Sports Litigation Alert

Reprinted from Sports Litigation Alert, Volume 10, Issue 19, October 18, 2013. Copyright © 2013 Hackney Publications.

The Way to San Jose: Not Through Federal Court

By Sunny Brenner

Frustrated with the inability of the Oakland Athletics to commit to relocate to San Jose in the face of the territorial objections of the San Francisco Giants[1] – and by the failure of Major League Baseball (MLB) to bring the issue up for the requisite vote of its owners[2] – the City of San Jose sued the Office of the Commissioner of Baseball and Commissioner Allan Huber "Bud" Selig earlier this year.[3]

The City's complaint, filed in federal court in San Jose, asserted antitrust claims under the Sherman Act and California's Cartwright Act, as well as claims for unfair competition and for tortious interference with contractual and prospective business advantage under California law.[4] The MLB defendants moved to dismiss the City's claims,[5] and a hearing on that motion was held before U.S. District Judge Ronald Whyte on October 4, 2013.[6] On October 11, Judge Whyte issued an order dismissing San Jose's antitrust claims and its unfair competition claim, but allowing its interference claims to proceed beyond the pleading stage.[7]

Given the long history of baseball's antitrust exemption[8] and the expansive manner in which it has been interpreted in prior court decisions,[9] the dismissal of the City's antitrust claims hardly came as a bombshell. Although the court expressed sympathy with the viewpoint that the antitrust exemption is deeply flawed as a matter of economic policy,[10] Judge Whyte considered himself bound by Supreme Court and federal circuit court precedent to enforce the exemption that the "business of baseball" has enjoyed since the 1920s.[11] In so ruling, the judge rejected the City's narrow construction of the antitrust exemption as limited to baseball's reserve clause, siding instead with the prior decisions that have considered the exemption sufficiently broad to exempt MLB from antitrust claims arising from franchise relocation disputes.[12] Echoing the statements of the Supreme Court and other courts to this effect, Judge Whyte's decision expressed the opinion that the antitrust exemption as so well-entrenched at this point that only Congress has the power to abrogate it.[13]

Despite the unsurprising thrust of the court's ruling on the antitrust issues, however, there was one wrinkle in Judge Whyte's decision that presents potentially intriguing possibilities for the future – not only for the dispute concerning the desire of the Oakland club to relocate to San Jose, but also for other internecine disagreements among MLB franchises. After a lengthy analysis of the antitrust issues, Judge Whyte – in a short discussion near the end of his opinion – declined to dismiss San Jose's claims for interference with contract and interference with prospective economic advantage.[14] Reasoning that these claims "are not exclusively premised on the alleged violation of antitrust law, but also are based on MLB's alleged delay in rendering a relocation decision in frustration of the Option Agreement"[15] between the Oakland franchise and the City of San Jose,[16] the court considered the interference claims "independently of the antitrust claims," [17] and ultimately found that San Jose had sufficiently alleged a "disruption" of its contract with the Athletics because "the A's are unable to exercise the option [to relocate to San Jose] due to MLB's delay in conducting the vote pursuant to the MLB Constitution to approve or deny relocation."[18] In so ruling, the court found that, although "it is within MLB's authority to decide" whether to approve or deny the A's relocation request, "the City was justified in assuming that MLB would make a decision within a reasonable time which it has not."[19]

Judge Whyte's determination to permit San Jose's interference claims to proceed is not without legal complications. Because the City would be precluded from challenging a *refusal* on the part of MLB to allow the A's to relocate to San Jose, the City would likewise be barred from seeking damages – such as lost profits – resulting from a failure on the part of the A's to exercise its option to relocate to San Jose. As a result, even if the City were to prevail on its interference claims, its ability to seek and recover damages from MLB would presumably be limited to economic losses stemming from the protracted period of indecision following its signing of its option agreement with the A's franchise. Although

Sunny Brenner is a partner at Loeb & Loeb LLP. He has a diverse litigation practice and specializes in entertainment, sports and media-related disputes, appellate litigation, and intellectual property matters.

