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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT – CHANCERY DIVISION**

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|---|---|---|
| **PETER JOHN CAVOTO, JR. and GERLAD A. CARR, JR., individually and on behalf of all others similarly situated class members,** | ) | |
| **Plaintiffs,** | ) | |
| **v.** | ) | **No. 02 CH 18372** |
| | ) | **Hon. Sophia H. Hall** |
| **CHICAGO NATIONAL LEAGUE BALL CLUB, INC., a Delaware corporation, and WRIGLEY FIELD PREMIUM TICKET SERVICES, INC., a Delaware corporation,** | ) | |
| **Defendants.** | ) | |

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**DECISION**

Plaintiffs Peter John Cavoto, Jr. and Gerald A. Carr, Jr. individually and on behalf of all other similarly situated class members filed suit against the Chicago National League Ball Club, Inc. ("Ball Club") and Wrigley Field Premium Ticket Services, Inc. ("Premium"). Plaintiffs claim that defendants violated the Ticket Scalping Act (720 ILCS § 375/1 et seq.) (Count I), the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS § 505/1 et seq.) (Counts II and III), and the Uniform Deceptive Trade Practices Act (815 ILCS 510/1 et seq.) (Count IV). Plaintiffs also seek injunctive relief (Count V).

**I.**

In summary, plaintiffs allege that the violations of the above Acts occurred because of the business relationship between Premium, a ticket broker reselling Chicago Cubs tickets at prices above the printed ticket price, and Ball Club. Defendants respond

that Premium satisfies all of the regulations in the Ticket Scalping Act as a licensed ticket broker, and that nothing done by Ball Club in assisting with the establishment and initial operations of Premium, and endorsing and doing business with Premium, violated any statutory requirements.

Specifically, plaintiffs claim that Premium does not satisfy the requirements for a licensed ticket broker under the Ticket Scalping Act because it did not purchase tickets from Ball Club and they claim that Premium is not in the regular and ongoing business of reselling tickets. Correspondingly, plaintiffs claim that Ball Club violated the Act because it placed tickets with Premium, rather than selling them to Premium, and thus was selling tickets through Premium for more than the printed price in violation of the Act.

Additionally, plaintiffs claim that defendants' conduct violated the Consumer Fraud Act and the Deceptive Trade Practices Act because defendants' relationship deceived the public by misrepresenting that they were independent of each other when in fact Ball Club was using Premium as a front to sell tickets above face value. Plaintiffs also claim that Ball Club used bait and switch advertising techniques by advertising that tickets were sold out and switching customers to Premium where customers paid a higher price. Plaintiffs claim that they were injured by the defendants' actions because they paid more to Premium than the printed price on the tickets.

On May 13, 2003, the Court certified the following plaintiff class: "All persons who purchased an admission ticket or tickets to a Chicago Cubs baseball game ("Cubs Tickets") from Wrigley Field Premium Ticket Services, Inc. for a price in excess of the printed rate or advertised price of such Cubs Tickets."

In section II of this decision, the Court sets forth the relevant provisions of the Ticket Scalping Act, which are central to all of plaintiffs' claims. In section III, the Court makes findings as to the evidence presented, most particularly Ball Club's ticket selling business, Premium's creation, operation and relationship to Ball Club, and plaintiffs' ticket purchases. Finally, section IV, contains the Court's decision regarding the Ticket Scalping Act, the Consumer Fraud Act and the Deceptive Trade Practices Act.

## II.

**Ticket Scalping Act**

The provisions of the Acts which plaintiffs claim were violated all relate to the same conduct which is claimed to violate the Ticket Scalping Act. The legislature passed the Ticket Scalping Act in the exercise of the police power of the state to regulate owners of amusements, like Ball Club and ticket brokers like Premium, in the interest of preserving the peace, good order, morality and public safety. See People v. Steele, 231 Ill. 340, 344-345 (1907); Cort Theater v. Thompson, 283 Ill. 87, 90-92 (1918).

In general, the Ticket Scalping Act prohibits owners of amusements, such as Ball Club, from selling tickets above the advertised and printed price on the tickets. The Act authorizes licensed ticket brokers, such as Premium, to resell tickets at a price higher than the printed purchase price if the broker complies with the specified regulations.

Section 1 governs the conduct of owners of such amusements, such as Ball Club. It provides that an owner of an amusement where tickets of admission are sold is prohibited from selling tickets at a place other than at the Box Office, except that it can place its tickets for sale at another location if the ticket is sold at the same advertised or printed rate.

> It is unlawful for any person, firm or corporation, owner, lessee, manager, trustee, or any of their employees or agents, owning, conducting, managing or operating any theater, circus, baseball park, place of public entertainment or amusement where tickets of admission are sold for any such places of amusement or public entertainment to sell or permit the sale, barter or exchange of such admission tickets at any other place than in the box office or on the premises of such theater, circus, baseball park, place of public entertainment or amusement, but nothing herein prevents such theater, circus, baseball park, place of public entertainment or amusement from placing any of its admission tickets for sale at any other place at the same price such admission tickets are sold by such theater, circus, baseball park or other place of public entertainment or amusement at its box office or on the premises of such places, at the same advertised price or printed rate thereof.

This section has been in exactly the same form since it was enacted in 1923.

Section 4, however, allows a ticket reseller, like Tickets.com, who is approved by the original distributor of the ticket, like Ball Club here, to sell the ticket and receive a service charge added to the price of the ticket. This section was added in 1979. The Appellate Court upheld the constitutionality of the provision in People v. Waisvisz, 221 Ill. App. 3d 667 (4th Dist. 1991).

A ticket broker could legally sell tickets above the printed price in Illinois until 1935. At that time, the legislature enacted the predecessor to Section 1.5(a) categorically prohibiting any person from selling tickets above the printed price. This section applies both to the owner of an amusement and to any reseller of a ticket.

> (a) Except as otherwise provided in subsection (b) of this Section and in Section 4, it is unlawful for any person, persons, firm or corporation to sell tickets for baseball games, football games, hockey games, theatre entertainments, or any other amusement for a price more than the price printed upon the face of said ticket, and the price of said ticket shall correspond with the same price shown at the box office or the office of original distribution.

The "Except as..." clause was added in 1991 when subsection 1(b) was enacted, as discussed hereinafter.

The 1935 version of Section 1.5(a), prohibiting any reselling of a ticket above the printed price, was upheld as constitutional in 1974 by the Illinois Supreme Court in People v. Patton, 57 Ill. 2d 43, in which the Court reversed its contrary decision in People v. Steele, 231 Ill. 340 (1907). The Court construed the 1935 version of Section 1.5(a) and held that the state legislature could prohibit the resale of tickets at a profit. The court examined several United States Supreme Court decisions and found that the law is apparently settled that a State has a legitimate interest in seeking to control the resale price of tickets to places of entertainment and amusement. Patton, 57 Ill. 2d at 45-47. Accordingly, the court upheld the 1935 legislation prohibiting the resale of tickets at a price above the printed price.

