2024 WL 4869161
Only the Westlaw citation is currently available.
United States District Court, C.D. California.

M&N LUXURY AV, LLC, Plaintiff,
v.
BANG & OLUFSEN AMERICA, INC., et al., Defendants.

2:24-cv-2230-DSF-KESx
|
Signed October 25, 2024

Attorneys and Law Firms

Steven L. Feldman, Heidy A. Nurinda, Jessica Wynette Rosen, Matthew J. Soroky, Thomas McDowell Morrow, Lewitt Hackman Shapiro Marshall and Harlan, Encino, CA, for Plaintiff.

J. David Bournazian, K and L Gates LLP, Irvine, CA, Christopher S. Finnerty, Pro Hac Vice, K and L Gates LLP, Boston, MA, for Defendant, Bang and Olufsen America, Inc.

J. David Bournazian, K and L Gates LLP, Irvine, CA, for Defendant Bang and Olufsen A.S.

Order DENYING Motion for Reconsideration (Dkt. 61)

Dale S. Fischer, United States District Judge

***1** Plaintiff M&N Luxury AV, LLC has moved for reconsideration of the Court's order denying Plaintiff's motion for a preliminary injunction. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The hearing set for October 28, 2024, is removed from the Court's calendar.

I. Legal Standard

Absent "highly unusual circumstances," reconsideration is appropriate only where: (1) the court is "presented with newly discovered evidence"; (2) the court "committed clear error or the initial decision was manifestly unjust"; or (3) there is "an intervening change in controlling law." School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). Rule 59(e) "offers an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enters, Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000) (citation and quotation marks omitted). "A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." Id. (citation omitted).

In the Central District of California, a motion for reconsideration may be made only on grounds of:

> (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after

> the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the court before such decision.

Local Rule 7-18. "No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion." Id. Unless the moving party shows that one of the three listed grounds exists, the Court will not grant reconsideration.

II. Analysis

Plaintiff claims that reconsideration is appropriate for two reasons. First, Plaintiff argues that the Court "fail[ed] to consider a material fact presented to the Court before the Court's decision—namely, whether Business & Professions Code Section 20021 is self-executing and, if not, whether notices of termination were proper in this instance." Mem. at 1. Second, Plaintiff argues that there is a material difference in fact from what was presented originally and that fact could not have been known in the exercise of reasonable diligence at the time of the original motion. Specifically, "the parties and the Court were unaware that the provision of the Framework Agreement relied upon for termination had been repealed and replaced by another provision, such that late payment of invoices (the principal fact relied upon in denying the motion for preliminary injunction) could not be a basis for termination." Mem. at 2. Neither argument is persuasive.

A. Notice of Termination Under California Franchise Investment Law

***2** By arguing that Business & Professions Code § 20021 is not "self-executing," Plaintiff appears to mean that valid termination of a franchise agreement under § 20021 requires valid notice. See Mem. at 3 ("it appears only one court has squarely addressed the issue, concluding that Section 20021 is not self-executing but rather, requires valid notice, even assuming Section 20021 entitled the franchisor immediately to terminate the franchise."). The sufficiency of the two notices, one on February 14, 2024, and the other on May 8, 2024, was not directly discussed in the Court's order because of the way the original preliminary injunction motion was litigated by the parties. As argued, the two primary issues were (1) whether the California Franchise Investment Law (CFIL) applied to the parties' relationship and (2) if so, whether Defendant's termination of the relationship was in compliance with the CFIL. [1]

Defendant's theory under the CFIL was that it was entitled to terminate immediately under § 20021(g). The Court found this argument persuasive, which made the less-detailed February 14 letter effectively irrelevant. Plaintiff *conceded* that the more detailed May 8 letter was sufficient under the CFIL. Dkt. 40 (PI Reply) at 6. Therefore, the Court had no reason to analyze the issue. The Court did not find that notice is not required to terminate a franchise under the CFIL, and the statute has a clear provision to that effect. See Cal. Bus & Prof. Code § 20030.