Judge Whyte's opinion noted some plausible examples of expenses that the A's (not the City) may have incurred as a result of MLB's delay in reaching a relocation decision, it appears unlikely that the City would be in a position to prove substantial economic losses within these narrow constraints.

This is not to say, however, that the court's ruling on San Jose's interference claims may not have ramifications – both for the A's situation and in other contexts. Even if the financial exposure presented by the City's surviving claims may be minimal, the mere continuation of the litigation could impose some pressures on MLB that could, in turn, lead to changes (whether acknowledged or not) in the manner in which the commissioner's office has been operating in recent years. For example, as the litigation with San Jose proceeds, MLB may be forced to respond to discovery demands, including requests for documents relating to the territorial dispute between the Giants and the A's. Further, there will be demands for the depositions of Commissioner Selig, some or all of the club owners, and perhaps MLB personnel other than the commissioner who have knowledge of the decision-making process (or lack thereof) concerning the A's attempt to relocate.[20] To the extent that the commissioner's office may be reluctant to expose its decision-making process to such discovery procedures,[21] the threat of being forced to engage in such discovery could prompt MLB, at a minimum, to expedite the making of difficult and controversial decisions that, in recent years, have been fraught with delay.

By way of illustration, Article VI of the MLB Constitution vests in the commissioner the sole authority to decide "[a]ll disputes and controversies [with some notable exceptions] ... between Clubs or between a Club(s) and any Major League Baseball entity(ies) (including in each case, without limitation, their owners, officers, directors, employees and players)…." In recent years, there have been multiple reported disputes involving MLB franchises that fall within this provision. In addition to the territorial dispute between the Giants and the Athletics, the commissioner has reportedly been called upon – but has yet – to resolve a protracted disagreement between the Washington Nationals and the Baltimore Orioles concerning the value of the television broadcast rights fees owed to the Nationals in connection with the Mid-Atlantic Sports Network (MASN).[22] As is the case with the clash between the Giants and the A's clubs,[23] moreover, it has been widely reported that the commissioner's office has been extraordinarily deliberate in deciding the media rights dispute involving MASN, the Nationals and the Orioles[24] – so much so that as to attract comment from such interested parties as the executive director of the MLB Player's Association, who was quoted as saying that "[t]here has to be an end in sight for the sake of both franchises…."[25] Yet Judge Whyte's decision to allow the City of San Jose to proceed with claims against MLB and its commissioner premised solely on the *timing* of the decision concerning the A's relocation request represents an external source of pressure on the commissioner's office to expedite its internal decision-making processes regarding disputes and issues that are substantively exempt from antitrust challenge.

That said, the impact of this development should not be overstated, particularly given the reality that it is a third party – not an MLB franchise – that has been granted permission to seek redress for potential damages caused by MLB's delay in acting on a franchise relocation request.

Arguably, Judge Whyte's reasoning could be read to open the door in extreme cases to lawsuits by MLB clubs against MLB or the commissioner addressed to unreasonable delays in adjudicating disputes within the purview of the commissioner's sole authority. As a practical matter, it is questionable whether a club would bring such a limited court action, particularly as long as the antitrust exemption and the MLB Constitution operate to exempt the ultimate decisions of the commissioner and the MLB ownership from challenge. The greater risk from the standpoint of MLB and the commissioner's office continues to be that Congress may eventually conclude that the time has come to take a hard look at limiting or eliminating the sport's expansive exemption from antitrust regulation.

Endnotes

1 *See, e.g.,* K. Belson, *In Tug of War Over San Jose, A's and the Giants Remain at a Standoff*, The New York Times, Apr. 2, 2012, http://www.nytimes.com/2012/04/02/sports/baseball/as-and-giants-in-tug-of-war-over-rights-to-san-jose.html?_r=0 ("The teams, which have shared a market for 44 years, are battling over who controls the rights to San Jose, which is in the heart of Silicon Valley about one hour south of both cities.… [¶] … [T]he Giants insist that San Jose is in their territory.… [¶] The dispute has become so fractious that in 2009, Commissioner Bud Selig appointed a committee to study the issue.").