Thereafter, in 1991, the Illinois legislature enacted Section 1.5(b) providing for an exception to the prohibition of selling tickets above the printed price. The legislature authorized ticket brokers to resell tickets at a profit if they were licensed and in compliance with certain regulations. In 1995, it enacted and added additional requirements. In pertinent part the present section provides:

> (b) This Act does not apply to the sale of tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind for a price in excess of the printed box office ticket price by a ticket broker who meets all of the following requirements:
>
> (1) The ticket broker is duly registered with the Office of the Secretary of State on a registration form provided by that Office. The registration must contain a certification that the ticket broker:
>
> (A) engages in the resale of tickets on a regular and ongoing basis from one or more permanent or fixed locations within the State; ...

Section 3 of the Ticket Scalping Act was enacted in 1923, and provides for a private cause of action for a person who is pays more than the printed ticket price. It states:

> Whoever, upon the purchase of such admission tickets as herein provided, feels himself aggrieved or injured by paying for such tickets any sum in excess of the advertised price or printed rate, or any sum in excess of the price originally charged at the box office ... has, irrespective of the penalties herein provided, a right of action in his name and against such person, firm, corporation, owner, lessee, manager, trustee, or any of their agents or employees owning, conducting, managing or operating any such theater, circus, baseball park or place of public entertainment or amusement, to recover for each ticket for which an overcharge was made contrary to the provisions of this Act, a sum of $100, which may be recovered in a civil action before the circuit court in this State.

The initial recoverable sum was $20 and was raised to $100 in 1985.

## III.

The evidence presented by the parties in this case is largely undisputed regarding customers access to Cubs tickets, and the creation and operation of Premium.

### A.

### Ticket Purchasing

Fans of the Cubs have many options for purchasing tickets to attend Cubs games. Tickets can be purchased for a wide variety of prices depending on where the fans wish to sit, how many tickets they wish to buy, and when they wish to purchase them. Tickets can be purchased at the price printed on the tickets, or with an added service charge from Tickets.com, or at prices usually higher that the printed price from licensed ticket brokers.

The prices at which Ball Club sells tickets for Cubs games depends on the location of the seats at Wrigley Field. The locations include club box, field box, terrace

box, upperdeck box, terrace reserved, upperdeck reserved seats, and bleacher seats. The type of ticket purchases include season, group, and individual.

A person may buy season tickets for all Cubs home games. Invoices for season tickets are usually sent in November to customers who purchased season tickets in a previous season. By December, these customers must notify Ball Club whether they are interested in buying season tickets for the upcoming season. Customers indicating a desire to obtain season tickets must generally purchase them by January. Ball Club maintains a ticket exchange program, as a benefit unique to its season ticket holders. Under this ticket exchange program, a season ticket holder could return a ticket for a rained out game to receive a refund. Also, as an additional benefit to its season ticket holders, Ball Club contracted with an online vendor Paciolan to run an online service that would allow season ticket holders to resell their unwanted tickets online.

Group tickets are sold to a purchaser who wishes twenty or more seats for a single game. Group tickets generally go on sale at the end of January and are generally restricted to upper deck box, upper deck reserve and terrace reserve, and, in very isolated instances, bleachers. Ball Club maintains a return policy for group tickets. A group purchaser may return ten percent of the tickets bought at least ten days prior to the day of the game. Ball Club makes exceptions for special cases.

Customers who do not wish to purchase season or group tickets have their first opportunity to purchase tickets for individual games at the Box Office or Tickets.com on the on-sale date. The on-sale date is when individual game tickets go on sale to the general public and is generally the third Friday of February. The on-sale date for the 2003 season was February 21. Ball Club makes a significant effort to promote the on-

sale date, including issuing press releases. Ball Club generally does not give refunds for tickets bought at the Box Office or Tickets.com.

Not all of Cubs tickets, however, become available on the on-sale date. Ball Club holds back about four to five thousand tickets per game in reserve, also called house accounts. These reserve tickets are allocated to organizations such as game sponsors, opposing teams, the media, elected officials and employees. For example, for the Yankees series in the 2003 season, Ball Club allocated tickets to the Yankees, ESPN, Fox TV and the Tribune Co. About forty-eight hours before a game, any remaining unclaimed reserve tickets are released for sale to the public. Logistically, this is accomplished by changing the status of the tickets on Ball Club's computer system from "reserved" to "on-sale."

As stated above, customers can also obtain Cubs tickets from Tickets.com, which is the exclusive agent of Ball Club for selling Cubs tickets. Tickets.com sells ticket selling software and operates an internet site for the sale of tickets. Tickets.com sells "available" Cubs tickets, that is, tickets that Ball Club has released for sale to the general public, beginning on the on-sale date. In other words, after the on-sale date, a customer can buy the same Cubs ticket either at the Box Office or from Tickets.com. Also, when a reserve ticket becomes available to the public at the Box Office forty-eight hours before a game, those tickets also become available on Tickets.com. While Ball Club sells Cubs tickets at face value at the Box Office, Tickets.com charges customers a service fee for using it as the provider of Cubs tickets.

When all tickets have been sold by game day, a fan can purchase standing room only tickets. Standing room only tickets are put on sale only on the game day. Thus, a

game is considered "sold out" when the last standing room only ticket is sold or, in other words, when Ball Club has no more tickets, nor will it have any more tickets to sell. Also, a game could be sold out even though there are still reserve tickets, which, as indicated above, could become available if not used by the organizations allotted those tickets. A game is not sold out if a ticket is available to buy even as late as the ninth inning.

Customers, who do not buy tickets from Ball Club, Tickets.com or from an individual at the printed price, can purchase tickets in the secondary market from licensed ticket brokers. Licensed ticket brokers can sell tickets at a price higher than the printed price. Many have offices within a block of Wrigley Field. Ticket brokers purchase tickets in the same way as any customer; from the Box Office, from Tickets.com, from a season ticket holder or from other ticket brokers. Premium is one of those ticket brokers. The evidence was uncontested that Premium's entry into the secondary market resulted in generally lower prices for tickets sold in the secondary market.

**B.**

**Premium's Business**

Wrigley Field Premium Ticket Services, Inc. was incorporated on February 12, 2002. It is one of approximately sixty wholly owned subsidiaries of the Tribune Company. Premium obtained its ticket broker license in May 2002 and renewed its license in 2003. In addition, it has a broker's business license from the City of Chicago. Premium opened for business reselling tickets on June 14, 2002, at 3717 N. Clark Street. A sign posted at the location states, "The Cubs and Premium are both owned by Tribune Company."

In March 2002, Premium purchased Cubs tickets from Ball Club in the amount of $1,047,766. In February 2003, Premium purchased $402,700 worth of Cubs tickets. The February 2003 purchase represented less than one-half of one percent (0.005%) of the 3.1 million tickets available for purchase from Ball Club in 2003.

Section 1.5(b)(1)-(6) sets forth the requirements one must meet in order to be a licensed ticket broker under the Ticket Scalping Act. The evidence is undisputed that Premium has met most of these requirements. Specifically, the evidence shows that Premium sells tickets from a fixed location at 3717 N. Clark Street. The evidence also shows that Premium displays its ticket broker registration, includes its name and ticket broker registration number on its advertisements, and maintains at its location a list of the names and addresses of its employees. With respect to compliance with other laws, as required by the Ticket Scalping Act, the evidence shows that Premium has a broker's business license from the City of Chicago, pays amusement taxes to the City of Chicago, and complies with the Retailers' Occupation Tax Act. Premium has also paid its annual registration fee of $100 to the Secretary of State.

