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MAR 14 1977

CENTRAL U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELLIOT HANDLER, et al.,
Plaintiffs,
v.
SECURITIES AND EXCHANGE
COMMISSION, et al.,
Defendants.

No. CV 77-67 FW

MEMORANDUM OF DECISION

This case arises from the actions taken by this Court and the District Court for the District of Columbia in Securities and Exchange Commission v. Mattel, Inc., CV 74-2958. The Mattel case originated in the District of Columbia when the Securities and Exchange Commission (S.E.C.) sued to enjoin alleged violations of the securities laws. On August 5, 1974, the District Court for the District of Columbia entered, pursuant to the consent of the parties, a Judgment and Order of Permanent Injunction and Ancillary Relief. This Judgment enjoined Mattel from violating the securities laws and from filing false statements with the S.E.C. The Judgment also provided that within sixty days after entry of the judgment, Mattel was to appoint two persons as additional directors of the corporation. These directors were to have had no previous connection with the

1 corporation. Two new committees of the board of directors
2 were also to be created within sixty days of entry of the
3 Judgment. The Financial Controls and Audit committee was
4 to work with the auditors of Mattel in reviewing the
5 financial condition of the corporation and making sure
6 that all material submitted to the S.E.C. was accurate.
7 The Litigation and Claims Committee was to review all
8 actions brought against Mattel, approve any settlements,
9 and review all matters involving conflicts of interest
10 within the corporation. The new directors were to be
11 members of these new committees. Mattel was directed to
12 cooperate with the committees and was to make all relevant
13 information reasonably requested available to the S.E.C.
14 staff. Finally, the Court retained jurisdiction to grant
15 further relief appropriate in the public interest or for
16 the protection of investors.

17
18 Following the S.E.C.'s application for further
19 relief, an Amended Consent Judgment and Order of Permanent
20 Injunction and Ancillary Relief was filed in the District
21 of Columbia on October 2, 1974. The Amended Judgment
22 added provisions to those of the original Judgment. A
23 majority of the board, rather than only two of the directors,
24 was to be comprised of people not previously associated
25 with Mattel. An executive committee of the board of
26 directors was to be created, a majority of which would be
27 new directors of the corporation. Within thirty days after
28 assumption of office by the additional directors, a majority
29 of them was to appoint a Special Counsel for Mattel who
30 would be satisfactory to the S.E.C. and approved by the
31 Court. The Special Counsel was to conduct an investigation
32 of the securities practices of the corporation, prepare

1 and file the report of a Special Auditor, take action upon
2 his or her findings (with the approval of the board of
3 directors), and take further action upon the approval of
4 the board. In the event of any disagreement between the
5 board of directors and the Special Counsel, the Special
6 Counsel was to apply to the Court for resolution of the
7 dispute.

8 The Amended Judgment further provided that the
9 Special Counsel was to retain a Special Auditor to assist
10 him in preparing the report. This Special Auditor was to
11 be paid by Mattel, but would be permitted to consult with
12 the S.E.C. in preparing its report. Following completion
13 of the report, Mattel was to correct its documents on file
14 with the S.E.C. in order to make them comply with the
15 securities laws. Although Paragraphs XII and XIII of the
16 Amended Judgment provided that Mattel was to cooperate with
17 those conducting the investigation and to make all relevant
18 material available, Paragraph XIV provided that the Amended
19 Judgment was not intended to curtail the exercise of the
20 Constitutional rights of all persons interviewed. The Amended
21 Judgment was to remain in effect for five years, or for a
22 greater or shorter period as the Court considered appropriate,
23 according to the developing facts.

24 On the same day the District of Columbia Court
25 transferred the case to the Central District of California.
26 The Order of Transfer indicated that the parties had agreed
27 by stipulation that supervision pursuant to the Amended
28 Judgment and the entry of any further orders would be
29 better accomplished by a court near the corporation's
30 principal place of business.

31 Pursuant to the consent of the parties, this Court
32

1 entered a Second Amended Judgment and Order of Permanent
2 Injunction and Ancillary Relief (hereinafter referred to
3 as the "consent decree"), on November 26, 1974. The consent
4 decree was identical to the Amended Judgment, with the ex-
5 ception that this Court expressly reserved the power to
6 enter further orders as may be necessary, particularly with
7 respect to the necessity for judicial approval of the Special
8 Counsel and judicial resolution of disputes between the
9 Special Counsel and the board of directors.

