

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

In re

BRIDGEPORT JAI ALAI, INC., D/B/A
SHORELINE STAR GREYHOUND PARK
& ENTERTAINMENT COMPLEX,

Debtor.

Chapter 11

Case No. 96-51183

BRIDGEPORT JAI ALAI, INC.,

Movant,

v.

AUTOTOTE SYSTEMS, INC.
AUTOTOTE CORPORATION, and
AUTOTOTE ENTERPRISES, INC.,

Respondents.

Re. # 514
520

APPEARANCES:

James G. Verrillo, Esq.
Zeisler & Zeisler, P.C.
558 Clinton Avenue
Bridgeport, Connecticut 06605

Attorney for movant/debtor

David D. Tobin, Esq.
Tobin, Carberry, O'Malley, Riley & Selinger, P.C.
43 Broad Street, P.O. Box 58
New London, CT 06320

Attorney for respondents

**MEMORANDUM AND ORDER ON MOTIONS TO EXERCISE
RENEWAL OPTION RIGHTS**

Alan H.W. Shiff, United States Bankruptcy Judge:

Pursuant to motions filed on January 30, 2001 and April 27, 2001, Shoreline Star Greyhound Park & Entertainment Complex ("Shoreline"), as successor in interest to the debtor Bridgeport Jai Alai, has moved to exercise an option to renew an agreement with the respondents (collectively, "Autotote"). Autotote objects, claiming that Bridgeport Jai Alai and Shoreline materially breached the agreement, thereby terminating the option.

Background

In an October 29, 1992 agreement (the "Agreement"), the State of Connecticut, as the operator of an off-track betting system (the "OTB System"), granted Bridgeport Jai Alai the right to operate an off-track betting branch until December 2, 1995. On June 30, 1993, Autotote succeeded to Connecticut's interest in the OTB System. On June 2, 1993, in anticipation of that transfer, Autotote entered into an amendment to the Agreement with Bridgeport Jai Alai (the "Amended Agreement"). The Amended Agreement extended the initial term to December 2, 2000 and gave Bridgeport Jai Alai three five year options to renew, provided that it was not "in default [of the Amended Agreement] as of the date of exercise of an option, and that there [were not] more than two *material* defaults during the current term." (Emphasis added).

On July 16, 1996, Bridgeport Jai Alai commenced this chapter 11 case. On December 11, 1997, its chapter 11 plan was confirmed,¹ and on December 29, 1997, the court approved the assumption of the Amended Agreement, see 11 U.S.C. § 365 (the "§ 365 Order"). On June 13, 2000, Shoreline, as successor to Bridgeport Jai Alai, sent to Autotote a "notice of exercise of option." Autotote responded that Shoreline had

¹ The court has jurisdiction over the instant motions pursuant to Article X of the confirmed plan.

no right to renew because its predecessor, Bridgeport Jai Alai, had committed more than two material defaults.

There is no dispute that Bridgeport Jai Alai committed numerous preconfirmation material defaults. For example, from November 25, 1995 through May 13, 1996, it did not timely pay invoices for fees issued by Autotote, although did eventually pay all of those invoices prior to the commencement of this case. After May 13, 1996, Bridgeport Jai Alai failed to pay any invoices until the Amended Agreement was assumed and cured on December 29, 1997. In addition, it failed to provide Autotote with financial statements which were required by the Amended Agreement, including quarterly unaudited statements, audited annual statements, and quarterly and annual unaudited supplemental schedules on revenue. Shoreline has paid all postconfirmation invoices in full, but it did not provide Autotote with the financial statements required by the Amended Agreement until April 27, 2001.

On January 30, 2001, Shoreline filed a motion to reopen the December 11, 1997 order confirming the plan and the § 365 Order. The motion requested a clarification that those orders cured all past defaults and, accordingly, Shoreline's option rights were not lost. At a hearing on April 24, 2001, the court agreed that any preconfirmation defaults had been cured, but an evidentiary hearing would be needed to address Autotote's allegations of postconfirmation defaults. Since those allegations went beyond the scope of the motion papers, Shoreline² filed a second motion on April 27, 2001 seeking, in addition to the relief initially sought, an order that no material defaults had occurred postconfirmation.

