

277 So.3d 1166  
Supreme Court of Louisiana.

ANTONIO LE MON, a Professional Law Corporation; Susan S. Boudreaux; and Jane N. Preau Wife of/and William J. Preau, III

v.

NATIONAL FOOTBALL LEAGUE; Roger Goodell, in His Official Capacity as Commissioner of the National Football League; NFL Properties LLC, as Successor-in-Interest to NFL Properties, Inc.; Patrick O. Turner, Jr.; Gary P. Cavaletto; and William J. Vinovich, III

NO. 2019-CC-1264

|  
09/06/2019

**Synopsis**

**Background:** Putative season ticket holders who attended football championship game brought action against the National Football League (NFL), its commissioner, and certain officials, alleging that NFL and game officials engaged in a conspiracy and committed fraud and deceptive trade practices against season ticket holders and observers. NFL filed a peremptory exception raising the objection of no right of action. The Civil District Court, Orleans Parish, No. 20 191226, denied the NFL's exception. NFL sought supervisory review, and the Court of Appeal denied the application. NFL applied for supervisory writ.

The Supreme Court held that rights of season ticket holders were never revoked, and therefore season ticket holders had no legally cognizant rights to seek damages for alleged fraud and deceptive trade practices committed by defendants during football game.

Writ granted and made peremptory, judgment of the district court reversed and rendered.

Hughes, J., concurred in the result.

Genovese, J., concurred in the result.

Chehardy, J., concurred in the result.

**Procedural Posture(s):** On Appeal; Peremptory Exception of No Right of Action or No Interest in the Plaintiff to Institute the Suit.

\*1167 Applying For Supervisory Writ, Parish of Orleans Civil, Civil District Court Number(s) 20 191226, Court of Appeal, Fourth Circuit, Number(s) 2019C0631

ON SUPERVISORY WRIT TO THE CIVIL  
DISTRICT COURT, PARISH OF ORLEANS

PER CURIAM

\*\*1 Plaintiffs, who allege they are New Orleans Saints season ticket holders and who attended the NFC Championship game, filed the instant suit against the National Football League, its commissioner and certain officials (collectively referred to hereinafter as "NFL") based on actions which occurred during the 2019 NFC Championship game between the New Orleans Saints and the Los Angeles Rams. Specifically, plaintiffs alleged the NFL and the game officials engaged in a conspiracy and committed fraud and deceptive trade practices "against Petitioners as season ticket holders and observers of the aforesaid game" entitling them to damages.

The NFL responded by filing a peremptory exception raising the objection of no right of action. In support of its exception, the NFL argued plaintiffs were not within the class of people with enforceable rights regarding the outcome of the administration of the rules in a particular game. According to the NFL, plaintiffs' tickets were merely a revocable license only allowing entrance to the stadium and a place from which to watch a particular game.

After a hearing, the district court denied the NFL's exception. The NFL sought \*\*2 supervisory review in the court of appeal, which denied the application. The NFL now seeks relief in this court.

The function of the exception of no right of action is to determine whether the plaintiff belongs to the class of persons to whom the law grants the cause of action asserted in the suit.  *Eagle Pipe & Supply v. Amerada Hess Corp.*, 10-2267 (La. 10/25/11), 79 So.3d 246. In reviewing a ruling on an exception of no right of action, the reviewing court should focus on whether the particular plaintiff has a right to bring the suit and is a member of the class of persons that has a

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legal interest in the subject matter of the litigation, assuming the petition states a valid cause of action for some person.

 *Badeaux v. Southwest Computer Bureau, Inc.*, 2005-0612 (La. 3/17/06), 929 So.2d 1211, 1217.

The narrow issue presented in this case is whether plaintiffs, who are New Orleans Saints season ticket holders and who attended the NFC Championship game, belong to the class of persons who have a cause of action to recover damages for alleged fraud and deceptive trade practices committed by the NFL and its officials during the game. Nearly seventy-five years ago, in  *Vogel v. Saenger Theatres*, 207 La. 835, 22 So.2d 189 (1945), we explained that under Louisiana law, a ticket of admission to a theater or place of public amusement confers on a purchaser thereof a mere license to witness the performance.<sup>1</sup> Under this doctrine, a ticket holder **\*1168** whose right of admission is **revoked** may bring an action for breach of contract. *See also*  *Mancina v. Goodell*, 2013 WL 393041 (E.D. La. 1/30/13) (explaining that Louisiana jurisprudence provides that revocation of a license or breach of contract can result in actual damages, usually the amounts paid for the ticket and necessary expenses incurred in attending the performance, as well as mental suffering).