Further, Section 1.5(b) requires a ticket broker to meet certain consumer protection requirements. The evidence is undisputed that Premium has met all of these consumer protection requirements. Specifically, the evidence shows that Premium maintains a toll free number for consumer complaints and inquiries, and has a consumer protection code, including guidelines, a refund policy and standards of professional conduct. Also, the evidence shows that Premium has a procedure for the resolution of consumer complaints and maintains a consumer rebate fund of $100,000. Finally, the

evidence shows that Premium complies with certain advertising requirements and does not sell tickets while sitting or standing near Wrigley Field.

***Creation of Premium***

The parties do not dispute that Premium was developed and established through the efforts of personnel from the Tribune Co. and personnel Ball Club, also a wholly owned subsidiary of Tribune Co. In the summer of 2001, Mark McGuire, the executive vice-president for business operations for Ball Club, developed an idea to create a Tribune Co. subsidiary to engage in the ticket brokering business. McGuire testified that Premium's goal as a business was to provide a better product at lower prices in the secondary market for Cubs tickets. McGuire also conceived that Premium would have a competitive edge over other ticket brokers because Premium could take advantage of Ball Club's access to the Cubs ticket inventory.

Once Tribune Co. authorized McGuire to proceed with this concept, McGuire worked closely with Tribune Co. to create. Tribune lawyers worked on satisfying the corporate requirements for Premium to become a corporate subsidiary of Tribune Co. The first corporate officers of Premium in 2002 overlapped with officers of Ball Club. They were Mark McGuire as President, Carl Rice, Ball Club's Director of Information Services and Special Projects, as Vice President, and Jodi Reischl, Ball Club's Comptroller, as Vice President and Treasurer.

McGuire hired Dan Guza in February 2002 as Premium's general manager to run Premium's ticket broker business. Before he was hired, Guza was a Ball Cub employee who had general ticket sales experience, knew Wrigley Field seating locations, and was trained and experienced in customer service. His responsibilities at Premium included

learning as much as possible about the ticket brokering business. Later, on May 20, 2003, at a Board Meeting, Guza replaced McGuire as President of Premium.

Before Premium opened for business on June 14, 2002, Guza received advice and assistance from Premium's vice-presidents in accomplishing all of the details necessary to establish the business. Carl Rice assisted with telephone and computer matters, while Jodi Reischl assisted with accounting related issues. Rice and Reischl were also replaced as officers of Premium at the May 20, 2003 Board meeting. Tom Leach, the CFO of Tribune Broadcasting, which is another Tribune Co. subsidiary, was added to Premium's Board at that time.

Guza also received assistance in many of his other duties from several other Ball Club employees. They helped him to obtain a location for the business in a building owned by a Tribune Co. subsidiary, Diana-Quentin, and to find contractors to build out the space. They helped him to obtain Tickets.com software, computers, ticketing terminals, and office supplies. Additional assistance was provided, in 2002, when Ball Club allowed Premium to use a small amount of its unused advertising airtime on WGN, yet another Tribune Co. subsidiary. Ball Club did not charge Premium for the airtime because Ball Club itself was not charged for it.

With respect to Premium's accounting needs, Premium paid a fee to Ball Club to use its' accounting department. Witnesses testified that one reason for using Ball Club's accounting department rather than a third-party accountant was because Ball Club's accounting department is familiar with Tribune Co.'s accounting requirements and practices. Because it took some time for the Tribune Co. to set up Premium's separate payroll system, Guza and the part-time employees were initially kept on Ball Club's

payroll from February 2002 to June 2002, just before Premium opened for business. In June 2002, Ball Club was then reimbursed for all the salary payments through Premium's payment through the intercompany accounts discussed in greater detail hereinafter. Additionally, in 2002, some invoices that were supposed to be addressed to Premium were addressed to Ball Club. These invoices were paid from Premium's accounts. By the end of 2002, Tribune Co. completed the establishment of Premium's within Tribune Co. subsidiaries' accounting system discussed hereinafter.

***Premium's Launching and Operation***

From the beginning Ball Club and Premium did not keep secret that they were both owned by Tribune Co. In fact, a press release was issued when Premium opened for business. Moreover, Ball Club has licensed its trademarks and service marks to Premium, and put up a sign that they had common ownership by the Tribune Co. Also, Premium's yellow pages advertisements state that it is endorsed by Ball Club. To dispel possible confusion, Premium's employees were instructed to tell customers that Premium is not a part of Ball Club.

As stated above, Premium opened its doors for business on June 14, 2002. It stopped selling tickets for the Cubs 2002 season in October of that year. In the four months between October, 2002, the end of the Cubs 2002 season, and February 2003, when Premium purchased Cubs tickets for the 2003 season, Dan Guza continued to work for Premium. He reviewed Premium's 2002 sales numbers, trends and pricing, and planned for the purchase and resale of 2003 tickets. He also worked on advertising, including the yellow pages and promotional flyers, and created a comprehensive manual for Premium's employee training.

***Premium's Cash Management***

Premium's cash is managed through the Finance Service Center of Tribune Co. The Finance Service Center operates a cash management concentration account from which all of the cash needs of all of the Tribune Co's subsidiaries are managed. Each subsidiary has its own bank account, which it uses to receive funds. The subsidiary does not, however, write checks from that account to pay its bills. Rather, it requests the Finance Service Center to pay a bill.

The Finance Service Center receives money from the subsidiaries' bank accounts on a daily basis and then uses these funds for such things as paying bills, including the subsidiaries' bills, and making investments. The subsidiaries' bank accounts are linked to the cash management concentration account. Through that "link," the subsidiaries' bank accounts are swept to zero every night, and all the funds in those bank accounts are transferred to the Tribune Co. cash management concentration account. Unlike the other subsidiaries' accounts, Premium's account is not swept to zero. This is because $100,000, the consumer rebate fund, must be maintained in Premium's bank account to comply with the Ticket Scalping Act. The Finance Service Center maintains an account for each subsidiary, which is credited with the amount swept from their bank accounts.

In its operation, Tribune Co.'s management of its subsidiaries' finances is similar to the way a bank functions. A bank does not keep a separate pile of cash for each of its customers. Rather, the bank pools customers' deposits and keeps an "account" of a customer's individual deposits and withdrawals. This is the way Tribune Co. manages its subsidiaries' accounts in the cash management concentration account. In other words, Tribune Co. essentially acts like a bank for its subsidiaries.

In addition to the subsidiary's bank account, the subsidiary has "intercompany accounts." Intercompany accounts are used to transfer funds between Tribune Co. and its subsidiaries, between subsidiaries when one subsidiary seeks to make a payment, or credit, to another subsidiary, and is used when the subsidiary directs Tribune Co. to make payments to third parties from the cash management concentration account. The Finance Service Center maintains an intercompany account ledger on Premium's general ledger to track and account for all of Premium's payments or receipts with other subsidiaries or with Tribune Co.

Uncontradicted testimony was received that the intercompany accounts are used for efficiency to avoid losing the use of funds and the interest they generate if funds were transferred between subsidiaries or to the Tribune Co. by cash or check. Also, that the use of the intercompany account reduces the risk of loss or fraud associated with many different people handling cash or checks. Further, the testimony was that the use of intercompany accounts is a common business practice.

Premium has five intercompany accounts. It has one with Tribune Co., one with Ball Club, one with its landlord, Diana-Quentin, one with Tribune Finance Service Center, and one with Tribune Information Services.

