

Mississippi Supreme Court Ruling Reinstates Claims Against Anheuser-Busch, Mitchell Distributing

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I. Introduction

On May 23, the Mississippi Supreme Court published its opinion in the case of *Rex Distributing Company v. Anheuser-Busch, LLC, et al.* The ruling partially reverses the trial court's decision to dismiss all of Rex's claims against Anheuser-Busch and rival distributor Mitchell Distributing Company (Mitchell). The ruling will allow Rex Distributing Company (Rex) to proceed with its lawsuit alleging that Anheuser-Busch violated Mississippi's Beer Industry Fair Dealing Act (BIFDA) by refusing to approve Rex's attempt to sell its distribution rights to Anheuser-Busch products. In addition, the ruling will allow Rex to proceed with a claim against Mitchell for tortious interference and civil conspiracy.

The ruling clarifies Mississippi beer franchise law by limiting the rights of beer suppliers in the context of distributor transfers, effectively rendering Anheuser-Busch's "match and redirect" contractual provisions unenforceable under Mississippi's Beer Industry Fair Dealing Act (BIFDA).

II. Background and Procedural History

A. Rex Sells to Adams; Major Suppliers Refuse Consent

Rex was a longstanding wholesaler of Anheuser-Busch's beer, with an exclusive distribution area in the Gulf Coast region of Mississippi. Rex attempted to sell the assets of its beer distribution business to another nearby distributor, Adams Beverages, Inc. (Adams). The Asset Purchase Agreement provided that the sale price would be determined based on the individual distribution contracts Rex successfully transferred to Adams.

The written distribution contract between Anheuser-Busch and Rex included a "match and redirect" provision, granting Anheuser-Busch the right to refuse consent to Rex's proposed purchaser, and instead appoint an alternative distributor as the purchaser of Rex's portfolio. The alternate would acquire the distribution rights from Rex "at the price and on the terms and conditions applicable to" the proposed transfer. Anheuser-Busch exercised its match and redirect, blocking Rex's sale of its distribution portfolio to Adams and instead appointing Mitchell as the purchasing distributor. Another major supplier, D.G. Yuengling & Son (Yuengling), then objected to the transfer of its distribution rights to Mitchell, and terminated Rex rather than acquiesce to the transfer. Yuengling's decision to terminate deprived Rex of more than \$3 million in sales proceeds. Rex then filed suit, alleging various causes of action against Yuengling, Anheuser-Busch and Mitchell.

B. The Lawsuit and Rex's Theory

Rex alleged that Anheuser-Busch's exercise of the match-and-redirect provision violated the Mississippi BIFDA, and that Anheuser-Busch breached its contract with Rex by failing to ensure Rex received the same price it would have received had Anheuser-Busch not redirected the sale. Rex also accused both Anheuser-Busch and Mitchell of common-law tortious interference with contract and civil conspiracy. The trial court dismissed all these counts for failure to state a legal claim under Rule 12(b)(6). Finally, Rex alleged that Yuengling had violated BIFDA by refusing the proposed transfer to Mitchell of Rex's Yuengling distribution rights. This claim survived the motion to



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dismiss and remains pending in the trial court. The Mississippi Supreme Court granted Rex's petitions for interlocutory appeal from the judgments dismissing its claims against Anheuser-Busch and Mitchell.

Rex's original complaint theorized that Anheuser-Busch's decision to match and redirect was part of an illegal scheme to manipulate its distributors. Rex claimed that Anheuser-Busch had recently engaged in a campaign to convince its Mississippi distributors not to sell Yuengling beer, and that Mitchell was the only distributor to comply. Rex alleged that, in exercising its match-and-redirect option, Anheuser-Busch was rewarding Mitchell for its compliance in the scheme to keep out Yuengling products from the Anheuser-Busch distribution network.

III. Interlocutory Appeal: Results and Reasoning

A. Rex's Claims Against Anheuser-Busch

Mississippi's beer franchise statute, BIFDA, provides that a beer supplier's consent to a transfer of the wholesaler's rights shall not "shall not be withheld or unreasonably delayed to a proposed transferee who meets [certain] nondiscriminatory, material and reasonable qualifications and standards" and additionally prohibits suppliers from acting to "interfere" with the transfer of distribution rights. BIFDA further provides that wholesalers may not waive its protections. Rex alleged that BIFDA rendered the "match and redirect" provision void, while Anheuser-Busch responded that the match and redirect did not violate BIFDA because the result was that Rex's business was indeed transferred and, thus, Anheuser-Busch had not "interfered". While the trial court found Anheuser-Busch's reasoning persuasive and dismissed Rex's BIFDA claim, the Mississippi Supreme Court reversed. The Court reasoned that:

- Anheuser-Busch's interpretation of the statute contradicts its plain language (particularly with respect to the word "interfere");
- Allowing a supplier to block transfers to chosen successors would provide an "end-around" with respect to BIFDA's protections for "designated member" successors; and
- Allowing a manufacturer to choose the owners of its wholesalers in perpetuity would undermine the statutory separation of the beer industry into three tiers.

Hence, the Court ruled that "Rex has alleged a claim upon which relief can be granted: *BIFDA rendered the match-and-redirect provision null and void*, and Anheuser-Busch's demands premised on the void provision may have amounted to unjustified 'interference' with Rex's transfer to Adams, an allegedly qualified transferee. BIFDA expressly provides a remedy

for damages resulting from violations of its protections. The circuit court's dismissal for failure to state a claim is reversed." (Emphasis added; internal citations omitted.) The Court upheld the dismissal of the other claims against Anheuser-Busch, including breach of contract, tortious interference and civil conspiracy.

B. Tortious Interference and Civil Conspiracy Claims Against Mitchell

Rex alleged that Mitchell had collaborated with Anheuser-Busch's alleged illegal scheme, giving rise to a claim of tortious interference with Rex's contract to sell its business to Adams as well as "civil conspiracy," meaning a conspiracy of two or more parties to engage jointly in a tortious act. The trial court had dismissed these claims.

Under Mississippi law, the elements of tortious interference with contract are: (i) that the acts were intentional and willful; (ii) that they were calculated to cause damage to the plaintiffs in their lawful business; (iii) that they were done with the unlawful purpose of causing damage and loss, without right or justifiable cause on the part of the defendant (which constitutes malice); and (iv) that actual damage and loss resulted.

The Court noted that while the typical tortious-interference case involves actions by the defendant to induce some third party to break a contract with the plaintiff, in this case, Rex's theory was that the defendants' wrongful actions induced Rex to break the contract to sell its entire business. Nevertheless, the Court found that Rex had sufficiently pled the elements of tortious interference with respect to Mitchell. Hence, the Court reinstated the tortious interference claim against Mitchell.

With respect to civil conspiracy, the Court reasoned that because it had found that Rex stated a claim when it alleged Anheuser-Busch violated BIFDA, and because Mitchell and Anheuser-Busch had allegedly acted jointly in halting the transfer to Adams, the dismissal of the civil-conspiracy claim against Mitchell should also be reversed.

Conclusion

The *Rex Distributing* decision provides a rare published precedent examining Mississippi's BIFDA, and may provide

persuasive authority for future proceedings in other states. In the meantime, the case will be remanded to the trial court for further proceedings. An out-of-court settlement prior to a final judgement seems likely.

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