

MERCEDES-BENZ USA v. BECK IMPORTS

CIVIL ACTION NO: 08-CVS-018828

NORTH CAROLINA SUPERIOR COURT, WAKE COUNTY

November 20, 2008

Reporter

2008 NCBC Motions LEXIS 139 *

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

Type: Motion

Counsel

[*1] Julian H. Wright, Jr., N.C. State Bar No. 19345, John R. Wester, N.C. Bar No. 4660, Adam K. Doerr, N.C. State Bar. No. 37807, ROBINSON, BRADSHAW & HINSON, P.A., Charlotte, N.C., Mark F. Kennedy (Pro Hac Vice Admission), Gwen J. Young (Pro Hac Vice Admission), WHEELER TRIGG KENNEDY LLP, Denver, CO, Attorneys for Petitioner Mercedes-Benz USA, LLC.

Title

MERCEDES-BENZ USA, LLC'S OPPOSITION TO MOTION TO RECONSIDER

Text

Petitioner Mercedes-Benz USA, LLC ("MBUSA") submits this opposition to the Motion of Respondent Beck Imports Limited Partnership d/b/a Beck Imports of the Carolinas ("Beck") to reconsider the Order issued by Judge Tennille on November 6, 2008 (the "Order"), recommending reassignment of this matter to the Honorable John R. Jolly.

MBUSA previously filed an Opposition to Motion to Reconsider Assignment, in response to the November 12, 2008 letter to Judge Tennille from Sonic Automotive, Inc. "Sonic"), the plaintiff in the matter pending in the Business Court in Mecklenburg County, *Sonic Automotive, Inc. vs. Mercedes-Benz USA, LLC*, Mecklenburg County Civil Action No. 08-CVS-4259 (the "Sonic Case"). In its Opposition in the Sonic Case, filed on November 13,

MBUSA addressed [*2] many of the same issues raised by Beck in its Motion to Reconsider here. MBUSA incorporates by reference its opposition to Motion to Reconsider Assignment filed in the Sonic Case. MBUSA states the following in response to the additional matters raised by Beck.

I. REASSIGNMENT OF THE SONIC CASE AND THIS MATTER CONSERVES JUDICIAL RESOURCES AND ASSURES CONSISTENT LEGAL RESULTS.

Chief Justice Parker ratified and implemented Judge Tennille's Order in her November 12, 2008 Order (the "Chief Justice's Order"). Beck seeks only reconsideration of Judge Tennille's Order. That Order, as well as Chief Justice Parker's November 12, 2008 Order, have but one effect: They bring both this matter and the Sonic Case before the same judge, the Honorable John R. Jolly of the Wake County Superior Court. The sole and - MBUSA submits - sensible and efficient purpose of the Order is "to conserve judicial resources and assure consistency in application of the law." *See* Order at 2. Judge Tennille did not suggest, and Chief Justice Parker did not order, consolidating the two cases. Instead, they leave that decision to Judge Jolly's discretion in the manner he may chose, again with the purpose [*3] of "ensure[ing] consistency in the decisions in the cases involving all the parties." *Id.* There is nothing in Judge Tennille's Order that in any way requires consolidation of the two matters, nor even suggests that Judge Jolly should speed up or slow down the progress of either case upon reassignment, as Beck's argument portends.

Judge Tennille's Order makes excellent sense. The Sonic Case and this matter involve exactly the same transaction: MBUSA's objection to Sonic's proposed purchase of Beck's Mercedes-Benz dealership. Both cases involve the same facts, namely Sonic's history of failing to honor its written commitments with MBUSA and, consequently, Sonic's agreement just months before its proposed

purchase of Beck's dealership that MBUSA would have no obligation to approve any further dealership purchases by Sonic until Sonic demonstrated substantial progress in remedying the deficiencies in its prior commitments. It matters not that these two cases are at different procedural stages. The sole purpose of bringing before the same judge two separate matters filed by the seller and prospective purchaser of this Mercedes-Benz dealership, respectively, is to ensure efficiency [*4] and consistency in the rulings that are made in these cases.¹

There also is no question that Beck has a statutorily-protected right to sell its dealership assets, as it states. MBUSA, however, has an equally protected right, conferred by the same statute, to object on appropriate grounds to the sale of those assets. MBUSA believes that the approach laid out in Judge Tennille's Order - assignment of both pending cases to Judge Jolly - provides a fair and efficient mechanism [*5] to vindicate that right.

II. JUDGE TENNILLE AND CHIEF JUSTICE PARKER APPROPRIATELY DESIGNATED THE BECK MATTER AS A RULE 2.1 EXCEPTIONAL CASE.

Rule 2.1 of the General Rules of Practice confers on the Chief Justice broad discretion to designate any case before the Superior Court as an exceptional case. *See* N.C. R. Super. and Dist. Cts. Rule 2.1(a). Among the factors that may guide the Court in designating a case as exceptional are the complexities of the legal issues involved, whether the designation will promote the efficient administration of justice, or "such other matters as the Chief Justice shall deem appropriate." Rule 2.1(d). Judge Tennille properly exercised his discretion in making the recommendation that he did. Chief Justice Parker properly exercised her discretion in accepting that recommendation and implementing it. The designation of this matter as an exceptional case is appropriate.²

¹ Contrary to Beck's characterization, this case is not "almost over" and it has not "already been decided." It certainly is not a foregone conclusion that the Superior Court will affirm the DMV ruling on Beck's motion for judgment on the pleadings, as Beck implies. If MBUSA prevails, this case will be remanded to the DMV as directed by the Superior Court for full discovery and a hearing on the merits. It is imperative that the two cases proceed under the same legal principles upon remand of this matter and as the Sonic Case goes forward.