In any event, Plaintiff's belated challenge to the sufficiency of the notice given in the May 8 letter is entirely unpersuasive. Plaintiff somehow contends that the May 8 letter "disclaims termination based on nonpayment" despite (inaccurately) quoting contradictory language from the May 8 letter: "M&Ns failure of comply [sic] with the requirements of the Framework Agreement, including, but not limited to, M&N's recurring nonpayment, constitutes cause for immediate termination." See Mem. at 6. [2] While not clearly explained – if explained at all – it seems that Plaintiff is arguing that the following sentence in the letter – "However, in accordance with the February 14, 2024 Notice of Termination, termination under this notice shall occur on August 15, 2024" – was meant to disclaim what had been just stated. This is not a fair reading of the May 8 letter. The only reasonable reading of this portion of the letter is that (1) Defendant was terminating the relationship, at least in part, because of recurring nonpayment, (2) Defendant believed it had the legal right to terminate immediately, but (3) Defendant would nonetheless abide by its previous six months' notice that it gave in the February 14 letter.

Plaintiff also argues that the May 8 letter was required to specify the alleged repeated failures in order to invoke termination under § 20021(g). Plaintiff fails to cite anything in the CFIL that would require such an accounting in its termination notice. Cf. Cal. Bus. & Prof. Code § 20030 (requiring "statement of intent to terminate ... the franchise" along with "reasons therefor" but lacking requirement of detailed accounting of deficiencies).

B. Revised Schedule 24

***3** As for the second ground for reconsideration, the fact that a highly relevant portion of the agreement between the parties – Schedule 24 – had been amended was well within the knowledge of Plaintiff at the time of the original motion or certainly could have been known through reasonable diligence. If nothing else, the change to Schedule 24 was directly referenced in Defendant's original opposition and in at least two key exhibits. See Dkt. 38 (PI Opp'n) at 4 n.2, 6; Dkt. 38-2 (revised Schedule 24 included on unnumbered page); Dkt. 38-4 (Oct. 18, 2023 letter from B&O to Plaintiff).

But even if the revised Schedule 24 did provide grounds for reconsideration, Plaintiff's motion would fail. Succinctly, Defendant's termination has to satisfy the requirement of both the parties' agreement and California franchise law. Under the revised Schedule 24, Defendant was entitled to terminate the agreement "for convenience" – *i.e.*, without any showing of cause – with six months' notice. Dkt. 61-4. Given this, there is no merit to Plaintiff's argument that the revision to Schedule 24 meant that "late payment of invoices ... could not be a basis for termination." The revised Schedule 24 provided for termination without any cause at all. [3] Any reason given for termination was extraneous.

At best, there might be some dispute about the proper timing of termination. Defendant's February 14 letter was likely sufficient under the agreement with the revised Schedule 24, but it was likely not sufficient under California franchise law. The May 8 letter was sufficient under both the parties' agreement and California franchise law. However, Defendant did not provide six months' notice from the date of the May 8 letter; the timing of termination was still calculated from the date of the February letter. But even if Defendant should have provided six months' notice from the May 8 letter, [4] premature termination would entitle Plaintiff to recover damages only for the fixed period between when the agreement was terminated and when it should have been terminated. Martin v. U-Haul Co. of Fresno, 204 Cal. App. 3d 396, 409 (1988). These damages can be compensated through monetary relief and do not constitute irreparable harm.

III. Conclusion

The motion for reconsideration is DENIED.

IT IS SO ORDERED.

All Citations

Slip Copy, 2024 WL 4869161

Footnotes

1 Plaintiff also argued that it had not breached the parties' agreement despite extensive evidence of recurring failures to pay invoices on time. Plaintiff claimed that late payments "were a characteristic of the parties' relationship" and

should not be viewed as a breach of the agreement. The Court rejected that argument and found that Plaintiff had not demonstrated that Defendant had waived its right to timely payment. Dkt. 52 at 5.

2 The letter actually states: "M&N's repeated failure to comply with the requirements of the Framework Agreement, including, but not limited to, M&N's recurring nonpayment, constitutes cause for immediate termination." Dkt. 38-7 (emphasis added).

3 While Plaintiff suggests that Defendant did not have the authority to substitute a revised Schedule 24 into the agreement, the validity of the revised Schedule 24 is an underlying premise of Plaintiff's current motion.

4 The Court expresses no opinion on this point.

End of Document