

TSZYU V FIGHTVISION PTY LTD [1999] NSWCA 323

Court of Appeal of NSW – 13 September 1999

FACTS

Tszyu, a boxer, and his trainer, Lewis entered into a written contract for three years with an option of two years. The contract was signed in January 1992 with Classic Promotions the promoter of Tszyu. In November 1992, Classic Promotions ceased trading and Mordey, the principal of Classic promotions, set up Fightvision to carry on the boxing promotion business.

Mordey claimed that the original contract had been novated by discharge after discussions with Tszyu and Lewis and a new contract between Fightvision, Tszyu and Lewis had been created.

In January 1995, Fightvision purported to exercise the option for two years. Tszyu refused to continue the contract and was sued for breach of contract. Fightvision also sued Fenech, another boxer, and others claiming they had induced Tszyu to breach the contract.

ISSUES

Had the contract between Tszyu and Classic promotion been novated or replaced by a new contract?

Had Fenech induced Tszyu to breach the contract with Fightvision?

FINDING

There was sufficient evidence to show that the parties had agreed that the original contract would be replaced with a new contract with Fightvision to replace Classic Promotions.

Fenech was not aware of the contract between Tszyu and Fightvision and could not intend to induce Tszyu to breach that contract.

QUOTE

The Court (Sheller JA, Stein JA, Giles JA) said:

“In our opinion, the submission that Mr. Mordey’s words to Mr. Tszyu and Mr. Lewis were insufficient to establish novation seeks to read too much into the way in which these parties carried out much of their contractual relationships and activities.

Stated simply, Mr. Mordey was the promoter and Mr. Tszyu was the boxer. The corporations involved were merely vehicles for the promoter to promote Mr. Tszyu’s fights. It is unsurprising that Mr. Mordey did not know of the legal term “novation”.

What non-lawyers would? Mr. Mordey did know, however, that it was desired to wind promotions down (or up it doesn't matter) and have Fightvision become the exclusive promoter of Mr. Tszyu's bouts. He told Mr.

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Tszyu and Mr. Lewis of this, and they were agreeable. It was informal, but it had the result, that all parties to the 17 January 1992 contract agreed that there should be a new contract with Fightvision in place of promotions”.

“The position may be stated, we think, as follows: The plaintiff must prove that the defendant intentionally procured the breach. The requirements that the defendant have sufficient knowledge of the contract is a requirement that he have sufficient knowledge to found an intention to interfere with contractual rights. Ignorance of the existence of the contract or of its terms born of inadvertence or negligence is not enough. On the other hand, reckless indifference or wilful blindness to the truth may lead to a finding of necessary intention”.

IMPACT

A written contract may be novated by the oral discussions and conduct of the parties. In this case the Court held that there was sufficient evidence to show that the parties agreed to enter into a new contract by replacing Classic Promotions with Fightvision. It should not be assumed that a written contract cannot be altered by further discussions between the parties.

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