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ANTITRUST LAW

ANTITRUST LAW AND THE SPORTS LEAGUE RELOCATION RULES

I. INTRODUCTION

In 1982, the United States District Court for the Central District of California held that the National Football League (NFL) had violated the federal antitrust laws by attempting to prevent the Oakland Raiders from moving to Los Angeles.[1] The Ninth Circuit approved this result.[2] Yet when the United States District Court for the Southern District of California held that the National Basketball Association (NBA) had similarly violated the same antitrust laws by attempting to prevent the San Diego Clippers from moving to Los Angeles,[3] the Ninth Circuit reversed and remanded the decision.[4] How can these seemingly inconsistent results be reconciled?

This article will focus on the Ninth Circuit's analysis of federal antitrust law as applied to sports league relocation rules. Primary attention will be directed to the court's most recent opinion in this area, *NBA v. SDC Basketball Club, Inc.*[5] In this case, the Ninth Circuit held that sports league created restrictions on franchise movement do not constitute per se violations of antitrust law.[6] Therefore, the court reasoned, such restrictions

1. Los Angeles Memorial Coliseum Comm'n v. National Football League, 726 F.2d 1381, 1386 (9th Cir. 1984), *cert. denied* 469 U.S. 990 (1984) [hereinafter *Raiders I*].

2. *Id.* at 570.

3. National Basketball Association v. SDC Basketball Club, 815 F.2d 562, 565 (9th Cir. 1987) [hereinafter *Clippers*] (SDC Basketball Club is an abbreviation for San Diego Clippers Basketball Club.)

4. *Id.* at 570.

5. 815 F.2d 562 (9th Cir. 1987) (per Ferguson, J.; the other panel members were Nelson, J., and Beezer, J.).

6. *Id.* at 568.

must be evaluated under the rule of reason antitrust analysis.[7]

II. FACTS

In the early 1980's, the San Diego Clippers operated as a professional basketball team in San Diego.[8] The franchise is a member of the National Basketball Association (NBA), an organization of professional basketball teams that operates as a joint venture under New York law.[9] When the team considered a move to Los Angeles, the NBA brought suit in the Southern District of California to prevent an unauthorized move by one of its franchises.[10] This dispute was resolved when the parties stipulated that the Clippers would stay in San Diego, and that any further disputes would be litigated in the Southern District of California.[11]

In 1984, the Ninth Circuit held that the National Football League (NFL) had violated antitrust laws when it attempted to prevent the Oakland Raiders from moving to Los Angeles.[12] Seeing this as a window of opportunity, the Clippers informed the

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7. *Id.* at 567.

8. *Id.* at 564.

9. *Id.*

10. *Id.*

11. *Id.*

12. Los Angeles Memorial Coliseum Comm'n v. National Football League, 726 F.2d 1381 (9th Cir. 1984), *cert. denied*, 469 U.S. 990 (1984) [hereinafter *Raiders* I]; *see also* Los Angeles Memorial Coliseum Comm'n v. National Football League, 791 F.2d 1356 (9th Cir. 1986) [hereinafter *Raiders II*].

In *Raiders I*, the court considered the antitrust implications of the Raiders move from Oakland to Los Angeles. *Raiders I*, 726 F.2d at 1381. The Raiders, without permission from the National Football League, relocated to the Los Angeles Memorial Coliseum. *Id.* at 1385. The NFL filed a contract suit against the Raiders in state court and obtained an injunction preventing the move. *Id.* The Raiders, joining the Los Angeles Memorial Coliseum, cross-claimed against the NFL asserting that the NFL's rule requiring approval by three-quarters of the NFL teams for franchise moves violated the antitrust laws. *Id.* The Ninth Circuit affirmed a jury verdict which had found that the NFL's three-quarter rule constituted an antitrust violation. *Id.* at 1401.

In *Raiders II*, the court considered the damages incurred by the Raiders as a result of the NFL's violation of the antitrust laws. *Raiders II*, 791 F.2d at 1356. The court determined that the treble damages awarded to the Raiders as a result of the two year delay in moving to Los Angeles must be offset by the NFL's loss of franchise opportunity in the Los Angeles area. *Id.* at 1366. More pointedly, the court held that the antitrust award must be reduced by an amount equivilent to the difference in value of locating a new NFL team in Oakland, as opposed to Los Angeles. *Id.*

NBA of its intention to move to Los Angeles.[13] The Clippers asserted that any attempt by the NBA to prevent the move would violate the antitrust laws.[14] To avoid potential liability, the NBA scheduled the Clippers games in Los Angeles.[15]

