

Appellate Court Affirms Summary Judgement in Favor of Sheppard Mullin Beauty Client Coty, Inc.

10.24.2022

On October 6, the Supreme Court of the State of New York, Appellate Division, unanimously affirmed a New York trial court's ruling on summary judgment in *Thurayyah Z. Richardson v. The Proctor and Gamble Company, et al.*, upholding the trial court's decision to dismiss Plaintiff's claims in their entirety.

Background on the Case

The 2019 lawsuit arose from claims brought by Plaintiff Thurayyah Z. Richardson against Proctor and Gamble, Clairol Beauty Brand and international beauty brand company Coty, Inc., as well Ms. Richardson's agent A3 ("Defendants") for allegedly using her image to market and sell hair care products without her authorization. Plaintiff alleged that she had a 2003 agreement with Proctor and Gamble to use her image on the box of a *certain* Clairol hair product, but Defendants continued to use Plaintiff's image after that agreement had expired, and in ways beyond the scope of the original agreement, which Plaintiff claimed was limited to domestic, point-of-purchase advertisements. Plaintiff sued Defendants alleging claims for breach of contract, violation of New York Civil Rights Law §50 and 51, and unjust enrichment.

Sheppard Mullin represented all defendants and moved for summary judgment after discovery was completed. In September 2021, the trial court granted the motion with prejudice, holding that Plaintiff had failed to adduce evidence that defendants breached any contract with Plaintiff, violated Plaintiff's civil rights, or were unjustly enriched at Plaintiff's expense. Plaintiff subsequently appealed.

On October 6, the Appellate Division upheld the Trial Court's decision. The Appellate Division adopted the Defendants' argument that claims arising under the New York Civil Rights Law preempt claims for unjust enrichment under New York law. Furthermore, the Appellate Division agreed with the Defendants' argument that the New York Civil Rights Law claim was untimely and violated the one-year statute of limitations. The untimeliness was based on the fact that the Plaintiff knew about the alleged unauthorized use of her image for more than one year prior to her filing suit. Indeed, the single publication rule provides that the statute of limitations begins to run when the offending material is first published and does not account for subsequent publications. Accordingly, the Appellate Division ruled that offending material allegedly published within one year of the date the action was filed remained untimely. The Appellate Division further noted that the Defendants were no longer in possession of the offending material for more than one year before the Plaintiff filed suit.

The Sheppard Mullin team was led by Business Trial Practice Group Leader Robert Friedman and associate Damani Sims with support from Appellate Team co-leader Todd Lundell and associate Kunchok Dolma.

Attorneys

Robert S. Friedman

Todd E. Lundell

Damani C. Sims

Practice Areas

Appellate

Litigation

Industries

Retail, Fashion & Beauty