An example of how the intercompany account works is when a subsidiary wishes to pay a third party, such as when Ball Club pays its ball players. Specifically, when Ball Club wishes to pay Sammy Sosa his salary of about $13 million, Ball Club does not pay with a check from its bank account. Instead, Ball Club's accounting department requests Tribune Co. to make the payment to Sosa. Upon receipt of Ball Club's request, Tribune Co. issues a check on the Tribune Co. cash management concentration account, payable

to Sosa. The face of the check bears the Tribune Co. name, below which is Ball Club's name. When Tribune Co. issues the check to Sosa, it charges Ball Club for the expense through the intercompany account. As soon as this entry is made on the intercompany account, Ball Club incurs an expense. This same process is followed for Premium's third party payments, only the Tribune Co. check has Premium's name below Tribune Co.'s name.

Another example of how these intercompany accounts function, is when payments are made between Tribune Co. subsidiaries such as between Ball Club and Premium when Premium pays Ball Club for tickets. The payments Premium makes to its landlord Diana-Quentin show how this is recorded. Premium entered into a lease agreement with Diana-Quentin for the period of June 10, 2002 to December 31, 2002 at $200 per month and extended it for another year at $210 per month. Diana-Quentin does not send Premium a bill for rent, nor does Premium pay its rent by a check drawn on its bank account. Instead, Premium pays its rent through its intercompany account with Diana-Quentin. Specifically, Premium's intercompany account ledger for 2002 indicates certain rental payments of $200 from Premium to Diana-Quentin. Likewise, the intercompany account ledger for 2003 indicates rental payments of $210 from Premium to Diana-Quentin. Each payment is recorded as a reduction on Premium's intercompany account. Each reduction has its corresponding credit on the destination intercompany account. Here, credits appear on Diana-Quentin's intercompany account with Premium.

The entries on the intercompany accounts recognizing Premium's purchase of Cubs tickets from Ball Club in March 2002 for the 2002 season, and, later, for the 2003 season, were similar to the Diana-Quentin transaction above. An expense was incurred

by a debit on Premium's intercompany account with Ball Club when Premium purchased Cubs tickets. A credit was made on Ball Club's intercompany account with Premium showing it received the credit. When, in 2002, Premium sold the unsold tickets back to Ball Club, it was recorded as a credit on Premium's intercompany account and as a debit on Ball Club's intercompany account.

***Premium Ticket Purchases***

The tickets Premium purchased from Ball Club for resale were tickets Ball Club historically held in reserve as described above. In 2002 and 2003 Mark McGuire determined the number of tickets that Ball Club should sell to Premium. Frank Maloney who was in charge of all ticket sales, selected the actual seat locations for the tickets sold to Premium. The tickets sold to Premium were for high demand locations, which were club box, field box, and bleacher seats. Premium was able to obtain these tickets before the on-sale day.

To facilitate these ticket sales to Premium, Maloney set up an account with Tickets.com for Premium. Thus, all ticket sales to Premium were effected through Tickets.com. In February 2002, Ball Club amended its Ticket Services Agreement with Tickets. Com, in order for Premium to use the software, by placing Premium under the section in that agreement, "Box Office Sales".

The software was used to track ticket sales. When Ball Club sold tickets to Premium, or to anyone else, the Box Office computer system operating Tickets.com's ticket selling software would indicate a change from a dot to a capital "A" for all such tickets, which means that the tickets could no longer be sold for any reason. In other words, Ball Club no longer had any ownership rights in the tickets. When Ball Club

purchased tickets back from Premium, the computer system would change the "A" designation back to a dot, which is a way to indicate that the seat is now available for purchase at the Box Office.

In addition, when Premium purchased tickets from Ball Club, Ball Club and Premium each recorded the transaction as a sale or purchase, respectively, on their financial records. Also, when Ball Club bought the tickets back from Premium, Ball Club paid the fact value through a credit on Premium's intercompany account, the process described in the preceding section.

During its startup period in 2002, Guza inputted the ticket information concerning Premium's purchases into Premium's computer system. Before Premium opened its office in June 2002, Guza inputted the ticket information at Ball Club's offices. After Premium leased separate office space, Premium employees do not use and have no access to Ball Club's computer system. Thus, once Premium purchased Cubs tickets from Ball Club for the 2003 season, Guza built Premium's ticket database by manually inputting the game, date and location of each ticket, into Premium's computer system at Premium's own office.

For the 2003 season, Premium purchased $402,700 worth of tickets totaling 11,795 tickets. Looking at specific games, Premium purchased, for example, about 585 tickets for each of the 2003 Yankees series games, totaling 1755 tickets. These were high demand games, thus many of Ball Club's usual ticket distribution policies were changed. Group Sales, which account for 7,000-8,000 tickets sold for an average weekend game and which are available for sale before the public has access to tickets on the on-sale

date, were suspended. Each ticket purchaser was limited to only 4 tickets. Ball Club also increased its reserve pool to allocate more tickets to media and the Yankees team itself.

In 2003, Premium did not resell any of its 2003 tickets back to Ball Club because Guza optimistically thought that, before the ten-day return deadline, Premium would be able to sell every single ticket prior to the games. However, Premium failed to sell 1,463 tickets for games played through July 13, 2003. This amounted to a $27,792 loss for unsold tickets. In 2003, Ball Club and Premium had an agreement whereby Premium had the ability to return 10% of tickets purchased for any game, provided that the return was made ten days prior to the game. This is the same return policy that Ball Club employs for group sales.

For its initial 2002 season, Premium purchased $1,047,766 worth of tickets. In the initial agreement between Premium and Ball Club in June 2002, Ball Club retained the right to approve Premium's ticket sales as a part of a variety of conditions and services Premium would provide regarding Ball Clubs Tickets.com agreement. No evidence was presented that Ball Club exercised tits approval right, and this provision was later deleted. In 2002, Premium sold only 3900 tickets representing a face value of $112,428. It suffered a loss of $15,464 in unsold tickets.

In 2002, Premium received permission to sell 90% of its inventory back to Ball Club pursuant to Guza's request. After the late June, 2002 opening of business, Guza came to Maloney and indicated that Premium had a surplus of 2002 Cubs tickets that it was unable to sell. To accommodate Premium, Maloney received the authorization from McGuire for Ball Club to purchase the tickets back from Premium. McGuire reasoned that Ball Club had an incentive to purchase tickets back from Premium because, rather

than have the seats empty, Ball Club would instead prefer to resell the tickets at the Box Office and have fans watch ball games and generate concession sales. Ball Club, in exercising its business discretion, purchased most of these tickets back well before the 48-hour period within which any remaining reserve tickets are made available to the public.

Additionally, at the time of the sale to Premium in 2002 and 2003, Ball Club paid a 7% amusement tax to the City of Chicago on each ticket sold. Specifically, in April 2002, Ball Club paid the required amusement tax for the March 2002 sale of tickets to Premium. Likewise, in March 2003, Ball Club paid the required amusement tax for the February 2003 sale of tickets to Premium.

Premium set and controlled all of the resale prices of the tickets it bought from Ball Club. In other words, Ball Club has not been involved with setting Premium's resale prices.

