defendant concedes that Chapter 849, Florida’s Gambling Statute provides certain exemptions and safe harbors to the general prohibition on gambling which

are codified in the statute inclusive of Florida Statute §849.0931 however Defendant argues that such immunities and safe harbor provisions should be narrowly construed.

23. This Court finds that this Court can both narrowly construe the Statute and keep within the legislative intent, as well as utilize the Rule of Lenity in statutory construction, as requested by Plaintiff. Specifically, since a determination by this Court that the activities of Plaintiff could violate Florida Statute §849.0931 and would subject Plaintiff to the Statute's criminal remedies, this Court must consider the Rule of Lenity. The Rule of Lenity indicates that when the language in a statute is susceptible of differing constructions it shall be construed more favorably to the accused. See Florida Statute §775.102(1).

24. Therefore, in looking at the Statute, this Court can narrowly construe the restrictions so as to follow legislative intent on the prohibition of gambling while providing the "accused", here Plaintiff, the most liberal construction should there be any differences in construing the statute or any lack of clarity therein. In doing so, this Court is persuaded by Plaintiff's arguments and rejects Defendant's arguments that the Bingo and Instant Bingo statutes must specifically state explicit language that permits electronic aids in order for the utilization of such aids to be legal. As an example of why Florida Statute §849.0931 should not be interpreted in that manner. Florida Statute §849.0931(1)(a), directs that in the play of Bingo "**...numbers are drawn by chance, one by one, and announced,**" Florida Statute §849.0931(1)(a). The Statute is silent as to the manner and method as to how the numbers are drawn or announced.

25. Under the Bingo Statute, there is no restriction on:

- a. Whether the bingo balls are selected manually or, in the case of the Plaintiff and most other fraternal or charitable organizations, by an electronic device, such as a tube.

- b. Whether the winning bingo balls are displayed, as in this case by the Plaintiff and by most other fraternal or charitable organization, via an electronic video board displaying the winning numbers.
- c. Whether the winning numbers are announced by an individual with or without the use of a microphone and speakers, which is done by the Plaintiff and by most other fraternal or charitable organizations.
- d. Whether Bingo players can use electronic devices to track the bingo cards and winning numbers rather than manually tracking such results.

26. The unrefuted affidavits of Plaintiff indicate that the Plaintiff utilizes electronic devices in the conduct of Bingo.

27. Defendant has not taken any steps to claim these electronic devices as used by Plaintiffs and recognized as completely acceptable and appropriate are precluded from use under Florida Statute § 849.0931 even though the statute is silent as to the use of electronic devices to conduct Bingo. Such position would certainly not keep in line with common sense since the electronic equipment utilized by Plaintiff in drawing the winning bingo numbers and announcing the winning bingo numbers does not alter the rules of bingo nor results in criminal activity.

28. As to Instant Bingo, the statute states, each Instant Bingo Ticket must meet all of the technical requirements of Florida Statute §849.0931 (13) and sold or distributed, is again silent as to how a qualified organization can meet those standards and which standards are defined in part as follows:

“(13)(a) Instant bingo tickets must be sold at the price printed on the ticket or on the game flare by the manufacturer, not to exceed \$1. Discounts may not be given for the purchase of multiple tickets, nor may tickets be given away free of charge.

(b) Each deal of instant bingo tickets must be accompanied by a flare, and the flare must be posted before the sale of any tickets in that deal.

(c) Each instant bingo ticket in a deal must bear the same serial number, and there may not be more than one serial number in each deal. Serial numbers printed on a deal of instant bingo tickets may not be repeated by the manufacturer on the same form for a period of 3 years.

(d) The serial number for each deal must be clearly and legibly placed on the outside of each deal's package, box, or other container.

(e) Instant bingo tickets manufactured, sold, or distributed in this state must comply with the applicable standards on pull-tabs of the North American Gaming Regulators Association, as amended."

29. In the event the Plaintiff's electronic aid failed to meet these criteria, regardless of whether the electronic aid was permitted under the Statute or if the failure was by an individual selling the instant bingo tickets, Plaintiff would be in violation of the safe harbor exemption under Florida Statute §849.0931. If such would be the case, Plaintiff would violate Florida Statute §849.0931 and would be solely and only liable as to the criminal sanctions as contained in Florida Statute §849.0931 and not in violation of the other gambling statute sections.

