Gillis et al v. Murphy-Brown, LLC Doc. 230

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

CASE NO: 7:14-CV-185-BR

ANNJEANETTE GILLIS, et al.,

Plaintiffs,

v.

MEMORANDUM OPINION AND ORDER

MURPHY-BROWN, LLC d/b/a SMITHFIELD HOG PRODUCTION DIVISION,

Defendant.

Pending before the court are several motions. The court's rulings on those motions follow:

A. *Defendant's motion in limine to exclude evidence of lobbying or other political activities (ECF No. 99).*

In the related cases of McKiver v. Murphy-Brown, LLC, Civil Action No. 7:14-180-BR, McGowan v. Murphy-Brown, LLC, Civil Action No. 7:14-182-BR, and Artis v. Murphy-Brown, LLC, Civil Action No. 7:14-237-BR, the court granted similar motions as newspaper editorial cartoons but denied the motions in all other respects. For the same reasons expressed in those earlier cases, defendant's motion is **GRANTED** as to editorial cartoons but **DENIED** in all other respects.

Defendant sought exclusion of the documents based upon the Noerr-Pennington doctrine. "The Noerr-Pennington doctrine derives from the Petition Clause of the First Amendment and provides that

Dockets.Justia.com

`those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct.'" Kearney v Foley & Lardner, LLP, 590 F.3d 638, 643-44 (9th Cir. 2009) (quoting Sosa v. DIRECTV, Inc., 437 F.3d 923, 929 (9th Cir. 2006)). Although, the doctrine emerged in the antitrust context, the Court has "held that Noerr-Pennington principles `apply with full force in other statutory contexts' outside antitrust." Id. at 644 (quoting Sosa, 437 F.3d at 930).

Although the Noerr-Pennington doctrine has been extended beyond the antitrust context, it has not been applied in the manner in which defendant seeks to do here--bar otherwise admissible evidence in a state law private nuisance lawsuit. The Noerr-Pennington doctrine does not operate in this manner. As one court explained in a similar context:

> Secondarily, New GM's Eighth Motion in Limine also seeks to exclude evidence of its "lobbying" of NHTSA on the theory that such conduct is "protected under the First Amendment." (New GM's Eighth Mem. 10). More specifically, New GM contends that such conduct is off limits under the Noerr-Pennington doctrine, which derives its name from two antitrust decisions, Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), and United Mine Workers of America v. Pennington, 381 U.S. 657 (1965), but has evolved to stand for the more general proposition that "lobbying alone cannot form the basis of liability," Hamilton v. Accu-tek, 935 F. Supp. 1307, 1321 (E.D.N.Y. 1996). New GM's argument, however, fails for the same reason its Buckman argument failed: Under the Noerr-Pennington doctrine, a defendant may not be held liable based solely on conduct that is protected by the First Amendment, but that does not mean

> that such conduct is altogether inadmissible or necessarily lacking in evidentiary value. In fact the Pennington Court itself acknowledged that "[i]t would of course still be within the province of the trial judge to admit this evidence, if he deemed it probative and not unduly prejudicial, under the established judicial rule of evidence that testimony of prior or subsequent transactions, which for some reason are barred from forming the basis for a suit, may nevertheless be introduced if it tends reasonably to show the purpose and character of the particular transactions under scrutiny." Pennington, 381 U.S. at 670 n.3 (emphasis added) (internal quotation marks omitted); see also Hamilton, 935 F. Supp. at 1321 ("A core principle of the Noerr-Pennington doctrine is that lobbying alone cannot form the basis of liability, although such activity may have some evidentiary value." (emphasis added)).
>
> At bottom, New GM's Buckman and Noerr-Pennington arguments (and its related arguments under Rule 403 of the Federal Rules of Evidence) are premised on a concern that a jury could base a finding of liability on an inappropriate ground—either a ground that is preempted by federal law or a ground that is protected by the First Amendment. In the final analysis, however, the proper remedy for those concerns is care in instructing the jury with respect to what it must find in order to hold New GM liable and, if New GM requests it, perhaps also curative instructions making clear to the jury on what it may not base its verdict. See Brady v. Wal-Mart Stores, Inc., 531 F.3d 127, 136 (2d Cir. 2008). The proper remedy is not exclusion of evidence that is otherwise relevant and admissible in connection with Plaintiff's claims.