***Premium's Finances***

Premium' finances are separate from Ball Club. Ball Club does not control or share in Premium's revenue or profits. Ball Club as required by Major League Baseball Rules reported Premium's net loss in 2002 to Major League Baseball ("MLB"). These rules require that all ball clubs must report, and sometime pay money on, revenues from separate companies owned by the same parent as that of the ball club, even when the ball club does not receive any profits or incur any losses from the related party. Here, an MLB committee and audit process determines what amount, if any, of Premium's loss will be counted as revenue sharing for MLB purposes. The MLB committee's decision has no bearing on whether, under the Ticket Scalping Act, Ball Club directly received a

share of Premium's revenue. In addition, the fact that Tribune included Premium's earnings in its consolidated financial reports with the Securities and Exchange Commission which included all of its subsidiaries finances in one statement, has no bearing on the issues regarding the Ticket Scalping Act.

**C.**

**Plaintiffs' Ticket Purchases**

Peter John Cavoto is a longtime Cubs fan who has purchased tickets for Cubs games from ticket brokers in the past. On June 25, 2002, Cavoto purchased tickets from Premium. In particular, he purchased a Club Infield Box (Scale 1) ticket for $50.98 to the Cincinnati Reds game being played that day. He, also, purchased a Club Infield Box (Scale 1) ticket for the next day's Cincinnati Reds game for $80. Cavoto testified he went to Premium to buy the tickets because Richard Marc Hamid, one of the owners of JustGreatTickets.com, a licensed ticket broker, told him to do so. Cavoto attended both games and had a good time.

Particularly, on June 25, Cavoto went to the Ball Club's Wrigley Field Box Office before going to Premium. He did not remember whether he tried to buy a ticket for the game being played that day, nor did he ask to purchase a ticket for the next day's game. Evidence shows that on June 25 tickets were available for the June 25 game and were still unsold after the game. Those tickets included the location of the seat which Cavoto purchased from Premium. As to the next day's game on June 26, evidence showed that, on June 25, tickets were available at the Box Office, for the location of Cavoto's tickets, at the Box Office.

Two days later, on June 27, 2002, at Hamid's direction, Cavoto returned to Premium and purchased two tickets for the July 13, 2002 Florida Marlins game. Cavoto then sold those tickets to Hamid. While at Premium, he also purchased Club Infield Box tickets for the Cincinnati Reds game being played that day. This time, before going to Premium, he did not go to the Wrigley Field Box Office to obtain printed price tickets for the game. Evidence, however, showed that, on June 27, tickets for the same location of Cavoto's purchase for the Reds game that day, were available at the Box Office.

Cavoto testified that he thought Premium was "independent" when he purchased the tickets from Premium. He testified that he did not feel deceived until Hamid told him that Premium had some type of association with Ball Club.

On August 6, 2002, plaintiff Gerald Carr, a lifetime Cubs fan, purchased three bleacher tickets from Premium for an August 17, 2002 Arizona Diamondbacks game. Before going to Premium, Carr had called an 800-number with the last four digits spelling C-U-B-S. The person who answered stated that there were no bleacher tickets available and that "Wrigley Field Premium Seats" might be able to help. Carr then called Premium, ordered three bleacher tickets over the phone and left his credit card number. He testified that he did not ask for the price of the tickets over the phone. He testified that he expected to pay around $20 a ticket and assumed he would pay "fair money for a fair ticket."

Soon after placing his order for the tickets over the phone with Premium, Carr went to Ball Club's Box Office to pick up the tickets. There, he was directed to Premium to pick up his tickets. When he arrived, he found out that the charge was $155.46 for the three tickets, and was shocked that the price was above the ticket price. He testified that

he felt deceived. He attended the game and enjoyed it. He did not complain to Ball Club about Premium's price. He testified that he had purchased from ticket brokers before.

**IV.**

Plaintiffs have the burden of proving their case by a preponderance of the evidence. This means that plaintiff must prove that it is more likely true than not true that defendants' conduct violated the subject Acts. Cuculich v. Thomson Consumer Elecs., Inc., 317 Ill. App. 3d 709, 718 (1st Dist. 2000); Zeller v. LaHood, 627 F. Supp. 55, 60 (N.D. Ill. 1985).

**A.**

**Ticket Scalping Act**

Plaintiffs have failed to prove by a preponderance of the evidence that defendants violated the Ticket Scalping Act. Plaintiffs have two arguments supporting their claimed violations. First, that the transaction between Ball Club and Premium was not a sale. Accordingly, Premium violated Section 1.5(b) because it did not "resell" tickets as required by the Act to be a ticket broker. Therefore, Ball Club, also violated Sections 1 and 1.5(a) of the Act because it did not sell tickets to Premium, but, rather, "placed" tickets with Premium, thus using Premium to sell Ball Club's tickets above the printed price which the Act prohibits Ball Club from doing. Second, plaintiffs argue that Premium, also, violates Section 1.5(b) because it is not in the regular and ongoing business of ticket brokering.

**1.**

Initially, defendants argue that plaintiffs cannot pursue a private cause of action for violation of the Ticket Scalping Act authorized by Section 3 because plaintiffs have

not proven that they feel aggrieved or injured by purchasing tickets from Premium at a higher price. Defendants argue that plaintiffs must prove more than the purchase of the tickets, and that the fact that plaintiffs testified that they enjoyed the games they attended shows no injury. The Court is not persuaded by defendants' argument and finds that the purchase of the ticket at a higher price than face value is sufficient to satisfy Section 3.

**2.**

First, plaintiffs argue that the evidence proves by a preponderance that the transaction was not a sale since Premium and Ball Club transacted the business through intercompany accounts managed by their common parent company, Tribune Co. The Court finds that the transactions were sales.

To prove a sale, the cases state that there must be evidence of the transfer of ownership for a price. Plast v. Metro. Trust Co., 401 Ill. 302, 312 (1948). More specifically a sale occurs between a seller and a buyer when money is paid or a debt is recorded at the time of sale, ownership transfers, the buyer assumes the benefits and risks of ownership, and the buyer sets the price and conditions for resales. See Chickering v. Bastress, 130 Ill. 206, 215-16 (1889).

In the instant case, plaintiffs presented extensive evidence describing the operation of and detailing numerous transactions in the intercompany accounts during 2002 and 2003. Plaintiffs focus particularly on the transactions occurring in 2002, before Premium's accounts were completely set up within Tribune Co.'s Finance Service Center's computer programs. The Court has examined the evidence of the procedures used and the alleged discrepancies which plaintiffs argue, and finds that the evidence

does not support the conclusion that Ball Club did not receive value through the entries in the intercompany accounts for the tickets sold to Premium.

The testimony was uncontradicted that the use of intercompany accounts among subsidiaries of a common parent is a customary way to enter payments and receipts. Thus, plaintiffs' arguments that a sale can only occur if payment is by cash or check ignores modern cash management practices. Transfer of ownership was evidenced by the ticket statement Ball Club provided to Premium confirming the sale. Further evidence of the transfer of ownership is the entries into Ball Club's Tickets.com software made in the same manner as group sales and individual ticket sales.

In addition to these internal records establishing that a sale occurred, Ball Club complied with the Chicago Ordinance requiring that an amusement tax must be paid when a ticket is sold. The evidence shows that the taxes on Ball Club's sale of tickets to Premium were paid to the City at the time required by the ordinance.

Further indicia of sale is the fact that upon receipt of the tickets, Premium, alone, set the price and conditions of resale. No evidence was presented by plaintiff that proved otherwise.