**\*\*3** Applying this reasoning to the case at bar, we find plaintiffs' purchase of a ticket merely granted them the right of entry and a seat at the game. Plaintiffs have not alleged that these rights were revoked or denied in any way.<sup>2</sup>

Nonetheless, plaintiffs argue the facts of the instant case are distinguishable from earlier cases because they have alleged fraud, intentional torts, and gross negligent acts. They contend that  *Vogel* left open the possibility that a spectator could recover additional damages.

We disagree. While  *Vogel* recognized that Louisiana law may allow greater damages than those available at common law, such damages are predicated “upon the proprietor's breach of contract without just cause...” There is no allegation of any breach of the contract allowing plaintiffs to attend the game.

Finally, we find public policy considerations weigh in favor of restricting the rights of spectators to bring actions based on the conduct of officials of professional sporting leagues.

As the federal court in  *Mayer v. Belichick*, 605 F.3d

223, 237 (3d Cir. 2010), explained, “it is not the role of judges and juries to be second-guessing the decision taken by a professional sports league purportedly enforcing its own rules.” Allowing such suits would only serve to “further burden already limited judicial resources and force professional sports organizations and related individuals to expend money, time, and resources to defend against such litigation.”  *Id.* While we are certainly cognizant of the passion of sports fans, and particularly those who are fans of the New Orleans Saints, the courts are not the proper forum to litigate **\*\*4** such disputes.<sup>3</sup>

Accordingly, we find the district court erred in finding plaintiffs have a right of action to bring this suit. We must reverse that judgment and grant the exception.

**\*1169** While La. Code Civ. P. art. 934 provides that a judgment sustaining a peremptory exception should permit amendment of the petition when the grounds thereof can be removed by amendment, amendment is not permitted when it would constitute a vain and useless act. *Alexander and Alexander, Inc. v. State, Div. of Administration*, 486 So.2d 95, 100 (La. 1986). Here, we have concluded the plaintiffs—ticket holders who attended the NFL Championship games—have no right to recover damages for fraud and deceptive trade practices allegedly committed by the NFL and its officials during the game, and plaintiffs have suggested no facts they could plead in an amended petition that would cure or remove the grounds for sustaining the exception. Therefore, amendment would be a vain and useless act.

## DECREE

For the reasons assigned, the writ is granted and made peremptory. The judgment of the district court is reversed. Judgment is hereby rendered in favor of relators granting the peremptory exception raising the objection of no right of action and dismissing plaintiffs' suit with prejudice.

Hughes, J., concurs in the result.

Genovese, J., concurs in the result.

Chehardy, J., concurs in the result.

## All Citations

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## Footnotes

- 1 In this regard, Louisiana's rule is consistent with the prevailing rule in other jurisdictions. See  *Vogel*, 207 La. at 842, 22 So. 2d at 191.
- 2 In its reasons for judgment, the district court cited La. Civ. Code art. 2004 and *Hymel v. Eagle, Inc.*, 08-1287 (La. App. 4 Cir. 3/18/09), 7 So.3d 1249, *writ denied*, 09-0873 (La. 5/15/09), 8 So.3d 590, for the proposition that the NFL cannot use language on the back of the game tickets to prospectively limit its liability. However, as the NFL points out, it has not raised any contractual waivers as a defense. Rather, its arguments are based on the theory that plaintiffs' rights as ticket holders were never revoked, and they therefore have no legally cognizant rights to seek the damages they have alleged. Accordingly, we express no opinion regarding application of La. Civ. Code art. 2004.
- 3 In an amicus brief filed in support of the NFL's application, the New Orleans Saints raise similar concerns. While the Saints "appreciate the fervor and dedication of their deep and passionate fan-base," the team recognizes that "allowing such claims to proceed in court would open the door to countless legal claims brought by passionate sports fans that would inundate the courts and overburden sports leagues and their member teams, including the Saints." The Saints explain that the proper way to address the problem presented in this case (a missed pass interference call) was through the agreed upon process for amending the NFL Rules. In fact, the Saints note that "in March of this year, the NFL member clubs, at the strong urging of the Saints (whose head coach, Sean Payton, sits as a member of the NFL Competition Committee, which recommends playing rules to the full membership), amended the NFL Rules to allow, in certain circumstances, for the review of potentially missed pass interference penalties."