S145428
Supreme Court of California

Marathon Entertainment, Inc. v. Blasi

42 Cal.4th 974 (Cal. 2008) · 70 Cal. Rptr. 3d 727 · 174 P.3d 741
Decided Jan 28, 2008

No. S145428.

January 28, 2008.

Appeal from the Superior Court of Los Angeles County, No. Eł

WERDEGAR, J.

Indeed, the occasional procurement of employment opportunities may be standard operating procedure for many managers and an understood goal when not-yet-established talents, lacking access to the few licensed agents in Hollywood, hire managers to promote their careers.[1]

[1] Ser

procured various engagements for Blasi, including a role in the television series
Concluding that one or more acts of solicitation and procurement by Marathon violated the Act, the commissioner voided the parties' contract
and barred Marathon from recovery.

[2] The Labor Commissioner has original and exclusive jurisdiction over issues arising under the Act. ((2001) 26 Cal.4th 42, 54-56 [109 Cal.Rptr.2d 14, 26 P.3d 343]; Lab. Code, § 1700.44, subd. (a).) All further undesignated statutory references are to the Labor Code.

Marathon appealed the Labor Commissioner's ruling to the superior court for a trial de novo. (See § 1700.44, subd. (a);
982 (1972) *982 8 Cal.3d 493, 500-501 [105 Cal.Rptr. 368, 503 P.2d 1376].) It also amended its complaint to include declaratory relief claims challenging the constitutionality of the Act. Marathon alleged that the Act's enforcement mechanisms, including the sanction of invalidating the contracts of personal managers that solicit or procure employment for artists without a talent agency license, violated the managers' rights under the due process, equal protection, and free speech guarantees of the state and federal Constitutions.

Blasi moved for summary judgment on the theory that Marathon's licensing violation had invalidated the entire personal management contract. Blasi submitted excerpts from the Labor Commissioner's hearing transcript [illegible] violated the Act by soliciting or procuring employment for her without a talent agency license. Blasi did not specifically argue or produce evidence that Marathon had illegally procured the

I.

[illegible] ummary [illegible] at ct. f. ithat lCommicin [illegible] Employment contracts.

[illegible] granted Blasi's motion for summary [illegible]

deal: on negotiating numerous short-term, project-specific engagements between buyers and sellers. (, 76 So.Cal. L.Rev. at p. 981.)

Agents are effectively subject to regulation by the various guilds that cover most of the talent available in the industry: most notably, the Screen Actors Guild, American Federation of Television and Radio Artists, Directors Guild of America, Writers Guild of America, and American Federation of Musicians. (, 80 Cal. L.Rev. at p. 487.) Artists may informally agree to use only agents who have been "franchised" by their respective guilds; in turn, as a condition of franchising, the guilds may require agents to agree to a code of conduct and restrictions on terms included in agent-talent contracts. (, 76 So.Cal. L.Rev. at pp. 989-990; , 20 Loyola L.A. Ent. L.Rev. at p. 520.) Most significantly, those restrictions typically include a cap on the commission charged (generally 10 percent), a cap on contract duration, and a bar on producing one's client's work and obtaining a producer's fee. (Screen Actors Guild, Codified Agency Regs., rule 16(g); American Federation of Television and Radio Artists, Regs. Governing Agents, rule 12-C; (2007) 151 Cal.App.4th 593, 596-597 [60 Cal.Rptr.3d 93]; , at pp. 989-990; , at pp. 520-521.) These restrictions create incentives to establish a high volume clientele, offer more limited services, and focus on those lower risk artists with established track records who can more readily be marketed to talent buyers. (, at p. 981; , at p. 503.)