30. However, based upon the unrefuted affidavits of Plaintiff and evidence before the Court, it is also undisputed that Plaintiff's Instant Bingo Ticket meets all of the requirements of Florida Statute §849.0931 (13), the sale of the ticket meets the statutory requirements and the use of the electronic device not only eliminates the human error but allows the fraternal organization, here Plaintiff, to more fully and properly comply with the specific provisions of Florida Statute §849.0931 for maintaining an accurate record as to the sale of the Instant Bingo Ticket including the date of sale, the form number and serial number of each deal sold, number of tickets in each deal sold, the name of distributor or organization to whom each del is sold, the price of each deal sold, which information is to be maintained for three years. See Florida Statute 849.0931(13) (g):

“(g) Each manufacturer and distributor that sells or distributes instant bingo tickets in this state to charitable, nonprofit, or veterans' organizations shall prepare an invoice that contains the following information:

- 1. Date of sale.**
- 2. Form number and serial number of each deal sold.**
- 3. Number of instant bingo tickets in each deal sold.**

4. Name of distributor or organization to whom each deal is sold.

5. Price of each deal sold.

All information contained on an invoice must be maintained by the distributor or manufacturer for 3 years.”

31. Since Plaintiff complies with the requirements set forth in Florida Statute §849.0931, the Court now shifts its analysis to whether or not the electronic device is permitted. Plaintiff argues that the electronic aid at issue in this case is of the nature that is permitted under the Instant Bingo safe harbor provisions. The functionality and the mechanics of Plaintiff’s electronic aid was not disputed by Defendant and, therefore, is the only evidence before this Court. Plaintiff’s expert’s affidavit sets forth the way in which the electronic device functions.

32. After reviewing the affidavits, this Court is persuaded by the argument of Plaintiff that the electronic device is compliant with the activities authorized under Florida Statute §849.0931 and as identified in United States vs. Santee Sioux Tribe of Nebraska, 174 F.Supp.2d 1001 (US. Dist. 2001), which addressed the use of a technological aid to the game of pull-tabs and whether it was an exact replication of an electronic pull-tab game. In Santee Sioux Tribe, the Court found that the game was simply a *technological aid* to the pull-tab game. The evidence in this case reflects that the Instant Bingo System is not a “*standalone*” pull tab game itself. Rather, it is a technological aid for the player to engage in Instant Bingo based upon the unrefuted Affidavits and evidence before this Court.

33. As argued by Plaintiff, the game “could be played without the machine” and the “player is not playing against the machine” but rather, the machine is providing a method for which the information is provided to the player and pre-selected tickets are dispensed, sold and recorded, all as specifically required by the statute. All 4,000 tickets in the “Deal” as required by the statute are delivered only on to the player. In fact, Plaintiff argues and this Court finds persuasive that the electronic device at issue is nothing more than a “*high tech dealer*,” the description given by

the Court in Diamond Game Enterprises vs. Reno, 230 F.3d 365 (U.S. App. D.C. 2000) which analyzed and found to be permissible a pull tab dispensing machine similar to the Instant Bingo System. As is the case with the Instant Bingo System, the Court in Diamond Game Enterprises found that without the paper rolls, the machine has no gaming function at all. Here without the paper rolls of the Instant Bingo System the machine has no gaming functions and cannot be defined as a “*slot machine*.”

34. Based upon the foregoing, this Court declines to adopt Defendant’s narrow interpretation of Florida Statute §849.0931 and, instead, accepts Plaintiff’s evidence and finds its cases more applicable to the facts and evidence before this Court.

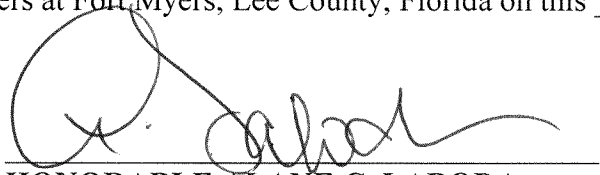
ACCORDINGLY, IT IS HEREUPON ORDERED AND ADJUDGED:

- A. Defendant’s Motion for Summary Judgment is **DENIED**.
- B. Plaintiff’s Cross-Motion for Summary Judgment is **GRANTED**.
- C. The Court declares that:
 - a. Plaintiff complies with all of the necessary qualifying elements of Florida Statute §849.0931 for engaging in Bingo and Instant Bingo;
 - b. Florida Statute §849.0931 is a self-contained statute and any violation of the statute must be handled in accordance with Florida Statute §849.0931 and not Florida Statute §849.15 or §849.16;
 - c. The electronic device at issue in this case is not a “*slot machine*” pursuant to Florida Statute §849.15 or §849.16;

- d. The electronic device at issue in this case is merely an electronic aid to assist the player that is not prohibited in the meaning of §849.0931;
- e. Plaintiff's conduct does not violate Florida Statute §849.0931;

This Court reserves the right to grant any other relief that this Court deems just and proper.


DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida on this 1
day of ~~May~~, 2020
June



HONORABLE ALANE C. LABODA
CIRCUIT COURT JUDGE

Copies to:

Kevin F. Jursinski
Whitney Rebecca Hays



Judicial Assistant

6/1/20
Date