Finally, Premium undertook the risks and benefits of ownership of the tickets when it received the payments for its ticket sales and incurred losses on the tickets it did not sell. Specifically, in 2003, Premium incurred losses of $27,792 up to July 13, 2003 on tickets it was not able to resell. The return policy it enjoyed was the same as that for group sales, that is, ten days before a game it could return for face value 10% of the tickets it had purchased for that game.

In 2002, its initial year, Premium incurred a loss of $15,464 on tickets it could not sell. In addition, in 2002 it was allowed to sell back 90% of the tickets it had purchased for the price it had paid. Plaintiffs argue that this generous 90% return is evidence that Ball Club did not actually sell the 2002 tickets to Premium. The Court finds that under all of the circumstances of this case, the return does not prove that a sale did not occur.

The undisputed facts were that Tribune Co. incorporated Premium as a subsidiary on February 2002 and, thereafter, as recounted above, Premium purchased over $1 million of tickets from Ball Club. However, Premium was not able to open its doors until June 2002, late in the season. Thus, Premium was unable to sell many of its tickets. Ball Club had discretion to allow returns under circumstances it determined were special. Ball Club offered testimony that it deemed this to be a special circumstance because it wanted fans to attend all of thus it bought back the tickets. Those tickets, which had originally come from Ball Club's reserves, were released within 48 hours of each game, in the same manner as the other reserve tickets were handled. In light of all of the indicia of sale of the tickets to Premium, these special circumstances are not proof that a sale did not occur.

Accordingly, for all of the foregoing reasons, the court finds that plaintiffs have failed to prove by a preponderance of the evidence that the ticket transactions between Premium and Ball Club in 2002 and 2003 were not sales.

Finally, plaintiffs argue that Premium is in violation of Section 1.5(b) because the business of Premium was not regular and ongoing as required by the Act. Plaintiffs argue that the seasonal nature of Premium's business and the fact that Premium only sells Ball Club's tickets is not sufficient to constitute doing business on a regular and ongoing basis. However, Section 1.5(b) does not specifically require year round activity or the

sale of different kinds of tickets. The evidence shows that ticket reselling is the only business of Premium and that Dan Guza works on Premium business during the off season. This is sufficient evidence that Premium operates on a regular and ongoing basis. The Court, therefore, finds that Premium satisfies that requirement of Section 1.5(b) of the Act.

Accordingly, the Court finds, for all of the foregoing reasons, that Premium satisfies all of the requirements of Section 1.5(b) of the Ticket Scalping Act as a duly licensed ticket broker. The Court further finds, for the foregoing reasons, that Ball Club has not violated Sections 1 or 1.5(a) of the Act by selling tickets.

**3.**

Despite the fact that this Court has found that neither Premium or Ball Club violated the provisions of the Ticket Scalping Act, this Court will nevertheless address other arguments that plaintiffs have raised. Specifically, plaintiffs argue that this Court should find that the common ownership of Premium and Ball Club by Tribune Co. and their transactions through intercompany accounts, the assistance Ball Club gave to Premium, and Ball Club's endorsement of Premium, require this Court to find that Ball Club is using Premium to avoid the prohibitions of Sections 1 and 1.5(a) against Ball Club selling its tickets for higher than the printed price.

First, plaintiffs argue that the Court should find that the business relationship described above is injurious to the public because, through the relationship, Ball Club is violating Section 1 of the Act which prohibits "placing" tickets with a broker. Plaintiffs argue that Section 1 codifies the reasoning of the Illinois Supreme Court in the 1918 case Cort Theater v. Thompson, 283 Ill. 87. In that case, a theater owner entered into a secret

agreement with a ticket reseller in which they both shared in the profits generated by the reseller's sale of theater tickets above face value. This kind of agreement was specifically prohibited by a city ordinance which prohibited a person who was an officer, manager or employee of a theater from directly or indirectly entering into any arrangement or agreement by which he would receive anything in excess of the face value for the sale of a theater ticket. Id. at 88.

The theatre owner argued that the ordinance was unconstitutional because it interfered with the business of ticket brokering, which was legal at the time. The Court stated that the ordinance was not directed at ticket brokers, but was directed at the conduct of theater licensees. In that case the court stated "the question here is whether the constitution protects a theater owner in a scheme by which an applicant for a ticket is told that the house is sold out, and upon going to the ticket scalper is permitted to select the part of the house where he desires to sit and the ticket scalper turns to the telephone and directs the theater to send up a ticket, which is sent and sold out at an advanced price." Id. at 97. The court upheld the constitutionality of the ordinance as an appropriate exercise of the police power, and observed that:

> there can be no question that the plan by which patrons of the theater, because of arrangements between the managers and ticket brokers or scalpers, are required to pay more than the advertised prices of admission, in which the manager of a theater shares, is unfair and injurious to the public and contrary to the public welfare. Id. at 91.

In the instant case, plaintiffs presented no evidence that Ball Club has an arrangement with Premium whereby Ball Club directly or indirectly shares in the excess over face value which Premium receives upon reselling the tickets. Instead, the evidence shows that the revenues Premium receives from the resale of tickets goes into its bank

account and then is swept directly into Tribune Co.'s concentration account where the amount is entered on Premium's separate account. Ball Club does not receive the money. Ball Club, of course, receives the price of the tickets sold to Premium and also payment for accounting services it provides to Premium. Clearly, these payments are not a secret sharing of the excess paid to Premium over the printed price for tickets.

Furthermore, there is no evidence Ball Club indirectly shares Premium's revenues. If indirect sharing is to be assumed because of the common ownership of Premium and Ball Club by Tribune Co., then the legislature could prohibit common ownership outright, or prohibit a Ball Club from selling tickets to a broker also owned by a common parent. Both of these prohibitions are absent from the Ticket Scalping Act.

Accordingly, the evidence does not show that the business relationship between Premium and Ball Club is unfair or injurious to the public, or in violation of any provisions of the Ticket Scalping Act. Thus, the facts of Cort Theater, and the concerns expressed by the court therein, do not apply to the instant case.

Second, plaintiffs argue that the Court should disregard the corporate separateness of Ball Club and Premium and treat them as one because Ball Club is violating the Ticket Scalping Act by doing indirectly what it cannot do directly, that is selling tickets, through Premium, at a price higher than the printed price. Plaintiffs analogize the instant case to Chicago-Crawford Currency Exchange, Inc. v. Thillens, Inc., 48 Ill. App. 2d 366 (1st Dist. 1964). Particularly, plaintiffs reference the court's statement that:

> Regulatory statutes apply to the regulated activity regardless of the form or guise it takes, and the court cannot allow the defendants here to do, by indirection, what is forbidden by the statute. Id. at 372.

The court, in that case, found that the defendant Thillens, Inc., in concert with defendant Melvin Thillens, violated the Currency Exchanges Act. Melvin was the sole shareholder of Thillens, Inc., an ambulatory currency exchange business, which was denied a license to operate in forty-one additional locations. To get around the Act, Melvin formed a business called Thillens Merchandising Company as a sole proprietorship. He obtained a peddler's license and began to sell various items of small value in other locations and would cash checks for much more than the items cost. For example, during a one-week period, Thillens Merchandising sold $740 worth of merchandise, but cashed checks totaling $228,000. Thillens, Inc. assisted the business by, among other ways, providing trucks and uniforms without the Thillens, Inc.'s name, sharing garage space, providing equipment necessary to the business and loaning operating money. Thillens, Inc. and Melvin Thillens were sued for violating the Currency Exchanges Act.

