

747 Fed.Appx. 643 (Mem)

This case was not selected for publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.
United States Court of Appeals, Ninth Circuit.

Mark YI, an individual, as successor in interest to Oe Sun Yi, Plaintiff-Appellant,

v.

CIRCLE K STORES INC., a Texas corporation, Defendant-Appellee.

No. 17-55971

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Submitted December 5, 2018 * Pasadena, California

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Attorneys and Law Firms

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Appeal from the United States District Court for the Central District of California, Ronald S.W. Lew, District Judge, Presiding, D.C. No. 2:16-cv-02171-RSWL-AJW

Before: [O'SCANNLAIN](#) and [IKUTA](#), Circuit Judges, and [STEEH](#), ** District Judge.

MEMORANDUM ***

Plaintiff Mark Yi (“Yi”) appeals the district court's order granting summary judgment in favor of defendant Circle K Stores Inc. (“Circle K”) in Yi's diversity action alleging breach of contract and other derivative claims. We have jurisdiction under [28 U.S.C. § 1291](#). We review de novo, *JL Beverage Co., LLC v. Jim Beam Brands Co.*, [828 F.3d 1098, 1104 \(9th Cir. 2016\)](#), and we affirm. Because the facts are known to the parties, we do not repeat them here.

1. The district court did not err by granting summary judgment in favor of Circle K on Yi's breach of contract claim. Yi claims that the contract required Circle K to sell him the station for \$2.611 million. However, the phrase “mutually agreeable sale” is not ambiguous, and even if it were, it could not be interpreted to mean a sale at Exxon's offer of \$2.611 million because the contract did not identify a specific offer price or incorporate Exxon's offer by reference. Furthermore, there is no extrinsic evidence from which a reasonable jury could find that “mutually agreeable sale” means \$2.611 million.

Yi's argument that Circle K breached the contract by failing to negotiate is likewise not successful. Though the process was drawn out, there was an offer to purchase by Yi and a counteroffer by Circle K. The record supports the conclusion that Circle K negotiated in good faith and it was Yi who ended the negotiations. “If, despite their good faith efforts, the parties fail to reach ultimate agreement on the terms in issue the contract to negotiate is *644 deemed performed and the parties are discharged from their obligations.” *Copeland v. Baskin Robbins U.S.A.*, [96 Cal.App.4th 1251, 117 Cal.Rptr.2d 875, 880 \(2002\)](#).

2. We agree with the district court's determination that Yi's claim for breach of the implied covenant of good faith and fair dealing may be disregarded as superfluous to the allegations of breach of contract. On appeal Yi argues Circle K breached the implied covenant of good faith and fair dealing when it made its counteroffer to sell the station for \$3.6 million. However, where the counteroffer matched an appraisal and a bona fide third-party offer, Circle K engaged in objectively reasonable conduct, which is the essence of the good faith covenant. *See Carma Developers (Cal.), Inc. v. Marathon Dev. Cal., Inc.*, 2 Cal.4th 342, 6 Cal.Rptr.2d 467, 826 P.2d 710, 726-27 (1992).

3. The district court did not err in granting summary judgment in favor of Circle K on Yi's unfair competition claim. Yi claims that Circle K violated [California Business & Professions Code § 17200](#) by persuading Yi to give up his right to purchase the station in exchange for consideration that Circle K never intended to provide. To be actionable under the Unfair Competition Law, a business practice must be “independently unlawful, unfair, or fraudulent.” *Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1152 (9th Cir. 2008). Yi's theory is properly analyzed as a fraudulent business practice, which is defined as “one likely to deceive the public.” *ESG Capital Partners, LP v. Stratos*, 828 F.3d 1023, 1039 (9th Cir. 2016). Yi points to no evidence from which a jury could find that Circle K did not intend to negotiate at the time it entered the contract with Yi, much less that Circle K's contract was intended to deceive the public.

4. Finally, the district court did not err in granting summary judgment in favor of Circle K on Yi's fraudulent inducement claim. Yi argues that Circle K induced him to enter the contract by falsely promising that it would negotiate a mutually agreeable sale when it did not intend to do so. This claim does not survive summary judgment for the same reason that Yi fails to show a genuine issue of material fact regarding whether Circle K breached the contract by failing to negotiate in good faith.

AFFIRMED.

All Citations

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Footnotes

- * The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.
- ** The Honorable George Caram Steeh III, United States District Judge for the Eastern District of Michigan, sitting by designation.
- *** This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).