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Nev. Recycling & Salvage v. Reno Disposal, 134 Nev. Adv. Op. 55 (Aug. 2, 2018) (en banc)

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CIVIL APPEAL: ANTITRUST

Summary

The Court affirmed the district court's grant of summary judgment in favor of respondents, holding that appellants lacked standing to bring an antitrust claim because they were unable to show that they suffered any injuries.

Facts and Procedural History

Appellants Nevada Recycling and Salvage, Ltd. (Nevada Recycling) and AMCB, LLC, d/b/a Rubbish Runners (Rubbish Runners), brought this suit in district court under the Nevada Unfair Trade Practice Act (UTPA). Nevada Recycling operates a facility that accepts, processes, recycles, and disposes of waste and recyclable materials. Rubbish Runners collects, hauls, and disposes of waste and recyclables. Their complaint alleged that respondents, Reno Disposal Company, Inc. (Reno Disposal), Refuse, Inc. (Refuse), and Waste Management of Nevada, Inc. (Waste Management), also collectors, haulers, and disposers of waste and recyclables, entered into a conspiracy with nonparty Castaway Trash Hauling (Castaway) for the explicit purpose of monopolizing the waste and recyclables market in the City of Reno.

The City of Reno sought to implement a single-stream recycling service and, at the suggestion of Reno Disposal, planned to create exclusive service areas whereby waste haulers would have an exclusive privilege to collect and dispose of waste and recyclable materials within an assigned area. Reno Disposal and Castaway were to each receive exclusive commercial franchise agreements, servicing all of Reno. Proposed ordinances representing the agreements were discussed at public hearings. Rubbish Runners spoke in opposition, concerned that the ordinances would put it out of business. In response, carve-outs and exemptions were included in the ordinances that allowed Rubbish Runners to keep its existing customers upon verification of its customers' contracts. The ordinances were subsequently approved.

Afterwards, Waste Management purchased Castaway and acquired all of Castaway's rights and duties held under the ordinance. Waste Management then assigned its rights and duties to Reno Disposal. As a result, Reno Disposal had exclusive rights to collect waste and recyclables in the City of Reno, subject to the exemptions made for Rubbish Runners.

Before the district court, appellants argued that respondents conspired to create an illegal monopoly for Reno Disposal. The district court granted summary judgment in favor of respondents, concluding that the Noerr-Pennington doctrine

¹ By Carmen Gilbert

applied because respondents' conduct involved political and not business conduct.² In addition, the district court concluded that, in terms of damages, appellants lacked standing to assert an UTPA claim because they were not qualified to service a franchise zone, they never sought to be considered for a franchise zone, and the City of Reno determined that they were not qualified waste haulers.

Discussion

"Antitrust standing is a question of law reviewed de novo."³ Likewise, a district court's order granting summary judgment is reviewed de novo.⁴ Summary judgment is proper if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.⁵ All evidence must be viewed in a light most favorable to the nonmoving party.⁶ General allegations and conclusory statements do not create genuine issues of fact.⁷

Although the Court has not previously addressed standing under the UTPA, the United States Supreme Court has addressed standing under the federal antitrust counterpart, the Clayton Act,⁸ and rejected a broad interpretation of the statute.⁹ Instead, antitrust standing requires courts to "evaluate the plaintiffs harm, the alleged wrongdoing by the defendants, and the relationship between them."¹⁰ Since it is "virtually impossible to announce a black-letter rule that will dictate the result in every case,"¹¹ certain factors are used to determine antitrust standing:

- (1) the nature of the plaintiffs alleged injury; that is, whether it was the type the antitrust laws were intended to forestall;
- (2) the directness of the injury;
- (3) the speculative measure of the harm;
- (4) the risk of duplicative recovery; and
- (5) the complexity in apportioning damages.¹²

² See *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 (1965).

³ *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. Cal.*, 190 F.3d 1051, 1054 (9th Cir. 1999).

⁴ *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 731, 121 P.3d at 1030-31.

⁸ *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 521 (1983).

⁹ *Id.* at 529

¹⁰ *Id.* at 535.

¹¹ *Id.* at 536.

¹² *Am. Ad Mgmt.*, 190 F.3d at 1054.

"Generally no single factor is decisive," and "a court need not find in favor of the plaintiff on each factor."¹³ Instead, the factors should be weighed and balanced.¹⁴

The UTPA was intended to preserve competition for the benefit of consumers.¹⁵ Since Nevada Recycling does not collect waste and recyclable materials, it is not a competitor as to the franchise agreements and did not provide any evidence showing the ordinances harmed its business. Even if it did, Nevada Recycling, as a non-competitor, could not show how any alleged injury is the type the antitrust laws were intended to forestall.

Rubbish Runners is a competitor, as its services include the collection of waste and recyclable materials, but did not provide any evidence supporting its contention that it lost customers due to the franchise agreements. Pursuant to the franchise agreements, Rubbish Runners was allowed to keep its existing customers upon verification of the customers' contracts.

Because appellants did not make any showing that they suffered any injuries (i.e., damages), they lacked antitrust standing. Accordingly, the Court affirmed the district court's order granting summary judgment in favor of respondents.

Conclusion

Because appellants did not make any showing that they suffered any injuries from respondents' alleged conspiracy, they lacked antitrust standing under the UTPA. Accordingly, the Court affirmed the district court's order granting summary judgment in favor of respondents.

¹³ *Id.* at 1055

¹⁴ *Id.*

¹⁵ *See* NEV. REV. STAT. § 598A.030 (2017); *see also* GAF Corp. v. Circle Floor Co., 463 F.2d 752, 758 (2d Cir. 1972).