

No. 990313

ORIGINAL

IN THE

Supreme Court of North Dakota

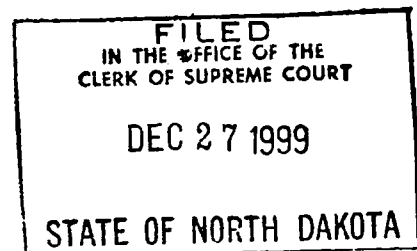
990313

Bublitz ,dba DC Marketing, Appellant

v.

Tsang, dba Purple Rooster, LLC, Appellee

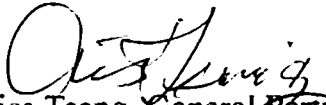
)
)
)
)



Appeal From the North Dakota Supreme Court

Cass Co. No. CV-97-00232

Brief Of Appeal


Abies Tsang, General Partner
Purple Rooster, LLC
4820 East Second Street,
Benicia, CA 94510
(707) 746-5222

No. 990313

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC

Cass Co. No. CV-97-00232

Brief of Appellee

TABLE OF CONTENTS

ARGUMENT

I. Case Should Not Be Tried In North Dakota.

**II. Purple Rooster LLC (a California Limited Liability Company)
should be the Defendant.**

**III. No written agreement to show period of time covered, what
particular sales were covered or percentage of compensation for
overriding of sales.**

**IV. Documentation from both Appellant and Appellee shows Appellant
was paid in full for all jobs.**

**V. Cass County Court Should Not Have Tried This Case; and when It
tried This Case, treated Mr. Abies Tsang unfairly.**

CONCLUSION

No. 990313

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC

Cass Co. No. CV-97-00232

Brief of Appellee

ARGUMENT

Mr. David Bublitz, along with DC Marketing, worked as an independent sales representative and sales organization for Purple Rooster, LLC (a Limited Liability Company operating in the State of California). From 1995 through 1996, Mr. Bublitz worked as an independent representative, along with DC Marketing.

Before Mr. David Bublitz/DC Marketing worked as an independent sales representative for Purple Rooster, Mr. David Bublitz/DC Marketing purchased merchandise from Purple Rooster namely: framed prints, framed mirrors, and related items. Most of the time, Mr. David Bublitz/DC Marketing owed money to Purple Rooster, at times, large sums. Purple Rooster also would purchase and pay for items Purple Rooster needed at that time.

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC

Cass Co. No. CV-97-00232

Brief of Appellee

The function of Mr. David Bublitz/DC Marketing during the tenure with Purple Rooster, was to attend various trade shows for Purple Rooster, generate sales, and he was compensated for sales generated (commissions ranged from 7.5% to 15% for all actual shipped and paid orders). Commissions were paid in the form of cash, merchandise from Mr. David Bublitz, or his wife, or his office clerk), checks from Purple Rooster, LLC, along with statements, many times with credit or debit adjustments from both Mr. David Bublitz/DC Marketing, and Purple Rooster. At times, a portion of airline tickets, hotel expenses, food expenses and other miscellaneous expenses were paid by Purple Rooster upon the request of Mr. David Bublitz/DC Marketing, due to the financial difficulties Mr. David Bublitz/DC Marketing suffered before, during and after Mr. David Bublitz/DC Marketing worked as independent representative for

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC

Cass Co. No. CV-97-00232

Brief of Appellee

Purple Rooster, LLC. During the tenure with Purple Rooster, LLC there was never a written agreement between Mr. David Bublitz/DC Marketing and Purple Rooster, LLC, NOR any written agreement between Mr. David Bublitz/DC Marketing and Mr. Abies Tsang, general partner of Purple Rooster, LLC It has been confirmed by Purple Rooster, LLC accountants, that there was no agreement signed by Purple Rooster of providing any percent of overriding commissions to Mr. David Bublitz/DC Marketing.

I. Case Should Not Be Tried In North Dakota

Purple Rooster, LLC is a Limited Liability Company with it's base of operations in California. Mr. Bublitz did not work for Purple Rooster from the state of North Dakota. He was flown from North Dakota at the expense of Purple Rooster, to attend sales shows in different states.

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC

Cass Co. No. CV-97-00232

Brief of Appellee

II. Purple Rooster LLC (a California Limited Liability Company)

should be the Defendant

Mr. Bublitz/DC Marketing provided sales services to Purple Rooster, LLC, rather than to the general partner of the company, Mr. Abies Tsang. Mr. Bublitz/DC Marketing was paid by Purple Rooster, LLC, rather than from Mr. Abies Tsang, the general partner. The ongoing relationship between Mr. Bublitz/DC Marketing from 1995-1996 were handled by office clerks of Purple Rooster, not by Mr. Abies Tsang. Commission checks paid to Mr. Bublitz/DC Marketing were issued from Purple Rooster by various signers of the accounts of Purple Rooster. Mr. Abies Tsang, any other individuals from Purple Rooster should not be the defendants, the Company, Purple Rooster, LLC should be the defendant.

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC.

Cass Co. No. CV-97-00232

Brief of Appellee

III. No written agreement to show period of time covered , percentage of compensation for overriding of sales.

No written agreement was drawn between Purple Rooster, LLC and Mr. David Bublitz/DC Marketing, nor oral agreement for any compensations other than maximum of 15% on sales that Mr. Bublitz/DC Marketing made at shows Mr. Bublitz/DC Marketing covered for Purple Rooster, LLC. All commissions/expense statements issued by Mr. David Bublitz/DC marketing and Purple Rooster clearly demonstrated that there were nothing more owed to Mr. David Bublitz/DC Marketing, other than those stated in each and every statement agreed by both Purple Rooster, LLC and Mr. David Bublitz.

