

MERCEDES-BENZ USA v. BECK IMPORTS

CIVIL ACTION NO: 08-CVS-018828

NORTH CAROLINA SUPERIOR COURT, WAKE COUNTY

November 14, 2008

Reporter

2008 NCBC Motions LEXIS 71 *

MERCEDES-BENZ USA, LLC, Petitioner, v. BECK IMPORTS LIMITED PARTNERSHIP d/b/a BECK IMPORTS OF THE CAROLINAS, Respondent.

Type: Motion

Counsel

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Title

MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER

Text

NOW COMES Respondent Beck Imports Limited Partnership d/b/a Beck Imports of the Carolinas ("Beck") and hereby tenders this Memorandum in Support of Motion to Reconsider the Order issued in this matter by Judge Tennille on November 6, 2008.

BACKGROUND

On March 3, 2008 Beck entered into an agreement to sell substantially all of its assets in its Mercedes-Benz franchise to Sonic Automotive, Inc. ("Sonic"). As required by the North Carolina Motor Vehicle Dealers and Manufacturers Licensing Law, N.C. Gen. Stat. §§ 20-285 et seq. ("Licensing Law"), MBUSA objected to that sale (the "Turndown Letter"). The Licensing Law invests the Commissioner of DMV with the authority to determine whether a manufacturer's denial of a dealership sale is lawful pursuant to the criteria set forth in N.C. Gen. Stat. § 20-305(4).

The Beck Matter

As was its right, Beck filed a Petition before the Division of Motor Vehicles ("DMV") pursuant to the Licensing Law which required the following [*2] in regard to MBUSA's Turndown Letter:

[t]he notice shall state in detail all factual and legal bases for the objection on the part of the franchisor to the proposed transfer, sale, assignment ...

N.C. Gen. Stat. § 20-305(4)(emphasis added).

Following a hearing on a motion filed by Beck, the Commissioner of Motor Vehicles granted judgment on the pleadings in favor of Beck (the "Final Agency Decision").

The Final Agency Decision could not be simpler. DMV held, as a matter of law, that the Turndown Letter, on its face, did not comply with the Licensing Law's statutory notice requirements.

MBUSA then filed a Petition for Judicial Review in Wake County Superior Court (hereinafter the "Beck Matter"). Although MBUSA attempts to infuse numerous issues into that Petition, at its heart, it merely involves a simple appeal of the DMV ruling. Per the Administrative Procedure Act ("APA"), the only issue for the reviewing court is whether DMV's Order contains an error of law, was made upon unlawful procedure, or exceeded DMV's statutory authority.

The Sonic Matter

By contrast, Sonic has filed a declaratory judgment action against MBUSA in Mecklenburg [*3] County. That action was filed . It is apparent from the pleadings filed in that matter that numerous claims and counterclaims have been made regarding contracts between Sonic and MBUSA related to dealerships in several other states. Issues of slander, tortuous interference and unfair and deceptive

trade practices have also apparently been raised. None of those issues have anything to do with Beck or the pending judicial review.

Incompatibility of Beck Matter with Sonic Matter

In Judge Tennille's Order, it is recommended that Judge Jolly "consolidate the matters in any manner he chooses." Any type of consolidation of these matters would be a mistake. The Beck Matter is currently at the judicial review stage following an administrative contested case hearing. The Superior Court has appellate jurisdiction over the Beck Matter. The Sonic Matter is a civil action having original jurisdiction in the Superior Courts. A petition for judicial review is a far different creature than an ordinary civil action. By way of illustration, the following chart demonstrates some of the critical differences between the two proceedings:

BECK MATTER

Review by Superior Court as [*4] appellate body.

SONIC MATTER

Original Superior Court jurisdiction.

BECK MATTER

Final Agency Decision has already been obtained.

SONIC MATTER

Case still in its infancy stages; motions to partially dismiss counterclaims have been filed.

BECK MATTER

Record is closed.

SONIC MATTER

Discovery is still ongoing.

BECK MATTER

Single legal issue.

SONIC MATTER

Numerous factual issues.

BECK MATTER

Appellate briefs must be filed.

SONIC MATTER

Parties may still file motions and other pleadings.

BECK MATTER

No mediation.

SONIC MATTER

Parties currently attempting to schedule a mediated settlement conference.

BECK MATTER

Application of North Carolina Licensing Law to single dealership.

SONIC MATTER

Application of federal law, common law and contract law for dealerships across the United States.

BECK MATTER

Finder of Fact = DMV.

SONIC MATTER

Finder of Fact = Jury.

ANALYSIS

The Beck Matter should be allowed to proceed unhindered. Although the Sonic Matter is a month older than the Beck Matter, it remains mired in pre-trial motions and has not yet [*5] even progressed beyond partial motions for dismissal of some of the counterclaims. By contrast, the Beck Matter has already been decided, and a Final Agency Decision has been entered. All that is left is the judicial review. If not impeded, the Beck Matter will be resolved long before the parties in the Sonic Matter have even conducted their discovery.

