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Litigator says fan's suit against NFL and its teams raises interesting questions

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While the possibility remains of a National Football League lockout of players due to a labor dispute, an Ohio man has sued the Cleveland Browns and the NFL for violating his contractual right to buy game tickets under "personal seat licenses." One practitioner views his claims as raising interesting questions, although "quite weak."

Cleveland resident Kenneth Lanci sued the Browns, the NFL and 31 other NFL teams in the Court of Common Pleas in Cuyahoga County, Ohio on March 24. The case is *Lanci v. Cleveland Browns LLC*. Lanci claims his 10 personal seat licenses give him the right and obligation to "use and possess seats for Browns home games."

Lanci's legal claims against the Browns are breach of the personal seat license agreement and bad faith. He also claims the NFL and the NFL teams engaged in tortious interference with his contract rights. He claims his damages exceed \$25,000, and he has asked the court for unspecified monetary or equitable relief and a "preliminary injunction against the proposed lockout of NFL players."

Licenses like Lanci's "came about as a way of financing stadiums," said Thomas Sartory, a partner and litigator at Boston's Goulston & Storrs, as well as the firm's general counsel, who isn't involved in the case.

Lanci's case is "quite weak" because he hasn't been harmed yet, but it does raise some interesting questions, Sartory said.

"One big problem is he can't prove damages because there hasn't been a game cancelled," Sartory said. "Long term, he can't prove damages because there's a mechanism to allow for abatement in the nature of refunds."

Also, it's possible that the upcoming season will be played with strike breaking players, Sartory said.

One interesting potential wrinkle in the case is a provision of Lanci's contract in the court papers that calls for the abatement of the license/ticket fee in the event of a "strike or other labor disturbance" that results in the cancellation of Browns games at the stadium, Sartory said.

Whether any games cancelled by the lockout would be deemed "the product of a labor disturbance would be an interesting issue," Sartory said. "Is that within the intent of the section of license that he got? That might be something he has a right to argue about."

Also, since licensees like Lanci have the right to assign the licenses to someone else "he might argue that he's lost the value of his investment," Sartory said.

"It's a conceptual argument that could have some standing, but even there, how do you measure the harm that a game or two or three or even a season [will cause], especially in a period when he's not trying to sell?"

Lanci's attorney, Christian Bates, a litigator at Westlake, Ohio-based Corsaro & Associates, said he's "not going to make any comment about any kind of ongoing case."

The Cleveland Browns did not respond to requests for comment. NFL spokesman Brian McCarthy said that although the league does not have a comment on the suit, it announced a league-wide refund policy for any preseason or regular season cancelled due to a work stoppage. "Fans would receive their money back," McCarthy said.

Cincinnati Bengals spokesman Jack Brennan said "the Bengals will defer to the league office for any comment on this." Representatives of most of the other NFL defendant teams declined to comment, did not respond immediately to requests for comment or could not be immediately reached.

Meanwhile, a group of current, former and prospective players led by New England Patriots quarterback Tom Brady have an ongoing antitrust case against the league in Minneapolis federal court, *Brady v. National Football League*.

At an April 6 hearing, the players asked U.S. District Judge Susan Richard Nelson for an injunction to stop the league's lockout.

After the NFL's collective bargaining agreement with the players ended last month, the union decertified itself and the players filed the federal case on March 11.

Since the hearing, both sides have sent each other and the judge letters about their willingness to engage in mediation. The NFL, however, wants mediation to resume at the government agency, the Federal Mediation & Conciliation Service, while the players want to conduct mediation "with the assistance of the federal court in Minnesota."

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