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Chateau Vegas Wine, Inc. v. S. Wine & Spirits, 127 Nev. Adv. Op. 73 (Nov. 23, 2011)[1]

INTELLECTUAL PROPERY – EXCLUSIVE TRADE RIGHTS

Summary

The Court considered an appeal from a district court order granting a permanent injunction in a business tort action.

Disposition/Outcome

The Court concluded that Southern Wine & Spirits established exclusive trade rights for certain wines and champagnes. Chateau Vegas and Transat Trade violated the exclusive trade rights by selling the same wines and champagnes without authorization. Accordingly, the Court affirmed the district court's order permanently enjoining Chateau Vegas and Transat Trade from importing and selling Southern Wine & Spirits' wines and champagnes.

Factual and Procedural History

Appellants Chateau Vegas Wine and Transit Trade are importers and wholesalers of liquor in Nevada. Respondent Southern Wine & Spirits ("Southern Wine") imports and wholesales certain Bordeaux wines and French Champagnes in Nevada. Southern Wine built and maintained relationships with wine and champagne producers for many years and partnered with the producers or their agents, to establish and sell the brands in Nevada.

The Bordeaux Wines

In 2003, Southern Wine entered into agreements with four of the five Bordeaux *châteaux* – producers – of the Bordeaux wines at issue, gaining exclusive rights to import, sell, and/or distribute the wines in Nevada. Southern Wine entered into a similar agreement with the fifth *châteaux* in 2005. Each of the agreements stated that the *châteaux* would not sell directly to Southern Wine; rather, the transaction would go through *négociants* – sellers on the international market. Southern Wine filed the agreements with the Nevada Department of Taxation ("Department"). Southern Wine believed that by filing the agreements, the *châteaux* designated the négociants as their agents. Consequently, Southern Wine thought that the *châteaux* did not need to obtain a certificate of compliance or file a Designation of Importer ("DOI")[2] for Southern Wine because the *négociants* could do so.

The Department did not have a specific process for a supplier to designate an agent, but could use the certificate of compliance ("COC")[3] to learn that an agent is a designated agent. Each *négociant* filed a DOI that designated Southern Wine as its exclusive Nevada importer, which Southern Wine also signed and dated. Each *négociant* also held a COC with the

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[1] By Richard A. Andrews
[2] NEV. REV. STAT. § 369.386(2) (2007).
[3] *Id.* § 369.430(3).

Department. Neither the *châteaux* nor the *négociants* filed a DOI with the Department designating Chateau Vegas or Transat Trade as an authorized importer of the Bordeaux wines.

Chateau Vegas' and Transat Trade's Activities

Transat Trade obtained a COC from the Department in 1996 and supplied liquor to Nevada importers. After the importers went out of business, Transat Trade incorporated in California and began supplying liquor to Chateau Vegas, which was incorporated in Nevada. Transat Trade procured the products outside of Nevada, from sources other than Southern Wine, and then provided them to Chateau Vegas. Transat Trade filed DOIs with the Department, attempting to designate Chateau Vegas as a Nevada importer of the Bordeaux wines and French champagnes. Neither Chateau Vegas nor Southern Wines had agreements with the producers or their agents, to import and sell the products in Nevada.

In 2002, Southern Wine filed suit against Chateau Vegas seeking, in part, a permanent injunction on the basis that Chateau Vegas violated Southern Wine's exclusive trade rights under NRS Chapter 369. Southern Wine later amended the complaint to add Transat Trade as a defendant. In a bench trial for equitable relief, the district court found that Southern Wine met the requirements for a permanent injunctive relief and thus enjoined Chateau Vegas and Transat Trade from importing and selling the Bordeaux wines and French champagnes. Chateau Vegas and Transat Trade appealed the injunction.

Discussion

Chief Justice Saitta wrote for the unanimous Court, sitting en banc.[4] The Court first held that the district court did not abuse its discretion in permanently enjoining Chateau Vegas and Transat Trade from importing and selling the Bordeaux wines. The Court then upheld the district court's injunction on importing and selling the French champagne.

Injunction on Importing and Selling Bordeaux Wines

On appeal, Chateau Vegas argued that the district court abused its discretion when it permanently enjoined Chateau Vegas, primarily because Southern Wine failed to comply with the requirements in NRS Chapter 369 for obtaining exclusive trade rights.[5] The Court reviewed the district court's decision for an abuse of discretion.[6] Further, the Court reviewed the questions of statutory construction, including the meaning and scope of a statute, de novo.[7] The Court gives the district court's findings of fact deference unless they are "clearly erroneous and not based on substantial evidence."[8]

Chateau Vegas argued that Southern Wine did not comply with the statutory requirements because none of the *châteaux* or *négociants* filed DOIs with the Department.