Beck has a substantial, statutorily-protected right to sell its dealership assets. DMV, the licensing agency charged with the oversight of those rights, has spoken. MBUSA is a licensee pursuant to the Licensing Laws, and cannot, and should not, avoid DMV regulatory authority by unreasonably attempting to inject a host of legal and factual issues into the Beck Matter. Likewise, the Court may not ignore the mandate of the Legislature by disregarding the decision of the DMV.

I. THE BECK MATTER IS NOT AN EXCEPTIONAL CASE.

Judge Tennille's Order appears to recognize that the Beck Matter is a "...simple appeal from the decision of the Department of Motor Vehicles...". Nevertheless, the Order designates the Beck Matter as a Rule 2.1 exceptional case, presumably based upon the perceived interrelation with the Sonic Matter. In actuality, [*6] the two matters bear little resemblance. At this stage in the

litigation the two proceedings share but a single issue: Whether MBUSA's Turndown Letter satisfies the statutory notice requirements found in [N.C. Gen. Stat. § 20-305\(4\)](#).

In any event, Sonic has consented to stay this matter.¹ With a stay of the Sonic Matter, any perceived complexities are resolved. The Beck Matter may proceed in the Wake County Superior Court as contemplated by the Administrative Procedure Act until it reaches a resolution. In the meantime, if a stay were entered in the Sonic Matter, there would be no potential for inconsistent rulings. Any rulings obtained in the Beck Matter can merely be reviewed and applied in the Sonic Matter in order to maintain consistency.

[*7]

II. JUDICIAL ECONOMY WILL BE PRESERVED BY REMANDING THE BECK MATTER TO WAKE COUNTY SUPERIOR COURT WHILE THE SONIC MATTER IS STAYED.

Due to the concentration of administrative agencies located in Raleigh, Wake County Superior Court is the primary forum for hearing petitions for judicial review. In fact, the Tenth Judicial District (Wake County) Local Rules provide a streamlined procedure for pursuing those reviews, including briefing schedules. If left unimpeded, the Local Rules provide the most efficient means for the Beck parties to obtain judicial review of the Beck Matter.

In relative terms, the Beck Matter has proceeded rapidly. Unencumbered by the extra baggage which MBUSA seeks to place upon it, the Beck Matter has come to a final resolution while the Sonic Matter remains mired under its own weight in the Business Court before Judge Diaz. Adding the Beck Matter to the Sonic Matter will do nothing to speed up the Sonic Matter. However, it has the potential to bring the Beck Matter to a screeching halt. The single discreet issue raised in the Beck Matter would be in jeopardy of being captured and inappropriately subsumed into the morass of the Sonic Matter. Additionally, [*8] Judge Diaz already has a working knowledge of the Sonic Matter. Judicial resources which

have been dedicated to that matter may be lost as a result of a transfer to Judge Jolly, who will be required to educate himself on all of the issues contained in the Sonic Matter.

III. A STAY OF THE SONIC MATTER WILL SERVE TO PROTECT ALL PARTIES FROM INCONSISTENT RULINGS.

Judge Tennille's Order enunciates a concern that inconsistent rulings could be obtained if the Sonic Matter and the Beck Matter are heard by different judges. That concern is easily alleviated through a stay of the Sonic Matter. By letter dated November 12, 2008, Sonic has already consented to a stay of its matter. The sole issue in the Beck Matter is merely whether MBUSA's Turndown Letter, on its face, complied with the North Carolina Licensing Laws.

To the extent that this issue also appears in the Sonic Matter, any inconsistencies can be avoided. The Sonic Matter need only wait for a final resolution of the Beck Matter for that issue to be resolved. Upon its resolution, by way of collateral estoppel, Judge Diaz can apply the DMV ruling to any orders that he subsequently renders in the Sonic Matter. See [Rymer v. Estate of Sorrells, 127 N.C. App. 266, 268 \(1997\) \[*9\]](#) ("collateral estoppel precludes relitigation of an issue decided previously in judicial or administrative proceedings provided the party against whom the prior decision was asserted enjoyed a full and fair opportunity to litigate that issue in an earlier proceeding.").

Sonic may not avoid collateral estoppel by attempting to argue that Sonic should have intervened in the DMV action. As the proposed transferee of the dealership assets, Sonic had no standing to bring a Petition before DMV pursuant to [N.C. Gen. Stat. § 20-305\(4\)](#). Rather, that right resides only with the franchisee-transferor. See [N.C. Gen. Stat. § 20-305\(4\)](#); see also [Tynan v. General Motors Corp., 591 A.2d 1024, 1031 \(N.J. Super. 1991\)](#), rev'd in part on other grounds, [604 A.2d 99 \(1992\)](#) (providing a laundry list of other jurisdictions that have ruled against transferee standing under similar statutes).