10 At the time the judgments were entered and con-
11 sented to by Mattel, two of the Plaintiffs, Elliot Handler
12 and Ruth Handler, were members of the Board of Directors
13 of Mattel. They participated in the board's resolutions
14 authorizing Mattel's president to execute Mattel's consent
15 to entry of the judgments. Stipulations of Fact, pages
16 6 and 7.

17 On January 9, 1975, Mattel moved for court approval
18 of Seth M. Hufstedler as Special Counsel. Approval was
19 granted. On February 26, 1975, Mattel's motion for approval
20 of Price Waterhouse as Special Auditor was granted. The
21 reports of the Special Counsel and the Special Auditor were
22 completed and lodged with this Court on November 3, 1975.

23 Plaintiffs filed this action on January 7, 1977.
24 They claim that portions of the consent decree are invalid
25 and unconstitutional, and request that the Report of the
26 Special Counsel be expunged from the records of the Court
27 and that Defendants be enjoined from using any of the infor-
28 mation obtained in the investigation.

29 The present matter came on for hearing on Monday,
30 January 31, 1977. Plaintiffs moved for a preliminary in-
31 junction. Defendants moved to dismiss, or in the alter-
32 native, for summary judgment. Plaintiffs brought a cross-

1 motion for summary judgment and a motion to compel pro-
2 duction of documents and answers to interrogatories. After
3 presentation of argument, both oral and written, the matter
4 was submitted for decision.

5 Plaintiff's first contention is that the consent ^①
6 decree is void because of the requirement that the Special *consent*
7 Counsel and Special Auditor file reports with the court. *decree*
8 The consent decree was not void in this respect. *not valid* It was
9 within the jurisdiction of the court to make such a re-
10 quirement, particularly when it was in furtherance of a
11 decree which was agreed to by the parties. Filing of
12 reports with the court is merely an equitable manner of
13 disposing of the need of a preliminary investigation by
14 the S.E.C. Furthermore, it is an act such as the act of
15 a judge in a trademark infringement case when he or she
16 orders the defendants to file competent proof that they
17 have yielded up all instruments of infringement in their
18 possession to the trademark owner. It is also akin to
19 the provision, in a case involving forfeiture of foods or
20 drugs, that the owner thereof file a certificate with the
21 court showing compliance with the court's decree that the
22 goods be forfeited or rehabilitated.

23
24 Plaintiffs claim that they have a right to attack
25 the judgment because of the harm which may befall them ^②
26 from the possible use of the report. However, they have *TT's*
27 no standing. They are no longer associated with Mattel, *have*
28 the corporation which was the subject of the investigation. *study*
29 Stipulations of Fact, page 2.

30 Plaintiffs contend that their Fifth Amendment ^③ *STA*
31 rights were violated when they were subjected to interviews
32 by the Special Counsel. The court did not order those

1 interviewed to testify. Out of a superabundance of caution,
2 the Special Counsel reminded all persons interviewed of
3 their Fifth Amendment rights. While Paragraph XII of the
4 consent decree directed those associated with Mattel to
5 cooperate with the persons conducting the investigation,
6 Paragraph XIV of the consent decree provided: ". . . none
7 of the provisions of this SECOND AMENDED JUDGMENT AND
8 ORDER shall prevent the assertion of any applicable consti-
9 tutional or legally recognizable privilege." Had Plaintiffs
10 desired, each could have asserted his or her rights under
11 the Fifth Amendment in refusing to respond to interview
12 questions. Each could have moved this Court for a protective
13 order providing that the proceedings be sealed until further
14 order of the Court. Plaintiffs must have realized that
15 they had the right to ask relief from the Court; on Febru-
16 ary 14, 1975, Mattel's former director of accounting
17 moved for an injunction to prevent disclosure of certain
18 information which he claimed was protected by the
19 attorney-client privilege.
20

21 Plaintiffs contend that the consent decree pro- ^{Sec 5}
22 vided a method by which the S.E.C. abdicated its obligation
23 with respect to the investigation of possible criminal
24 violations. It is sufficient to say that this contention
25 is specious. For example, it is a long-established practice
26 of the Internal Revenue Service and agents of other federal
27 agencies to receive information from private persons, and
28 thereby initiate investigations. In these cases, the in-
29 formant is entitled by law to apply for compensation for
30 supplying the information. It is quite customary in cases
31 involving illegal drugs for an informant to supply narcotics
32 agents with names of persons who have, by their past conduct,

1 indicated a willingness to sell narcotics whenever the
2 opportunity presents itself. In these cases, the informant
3 makes the first contact with the suspect or suspects which
4 may result in a criminal investigation.

