

Game Goes On: Court Dismisses With Prejudice Class Action Alleging Social Gaming Micro-transactions Constitute Illegal Gambling

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Another lawsuit alleging illegal gambling in a social game has been dismissed. Over the last year, social gaming mobile applications have come under attack from the Plaintiffs' bar as gambling in disguise. Plaintiffs' attorneys theorize that in-app micro-transactions where consumers pay cash for virtual items (*i.e.*, gold coins or gems) designed to speed up or otherwise enhance gameplay are, in effect, wagers insofar as other in-game materials can subsequently be "won" with those items. None of the plaintiffs have prevailed in these recent cases.

In ***Soto v. Sky Union***, three plaintiffs brought nine claims on behalf of four putative classes under various state anti-gambling laws against the mobile application Castle Clash—a popular civilization building strategy game. Specifically, Plaintiffs asserted claims under the laws of California (Cal. Penal Code §§ 330b and 319 and the UCL), Illinois (720 ILCS 5/28-8(a), 815 ILCS 525/20, the [Illinois Consumer Fraud Act](#) and unjust enrichment) and Michigan (MCL 600.2939(1) and unjust enrichment).

Plaintiffs contended that because players can purchase "gems," and subsequently use those gems to attempt to win "heroes" and "talents," Castle Clash was in effect

a masked gambling enterprise whereby players could “wager” for heroes and talents. Though there is no means by which to “cash out” through Castle Clash itself, Plaintiffs contended that players were able to subsequently sell their accounts—made more valuable by certain heroes and talents—on unsanctioned, secondary markets.

On January 29, 2016, Judge Matthew F. Kennelly of the United States District Court for the Northern District of **Illinois** dismissed the *Sky Union* complaint in its entirety with prejudice. Judge Kennelly grounded his decision in the common sense fact that fictional, virtual items such as heroes and talents cannot conceivably be items of value within the context of state anti-gambling law. Specifically, Judge Kennelly first held that, generally speaking, for a given game to constitute gambling, there must be three key elements: (1) payment, (2) chance and (3) prize of value. As it pertains to the latter, Judge Kennelly held:

Heroes and Talents are not exchangeable for real money or other goods, either within the game or in the real world. Ultimately, players who use their purchased gems to play . . . are not paying for the chance to win anything of measureable value.

Importantly, the Court disregarded Plaintiffs’ theory that value can be leveraged from the fact that players could allegedly sell their accounts on unsanctioned secondary markets. Even if, the Court held, players could actually sell their accounts, “[t]he amount a player can get for selling his account to another player says little about the values of the individual items (Heroes, Talents, etc.) contained within that account.”

Considering that Castle Clash does not award players “prizes of value,” the Court dismissed each of the anti-gaming claims, as well as the California and Illinois unfair competition claims. And finally, concerning unjust enrichment, the Court concluded its analysis by holding:

[P]laintiffs received precisely what they sought when they gave their money to Sky Union: gems for use in gameplay It is not inequitable, therefore, for Sky Union to retain the money plaintiffs spent to purchase gems for use in Castle Clash

This is another significant win for the social gaming industry on a fundamental business practice—the ability to sell virtual items for use in winning other virtual goods to enhance gameplay. In recent blog posts, we discussed two similarly significant victories in [Maryland](#) and [Washington](#) district courts against other mobile games. With these decisions should come a collective sigh of relief from the social gaming industry as courts continue to dismiss claims alleging that winning virtual items, for which there is no opportunity to cash out from the game provider, constitutes illegal gambling.

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