Superior Court
San Diego County, State of California

Business

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The following is a TELEPHONIC, ruling for 11/27/01
Department 69, the Honorable RONALD S. PRAGER presiding.

Case Number GIC764116

The Court rules on the cross-motions for summary judgment filed by plaintiff People of the State of California ("Plaintiff") and defendant R.J. Reynolds Tobacco Company ("Defendant") as follows:

The Court declines to rule on specific evidentiary objections. The Court disregards all evidence which is found to be incompetent or inadmissible. See Biljac Associates v. First Interstate Bank, 218 Cal. App. 3d 1410, 1419 (1990).

The Court denies the application to file Amicus Curiae brief in support of Plaintiff's motion for summary judgment, as there is no authority allowing the consideration of such a brief on a motion for summary judgment by a California trial court.

The Court grants Plaintiff's motion for summary judgment and denies Defendant's motion for summary judgment.

The dispute at bar concerns a provision of the Master Settlement Agreement ("MSA") entered into by Plaintiff and Defendant, among other parties, in 1998. The provision in question, namely Section III(c)(3)(E)(ii), pertains to outdoor advertising of tobacco products. The provision states as follows:

"(E) nothing contained in the provisions of subsection III(d) shall (ii) apply to Outdoor Advertising advertising the Brand Name Sponsorship, to the extent that such Outdoor Advertising is placed at the site of a Brand Name Sponsorship no more than 90 days before the start of the initial sponsored event, is removed within 10 days after the end of the last sponsored event, and is not prohibited by subsection (3)(A) above."

Defendant has presented several arguments to support the proposition that the phrase "initial sponsored event" means the first event in a series of events such that its Outdoor Advertising can be placed at any site in which the events take place so long as the Outdoor Advertising is placed 90 days before the first event in the series and is removed 10 days after the last event in the series. In contrast, Plaintiff points out that the events at a site take place for several days and argues that the phrase "initial sponsored event" must be interpreted to refer to the events at each site, or more specifically, to the first day of the sponsored events at a site such that Outdoor Advertising is allowed within a narrow window of time consisting of 90 days before and 10 days after the events at a site.

In short, Defendant's interpretation would allow Defendant to place Outdoor Advertising 90 days before the first event of the

series at all the sites of the series and maintain such Outdoor Advertising until 10 days after the end of the last event of the series. If the series runs from February to November, this would mean that Plaintiff could keep its Outdoor Advertising up year round. In contrast, Plaintiff's interpretation would Prohibit Defendant from placing its Outdoor Advertising until 90 days before the initial event at a site begins and would require Plaintiff to remove the Outdoor Advertising 10 days after the events at a site are completed, thereby precluding Plaintiff from maintaining its Outdoor Advertising at each and every site year round.

The Court further notes that both Plaintiff and Defendant insist that the provision in question is not ambiguous and that its clear language support their respective interpretation despite the fact that the interpretations are clearly contradictory.

After carefully considering all the arguments presented, the Court finds that Plaintiff's interpretation is more reasonable and clearly supported by both the plain language of the provision and the context in which it is found. The Court reached this Ruling after reviewing the MSA and the law on contract interpretation, which requires the Court to take into account the whole of the contract so as to give effect to every part, each clause helping to interpret the other. National City Police Officer's Association v. City of National City, 87 Cal. App.4th 1274, 1279 (2001).

First, the Court notes that the first part of Section III(c)(3)(E)(ii) refers to subsection III(d) and states that "nothing contained in the provisions of subsection III(d) shall apply." A review of subsection III(d) reveals that it contains a very broad prohibition on Outdoor Advertising of tobacco products, including the elimination of Outdoor Advertising and Transit Advertising. Therefore, Section III(c)(3)(E)(ii) is an exclusion to this broad-based prohibition. Given the context of the exclusion, that is, that it constitutes an exclusion to a broad based prohibition, it stands to reason that Section III(c)(3)(E)(ii) should be read narrowly so as to give it its full effect, lest the exclusion swallow the prohibition. In sum, the structure of the MSA itself, i.e., the context in which the exclusion appears, supports Plaintiff's interpretation of the exclusion.