Personal managers typically are not franchised by the guilds. (, 76 So.Cal. L.Rev. at p. 991; , 20 Loyola L.A. Ent. L.Rev. at p. 522.) They typically accept a higher risk clientele and offer a much broader range of services, focusing on *984 advising and counseling each artist with an eye to making the artist as marketable and attractive to talent buyers as possible, as well as managing the artist's personal and professional life in a way that allows the artist to focus on creative productivity. (, D/¥1CK

booked their clients, or by sending clients to houses of ill repute under the guise of providing "employment opportunities." (See Stats. 1913, ch. 282, § 14, pp. 519-520 [prohibiting agents from fee splitting, sending artists to "house[s] of ill fame" or saloons, or allowing "persons of bad character" to frequent their establishments];
, at pp. 386-387;
, at p. 493.) Exploitation of artists by representatives has remained the Act's central concern through subsequent incarnations to the present day. (See , 26 Cal.4th at p. 50.)

In 1978, the Legislature considered establishing a separate licensing scheme for personal managers. (See Assem. Bill No. 2535 (1977-1978 Reg. Sess.) as amended May 1, 1978, § 41; Assem. Com. on Labor, Employment Consumer Affairs, Analysis of Assem. Bill No. 2535 (1977-1978 Reg. Sess.) as amended May 1, 1978, pp. 1-4; Entertainment
985 *985 Com. Rep., , at p. 8.) Unable to reach agreement, the Legislature eventually abandoned separate licensing of personal managers and settled for minor changes in the statutory regime, shifting regulation of musician booking agents to the Labor Commissioner and renaming the Artists' Managers Act the Talent Agencies Act. (Stats. 1978, ch. 1382, pp. 4575-4583.)

In 1982, the Legislature provisionally amended the Act to impose a one-year statute of limitations, eliminate criminal sanctions for violations of the Act, and establish a "safe harbor" for managers to procure employment if they did so in conjunction with a licensed agent. (Former § 1700.44, as enacted by Stats. 1982, ch. 682, § 3, p. 2815; Entertainment Com. Rep., , at pp. 8, 38-39.) It subjected these changes to a sunset provision and established the 10-person California Entertainment Commission (Entertainment Commission), consisting of agents, managers, artists, and the Labor Commissioner, to evaluate the Act and "recommend to the Legislature a model bill." (Former §§ 1701-1704, added by Stats. 1982, ch. 682, § 6, p. 2816, repealed by its own terms Jan. 1, 1986.) In 1986, after receiving the Entertainment Commission Report, the Legislature adopted its recommendations, w bò Remissi

managers, as the Courts of Appeal and Labor Commissioner have long assumed, and if so, how.

II.

Marathon contends that personal managers are categorically exempt from regulation under the Act. We disagree; as we shall explain, the text of the Act and persuasive interpretations of it by the Courts of Appeal and the Labor Commissioner demonstrate otherwise.

(2) We begin with the language of the Act. ((2004) 34 Cal.4th 915, 927 [22 Cal.Rptr.3d 530, 102 P.3d 915].) Section 1700.5 provides in relevant part: "No shall engage in or carry on the occupation of a without first procuring a license therefor from the Labor Commissioner." (Italics added.) In turn, "person" is expressly defined to include "any individual, company, society, firm, partnership, association, corporation, limited liability company, , or their agents or employees" (§ 1700, italics added), and "`[t]alent agency' means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists . . ." other than recording contracts (§ 1700.4, subd. (a)).

