

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1069

AMELIA SUPERETTE, INC., d/b/a PETE'S

VS.

RELIABLE AMUSEMENT COMPANY, INC.

JUDGMENT RENDERED: DECEMBER 28, 2006

ON APPEAL FROM THE
SIXTEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 112,031, DIVISION E
PARISH OF ST. MARY, STATE OF LOUISIANA

HONORABLE KEITH COMEAUX, JUDGE

KIM P. STANSBURY
MORGAN CITY, LA

COUNSEL FOR PLAINTIFF/APPELLEE
AMELIA SUPERETTE, INC., d/b/a PETE'S

GUY E. WALL
NEW ORLEANS, LA

COUNSEL FOR DEFENDANT/APPELLANT
RELIABLE AMUSEMENT COMPANY, INC.

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

Keith J. Comeaux
Whipple, J. concurs.

JMM

MCDONALD, J.

Thadeus Marcell, Jr. (Marcell) operated a lounge in Amelia, Louisiana owned by Amelia Superette, Inc. d/b/a Pete's (Pete's). In 1998, Reliable Amusement Company, Inc. (Reliable), a licensed video poker operator from West Baton Rouge Parish, and Marcell, on behalf of himself and Pete's, signed an agreement granting Reliable the exclusive right to place and operate video draw poker devices at Pete's. The net revenue generated by the operation of the video poker devices was to be split 50% to Reliable and 50% to Pete's. The term of the agreement was for sixty months from the commencement of lawful operation of the video poker devices, which was September 23, 1998. Reliable had an option to renew this agreement for an additional sixty-month period by paying an additional sum of \$10,000.00. The agreement also contained a provided that "Each party shall be liable to the other for reasonable attorney's fees incurred to enforce the provisions of the Agreement."

In the summer of 2000, Marcell asked Reliable to change the agreement and to give Pete's 60% rather than 50% of the net revenue. This proposition was originally resisted by Reliable, but in July 2000, Reliable agreed and immediately began giving Pete's 60% of the revenue. The initial term of the lease expired September 2003. In November 2003, Marcell, having consulted an attorney, directed that a letter be sent to Reliable advising that the sixty months period expired on September 22, 2003, that Reliable did not pay the \$10,000.00 to renew the option prior to September 22, 2003 and therefore it had terminated, that Marcell did not intend to renew the terminated agreement, but wanted to purchase his own machines and was willing to buy Reliable's video poker machines at fair market value. The letter also advised that Pete's would allow Reliable to continue

operation of the video poker devices on a month to month basis with revenues divided 60% to Pete's and 40% to Reliable until Pete's purchases its own machines and obtains the necessary licenses, at which time Reliable would be required to remove any and all video poker devices from Pete's.

In February 2004, Pete's filed a petition for declaratory judgment seeking a judicial declaration that the agreement had terminated September 22, 2003; that defendant be ordered to remove any and all video poker and/or coin operated devices; and that defendant pay reasonable attorney fees. Reliable answered alleging that the agreement was extended for an additional sixty months commencing September 22, 2003, in return for an increased share of the revenues and also filed a reconventional demand seeking refund of the consideration paid for the renewal of the agreement (in the event the court determined that the agreement had terminated) and for all sums paid to Pete's in excess of the percentage specified in the agreement and for reasonable attorney fees.

A bench trial was held in June 2005, at the conclusion of which judgment was rendered in favor of the plaintiffs, Marcel and Pete's, ordering the subject agreement cancelled as of September 23, 2003; dismissing the reconventional demand; decreeing that the 60%/40% revenue sharing agreement was valid and in effect from July 2000 to June 17, 2005; ordering all costs of the proceedings to be paid by the defendant, Reliable; and reserving the right to seek attorney fees.

In September 2005, Marcell filed a motion to set attorney's fees with the district court, which was opposed by Reliable. Subsequently, by joint written stipulation, an itemized statement of hours of legal services totaling legal fees of \$7,337.50 and affidavit were admitted into evidence, and the parties agreed to submit the matter to the court without appearance or oral

argument. On January 2, 2006, the trial court rendered judgment in favor of Marcell, and Amelia Superette, Inc., d/b/a Pete's, ordering Reliable to pay \$7,337.50 for attorney fees together with legal interest from the date of judicial demand and all court costs. Reliable appeals this judgment.

Reliable argues on appeal that the plaintiff's did not incur attorney's fees to enforce the contract, which according to the agreement entitles the other party to be liable for attorney's fees, but rather to cancel the agreement, and Louisiana law establishes that attorney fees are penal in nature and thus are subject to the principle of strict construction. However, the litigation was necessitated by a dispute between the parties as to the provisions dealing with termination of the agreement. Under these facts, the award of attorney's fees was not erroneous.

Reliable also asserts that the trial court's award of legal interest on the attorney fees from the date of judicial demand was error. We agree. *L & A Contracting Company, Inc. v. Ram Industrial Coatings, Inc.*, 99-0354 (La. App. 1st Cir. 6/23/00), 762 So. 2d 1223. 1239, writ denied, 2000-2232 (La. 11/13/00), 775 So.2d 438. The judgment is amended to award attorney's fees in the amount of \$7,337.50 together with legal interest from the date of judgment, January 2, 2006. In all other respects the judgment is affirmed.

Costs of this appeal are assessed half to plaintiff/appellee, Thadeus J. Marcell, Jr. and Amelia Superette, Inc. d/b/a Pete's and half to defendant/appellant, Reliable Amusement Company, Inc. This opinion is rendered in accordance with Uniform Rules – Courts of Appeal, Rule 2.16.2 A (6) and (8).

AMENDED, AND AS AMENDED AFFIRMED.