² Moreover, unlike [N.C. Gen. Stat. § 7A-45.4\(e\)](#), which provides a procedure for contesting designation of an action as a complex

[*6]

Contrary to Beck's representations, the Sonic Case has not been stayed nor "stalled," such that the designation of this case as exceptional under Rule 2.1 case as exceptional is somehow unnecessary. *See* Beck's Memorandum at 5 & n. 1. MBUSA has not consented to stay the Sonic Case, nor has the Court entered an order staying the case or any upcoming hearings or the mediation scheduled in it. The parties merely have agreed to extend the date for production of documents and written responses to outstanding discovery until ten days after mediation, which is scheduled for December 17. *See* Joint Motion to Extend Mediation Deadline and for Extensions of Time to Respond to Written Discovery at 2. Assuming the Sonic Case is not resolved during the mediation, the case will proceed through discovery and trial. The Court should not consider any purported stay, or Sonic's "consent" to any stay, in considering Beck's Motion.

III. JUDICIAL ECONOMY IS BEST SERVED BY REASSIGNING THESE CASES TO THE SAME JUDGE AND WITHOUT STAYING THE SONIC CASE.

Judge Jolly is and has been a Wake County Superior Court Judge for many years. He is thoroughly familiar with the Tenth Judicial District [*7] (Wake County) Local Rules, including the procedures for reviews of administrative agency decisions. No reason exists why those rules would not apply to the appeal of the DMV's ruling in this matter. Again, the two cases have not been consolidated, Judge Tennille's order recommending that such a decision be left up to Judge Jolly. Consequently, Beck's arguments about the reassignment either "speeding up" the Sonic Case or bringing this case to a "screeching halt" are pure speculation. As Judge Tennille determined, the interest of conserving judicial resources definitely militates toward reassignment both matters to a single Judge, and to Judge

business case, Rule 2.1 provides no such procedure to override the Chief Justice's Order designating this case as exceptional. Assuming that Chief Judge Tennille can and does reconsider his November 6 Order, this case remains an appropriate one for exceptional designation under Rule 2.1. Just as the designation has been applied to multiple lawsuits brought by persons injured in a single accident, such as a bridge collapse, or through a common insurance scheme, the designation is applicable to this case. The purpose of those designations is identical to that of Judge Tennille in his Order: To bring before a single judge all cases involving a single or similar transaction involving one or more of the same parties.

Jolly, who has heard and is considering MBUSA's motion to stay the DMV's order pending a decision on MBUSA's petition for judicial review of that order.

As noted above, MBUSA has not consented to any stay of the Sonic Case, nor has Judge Diaz entered any order staying that case. In any event, under the Wake County Local Rules, MBUSA's petition for judicial review of the DMV's Order on Beck's motion for judgment on the pleadings in this matter likely will be decided before the parties even complete discovery in the Sonic Case.³ Whether or not [*8] an adverse decision in this matter on MBUSA's petition will collaterally estop MBUSA on some issue in the Sonic Case is irrelevant; the primary point of Judge Tennille's Order is that the same judge rule on the issues in both cases, so that judicial resources will not be wasted covering and considering the same arguments in the two cases and that the same legal analysis is brought to bear in both cases. Indeed, if the filings generated by Judge Tennille's Order are any indication, there likely will be multiple filings on every one of the issues by Beck and Sonic in their respective cases, in furtherance of the coordinated front through which they already have moved against MBUSA on even preliminary issues. Reassigning these two cases before the same Judge will hopefully quash this practice and conserve the Court's scarce judicial resources, as Judge Tennille urges in his Order.⁴

[*9] IV. CONCLUSION

The issue already decided in the Chief Justice's Order, and which Judge Tennille's Order addresses, is not whether this judicial review is a "simple case" involving a "single legal issue," as Beck contends throughout its Motion. The sole issue is whether this case should be reassigned, with the Sonic Case, to a single judge for either or both of two reasons: to conserve judicial resources and to assure

consistency in the application of the law on the common issues.

For these reasons and those stated in Judge Tennille's Order, MBUSA respectfully requests that the Court deny Beck's Motion to Reconsider.

Dated this 20th day of November, 2008.

Respectfully [*10] submitted,

/s/ Julian H. Wright, Jr.

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CERTIFICATE OF COMPLIANCE WITH RULE

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³The DMV record was filed on November 18, 2008. This filing triggers the briefing and hearing schedule in this case, which, absent extensions under the Wake County Local Rules, would be completed in 40 to 43 days (briefing) and then however long it takes Judge Jolly to schedule a hearing and render a decision. *See* Wake County Local Rules 9.2-9.9.

⁴In the final section of its Memorandum, Beck argues that consolidation of the two matters would be unfair and improper. Judge Tennille's Order does not consolidate the matters nor recommend their consolidation, but rather leaves that up to Judge Jolly. *See* Order, at 2. Consequently, Beck's argument on this issue is premature. MBUSA will address these issues if and when Judge Jolly consolidates the matters.

The undersigned attorney for MBUSA hereby certifies that this brief complies with the requirements contained in Rule 15.8 of the General Rules of Practice and Procedure for the North Carolina Business Court.

/s/ Julian H. Wright, Jr.

Julian H. Wright, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **MERCEDES-BENZ USA, LLC'S OPPOSITION TO MOTION TO RECONSIDER** was served this 20th day of November, **[*11]** 2008, via the Business Court's electronic filing system and by first-class mail, postage prepaid to the following:

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