(3) The Act establishes its scope through a functional, not a titular, definition. It regulates , not labels; it is the act of procuring (or soliciting), not the title of one's business, that qualifies one as a talent agency and subjects one to the Act's licensure and related requirements. (§ 1700.4, subd. (a).) Any person who procures employment — any individual, any corporation, any manager — is a talent agency subject to regulation. (§§ 1700, 1700.4, subd. (a).) Consequently, as the Courts of Appeal have unanimously held, a personal manager who solicits or procures employment for his artist-client is subject to and must abide by the Act. (, 71 Cal.App.4th at pp. 1470-1471; , 41 Cal.App.4th at p. 253; see also , 254 Cal.App.2d at pp. 354-355 [deciding same issue under the Act's predecessor, the Artists' Managers
987 Act].)[4] The Labor *987 Commissioner, whose interpretations of the Act we may look to for guidance (see , 26 Cal.4th at p. 53; (1998) 19 Cal.4th 1, 7-8 [78 Cal.Rptr.2d 1, 960 P.2d 1031]), has similarly uniformly applied the Act to personal managers. (See, e.g., (Cal.Lab.Com., Sept. 4, 2007) TAC No. 21-06, pp. 2, 13-20; (Cal.Lab.Com., Dec. 30, 2005) TAC No. 35-04, pp. 9-11; (Cal.Lab.Com., Apr. 24, 1992) TAC No. 19-90, pp. 28-35.)[5] **(4)** As to the further question whether even a single act of procurement suffices to bring a manager under the Act, we note that the Act references the "occupation" of procuring employment and serving as a talent agency. (§§ 1700.4, subd. (a), 1700.5.) Considering this in isolation, one might interpret the statute as applying only to those who regularly, and not merely occasionally, procure employment. (See (1993) 13 Cal.App.4th 616, 628 [16 Cal.Rptr.2d 496] [Act applies only when "the agent's employment procurement function constitutes a significant part of the agent's business as a whole . . ."].) However, as we have previously acknowledged in dicta, "[t]he weight of authority is that even the incidental or occasional provision of such services requires licensure." (, 26 Cal.4th at p. 51, citing , 71 Cal.App.4th 1465, and , 41 Cal.App.4th 246.)[6] In agreement with these decisions, the Labor Commissioner has uniformly interpreted the Act as extending to incidental procurement. (See, e.g., (Cal.Lab.Com., July 19, 2004) TAC No. 24-02, p. 14; (Cal.Lab.Com., May 30, 2001) TAC No. 02-99, pp. 20-21;
988 (Cal.Lab.Com., Jan. 12, *988 1982) TAC No. 36-79, p. 4.) The Labor Commissioner's views are

(1995) 37 Cal.App.4th 597, 600 [43 Cal.Rptr.2d 647] [rule intended to prevent unrelated provisions from sliding through "unnoticed and unchallenged"];

(1985) 173 Cal.App.3d 1187, 1196 [219 Cal.Rptr. 664] [rule intended to `"prevent legislators and the public from being entrapped by misleading titles to bills whereby legislation relating to one subject might be obtained under the title of another"'].)

(6) However, the single-subject rule "is to be liberally construed to uphold proper legislation and not used to invalidate legitimate legislation." (

(2003) 110 Cal.App.4th 1549, 1556 [3 Cal.Rptr.3d 246]; accord,

, 43 Cal.3d at pp. 1097-1098;

(1963) 59 Cal.2d 159, 172-173 [28 Cal.Rptr. 724, 379 P.2d 28];

(1932) 215 Cal. 58, 62 [8 P.2d 467].) The Legislature may combine in a single act numerous provisions "`governing projects so related and interdependent as to constitute a single
989 scheme,'" and provisions auxiliary to the *989 scheme's execution may be adopted as part of that single package. (, at p. 1097, quoting , at p. 62.) The act's title "need not contain either an index or an abstract of its provisions. The constitutional mandate [citation] is satisfied if the provisions themselves are cognate and germane to the subject matter designated by the title, and if the title intelligently refers the reader to the subject to which the act applies, and suggests the field of legislation which the text includes." (

(1941) 19 Cal.2d 123, 130 [119 P.2d 717]; see also

(1944) 24 Cal.2d 664, 666 [151 P.2d 5] [to satisfy the Constitution, title need only "contain[] a reasonably intelligible reference to the subject to which the legislation is addressed"];

(1977) 75 Cal.App.3d 829, 841 [142 Cal.Rptr. 449].)

(7) Here, the 1978 legislation and its title satisfy the California Constitution. The legislation's provisions pertain to a single subject, the comprehensive regulation of persons and entities that provide talent agency services. The title, quoted in full in the margin, identifies that subject and specifically references the existing comprehensive regulations that are to be modified.[7] The legislation defines talent agencies as those that engage in particular conduct; thus, to the extent personal managers engage in that conduct, they fit within the legislation's title and subject matter and may be regulated by its provisions.