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC

Cass Co. No. CV-97-00232

Brief of Appellee

IV. Documentation from both Appellant and Appellee shows

Appellant was paid in full for all jobs

Commission Statements from Purple Rooster, LLC (and all correspondence from Mr. David Bublitz/DC Marketing) showed the amount, method of calculations of commissions in each job (i.e. trade show), commissions paid, were all to the satisfaction of both Mr. David Bublitz/DC Marketing and Purple Rooster, LLC. when the representation relationship ended in 1996, Mr. David Bublitz continued to operate his company DC Marketing, and made one Purchase Order for framed prints and framed mirrors from Purple Rooster, for the sum of about \$40,000.00 during a trade show in Kansas City, Missouri - where Purple Rooster attended as wholesaler, represented by Mr. Abies Tsang, Mr. Mark Fitzpatrick. DC Marketing

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC

Cass Co. No. CV-97-00232

Brief of Appellee

attended as wholesalers, represented by Mr. David Bublitz and his assistant, selling similar products including some items purchased from Purple Rooster previously. Purple Rooster agreed to grant a credit of \$15,000.00 for this order, providing DC Marketing will pay \$25,000.00 in the forms of cashier check or cash, upon delivery in the fall of 1996 (original written sales agreement was signed both by Mr. David Bublitz, and Mr. Abies Tsang, on behalf of Purple Rooster, LLC, at the trade show). Original Sales Agreement is enclosed with this Appeal).

If Purple Rooster had owed Mr. David Bublitz/DC Marketing any unpaid commissions (in such a huge sum, at the moment of the desperate financial situation of Mr. David Bublitz/DC Marketing,

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC

Cass Co. No. CV-97-00232

Brief of Appellee

before the end of the sales relationship), Mr. David Bublitz/DC Marketing should have contacted Purple Rooster for such debts, Mr. David Bublitz/DC Marketing, had a further opportunity to demand such unpaid commissions at the time Mr. David Bublitz met Mr. Abies Tsang at the trade show.

The unpaid commissions issue only surfaced when:

Products in the Purchase Order were shipped by the truck owned by Purple Rooster, LLC to Minneapolis, Minnesota, in late 1996, Mr. David Bublitz/DC Marketing was informed before the shipment left California, and informed again before the shipment arrived, and finally, after it arrived at Minneapolis, Minnesota. Purple Rooster later found out that Mr. David Bublitz left North Dakota to Colorado to attend one trade show, to generate sales to rescue his failing business. his wife also gave false information of one cashiers check was

No. 990313

**Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster,
LLC**

Cass Co. No. CV-97-00232

Brief of Appellee

obtained, payable to Purple Rooster, LLC at the time of telephone conversations between Purple Rooster and DC Marketing. Under the understanding that Mr. David Bublitz would return in a few days and to receive the big shipment, would pay \$25,000.00 in a cashiers check, to get this \$40,000.00 worth of shipment (and pay approximately \$15,000.00 balance in posted checks). Purple Rooster had to rent a storage space in Minnetoka, Minnesota. Subsequently, Mr. David Bublitz/DC Marketing never could produce a cashiers check, nor cash to pay Purple Rooster, and forced Purple Rooster to sell the shipment to another customer of Purple Rooster, Thompsons Oak Furniture, in Robbinsdale, Minnesota, for a huge reduction in price. After Purple Rooster repeatedly demanded Mr. David Bublitz/DC Marketing to pay back the losses (including total sales loss, shipping loss, and storage space costs)

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC

Cass Co. No. CV-97-00232

Brief of Appellee

, Mr. David Bublitz/DC Marketing began this unfounded law suit and the demand for the overriding sales commissions.

V. Cass County Court Should Not Had Tried This Case; When It Tried This Case, It Treated Mr. Abies Tsang Unfairly.

Should Mr. David Bublitz/DC Marketing had the written contract, or oral contract, it would have stated clearly that any disputes arisen from such contract, should be resolved and tried in Solano County, California, not in any other places, - Cass County Court should not have accepted this case at the first place. When Cass County Court accepted the case, it should have considered all the facts in the contract which Mr. Bublitz/DC Marketing had claimed processed, and understood that Cass County Court had no

Bublitz, dba, DC Marketing v. Tsang, dba Purple Rooster, LLC

Cass Co. No. CV-97-00232

Brief of Appellee

jurisdiction over this particular dispute brought out by Mr. David Bublitz/DC Marketing. Further, when Cass County Court accepted Mr. Abies Tsang's attorney's resignation on August 3, 1999, Cass County Court should have allowed Mr. Abies Tsang to search and find another attorney, instead, a judgement was giving on August 6, 1999.

CONCLUSION

In conclusion, this case (#97-00232) is groundless and should be overturned, because (1) Purple Rooster, LLC. did not owe Mr. David Bublitz/DC Marketing any money, (2) nor did Mr. Abies Tsang, general partner of LLC owe Mr. David Bublitz/DC Marketing any money. Mr. David Bublitz's lawsuit is unsupported and baseless, and he should not be awarded any monies for his claim. If North Dakota Supreme Court still believes that North Dakota has jurisdiction over this case, the defendant should be renamed as Purple Rooster, LLC., and a new trial is warranted.