On June 21, 2001, an order entered which was consistent with the court's oral ruling on April 24th, *i.e.*, that any preconfirmation defaults were cured by the confirmation of the plan and the assumption of the Amended Agreement, but an evidentiary hearing was necessary as to whether any postconfirmation material defaults had terminated Shoreline's option rights (the "June 21st Order"). On August 27, 2001, the parties filed a joint motion requesting that the court vacate the June 21st Order, so that there would

² The papers were filed by Bridgeport Jai Alai, but since Shoreline succeeded to its interest in the Amended Agreement, Shoreline is the real party in interest.

only be one order for appellate review and the parties could continue settlement discussions. The motion was granted, and on September 25, 2001, the June 21st Order was vacated. In lieu of an evidentiary hearing, the parties filed a stipulation of facts and exhibits on September 23, 2002. See Appendix A. After the parties informed the court that settlement negotiations had failed, oral argument was scheduled for January 25, 2005.

Preconfirmation Defaults

Consistent with the June 21st Order, it is concluded that the § 365 Order determined that all preconfirmation defaults, including those which were prepetition, were cured and all rights under the Amended Agreement were restored. Accordingly, the preconfirmation defaults did not terminate Bridgeport Jai Alai's and Shoreline's options. See June 21st Order at 2.

Postconfirmation Defaults

Autotote claims that Shoreline was in material default each time it failed to provide the financial statements required by the Amended Agreement. Shoreline counters that none of the failures constituted a *material* default. Shoreline notes that Bridgeport Jai Alai's previous failures to provide the financial statements predated Autotote's involvement, and at no time during the years before this litigation did Autotote ever notify Bridgeport Jai Alai that they considered any such failures to be a default. See Stipulation, Appendix A, at ¶ 26. That admission supports Shoreline's argument that Autotote did not consider the financial statements to be material. Indeed, it raises the question of whether Autotote was even aware of the requirement to produce them.

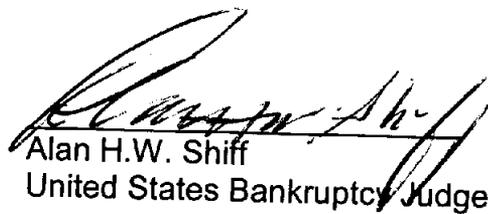
Of greater significance, Autotote did not claim that the failure to produce the financial statements affected the amount of money it was entitled to under the Amended Agreement. The requirement to provide the financial statements was in the Agreement negotiated by the State of Connecticut, which had a regulatory role over the gaming

industry and therefore needed the data. Autotote, however, does not have any regulatory powers. It is therefore concluded that the failures to provide the financial statements were not material defaults and Shoreline has not lost its right to exercise the option to renew the Amended Agreement.

For the foregoing reasons, the motions are granted, and

IT IS SO ORDERED.

Dated at Bridgeport, Connecticut, this 31st day of March, 2005.


Alan H.W. Shiff
United States Bankruptcy Judge

APPENDIX A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT DIVISION

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BRIDGEPORT DIVISION

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In re:	:	CHAPTER 11
	:	
BRIDGEPORT JAI ALAI, INC., D/B/A	:	CASE NO. 96-51183
SHORELINE STAR GREYHOUND PARK	:	
AND ENTERTAINMENT COMPLEX	:	
	:	
Debtor	:	
<hr/>		
SHORELINE STAR GREYHOUND PARK	:	
AND ENTERTAINMENT COMPLEX, LLC	:	
	:	
Plaintiff-Movant	:	
v.	:	
	:	
AUTOTOTE SYSTEMS, INC.	:	
AUTOTOTE CORPORATION, and	:	
AUTOTOTE ENTERPRISES, INC.,	:	
	:	
Defendants-Respondents	:	SEPTEMBER 23, 2002
<hr/>		