The language of Section III(c)(3)(E)(ii) also supports Plaintiff's interpretation. While it is true that the phrase "Brand Named Sponsorship" is defined in the MSA to include a series consisting of multiple events, such as NASCAR (MSA, Section II(j)), and that the phrase "initial sponsored event" first appears at Section III(c)(2)(A) and refers to the initial sponsored event, it does not necessarily follow that with regard to Section III(c)(3)(E)(ii), this phrase means the first event in the series rather than the first day of the events at a site. This is because, as Plaintiff points out, Defendant's interpretation would allow Outdoor Advertising to remain at each and every site for an entire year when the Named Brand Sponsorship runs for roughly a year, such as the NASCAR sponsorship, and this result would render the prohibition meaningless, if not as to all Brand Named Sponsorships, at least as to the NASCAR sponsorship and possibly others including the NHRA Winston Drag Racing Series. Further, while it is true that Defendant's interpretation does not render the prohibition meaningless as to other Brand Named Sponsorships that take place over a shorter period of time, given that the parties had NASCAR in mind when they drafted the MSA, as shown by its inclusion in the definition of Brand Named Sponsorship, it seems unreasonable or illogical to conclude that the exclusion's narrow window of time in which Outdoor Advertising can take place does not apply to NASCAR.

Had the parties so intended, they could have easily written either the exclusion (i.e., Section III(c)(3)(E)(ii)) or the prohibition (i.e., Subsection III(d)) to so provide. Further, given that Defendant's

interpretation of the exclusion would render the 90-day and 10-day language a nullity as to the NASCAR sponsorship--a well known sponsorship--one would think that such an intent would have been set forth in clear and precise language. Indeed, it stands to reason that had the parties intended to allow Defendant to advertise its NASCAR Named Brand Sponsorship at all the sites of its multi-event series year round, at a minimum, the term "at the sites" in the plural would have been used instead of the singular "at the site."

This appears to be particularly the case when one considers that the NASCAR sponsorship begins the first week of February, around February 4, and ends during the third week in November, around November 23. See Defendant's Amended Memorandum in Support of Defendant's Motion for Summary Judgment, at 4:16-18. The application of the exclusion (i.e., Section III(c)(3)(E)(ii)) with the interpretation given to it by Defendant means that Defendant would be allowed to place its Outdoor Advertising 90 days before February 4 (or November 6 of the preceding year), and keep them in place until 10 days after the last event of the series (or December 3 of the same year). Thus, if Defendant sponsors the NASCAR races two consecutive years, there would be a period of several weeks (specifically from approximately November 6 through December 3 of the same year) when it could place and/or maintain Outdoor Advertising for two sponsorships (e.g., the 2000 NASCAR Winston Cup Series and the 2001 NASCAR Winston Cup Series) at the same time.

Further, although this would not be a technical violation of another prohibition in the MSA, namely the prohibition set forth at Section III(c)(2)(A) against having more than one Brand Name Sponsorship in any twelve-month period since "(such period [is to be] measured from the date of the initial sponsored event)" and not from the day that the Outdoor Advertising is placed at the first site, allowing Outdoor Advertising for two sponsorships at the same time clearly conflicts with the spirit of this prohibition. Accordingly, it would be unreasonable to conclude that the parties intended such an apparently inconsistent result without providing for it specifically. Lastly, if the phrase "initial sponsored event" does not refer to the first day of the events at the first site, it would be difficult to determine the date from which to begin counting the twelve-month period referred to in Section III(c)(2)(A).

Therefore, the Court find's that Plaintiff is entitled to judgement as a matter of law.

Should Defendant wish to present oral argument, it shall file and serve a letter brief no longer than two pages setting forth (1) the issues to be argued and (2) a brief summary of the arguments by 4:00 p.m. on November 28, 2001. Plaintiff shall respond by filing and serving a two-page letter brief by 4:00 p.m. on November 29, 2001. If the Court receives Defendant's brief by the above deadline, oral argument shall take place on November 30, 2001 at 1:15 p.m.

IT IS SO ORDERED.

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