Melvin argued that his Merchandising Co. was covered by the exemption provision of the Act which allowed a retail business to cash checks as an incident to their business. The court found that Thillens Merchandise Co.'s check cashing was not incident to its sales, because it went well beyond the legislature's intent to protect the bona fide retail business that sells tangible personal property and incidentally cashes checks. Id. at 370. The court also held that Thillens, Inc. was liable, despite being a separate corporation, because it was wholly owned by Melvin Thillens and conspired with him to violate the law. Id. at 373.

Thillens, clearly, is distinguishable from the present case. Here, the evidence shows that Premium complies with all of the requirements as a licensed ticket broker

under the applicable provisions of the Ticket Scalping Act, whereas Thillens Merchandising Company violated the Currency Exchange Act exemption by doing little retail selling and an enormous amount of check cashing. Plaintiffs have not proven by a preponderance that Ball Club, in its relationship with Premium, is itself getting around the Ticket Scalping Act by using Premium to sell tickets at a higher price. Thus, Ball Club is not working in concert with Premium to violate the law. Accordingly, the Court need not disregard the corporate separateness of Ball Club and Premium.

Finally, plaintiffs argue that the corporate separateness of Ball Club and Premium should be ignored because the relationship between them and the assistance Ball Club gave to Premium, described in the facts recounted above, amounts to Ball Club controlling Premium. This Court disagrees.

The Delaware Court's decision in Japan Petroleum v. Ashland Oil, Inc., 456 F. Supp. 831, 843 (D. Del. 1978) is instructive in considering the effect of Ball Club's assistance to Premium. The Delaware court held that the facts of the relationship of the parent and subsidiary there did not warrant disregarding the corporate separateness of the parent and subsidiary. The court described the assistance the parent corporation, an oil company seeking to explore and produce oil in Nigeria, gave to its subsidiary, a Nigerian Company formed to do business in Nigeria. The Court stated that "the fact that incorporators have exercised ordinary and temporary control over an incipient corporation does not prevent the corporation from existing as an independent entity thereafter." Id. at 845-46 and n. 30.

There, the subsidiary was incorporated by the parent, was financed by, planned by, and had joint operations with the parent. The parent company, also, provided

consulting services and a cash management program. The parent company guaranteed three major bank loans for the subsidiary and included the subsidiary under the parent's blanket insurance policy, and more. The Delaware court held that the corporations were separate, and that the subsidiary was not a mere instrumentality of, alter ego of, or agent of the parent. The court found no control, domination, fraud or inequity.

In the instant case, the evidence fails to show that Ball Club controls or dominates its sister subsidiary Premium. Also, as outlined above, Ball Club had even less involvement with Premium in its starting stages and assisted it for a shorter time than the parent did in Japan Petroleum. The business relationship between Ball Club and Premium, described by the evidence in the instant case, is not sufficient to show control.

In sum, the thrust of plaintiffs' three arguments above is that this Court should find that the Ticket Scalping Act prohibits Ball Club and Premium, a licensed ticket broker, from doing business because they are commonly owned, even though the evidence fails to prove that any provision of the Act has been violated by the manner in which these subsidiaries do business. The Ticket Scalping Act, while quite detailed, does not prohibit such arrangements. This Court cannot provide such legislation by court decision.

**B.**

**Consumer Fraud and Deceptive Business Practices Act**

Plaintiffs' main claim of violation of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 et seq.) is that defendants' violation of the Ticket Scalping Act is itself an unfair and deceptive practice that violates the Consumer Fraud Act because Ball Club allegedly does not reveal that it is using Premium to sell tickets.

Plaintiffs, additionally, argue that Ball Club's conduct constitutes a bait and switch advertising scheme because Ball Club allegedly baited consumers by advertising Cubs tickets at face value, and then allegedly switched the consumers to Premium's higher priced tickets by artificially limiting the supply of Cubs tickets in the marketplace.

The Consumer Fraud Act provides:

> § 2. Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act," approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act. 815 ILCS 505/2.
>
> § 10a. (a) Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person....

To prove a private cause of action for a violation of the Consumer Fraud Act, plaintiffs must prove: (1) a deceptive act or practice by the defendant, (2) the defendant's intent that the plaintiff rely on the deception, (3) the occurrence of the deception in the course of conduct involving trade or commerce, (4) actual damage to the plaintiff which is (5) proximately caused by the deception. Oliveira v. Amoco Oil Co., 201 Ill. 2d 134, 149 (2002); Zekman v. Direct American Marketers, Inc., 182 Ill. 2d 359, 373 (1998); Connick v. Suzuki Motor Co., 174 Ill. 2d 482, 501 (1996). Courts have recognized that bait and switch sales tactics fall within the scope of the Consumer Fraud Act. Chandler v. American General Finance, 329 Ill. App. 3d 729, 739-40 (1st Dist. 2002).

First, the Court finds that plaintiffs have failed to prove by a preponderance of the evidence a violation of the Consumer Fraud Act based on defendants concealing their violation of the Ticket Scalping Act. Specifically, this Court has found that Ball Club did not use Premium to sell tickets above the printed price in violation of the Act. Also, the Court has found that Premium is a licensed ticket broker in compliance with all of the provisions of the Ticket Scalping Act. Accordingly, there was no deception concerning the independence of Premium as a ticket broker and the defendants' compliance with the Act.

Second, the evidence does not show that Ball Club used bait and switch advertising techniques. Bait and switch advertising is a practice by which a seller seeks to attract customers through advertising at low prices products which he does not intend to sell in more than nominal amounts. Disc Jockey Referral Network v. Ameritech Publishing, 230 Ill. App. 3d 908, 915 (1st Dist. 1992). When prospective buyers respond to the advertising, sale of the bait is discouraged through various artifices. Id.

In the instant case, plaintiffs failed to prove by a preponderance of the evidence that Ball Club artificially limited the supply of tickets. In fact, there were more than a nominal number of tickets available at the Box Office for the games. Premium's share of tickets in 2003 was only one-half of one percent of the tickets available for purchase, and these tickets were originally sold to Premium from Ball Club's reserves. In 2002, the percentage was similar.

The evidence presented by plaintiffs did not prove bait and switch as to the representatives of the class, Cavoto and Carr. Cavoto testified that, at the direction of Richard Marc Hamid, another ticket broker, he went to Premium to purchase tickets. He

did not first go to the Box Office to see if tickets were available for the area he sought. In fact, tickets were available. Therefore, Cavoto was not switched. Carr testified he called the Box Office to purchase bleacher seats and was told that none were available for the game he sought. He testified that he knew that bleacher seats were hard to get. Plaintiffs presented no evidence that the unavailability of bleacher seat tickets for that day was due to Ball Club artificially limiting the tickets by selling them to Premium.

