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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

OLDE TOWNE BEVERAGE COMPANY,)
)
 Plaintiff,)
)
)
 v.)
)
)
THE JOS. SCHLITZ BREWING COMPANY,)
)
)
 Defendant.)

Civil Action No. 83-0078-A

MEMORANDUM OPINION

This matter comes before the court on defendant's motion for summary judgment under Rule 56 (b) of the Federal Rules of Civil Procedure. Plaintiff sought to acquire one of defendant's beer distribution franchises from the existing franchisee. The existing franchisee agreed to assign the franchise to plaintiff, subject to the defendant's approval. The defendant disapproved the assignment. Instead, the existing franchisee transferred the franchise to the distributor of defendant's corporate parent's product. The defendant approved this latter assignment. The plaintiff sued the defendant on a theory of tortious interference with its contract with the existing franchisee. Defendant now moves this court to grant judgment in its favor on the grounds that its conduct was privileged; that there was no contract with which it could interfere; and that the plaintiff's claimed damages are so speculative that that no damage award could have any meaning.

The court does not reach the defendant's latter two arguments for summary judgment. The court finds that defendant's motion for summary judgment must be granted on the grounds of privilege. As the United States Court of Appeals observed in Zoby v. American Fidelity Co., 242 F.2d 76, 79-80 (4th Cir. 1957):

Where the alleged interferer is a financially interested party and such interest motivates his conduct, it cannot be said that he is an officious intermeddler....

The court finds that the basis plaintiff claims to have lay behind the defendant's rejection of plaintiff's proposed franchise acquisition (i.e., the desire to consolidate Schlitz and Stroh's franchises), even without the other ample financial justifications the defendant asserts but plaintiff contests, qualifies as a financial interest which would immunize defendant from any liability for the denial on the grounds of privilege.

The court further finds that plaintiff's attempt to distinguish Zoby on the basis of the different varieties of contracts involved distinctly unpersuasive. The court's holding here, as in Zoby, does not turn on the type of contract involved, but on the the absence of any legally significant interference. As the court observed in Walner v. Baskin-Robbins Ice Cream Co., 414 F.Supp. 1028, 1031 (D. Tex. 1981) (applying Texas law):

By definition, interference does not exist if the alleged interferer had the legal right to perform the action complained of... In other words [the defendant's] approval was a

condition precedent to the existence of a contract of sale, and disapproval would not be considered interference.

See also Pierce Ford Sales, Inc. v Ford Motor Co., 299 F.2d 425 (2d Cir.), cert. denied, 371 U.S. 829 (1962). The agreement between the plaintiff and the existing franchisee was expressly conditioned on defendant's approval. As long as the defendant's exercise of its rights under the parties' agreement was based on legitimate financial considerations, it could not be held liable. See Carter Equipment Company v. John Deere Industrial Equipment, 681 F.2d 386, 396 (5th Cir. 1982). And a finding that plaintiff has failed to allege sufficiently the absence of legitimate financial considerations is appropriate on a motion for summary judgment. See Zoby v. American Fidelity Co., supra.

Accordingly, the defendant's motion for summary judgment is GRANTED and plaintiff's case is DISMISSED.

DATE: _____

July 19, 1983

Richard L. Williams
UNITED STATES DISTRICT JUDGE

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OLDE TOWNE BEVERAGE COMPANY,)
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 Defendant.)

ORDER

This matter comes before the court on defendant's motion for summary judgment. For reasons stated in the accompanying memorandum opinion, the defendant's motion is GRANTED. Accordingly, plaintiff's case is DISMISSED.

Let the Clerk send a copy of this order and accompanying memorandum opinion to all counsel of record.

DATE:

July 19, 1983

Richard L. Williams
UNITED STATES DISTRICT JUDGE