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# RACING FROM THE TRACK TO THE COURTROOM: HOLY LUTE OWNER SUES OVER ALLEGED PRE-ENTRY MISTAKE

BY HANNAH SIMMS

Holy Lute, a gray thoroughbred trained by James Cassidy and owned by Class Racing Stable, has found himself in the middle of a heated contest. Only this contest is not taking place on the track, but rather in the courtroom.[i]

(file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_edn1) Class Racing Stable has filed a lawsuit against Breeders' Cup Limited alleging negligence, negligent misrepresentation, and promissory estoppel stemming from a mistaken pre-race entry in the 2015 Breeders' Cup races, which ran at Keeneland.[ii]

(file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_edn2)

The horse's owners claim they called Breeders' Cup's Director for Racing and Nominations on October 18, 2015 to pre-enter Holy Lute in the in the turf sprint.[iii] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_edn3) The next day, October 19th, Class Racing Stable flew the horse to Kentucky from California.[iv] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_edn4) On October 20th, Breeders' Cup's Racing Directors/Secretaries Panel released its pre-entry list to the public.[v] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_edn5) Following the public release of the pre-entries, Class Racing Stable became aware that Holy Lute had been pre-entered in the sprint, which is run on the dirt track, rather than the turf sprint. Class Racing Stable contacted Breeders' Cup officials about the alleged mistake with the pre-entry and Breeders' Cup made accommodations by listing Holy Lute as the last ranked horse on the turf sprint pre-entry list.[vi] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_edn6) Ultimately, when the final field of fourteen horses and two also "eligible" entries were set on entry day, Holy Lute had not been selected by the panel to race in the 2015 Breeders' Cup turf sprint at Keeneland.

The owners have since filed a lawsuit claiming damages as a result of this race entry mix-up. Class Racing Stable has requested damages that include the shipping and boarding costs associated with sending Holy Lute to Kentucky on October 20, 2015, lost potential purse money, residual values,

and future opportunities.[vii] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_edn7) Breeders' Cup has responded with a motion to dismiss for failure to state a claim on which relief can be granted. In this motion, Breeders' Cup effectively refutes elements of all three claims alleged by Class Racing Stable.



One of the many interesting legal issues in this case is the speculative nature of the damages alleged by the owners. Kentucky state courts have long held that “uncertain, contingent, and speculative damages can not be recovered.”[viii] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_edn8) The U.S. District Court for the Eastern District of Kentucky, where the Holy Lute complaint was filed, has also adopted this ruling.[ix] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_edn9) In its motion to dismiss, Breeders' Cup stated that in order for Holy Lute to obtain the damages Class Racing Stable is alleging, the horse would have had to have been selected to be a part of the field of fourteen horses that ran in the race and would have needed to finish in the top three of that field. The law in the relevant jurisdiction seems to preclude claims for speculative damages like the ones alleged by Holy Lute's owners.

Regardless of the merits of the three claims listed in the complaint, the damages asserted by Class Racing Stable in this action stand on very shaky legal ground. In horse racing even the most skilled career handicappers cannot accurately predict every race. Odds and wagering take skill and expertise, but can often be reduced to a guessing game. It is hard to imagine awarding Class Racing Stable the kind of damages it has requested when proving them with certainty is impossible. As such, Holy Lute will likely have better luck crossing the finish line as a winner at the track than in the courtroom.

[i] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_ednref1) *Holy Lute Profile*, Blood Horse, <http://www.bloodhorse.com/horse-racing/thoroughbred/holy-lute/2010> (last visited June 24, 2016).

[ii] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_ednref2) Defendant's Memorandum in Support of Motion to Dismiss at 1-2, Class Racing Stable LLC v. Breeders' Cup Limited, No. 5:16-CV-200 (E.D. Ky. June 21, 2016).

[iii] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_ednref3) *Id.* at 5.

[iv] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_ednref4) *Id.*

[v] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_ednref5) *Id.*

[vi] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_ednref6) *Id.*

[vii] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_ednref7) Ray Paulick, *Owner of Holy Lute Sues Breeders' Cup over Mistaken Race Entry*, Paulick Report, June 15, 2016, <http://www.paulickreport.com/news/the-biz/owners-holy-lute-sue-breeders-cup-mistaken-race-entry/>.

[viii] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_ednref8) *Spencer v. Woods*, 282 S.W.2d 851, 852 (Ky. 1955).

[ix] (file:///C:/Users/Evan/Downloads/HBS\_Blog\_Summer%202016.docx#\_ednref9) *Ward v. Chesapeake Appalachia, L.L.C.*, No. 07-244-EBA, 2009 U.S. Dist. LEXIS 81402, at \*9 (E.D. Ky. Sep. 8, 2009).

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