2 J. Woolfolk, *San Jose baseball: Oakland Athletics' move now on court's timetable rather than MLB's*, San Jose Mercury News, June 19, 2013, http://www.mercurynews.com/ci_23496978/move-now-courts-timetable-rather-than-mlbs?source=pkg ("The lawsuit reflects San Jose's impatience with four-plus years of MLB indecision on the proposed A's move …").

3 Complaint, *City of San Jose et al. vs. Office of the Commissioner of Baseball and Allan Huber "Bud" Selig*, Case No. 13-2787 (U.S.D.C.

N.D. Cal. June 18, 2013) ("*San Jose Litigation*"). San Jose's Complaint alleges, for example, that "MLB has imposed a lengthy and, under the circumstances, unreasonable process for relocation of the Oakland Athletics Club." *Id.* ¶ 94.

4 *See generally id.*

5 *See* Defendants' Motion To Dismiss Plaintiffs' Complaint Under Federal Rule of Civil Procedure 12(b)(6), *San Jose Litigation*, Docket No. 25 (N.D. Cal. Aug. 7, 2013).

6 *E.g.*, J. Christie, *San Jose, Calif. and MLB square off in court over moving A's*, Reuters, Oct. 4, 2013, http://www.reuters.com/article/2013/10/04/us-usa-baseball-mlb-antitrust-idUSBRE99310K20131004.

7 Order Granting-in-Part and Denying-in-Part Defendants' Motion to Dismiss Plaintiffs' Complaint Under Federal Rule of Civil Procedure 12(b)(6), *San Jose Litigation*, Docket No. 41 (N.D. Cal. Oct. 11, 2013) ("Order").

8 The judicially created exemption dates back to Justice Oliver Wendell Holmes' opinion in the U.S. Supreme Court's 1922 decision in *Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Base Ball Clubs*, 259 U.S. 200 (1922).

9 *See, e.g., Flood v. Kuhn*, 407 U.S. 258, 284 (1972); *Major League Baseball v. Crist*, 331 F.3d 1177, 1183-89 (11th Cir. 2003); *Charles O. Finley & Co., Inc. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978); *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1103 (9th Cir. 1974).

10 Order, *supra* note 7, at 2 (noting, *inter alia*, "the recognized flaws in the antitrust exemption for baseball").

11 *Id.* at 4, 17.

12 *Id*. at 8-17; *see also id.* at 20-21 (dismissing Cartwright Act claims); *id*. at 22 (dismissing unfair competition claim on basis that "the alleged conduct … can[not] arguably violate the 'policy or spirit' of the antitrust laws where MLB remains exempt from antitrust regulation").

13 *See id.* at 2; *accord Flood*, 407 U.S. at 285 ("[T]he remedy, if any is indicated, is for congressional, and not judicial, action."); *Portland Baseball Club, Inc. v. Baltimore Baseball Club, Inc.*, 282 F.2d 680 (9th Cir. 1960) ("if professional baseball is to be brought within the pale of federal antitrust laws, the Congress must do it.").

14 Order, *supra* note 7, at 22-26.

15 *Id.* at 22.

16 One commentator described the option agreement between the A's and San Jose as follows: "In November, 2011, San Jose granted an option to the A's to purchase a five-acre tract of public land for $6.9 million. The option contains two conditions: (1) no public funds shall be used in the design, construction or operation of the new ballpark; and (2) city voters must still approve the construction of the new ballpark. The option cost the A's $25,000 per year." W. Thurm, *San Jose Sues MLB To Get A's, Charges Teams Conspire To Maintain Monopoly Power In Their Markets*, Fan Graphs, June 18, 2013, http://www.fangraphs.com/blogs/san-jose-sues-mlb-to-get-as-charges-teams-conspire-to-maintain-monopoly-power-in-their-markets/.