Re. #520

STIPULATION OF FACTS

1. Movant, Shoreline Star Greyhound Park and Entertainment Complex, LLC, is the successor in interest to the debtor, Bridgeport Jai Alai, Inc. Movant has operated a pari-mutuel and entertainment facility in Bridgeport, Connecticut for several years offering the general public

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TOBIN, CARBERRY, O'MALLEY, RILEY & SELINGER, P.C.
43 BROAD STREET, P.O. BOX 58, NEW LONDON, CT 06320
(860) 447-0335

JURIS NUMBER
17447

live dog racing and simulcasting (televising) races from facilities within and without the State of Connecticut pursuant to Connecticut's statutorily authorized off-track betting system ("OTB System").

2. The Respondent, Autotote Enterprises, Inc., owns and operates the Connecticut Off-Track Betting System of which the Movant's simulcast operation is a part. Autotote Corporation is now known as Scientific Games Corporation and is the parent of Autotote Enterprises and Autotote Systems, Inc.

3. The Respondent, Autotote Systems, Inc., provides Totalizator services to the Connecticut OTB System and Movant's dog track. Totalizator equipment calculates the odds and payout on races.

4. For a number of years, the State of Connecticut operated the Connecticut Off-Track Betting System.

5. On October 29, 1992, Bridgeport Jai Alai, Inc. and the State of Connecticut, Division of Special Revenue entered into an agreement for the operation of an off-track betting simulcast branch at the jai alai fronton and dog race track in Bridgeport ("Jai Alai Agreement"). Stipulated Exhibit A. At the time, the Movant was operating a jai alai fronton. The fronton closed in 1994 and Movant commenced dog operation on November 1, 1995.

6. The Jai Alai Agreement became effective on December 2, 1992, and had an initial term of three years, i.e. until December 2, 1995.

7. Pursuant to the Jai Alai Agreement, Bridgeport Jai Alai agreed to pay the Division a fee equal to a certain percentage of the net OTB handle with respect to wagers placed at the Bridgeport facility and other fees. The Jai Alai Agreement provides: "The Division shall be paid said fee on a calendar-weekly basis (Monday through Sunday). Said fee will become due upon receipt by Bridgeport Jai Alai of Division's invoice voucher and payable within (five) Division business days therefrom."

8. The Jai Alai Agreement also imposed certain financial reporting requirements. Bridgeport Jai Alai was required to submit:

a. unaudited financial statements for Bridgeport Jai Alai's calendar quarter within sixty (days) of the close of the quarter.

b. annual statements reviewed by certified public accountants within ninety days following the end of the year.

c. quarterly and annually unaudited supplemental schedules on handle revenue attributable to the Bridgeport Jai Alai simulcast facility.

9. On June 30, 1993, Autotote Corporation and Autotote Enterprises purchased from the State the assets and liabilities of the OTB system and thereby acquired the right to operate, and became the owner of, the OTB system subject to state regulatory control. Among the assets purchased by, and transferred and assigned to Autotote were all of the State's right, title and interest in and to the Jai Alai Agreement.

10. In anticipation of the purchase of the OTB System, Autotote Corporation and Bridgeport Jai Alai executed a letter agreement, dated June 2, 1993, amending the Jai Alai Agreement (the "Jai Alai Amendment") (Stipulated Exhibit B) which specified inter alia:

a. that the Jai Alai Agreement would be extended for five years from its original termination date (i.e., from December 2, 1995 to December 2, 2000);

b. that as of December 2, 2000, Bridgeport Jai Alai would have three additional five-year options to renew the Jai Alai Agreement on the same terms and conditions, provided that Bridgeport Jai Alai "shall not be in default hereunder as of the date of exercise of an option, and that there shall not have been more than two material defaults during the then current term hereof"; and

c. that Bridgeport Jai Alai would be granted a "zone of protection," during the term of the Jai Alai Agreement and during any option periods, for Bridgeport Jai Alai's simulcasts and OTB operations, by prohibiting the establishment of simulcast and OTB facilities by any other party in a defined geographical area.

