

7-1-1996

People v. Concert Connection, Ltd.

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Recommended Citation

People v. Concert Connection, Ltd., 13 U. Miami Ent. & Sports L. Rev. 285 (1996)

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other terms of employment,” and under §§ 8(a)(5) and 8(d) of the NLRA, negotiations must hit an impasse before an employer can unilaterally change them. Permissive subjects of bargaining include everything else, and do not require an impasse before unilateral changes are made.

The Second Circuit held that since the free agency/reserve system is the centerpiece of baseball’s financial structure, it must be a mandatory subject of bargaining and not a permissive one. The Court added that the anti-collusion provision would not prevent the owners from exercising their right to bargain through an exclusive representative, because the anti-collusion provision only applied to the free agency provision, not the collective bargaining process. Therefore, the anti-collusion provision was also mandatory. Finally, the Court also held that salary arbitration was a mandatory subject of bargaining, because it resembled the grievance arbitration mechanism, and this form of arbitration has been long established as a mandatory subject of bargaining.

The Second Circuit did not believe the district court abused its discretion by issuing an injunction. The “just and proper” standard required that irreparable harm would occur if the injunction was not granted. Because players typically have short playing careers and their skills tend to fade with age, the district court met that requirement, and therefore, the injunction was granted properly.

J.W.

PEOPLE V. CONCERT CONNECTION, LTD., 634 N.Y.S.2d 445 (N.Y. 1995) affirming 629 N.Y.S.2d 254 (N.Y. App. Div.).*

Attorney General of New York brought suit against Concert Connection, a Connecticut corporation, and its president to enjoin them from continuing to illegally scalp tickets for New York entertainment events to New York residents. The Supreme Court enjoined Concert Connection from violating the ticket scalping statute, section 25 of the New York Arts and Cultural Affairs Law, and ordered the corporation to pay restitution and damages to eligible customers and pay specific costs to the State. Concert Connection appealed, alleging that New York lacked personal jurisdiction over the Connecticut corporation, and that the New

* The Court of Appeals of New York dismissed Concert Connection’s appeal and affirmed without opinion the opinion of the Supreme Court, Appellate Division.

York ticket regulations unconstitutionally violated their right to scalp tickets.

Held: The New York ticket scalping statute applies to out of state ticket resellers. The three issues before the court were whether New York had personal jurisdiction over Concert Connection, an out of state ticket reseller, whether the New York ticket scalping statute unconstitutionally violated Concert Connection's due process and equal protection rights, and whether the ticket scalping statute violated the Commerce Clause.

The court concluded that New York had personal jurisdiction over Concert Connection under the New York long-arm statute. The New York long-arm statute permits courts to exercise personal jurisdiction over a non-domiciliary who "contracts anywhere to supply goods or services in the State" (N.Y. Civ. Prac. L. & R. 302(a)(1)). The court reasoned that Concert Connection voluntarily subjected itself to personal jurisdiction in New York by advertising ticket sales in New York newspapers, maintaining two New York telephone numbers, reselling tickets in New York to New York residents, and actually shipping those tickets to New York. By purposely availing itself of business opportunities in New York, Concert Connection met the requirement that there be sufficient minimum contacts between the corporation and the forum State. In addition, the court explained that the long-arm statute does not insulate the president of the corporation from long-arm jurisdiction for acts performed in a corporate capacity. Essentially, by piercing the corporate veil, the president of Concert Connection was also held to be personally liable.

In determining that there was no due process or equal protection violation, the court explained that the constitutionality of price controls on the resale of tickets was explicitly upheld in *Gold v. DiCarlo*, 235 F. Supp. 817, affd. 380 U.S. 520. Relying on *Gold*, the court reasoned that the regulation of ticket sales to protect the public against fraud, exorbitant rates, and similar abuses is clearly a legitimate government interest and does not offend any notions of due process. In denying the equal protection challenge, the court explained that the statute treats all ticket brokers alike while exempting three specific classes of people from the application of the maximum pricing regulation of the statute. Concert Connection could not meet the requirement of those classes that receive preferential treatment. Therefore, no equal protection violation existed.

Finally, the court determined that the New York ticket scalping statute did not violate the Commerce Clause. Essentially, the statute did not unduly burden interstate commerce in that the statute applies evenhandedly to in-state as well as out-of-state ticket resellers. The court reasoned that the legitimate local public interest of preventing ticket pricing abuse outweighed any incidental effect on interstate commerce. Affirmed.

R.M.B.

ROBINSON V. RANDOM HOUSE, INC., 877 F. Supp. 830; 1995 U.S. Dist. LEXIS 468 (S.D.N.Y. 1995); 34 U.S.P.Q.2D (BNA) 1257; 23 Media L. Rep. 1481.

Plaintiff, Jack E. Robinson has brought this suit seeking a declaration that his book, entitled *American Icarus: The Majestic Rise and Tragic Fall of Pan Am* ("Robinson Book"), does not infringe on the copyright of another book. Daley is the author of a book which was published in 1980 entitled *American Saga: Juan Trippe and His Pan Am Empire* ("Daley Book"). It all began in 1992 when McGraw-Hill, Inc. canceled its contract with Robinson claiming that his book infringed upon Daley's copyright. He was then denied permission to use the material he allegedly copied from the Daley Book.

Robinson has admitted to using "approximately 25-30 percent of words and phrases from the Daley Book verbatim or through close paraphrasing" in his own book. A major factor here, is that Robinson deliberately forgot to use quotation marks nor did he cite to the Daley Book which is never mentioned. Robinson claims two theories as to why his book does not infringe upon the Daley Book: First, he argues that he took no protected material from the Daley Book and second, that even if he did, he claims that such a taking constituted "fair use" under the copyright laws.

Held: It is true that historical fact is not copyrightable. However, in the present case, it is the author's expression of historical facts that is protected by the Copyright Act. Therefore, it is not so much the idea that is being infringed upon, but the 'particular expression through similarities of treatment, details, scenes, events and characterization.' The court made a side-by-side comparison of the two books and found that Robinson's book went far beyond the use of mere facts or historical material from the Daley Book. Basically, 'he took Daley's organization, writing style, even punctuation, and passed it off as his own.' Therefore, Robinson's