On the contrary, the evidence showed that the tickets Premium purchased came from a pool of tickets not generally sold to the public, if at all until just before the specific game. These tickets came from Ball Club's reserves which contained around 4,000 to 5,000 tickets per game, identified prior to the on-sale date. Premium's purchases included high demand areas. The Yankees Series, which plaintiffs argue is an instance of artificial limitation, involved many decisions by Ball Club changing the usual way tickets were handled by Ball Club, which Ball Club stated were intended to enhance the public's access to tickets for this special series. However, this evidence does not sufficiently prove that Ball Clubs polices with respect to selling reserve tickets to Premium artificially limited the numbers of tickets in any category of tickets otherwise available in previous years from the Box Office.

Furthermore, there was no evidence that Ball Club discouraged the purchase of tickets from the Box Office while Premium was in business. The evidence showed that plaintiff Cavoto was not discouraged. He, deliberately, and at the direction of Hamid, chose to purchase tickets specifically from Premium. Additionally, the evidence does not show that Ball Club discouraged Carr from purchasing Cubs tickets at the Box Office in order to switch him to Premium. When Carr contacted Ball Club's Hotline to purchase

bleacher tickets, he was told none were available for purchase and that Premium might have some. Carr testified that he had purchased from ticket brokers before, thus he could have chosen another broker. Accordingly, none of plaintiffs' evidence proves by a preponderance that Ball Club engaged in bait and switch advertising.

Having found that defendants did not engage in any unfair or deceptive practice, the Court determines that the other elements of the Consumer Fraud Act, that is, intent, course of conduct, actual damage and proximate causation of any claimed injury cannot be proven. Accordingly, the Court finds that defendants have not violated the Consumer Fraud Act.

**C.**

**Uniform Deceptive Trade Practices Act**

In addition to asserting that defendants violated the Consumer Fraud Act, plaintiffs argue that defendants, through the very same alleged conduct, violated the Deceptive Trade Practices Act (815 ILCS § 510/1 et seq.). The Deceptive Trade Practices Act differs from the Consumer Fraud Act in that a plaintiff need not prove defendant's intent to deceive. Also, while a plaintiff may recover damages under the Consumer Fraud Act, he may not do so under the Deceptive Trade Practices Act, which is designed to provide a plaintiff with injunctive relief. Section 3 of the Act provides:

> A person likely to be damaged by a deceptive trade practice of another may be granted injunctive relief upon the terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive is not required.... 815 ILCS 510/3.

To prove an action for injunctive relief under the Deceptive Trade Practices Act, a plaintiff must minimally prove that he is likely to be damaged by another's deceptive trade practice. Greenberg v. United Airlines, 206 Ill. App. 3d 40, 47 (1st Dist. 1990). In

other words, he must prove that future harm can to be prevented by the remedy of injunctive relief. The specific sections claimed to have been violated in the instant case are in Section 2 of the Act:

> (a) A person engages in a deceptive trade practice when, in the course of his business, vocation or occupation, he: ...
>
> (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or service;
>
> (3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with or certification by another; ...
>
> (9) advertises goods or services with intent not to sell them as advertised;
>
> (10) advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity; ...
>
> (b) In order to prevail under this Act, a plaintiff need not prove competition between the parties or actual confusion or misunderstanding. 815 ILCS 510/2.

First, plaintiffs argue that Ball Club violated Section 2(a)(9) or (10) of the Deceptive Trade Practices Act because Ball Club allegedly engaged in the use of bait and switch advertising. As described above, the Court has found that plaintiffs evidence failed to show, by a preponderance, bait and switch advertising. In any event, even if defendants did engage in bait and switch advertising, plaintiffs have failed to prove a threat of future harm to consumers necessary for injunctive relief. Plaintiffs argue that future harm will occur because the public at large will have a diminished opportunity to purchase Cubs tickets at face value because Ball Club will reduce the supply of Cubs tickets at the Box Office while supplying Premium with those tickets. As described above, plaintiffs failed to prove by a preponderance that the public has a diminished opportunity to purchase tickets. Additionally, a competitor ticket broker testified that

Premium's entry into the secondary market caused resale ticket prices to decrease. Accordingly, plaintiffs have not proved a future harm with respect to the alleged bait and switch advertising.

Second, plaintiffs argue that Ball Club's alleged sales of Cubs tickets "through" Premium causes a likelihood of confusion as to the source or sponsorship of the tickets in the resale market in violation of Section 2(a)(2) or (3). Claims under the Deceptive Trade Practices Act must allege how or why a likelihood of confusion would occur for the future. Greenberg, 206 Ill. App. 3d at 47. According to plaintiffs, they were necessarily confused as to whether Premium was a ticket broker or a ticket agent for Ball Club because Ball Club endorses Premium, allows it to use Ball Club's trademarks, and because Premium's full name, Wrigley Field Premium Ticket Services, Inc., is similar to Ball Club's "Wrigley Field" Box Office.

The Court finds that Cavoto and Carr were not necessarily confused as to Premium's business. The evidence shows that Cavoto knew that Premium was a ticket broker. The evidence also shows that Carr, though "shocked" at the price Premium charged him for the tickets, did not testify to any confusion as to the source of the tickets, only that he was surprised at the price. Nevertheless, plaintiffs fail to prove a threat of future harm with respect to confusing Ball Club with Premium, because Premium displays a sign at its location that states that Premium and Ball Club are both owned by Tribune Co., from which customers would know that Premium and Ball Club are separate and different entities. Premium, also, maintains a policy of telling customers that it is not the same company as Ball Club. Moreover, both of the plaintiffs now know that Premium is a ticket broker, and not an agent of Ball Club with respect to the sale of Cubs

tickets. Accordingly, there is no situation in which such confusion would arise in the future.

Accordingly, plaintiffs have failed to prove by a preponderance of the evidence the alleged remediable violations of the Deceptive Trade Practices Act.

## CONCLUSION

In conclusion, the Court finds that Premium and Ball Club have not violated the Ticket Scalping Act, the Consumer Fraud Act or the Deceptive Trade Practices Act. First, the Court has found that Premium purchased Cubs tickets from Ball Club, and, thus, Premium and Ball Club satisfied the requirements of the Ticket Scalping Act. Plaintiffs failed to prove that the transactions were anything other than sales.

Second, the Court has found that Premium is not controlled by, nor is it an instrumentality of, Ball Club. Plaintiffs failed to prove that Ball Club's relationship with or endorsement of, Premium violates any law, or otherwise requires the Court to disregard their separate corporate status.

The Court has also found that Premium and Ball Club did not engage in any bait and switch tactics to lure fans to Premium. Plaintiffs failed to prove by a preponderance that Ball Club's sale of tickets to Premium from its discretionary reserves reduced Cubs fans' opportunity to purchase tickets from the Box Office.

Finally, it is undisputed that Tribune Co. owns Ball Club and Premium. The Ticket Scalping Act does not prohibit common ownership of an amusement like Ball Club and a ticket broker like Premium. The Act does not prohibit Ball Club from selling tickets to a sister subsidiary corporation which is a licensed ticket broker. Most importantly, plaintiffs' evidence fails to prove that the business relationship between

them violates any law or violates custom or practice. Should the public have a concern about the common ownership of an amusement and a licensed ticket broker, the relationship of the subsidiaries or advantages they devise from that relationship, then, the legislature can do the public's bidding by enacting desired limitations. Because this Court is bound by the law as presently enacted, the Court cannot encroach on the legislative authority and read such limitations into the law in this decision.

Accordingly, the Court finds for defendants and against plaintiffs.

Entered: _____
JUDGE

Date: 11/24/03