

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 08-10131-RGS

SHELBY AMERICAN AUTOMOBILE  
CLUB, INC.

v.

CARROLL SHELBY LICENSING, INC.

ORDER ON MOTION TO DISMISS

June 5, 2008

STEARNS, D.J.

Plaintiff Shelby American Automobile Association (SAAC), an association of Shelby automobile owners and enthusiasts, instituted this trademark litigation on January 28, 2008, against Carroll Shelby Licensing, Inc. (CSLI), a company affiliated with Carroll Shelby, a storied race car driver and automobile designer.<sup>1</sup> The dispute involves SAAC's use of the Shelby name under a licensing agreement with CSLI. The agreement contains a forum selection clause designating California for venue and choice of law purposes. CSLI moves to dismiss this case in favor of a later-filed (one day) case pending in the Central District of California. SAAC opposes dismissal, arguing that CSLI fraudulently induced it to enter into the licensing agreement and the court should, therefore, not enforce the forum selection clause.

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<sup>1</sup>After retiring from racing in October of 1959, Shelby designed and built the family of "Cobra" cars, the GT40, the Mustang-based Shelby GT350 and Shelby GT500, and the most popular of his designs, the 427 Shelby Cobra. Shelby worked variously with divisions of Ford, Chrysler, and General Motors to develop and build high-performance cars.

On March 13, 2008, SAAC moved to dismiss the California action. District Judge Gary Feess denied the motion, finding the forum selection clause controlling. Judge Feess wrote as follows.

Forum selection clauses are prima facie valid, and are enforceable absent a strong showing by the party opposing the clause “that enforcement would be unreasonable or unjust, or that the clause [is] invalid for such reasons as fraud or overreaching.” Manetti-Farrow, Inc. v. Gucci Am., Inc., 858 F.2d 509, 514-15 (9th Cir. 1988) (quoting The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 15 (1972)) (additional citations omitted). “[B]road and conclusory allegations of fraud without offering any specific factual allegations or evidentiary support” are not sufficient to negate a forum selection clause. Spradlin v. Lear Siegler Mgmt. Servs., Co., 926 F.2d 865, 868-69 (9th Cir. 1991). As noted by the Shelby IP Entities, if general assertions of fraud were enough, every forum selection clause could be negated by artful pleading “and the policy in favor of the enforcement of forum selection provisions would be frustrated.” (Opp. at 5.)

Here, the Shelby Club offers nothing but conclusory allegations as to fraud. No information is provided as to who made any fraudulent representations or when they were made or to whom. Without more, the Court does not find it credible that the Shelby Club thought that the detailed twelve-page license agreement it entered into had no binding effect.

Finally, the Court notes that, although some of the dispute between the parties may involve post-license conduct, which arguably would not be subject to the forum selection clause, the heart of the Shelby IP Entities’ action revolves around the Agreement. (See Compl. ¶¶ 7-15 (declaratory relief claim as to rights under the Agreement), ¶¶ 16-19 (claim for breach of the Agreement).) Accordingly, the Shelby Club’s motion to dismiss, stay or transfer this action is DENIED. The hearing previously scheduled for Monday, April 7, 2008 is hereby VACATED. Fed. R. Civ. P. 78; L.R. 7-15.

Carroll Shelby Licensing, Inc. v. Shelby American Automobile Club, Civ. No. 08-01556-GAF, slip op. at 4-5 (C.D. Cal., April 3, 2008). On May 5, 2008, SAAC filed a motion asking Judge Feess to reconsider his Order.

On May 7, 2008, this court heard argument on CSLI’s motion to dismiss. At the

hearing, the court indicated its inclination to defer to Judge Feess on all issues, but agreed to postpone a final decision until Judge Feess acted on the motion for reconsideration. On May 29, 2008, Judge Feess denied the motion and granted SAAC leave to file an Answer and Counterclaim.

The doctrine of the “law of the case” holds (under its first branch) “that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” Arizona v. California, 460 U.S. 605, 618 (1983). While usually framed around the adage that a court will (as a rule) respect and follow its own decisions, see Conley v. United States, 323 F.3d 7, 12 (1st Cir. 2003) (en banc), the Supreme Court has made clear that the doctrine “applies as much to the decisions of a coordinate court in the same case as to a court’s own decisions.” Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816 (1988). The doctrine “appl[ies] with even greater force to transfer decisions than to decisions of substantive law” in order to prevent the possibility of forcing a transferred case into “a perpetual game of jurisdictional ping-pong.” Id. at 816, 818.

“Federal courts of coordinate rank . . . owe each other comity in the sense of respecting each other’s orders and avoiding hindering each other’s proceedings.” Smith v. Securities and Exchange Comm’n, 129 F.3d 356, 361 (6th Cir. 1997); 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2942 at 59 n.43 (2d ed. 1995). Comity concerns are distinct from jurisdictional limitations and, therefore, “[a] court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loathe to do so in the absence of extraordinary

circumstances such as where the initial decision was ‘clearly erroneous and would work a manifest injustice.’” Christianson, supra, 486 U.S. at 817. The court sees no “extraordinary circumstance” that would justify a deviation from Judge Feess’s Order, or his rulings that the forum-selection clause of the licensing agreement is valid and that “the heart of the Shelby IP Entities’ action revolves around the agreement.”

ORDER

For the foregoing reasons, the motion to dismiss is ALLOWED without prejudice.<sup>2</sup>

The Clerk may now close the case.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE

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<sup>2</sup>“Because a dismissal to enforce a forum selection clause is not a determination on the merits of any cause of action, it is appropriately ‘without prejudice’ so that the merits can be litigated elsewhere.” Offshore Sportswear, Inc. v. Vuarnet Int’l, B.V., 114 F.3d 848, 850-851 (9th Cir.1997).