11. On September 9, 1995, Autotote Systems, Inc. and Bridgeport Jai Alai entered an agreement under which Autotote Systems would provide Totalizator services to the dog track which was scheduled to open in November (the "Totalizator Agreement").

12. Bridgeport Jai Alai opened its dog track on November 1, 1995 and operated it through December 1, 1996. Bridgeport experienced immediate financial difficulties in the operation of the dog track.

13. On July 16, 1996, Bridgeport Jai Alai filed a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code.

14. Prior to and subsequent to the bankruptcy, Autotote Enterprises issued Bridgeport Jai Alai invoices on a weekly basis for the payments due under the Jai Alai Agreement.

15. A form of invoice provided to Bridgeport under the Jai Alai Agreement reflecting fees and expenses due under the Jai Alai Agreement is attached as Stipulated Exhibit C.

16. A list of invoices from November 25, 1995 through May 13, 1996 under the Jai Alai Agreement which were paid prior to the bankruptcy filing is attached as Stipulated Exhibit D. None of the payments were made within five days of invoice from Autotote.

17. A list of invoices rendered to Bridgeport from May 21, 1996 through July 26, 1997 under the Jai Alai Agreement is attached as Stipulated Exhibit E. These invoices were not paid within five days of invoice but were paid after confirmation of Bridgeport Jai Alai's reorganization plan.

18. Autotote Systems billed Bridgeport separately under the Totalizator Agreement.

19. Between June 30, 1993 and July 16, 1997, Bridgeport Jai Alai did not provide Autotote with the financial material set forth in the Jai Alai Agreement.

20. In connection with the bankruptcy proceedings, Bridgeport Jai Alai, on October 9, 1997, sought to assume the Jai Alai Agreement and Jai Alai Amendment and to reject the September 9, 1995 Totalizator Agreement. See Stipulated Exhibit F.

21. On October 22, 1997, Autotote filed an Objection to Debtor's Motion to Compel Partial Assumption and Partial Rejection of an Executory Contract. In connection with its objection, Autotote stated:

“Debtor failed to abide by the terms of its agreement with Autotote. For the simulcasting portion of the Agreement, the Debtor owes \$702,786.79 prepetition. The Debtor also owes \$111,138.15, reflecting payment for certain outstanding tickets which became due and payable after the Debtor filed its Chapter 11 petition for bankruptcy. Additionally, the Debtor owes \$61,002.70 for prepetition Totalizator services and \$452,224.59 for postpetition Totalizator services.” Stipulated Exhibit G.

22. Autotote did not allege in its objection anything regarding failure to file financial statements.

23. In connection with its motion to assume the contract, Bridgeport Jai Alai filed interrogatories. On November 13, 1997, Respondent filed Respondent’s Answers to Bridgeport Jai Alai, Inc.’s First Set of Interrogatories and Requests for Production. The response to Interrogatory 12 provided:

12. If Autotote contends that BJA is presently in default or breach under the OTB Agreement, identify and state the basis for each and every default or breach.

RESPONSE: BJA has defaulted in numerous ways under the contract. Each failure to make a payment under the contract constitutes a default. Similarly, failure to pay the OUTs as they became due constitute a default as to each such payment. Stipulated Exhibit H.

24. Autotote did not specifically allege the failure to file financial statements as a default in the answer to interrogatories.

25. On December 1, 1997, Autotote first raised Bridgeport's failure to provide financial statements as a material default in the Supplemental Objection of Autotote Corporation, Autotote Enterprises, Inc. and Autotote Systems, Inc. to Debtor's Motion for Approval of Assumption of Executory Contract - Autotote Corporation which the court rejected as untimely. Stipulated Exhibit I.

26. Prior to December 1, 1997, Autotote did not notify Bridgeport Jai Alai that it considered failure to provide the financial information a default.

27. Section 12-584 of the Connecticut General Statutes requires Bridgeport Jai Alai to file with the Division of Special Revenue certified financial statements for the prior calendar or fiscal year prepared in accordance with generally accepted accounting principles which statements are available for public inspection and such statements were filed on a timely basis by Bridgeport Jai Alai and its successors.