IV. A CONSOLIDATION OF THIS MATTER WOULD BE UNFAIR TO BECK.

Judge Tennille's Order makes the recommendation that

¹ By letter dated November 12, 2008, Sonic has consented to a stay of the Sonic Matter in order to allow the Beck Matter to proceed to its fruition. As a practical matter, a stay is not even necessary, as the Sonic parties have apparently stalled the litigation in order to pursue mediation.

Judge Jolly may "...consolidate the matters in any manner he chooses...". Presumably, any such consolidation would be made pursuant to Rule 42 of the North Carolina [*10] Rules of Civil Procedure. As a conceptual matter, Rule 42 is not compatible with a petition for judicial review. Petitions for judicial review are such different creatures from civil actions where the Superior Court has original jurisdiction, that such consolidations would simply make no sense.

In the Beck Matter, the sole issue is whether to affirm the DMV Final Agency Decision or remanded it back to DMV. By contrast the Superior Court has original jurisdiction over the Sonic Matter, including all motion practice, discovery and ultimate trial of those matters. Rule 42 simply does not contemplate the consolidation of these dissimilar matters.

North Carolina caselaw bears out the fact that Rule 42 consolidation is meant to consolidate matters over which the General Court of Justice has original jurisdiction. The Court of Appeals has held that:

Prior to the effective date of the current Rules of Civil Procedure in our State, this court decided that only the judge who would **preside at the trial of the matters** to be consolidated could order their consolidation... the effect of this decision has been carried forward in interpreting the applicability of Rule 42(a).

[*11] *Oxendine v. Catawba County Dept. of Social Services*, 49 N.C. App. 571, 575 (1980) (citations omitted) (emphasis added). Neither Judge Jolly, nor any other superior court judge, will preside at the trial of the Beck Matter. Rather, the actual trial of that matter is reserved exclusively to the DMV through a contested case hearing. See *N.C. Gen. Stat. § 20-305(4)*.

The concept that consolidation is only appropriate between matters which originate in the General Court of Justice is verified by *Griffin v. Griffin*, 118 N.C. App. 400 (1995). In the *Griffin* case, the court was confronted with the proposed consolidation of an adoption proceeding (a Superior Court matter) with a custody proceeding (a District Court matter). The Court of Appeals stated that those matters could be consolidated because "...the Superior Court has concurrent jurisdiction to adjudicate custody disputes...". *Id. at 403* (citing *Oxendine v. Catawba County*). Unlike the matters in the *Griffin* case, the General

Court of Justice does not have original jurisdiction over the Beck Matter. Rather, there is no concurrent Superior Court jurisdiction because exclusive [*12] jurisdiction to hear franchisee complaints is vested with the Commissioner of Motor Vehicles.

Even if these matters could be consolidated, there is significant caselaw that suggests that they should not be consolidated due to the unfairness to Beck. Consolidation is allowable only as long as there is no prejudice to the parties. See *Greenville City Bd. of Ed. v. Evans*, 21 N.C. App. 899, 901 (1974). In this case, Beck would be severely prejudiced by a consolidation of these matters. Beck is in the home stretch of its litigation against MBUSA. By contrast, the Sonic Matter is still in its infancy stages. It would be unfair to force Beck to sit and wait while the myriad of issues in the Sonic Matter are adjudicated. In a similar case, the Middle District of North Carolina found a consolidation was unwarranted after finding that one of the cases had progressed much further than the other. In so ruling it held:

The Court has resolved numerous pre-trial motions in this case, and consolidation at this stage would result in undue delay with no resulting convenience or economy in judicial administration. Moreover, Defendant's concerns regarding potentially duplicative [*13] claims can be addressed under established principles of *res judicata* as appropriate.

Curtis B. Pearson Music Co. v. McFadyen Music, Inc., 2007 WL 30282.

CONCLUSION

The Beck Matter is not an exceptional case. In fact, it is an incredibly simple case involving a closed record and a single legal issue. There is no reason that the Beck Matter should not be able to proceed expeditiously in Wake County Superior Court. By moving the Sonic Matter to Wake County, the Business Court will merely be adding undue complexity where it should not exist.

Sonic has consented to a stay if needed. A stay pending the outcome of the Beck Matter would allay any fears of duplicative rulings that the parties or this Court may have.

This the 14th day of November, 2008.

/s/ Shawn D. Mercer

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served a copy the foregoing Memorandum in Support of Motion [*14] to Reconsider on the parties in the above-captioned action via e-mail and by depositing a copy of the same in the United States Mail, first-class postage prepaid, addressed as follows:

John R. Wester
Julian H. Wright, Jr.
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This the 14th day of November, 2008.

/s/ Shawn D. Mercer

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