5 An agency, including the S.E.C., is entitled to
6 obtain evidence wherever it may, subject to the rule that
7 its agents may not obtain the evidence through violation
8 of the constitutional rights of the suspect.

9 Two of the Plaintiffs, Elliot Handler and Ruth ⁵ Handler
10 Handler, may be said to be estopped from complaining of ^{were}
11 the effects of the report. They voted to authorize the ^{estopped}
12 president of Mattel to enter the corporation's consent to
13 the consent decree. Stipulations of Fact, pages 6 and 7. ^{action}

14 Apart from the other considerations in this case, ^{to}
15 it is clear that Plaintiff's action is premature. Should ^{preclude}
16 a grand jury indict any of them, the person or persons so
17 indicted have the right to move to suppress evidence in
18 the criminal case. Such motion, of course, is only proper
19 where criminal charges have been filed by way of indictment.
20

21 For the foregoing reasons, it is the opinion of
22 this Court that the Plaintiffs' motion for preliminary ^{its}
23 injunction, cross-motion for summary judgment, and motion ^{motion}
24 to compel production of documents and answers to inter- ^{denied}
25 rogatories should be denied. Further, it is the opinion
26 of the Court that Defendants' motion for summary judgment ^{Δ's}
27 should be granted. This is an appropriate action for ^{granted}
28 summary judgment inasmuch as there are no genuine issues ^{summary}
29 of fact. ^{judgment}

30 The foregoing constitutes the undisputed material
31 facts and conclusions of law of the Court.

32 Accordingly,

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IT IS ORDERED that Defendants' motion for summary judgment shall be granted and Judgment shall be entered in accordance herewith. No Judgment shall be entered until the Court has signed and filed its formal Judgment.

DATED this 14 day of March, 1977.

Francis C. Whelan
FRANCIS C. WHELAN
UNITED STATES DISTRICT JUDGE

- Generally,
- ① C. has long history of representing itself - we've experienced in such litigation Jones case 1941
White case 1970 (SDNY)
FOIA/PA cases - w/ announcement of Justice
- ② Specifically, the C. has represented itself w/ respect to three prior suits filed by Bechtel, re before Judge Owen.
- This suit is necessarily linked to those earlier suits
 - essential to the inquiry for consideration
 - possible collateral estoppel effect of earlier suits
 - Our experience of the prior suits could be helpful - in fact, you couldn't litigate this action w/o a thorough knowledge of the prior action & the records. Similarly, we're happy to have the presiding and ability of the US Atty's Office on our side
- ③ Legally, we look on participation in these type of actions as necessary to maintaining our ability to represent ourselves in our own injunctive actions and w/p's. If a Δ or R^{at} can go into court and collaboratively attack our proceedings, we would lose the ability to conduct our litigation, to the extent he can be successful.

Trend is for Justice to make adequate authority to sue appear to represent themselves.

- (in circumstances similar to the case)
- ④ Our representing ourselves has traditionally been approved by the Justice Dept. and specifically, our representing ourselves in the 3 prior Bechtel suits has been approved by Justice
- leaden letter

Proposed arrangements - Our interests are, so far as appears, identical

- US Atty to represent the interests of the U.S.
- Com atty to represent the interests of the C. & its employees

Experience in various cases
 FOIA cases
 FOIA type
 one set of papers

- As appropriate, we will file joint papers or separate papers
 - joint papers to list all attys, US Atty & Com.

At oral arg. attorneys for the C. will be present and may address court to extent the believe it's necessary

Trans. Case Hearing

- joint papers
- US Atty to take lead @ oral arg.

• one set of papers & show leave order

Subsequent (Motions, etc)

- Com. to address issues it can handle best
 - extent to what passed out - estopped by prior suit
 - that consideration of issue raised by Bechtel
 - non-attendance of Com proceedings