7 The title of the legislation is: "An act to amend Section 9914 of, to repeal Section 9902.8 of, and to repeal Chapter 21.5 (commencing with Section 9999) of Division 3 of, the Business and Professions Code,

(9) We turn to the key question in Blasi's appeal: What is the artist's remedy for a violation of the Act? In particular, when a manager has engaged in unlawful procurement, is the manager always barred from any recovery of outstanding fees from the artist or may the court or Labor Commissioner apply

(voiding contract only for the period of time after manager commenced acting as an unlicensed talent agency and denying disgorgement of commissions for earlier lawful services);

(Cal.Lab.Com., Feb. 24, 1995) TAC No. 63-93, pages 11-12 (where manager acted as an unlicensed talent agency in procuring role, denying right to recover commissions for that role, but preserving right to recover commissions for personal manager services in connection with later role lawfully procured by Anderson's licensed talent agency);

(Cal.Lab.Com., Jan. 14, 1982) No. 1098 ASC MP-432, page 16 (ordering return of 20 percent of compensation based on a determination respondent spent 20 percent of time acting as an unlicensed talent agency). More recent Labor Commissioner decisions appear to take a more stringent view toward the availability of severance. We address these decisions at pages 995-996.

11 The same is true of our own decisions. In , 26 Cal.4th at page 51, we correctly noted in dicta that "an unlicensed person's contract with an artist to provide the services of a talent agency is illegal and void." We did not address whether severance could ever apply to contracts with artists to provide personal management services.

In (2007) 156 Cal.App.4th 71 [67 Cal.Rptr.3d 82, 84 cMa

(1989) 213 Cal.App.3d 252, 261-262 [261 Cal.Rptr. 532] [unlicensed real estate broker may defend entitlement to compensation for services for which no license is
994 required]; *994 (1970) 13 Cal.App.3d 290, 294 [91 Cal.Rptr. 514] [under equitable principles, unlicensed commission merchant entitled to partial recovery under contract].)

[13] Blasi distinguishes on the ground that there the basis for differentiating services for which recovery could be had from those for which it could not was jurisdictional. This is a distinction without a difference. We recognized in a point equally applicable here: In the absence of an express contrary legislative determination, the equitable principles of severability may be applied to contracts where some portion of the services provided was unlicensed and hence unlawful. (, 17 Cal.4th at pp. 138-139; cf. (1957) 48 Cal.2d 141, 151 [308 P.2d 713] [Bus. Prof. Code, § 7031 "represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties" and forecloses severance of those contracts to which it applies].)

Blasi contends that even if severability may generally apply to disputes under the Act, we should announce a rule categorically precluding its use to recover for artist advice and counseling services. She relies on three sources in support of this rule: the legislative history, case law interpreting the Act, and decisions of the Labor Commissioner. None persuades us that the Legislature intended to foreclose the application of severability, as codified in Civil Code sections 1598 and 1599, to manager-talent contracts that involve illegal procurement, either generally or with regard to recovery specifically for personal manager services.

For legislative history, Blasi relies on a portion of the Entertainment Commission's 1985 report to the Legislature. Addressing whether criminal sanctions for violations of the Act, temporarily suspended in 1982, should be reinstated, the Entertainment Commission saie

(14) We are not persuaded. The passage acknowledges what all parties recognize — that the Labor Commissioner has the "power" to void [illegible] that she has "empowered" to deny all [illegible] where the Act has been [illegible]

novo) of the power to apply equitable doctrines such as severance would be squarely at odds with the Act's text, which contains no such limitation. Neither the Labor Commissioner nor we are authorized to engraft onto the Act such a limitation neither express nor implicit in its terms. We are thus unpersuaded and decline t

Cal.App.3d 447, 452-454 [248 Cal.Rptr. 405] [applying severance where the plaintiff alleged a ag*ð

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