17 Order, *supra* note 7, at 22.

18 *Id*. at 25.

19 *Id*.; *see also id*. at 25-26.

20 *San Jose Vows Action On A's Move Despite Judge's Split Ruling*, CBS SF Bay Area, Oct. 11, 2013, http://sanfrancisco.cbslocal.com/2013/10/11/split-ruling-on-mlb-motion-to-dismiss-san-jose-lawsuit-over-as-move/ ("A lawyer for San Jose said the city plans to request sworn statements from Major League Baseball's Commissioner and owners of 30 teams after a federal judge on Friday allowed the city to proceed with a lawsuit claiming MLB disrupted a contract by the Oakland A's to buy land to move to San Jose. … [¶] San Jose contends that MLB's 30 team owners 'would be subject to depositions,' or statements under oath, during the discovery period for the city's lawsuit. [¶] MLB Commissioner Bud Selig 'would probably be the first deposition we take.' …").

21 See, e.g., B. Bloom, *Fox drops motion to depose Selig in LA case*, MLB.com, Dec. 11, 2011, http://mlb.mlb.com/news/article.jsp?ymd=20111206&content_id=26105558&vkey=news_mlb&c_id=mlb&partnerId=rss_mlb&utm_medium=twitter&utm_source=twitterfeed (noting, in bankruptcy proceeding relating to Los Angeles Dodgers, that, "[a]s far as the depositions were concerned, MLB filed an objection Tuesday, stating that [Commissioner] Selig and [MLB Executive Vice President Robert] Manfred should not be deposed by [attorneys for] FOX [Sports]").

22 *See, e.g.,* M. Conway, *MASN, Nationals Still Locked In Dispute About Rights Fees*, Pressbox, June 4. 2013, http://www.pressboxonline.com/blog/6073/masn-nationals-still-locked-in-dispute-about-rights-fees; *MASN Dispute – Fair Rights Fee for Nationals*, Sports Business Now, http://sportsbusinessnow.com/masn-dispute-fair-rights-fee-for-nationals/); J. Wagner, *MLB seeks creative solution to MASN rights fees dispute between Nationals, Orioles*, The Washington Post, Dec. 13, 2012, http://articles.washingtonpost.com/2012-12-13/sports/35812522_1_rights-fees-sports-network-washington-nationals.

23 *See* B. Bloom, *No movement in A's-Giants territorial dispute*, MLB.com, May 17, 2012, http://oakland.athletics.mlb.com/news/article.jsp?ymd=20120517&content_id=31537436&vkey=news_mlb&c_id=mlb; Belson, *supra* note 1 ("Selig … has been criticized for letting the standoff linger."); B. Madden, *MLB likely to uphold San Francisco Giants' territorial rights in San Jose, leaving the A's stuck in Oakland*, N.Y. Daily News, March 3, 2012, at http://www.nydailynews.com/sports/baseball/mlb-uphold-san-francisco-giants-territorial-rights-san-jose-leaving-stuck-oakland-article-1.1032531?pgno=1#ixzz2hphmLSyF (referring to "Baseball Commissioner Bud Selig's interminable delay in ruling on the Giants' territorial rights to San Jose").

24 See, e.g., A. Yellon, *MLB Extends Deadline In Nationals' TV Rights Dispute*, SB Nation, June 11, 2012, http://www.baseballnation.com/2012/6/11/3078061/washington-nationals-tv-rights-dispute-mlb-extends-deadline ("It's complicated enough that Major League Baseball, which is to decide this dispute, has extended its own deadline for settling it into July. They were supposed to have decided by now.").

25 J. Wagner, *Union chief Michael Weiner talks about Gio Gonzalez's case, MASN dispute*, The Washington Post, Apr. 5, 2013, http://www.washingtonpost.com/blogs/nationals-journal/wp/2013/04/05/union-chief-michael-weiner-talks-about-gio-gonzalezs-case-masn-dispute/?print=1.