28. The amendment of the agreement between Autotote and Bridgeport Jai Alai provides:

"Notwithstanding the foregoing, Autotote shall not be deemed to have acquired the right to exercise any regulatory authority over BJA's conduct as an associate licensee with respect to the conduct of greyhound racing or jai alai."

29. The quarterly and annual audited financial statements showed annual losses in 1993 of \$3.2 million, in 1994 of \$4.7 million, and in 1995 of \$4.0 million. Stipulated Exhibits J and K.

30. In its motion to assume, Bridgeport Jai Alai represented that it and the Plan Proponent, A. Robert Zeff, would be ready, willing and able to make all payments due to Autotote Corp. and/or Enterprises under the Jai Alai Agreement, once the motion was granted and the Plan was confirmed.

31. After a hearing on Bridgeport Jai Alai's motion to assume the Jai Alai Agreement, the Court in a written opinion dated December 29, 1997 approved the assumption of the Jai Alai Agreement and Jai Alai Amendment by Bridgeport Jai Alai and the rejection of the September 9, 1995 Totalizator Agreement. Stipulated Exhibit L.

32. In accordance with the confirmed Plan of Reorganization, all pre-petition and post-petition monetary obligations of Bridgeport Jai Alai to Autotote Corp. and/or Enterprises under the Jai Alai Agreement, including those set forth on Stipulated Exhibit E, were paid in full. Autotote Systems received a payment of prepetition fees under the Totalizator Agreement in the same proportion as other general creditors. Autotote Systems received (\$12,500) of its \$61,002.70 claim for Totalizator services.

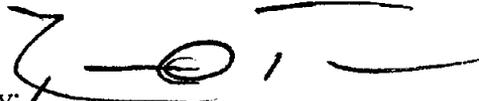
33. Since the confirmation of the Plan, Shoreline Star, the successor to Bridgeport Jai Alai, has paid in full all invoices from Autotote Corp. and/or Enterprises under the Jai Alai Agreement.

34. Between December 1997 and April 27, 2001, Bridgeport Jai Alai and Shoreline did not provide copies of the financial information referenced above to Autotote but did provide them as required to the Division of Special Revenue. Autotote did not demand the information or declare a default. Since April 27, 2001, Shoreline has provided the financial information. Shoreline has continued to have operating losses from 1998 on.

35. On or about June 13, 2000, Shoreline Park and Entertainment Complex, LLC, as assignee and successor of Bridgeport Jai Alai under the contract, sent to Autotote Corporation a "Notice of Exercise of Option", in which it asserted its right to exercise the option to renew contract for a five year period commencing in December 2000. Stipulated Exhibit M.

36. Autotote has informed Shoreline that it does not have a right to exercise the option because of its pre-petition and post-petition defaults.

AUTOTOTE CORPORATION
AUTOTOTE ENTERPRISES, INC.
AUTOTOTE SYSTEMS, INC.

By: 

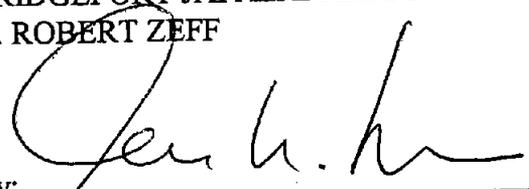
Robert D. Tobin, Esq.
Federal Bar No.: CT08610
of Tobin, Carberry, O'Malley,
Riley & Selinger, P.C.
43 Broad Street, P.O. Box 58
New London, CT 06320
(860) 447-0335

SHORELINE STAR GREYHOUND PARK AND
ENTERTAINMENT COMPLEX, LLC

By: 

James G. Verillo, Esq.
Federal Bar No.: CT08819
Zeisler & Zeisler, P.C.
558 Clinton Avenue
Bridgeport, CT 06605-0186

BRIDGEPORT JAI ALAI ASSOCIATES
A. ROBERT ZEFF

By: 

Charles M. Needle, Esq.
Federal Bar No.: CT07710
Zeldes, Needle & Cooper
1000 Lafayette Boulevard
P.O. Box 1740
Bridgeport, CT 06601-1740