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[4] Justice Parraguirre voluntarily recused himself from participation in the decision of this matter.
[5] NEV. REV. STAT. § 369.386.
[6] Comm'n on Ethics v. Hardy, 125 Nev. 285, 291, 212 P.3d 1098, 1103 (2009).
[7] Reno v. Reno Gazette-Journal, 119 Nev. 55, 58, 63, P.3d 1147, 1148 (2003).
[8] Beverly Enterprises v. Globe Land Corp., 90 Nev. 363, 365, 526 P.2d 1179, 1180 (1974).

Because the statutory requirements were not met, Southern Wine did not have exclusive trade rights.

The Court concluded that NRS 369.486(1) grants exclusive trade rights to an importer designated by the supplier pursuant to NRS 369.386. Further, an undesignated importer must purchase liquor from the authorized importer. To gain exclusive trade rights: (1) the supplier and importer must have a "commercial relationship . . . of definite or continuing indefinite duration," and the supplier must grant the importer the right to sell its brands in Nevada; (2) the supplier must file a DOI with the Department, after which the designated importer must file a written acceptance; and (3) a producer that designates an agent must file a designation with the Department. [9] The Court held that Southern Wine clearly complied with the first two requirements and moved on to the third requirement.

The Court reasoned that, by its plain language, NRS 369.386(3) states that when a producer wants to designate an agent, the producer must file a "written designation" and "written acceptance."[10] The agreements between Southern Wine and the *châteaux*, though not specifically listing the *négociants* as agents, reflected the contemplation of an agency relationship and satisfied the designation requirement. Using the same reasoning, the *négociants* DOI filings qualified as written acceptance. Thus, Southern Wine established exclusive trade rights, and Chateau Vegas was required to purchase the Bordeaux wines from Southern Wine.

The Court also found substantial evidence that Chateau Vegas and Transat Trade were importing and selling the Bordeaux wines in violation of Southern Wine's exclusive rights. According to the record, Southern Wine had greatly invested in the continued value of the Bordeaux wines. Southern Wine's efforts included constructing a modernized storehouse in Las Vegas, protecting the brand by combating the sale of counterfeit products, and shipping the wines in specialized trucks to preserve the flavor and quality.

To the contrary, Transat Trade lacked appropriate quality control measures and shipped the wine into Nevada on vegetable trucks, placing the flavor of the wine at risk. These actions damaged the reputation of Southern Wine as the primary importer in Nevada, which in turn damaged Southern Wine's investment. Remedies at law could not correct this damage. Thus, the Court concluded that Southern Wine met the requirements for permanent injunctive relief and the district court did not abuse its discretion.

Injunction on Importing and Selling French Champagne

Chateaux Vegas made the same arguments in regards to the French champagne injunction as it did for the Bordeaux wines injunction. Specifically, Chateau Vegas argued that none of the champagne producers filed DOIs or effective agent designations.

Southern Wine held a commercial relationship with the champagne producers for five to twenty-five years, and the producers desired to continue the relationship indefinitely, thus meeting the first requirement for exclusive trade rights. The producers' agents' DOIs granting

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[9] NEV. REV. STAT. § 369.386.
[10] *Id.*

Southern Wine the exclusive right to import the champagnes into Nevada, coupled with Southern Wine's acceptances, satisfied the second requirement. Finally, the producers' filings with the Department designating agents, and the corresponding agents' acceptances, met the third requirement. Therefore, Southern Wine had exclusive trade rights for the champagnes.

The record demonstrated that Chateau Vegas obtained the champagnes for sale in Nevada from sources other than Southern Wine. Because the champagne producers already granted exclusive rights to Southern Wine, Transat Trade could not authorize Chateau Vegas. The record also demonstrated that Chateau Vegas' sales caused Southern Wine irreparable harm because Chateau Vegas did not ensure the quality of the champagnes, thus damaging the reputation of the producers and Southern Wine. Thus, the district court did not abuse its discretion in enjoining Chateaux Vegas and Transat Trade from importing and selling the French champagnes.

Conclusion

Southern Wine met the requirements set forth in NRS Chapter 369 for obtaining exclusive trade rights for the Bordeaux wines and French champagnes distributed in Nevada. Consequently, the district court did not abuse its discretion in permanently enjoining Chateau Vegas and Transat Trade from importing and selling both the Bordeaux wines and the French champagnes in Nevada.