In re: General Motors LLC Ignition Switch Litig., 14-CV-8176, 14-MD-2543 (JMF), 2015 WL 8130449, *2 (S.D.N.Y. Dec. 3, 2015).

Based on the foregoing, it is clear that the evidence defendant seeks to exclude is not inadmissible under the Noerr-

Pennington doctrine. Having reviewed much of that evidence, however, the court cannot see the relevance of a number of the documents that plaintiffs may seek to introduce at trial. Therefore, the motion in limine is denied without prejudice and defendant may seek the exclusion of those documents on grounds other than the Noerr-Pennington doctrine.

B. *Defendant's motion for reconsideration of ruling on plaintiffs' motion for partial summary judgment with regard to defendant's "Right to Farm Act Defense" (ECF No. 107).*

In the related cases of McKiver v. Murphy-Brown, LLC, Civil Action No. 7:14-180-BR, McGowan v. Murphy-Brown, LLC, Civil Action No. 7:14-182-BR, and Artis v. Murphy-Brown, LLC, Civil Action No. 7:14-237-BR, the court denied similar motions. For the same reasons expressed in those earlier cases, defendant's motion is **DENIED.**

C. *Defendant's motion in limine to exclude misleading financial evidence (ECF No. 108).*

Defendant seeks to exclude the presentation of any evidence regarding its financial condition during the compensatory damages phase of this trial. Defendant also seeks to exclude financial evidence of any entity other than Sholar Farm, including its corporate parent and grandparent.

By Order entered October 24, 2018, the court granted defendant's motion to bifurcate the issues of liability for and

the amount of compensatory damages from the issues of liability for and amount of punitive damages.

> Compensatory damages serve a purpose different from that of punitive damages. The objective of compensatory damages is to restore the plaintiff to his original condition or to make the plaintiff whole. See Bowen v. Fidelity Bank, 209 N.C. 140, 144, 183 S.E. 266, 268 (1936) ("[C]ompensatory damages are allowed as indemnity to the person who suffers loss in satisfaction and recompense for the loss sustained. The purpose of the law is to place the party as near as may be in the condition which he would have occupied had he not suffered the injury complained of.").

Watson v. Dixon, 532 S.E.2d 175, 177-78 (N.C. 2000). Therefore, "[o]rdinarily, a party's financial ability to respond in damages. . . is totally irrelvant to issue of liability; and the admission of evidence tending to establish such ability is held to be prejudicial, except in cases warranting an award of punitive damages." Harvel's, Inc. v. Eggleston, 150 S.E.2d 786, 790 (1966); see also Di Frega v. Pugliese, 596 S.E.2d 456, 461 (N.C. App. 2004) (holding that trial court did not err in excluding evidence of defendants' financial status where evidence in case showed that punitive damages were not warranted).

Plaintiffs argue that evidence of defendant's financial status is relevant to their case-in-chief for a number of reasons, including defendant's ability to pay for feasible alternatives. However, the court believes that the prejudicial nature of this type of evidence substantially outweighs its probative value unless and until defendant contends that it does not have the

financial ability to pay for a feasible alternative. Therefore, with respect to the compensatory damages trial, the motion in limine is **GRANTED** to the extent that plaintiffs should not offer any financial evidence unless defendant opens the door to its introduction. Should defendant do so, counsel should ask the court to revisit this ruling. Furthermore, should financial evidence become admissible, the relevant financial evidence for the first trial is that pertaining to defendant, Murphy-Brown, LLC, unless plaintiffs can show that defendant has prohibited them from developing that evidence solely as to Murphy-Brown. See, e.g., Daughtery v. Ocwen Loan Servicing, LLC, No. 16-2243, 701 F. App'x 246, 258 (4th Cir. Jul. 26, 2017) (permitting introduction of parent company's 10-K, which contained a consolidated balance sheet of parent company and its subsidiaries, as evidence of defendant's financial worth where defendant was responsible for lack of best evidence of its financial worth).

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record.

IT IS SO ORDERED this 13th day of November, 2018.

ENTER:

David A. Faber
Senior United States District Judge