With the Clippers already in Los Angeles, the NBA amended its constitution by adopting Article 9A, a new rule governing franchise moves.[16] Article 9A requires that a simple majority of the member teams approve all team moves.[17] Subsequent to adopting Article 9A, the NBA sought declaratory relief in the Southern District of California.[18] The league asserted that it was not a violation of the antitrust laws for the NBA to evaluate and assess limits on franchise movement, and that the league could assess charges against the Clippers for its unauthorized relocation.[19] The Clippers argued that its move to Los Angeles complied with Article 9 of the NBA Constitution, and that Article 9A was not adopted until after the Clippers had moved.[20] Under Article 9, whenever a franchise moves into a territory occupied by another team, the moving franchise must receive permission from the team already in the territory.[21] The Los Angeles Lakers granted the Clippers permission to move into the Los Angeles area.[22] Though the NBA acknowledged that the Clippers satisfied the dictates of Article 9, the league asserted that this article was not the only stricture on franchise movement.[23]

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13. *Clippers*, 815 F.2d at 564.

14. *Id.*

15. *Id.*

16. *Id.*

17. Brief for Appellee at 35, National Basketball Association v. SDC Basketball Club, 815 F.2d 562 (9th Cir. 1986)(No. 86-5891).

18. *Clippers*, 815 F.2d at 564. The NBA argued that Article 9A was a new constitutional provision codifying previous practice. *Id.* This practice was evidenced by a 37 year history in which every team move was preceded by approval of the NBA Board of Governors. Brief for Appellant at 24, National Basketball Ass'n v. SDC Basketball Club, 815 F.2d 562 (9th Cir. 1986)(No. 86-5891). The Clippers argued that Article 9A was rather an amendment to Article 9 that, by virtue of the NBA Constitution, required unanimous approval by the member teams. *Clippers*, 815 F.2d at 564. The Clippers thus argued that Article 9A was not properly adopted at the time of the Clippers' move, when the Clippers voted against it. *Id.*

19. *Clippers*, 815 F.2d at 564-65.

20. *Id.* at 564. Article 9 provided that no team could move into a territory in which another team operated without that team's approval. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* The Clippers complied with the NBA Constitution in that the Los Angeles Lakers agreed in writing to waive their rights under Article 9. *Id.* The NBA argued,

Rather, the league as a body must be permitted to consider franchise moves.[24] The Clippers argued that such consideration by the NBA would violate the antitrust laws.[25]

Finding no genuine issues of material fact, the district court concluded as a matter of law that the NBA had violated the antitrust laws, and therefore granted summary judgment for the Clippers.[26] From this judgment, the NBA appealed to the Ninth Circuit.[27]

III. PROCEDURAL BACKGROUND

The basic requirements for jurisdiction under the Federal Declaratory Judgment Act are an actual controversy and a dispute within the federal court's subject matter jurisdiction.

The United States Constitution and the Federal Declaratory Judgment Act require an actual controversy as a prerequisite to federal jurisdiction.[28] The Supreme Court has held that

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however, that the league must be permitted to consider team moves. *Id.* Article 9, it contended, limited the actions of the NBA, but did not prescribe the only limits on team moves. *Id.*

24. *Id.*

25. *Id.* at 565.

26. *Id.*

27. *Id.*

28. Article III, section 2, clause 1 of the United States Constitution states:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;-to all Cases affecting Ambassadors, other public Ministers and Consuls;-to all Cases of admiralty and maritime Jurisdiction;-to Controversies to which the United States shall be a party;-to Controversies between two or more States;-between a State and Citizens of another State;-Between Citizens of different States;-between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

The Federal Declaratory Judgment Act, 28 U.S.C. § 2201 (1983), provides:

> In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of Internal Reveune Code of 1954, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have

the controversy must be one that is appropriate for judicial determination.[29] Thus, the dispute must be definite and concrete, not abstract or hypothetical.[30] The Court has conceded that it would be difficult to fashion a test that would, in every case, determine the existence of an actual controversy.[31]

In declaratory relief actions, the Supreme Court has required a substantial controversy between parties with adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.[32] The Court has observed, however, that the difference between an abstract question and an actual controversy, under the Declaratory Judgment Act, is necessarily one of degree.[33] Thus, though both the U.S. Constitution and the Declaratory Judgment Act require an actual controversy before a federal court can exercise jurisdiction, the

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the force and effect of a final judgment or decree and shall be reviewable as such.

The Constitution requires "case or controversy;" the Declaratory Judgment Act requires an "actual controversy." For additional discussion of these concepts, *see* Annotation, *Case, Controversy, or Actual Controversy*, 40 L.Ed. 2d 783 (Law. Coop. 1975).

29. Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 239-42, *reh. den.* 300 U.S. 687 (1937). Moreover, the Court regards actual controversy under the Declaratory Judgment Act to mean the same as case or controversy under the constitution. *Id.* at 239. In Aetna, plaintiff insurance company issued defendant's spouse five insurance policies. *Id.* at 237. Plaintiff sought a declartory judgment stating that it was not obligated to pay under the policies because there had been a lapse in the premiums paid. *Id.* at 239. The lower court held that it lacked jurisdiction over the matter because there was no controversy between the parties. *Id.* at 236. The appeals court affirmed. *Id.* The Supreme Court reversed, finding that the complaint did in fact present an actual controversy. *Id.* at 244.

30. Maryland Casualty Co. v. Pacific Coal and Oil Co., 312 U.S. 270, 273 (1941). The difference between an abstract question and a controversy contemplated by the Declaratory Judgment Act is necessarily one of degree, and it would be difficult, if possible, to fashion a precise test for determining in every case whether there is such a controversy. *Id.*

31. *Id.*

32. *Id.* Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Id.* Petitioner Maryland Casualty issued an insurance policy to Pacific Coal and Oil Co., which purported to indemnify the insured in the event of an accident involving one of the company's trucks. *Id.* at 271. The Court held that a substantial controversy existed between the parties when they disputed the extent of coverage under the policy. *Id.* at 273. *See also*, Wickland Oil Terminals v. Asarco, Inc., 792 F.2d 887, 893 (9th Cir. 1986). In *Wickland*, a property owner sought declaratory relief against the previous owner. *Id.* The plaintiff asked the court to declare that the defendant was responsible for the hazardous waste materials present on the property. *Id.* at 889. Finding that the suit presented an actual controversy, the Ninth Circuit reversed the district court's dismissal of the claim, and remanded the case for trial. *Id.* at 893.

33. *Maryland Casualty*, 312 U.S. 270, 273.

Court has acknowledged that it is not always clear when an actual controversy will be present.[34]

In addition to an actual controversy, the court must have subject matter jurisdiction over the dispute.[35] The United States Constitution confers jurisdiction to the federal courts for all matters arising under the constitution or laws of the federal government.[36] To determine if the controversy presents a federal question, the U.S. Supreme Court has long adhered to the well-pleaded complaint rule.[37] The Court has held that this rule bars a plaintiff from invoking federal question jurisdiction by anticipating in the complaint a defense the defendant may assert.[38]

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34. *Id.*

35. Federal Declaratory Judgment Act, 28 U.S.C. § 2201 (1983). The Act requires an actual controversy within the court's jurisdiction. *Id.* One commentator has observed:

> When deciding where to file suit one of the first questions that must be answered is whether the court chosen has the power or competence to decide the kind of controversy that is involved. This requirement typically is stated in terms of whether the court has subject matter jurisdiction over the dispute and should be distinguished from questions of personal jurisdiction, which focus on the court's authority to enter a judgment binding on the particular defendants involved.

J. FRIEDENTHAL, M. KANE, AND A. MILLER, CIVIL PROCEDURE, § 2.1 (1985).

This discussion of subject matter jurisdiction shall be limited to federal question jurisdiciton. Diversity jurisdiction is not appropriate here because there are five NBA teams in California, including the Clippers. Thus, diversity is not complete as required by Chief Justice Marshall in Strawbridge v. Curtiss, 7 U.S. 267 (1806).

36. U.S. Const. art. III, § 2, cl. 1. This section states that the federal courts shall have jurisdiction over "Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority." *Id. See supra* note 28.

37. Gold-Washing and Water Co. v. Keyes, 96 U.S. 199 (1877). Keyes, a landowner in Northern California, filed suit in state court to restrain the defendants from conducting their hydraulic mining operation. *Id.* Hydraulic mining is a process by which water is sprayed, under high pressure, at a hillside to uncover the gold contained therein. *Id.* at 199-200. This causes the rivers below to become muddy. *Id.* at 200. Defendant sought removal to federal court, but was denied because the complaint did not present a federal question. *Id.* at 204.

38. Louisville and Nashville Railroad Co. v. Mottely, 211 U.S. 149 (1908). This case represents the classic illustration of the well-pleaded complaint rule. As settlement for injuries caused by the railroad, the Mottleys accepted free lifetime passes on the train. *Id.* at 250. This agreement was honored for 29 years, until 1907, when a federal statute was enacted prohibiting the issuance of free passes. *Id.* at 150-51. The Mottleys sued the railroad in federal court, seeking specific performance. *Id.* The lower court found for the Mottleys, but the Supreme Court reversed, holding that the Mottleys' complaint failed to raise a federal question. *Id.* at 154. The Court stated that it is not enough to anticipate a defense for a federally based claim. *Id.* at 153. For subject matter jurisdiction, the federal question must be raised in the complaint as a part of the plaintiff's case. *Id. See*

The Supreme Court has held that the well-pleaded complaint rule applies to declaratory relief actions as well.[39] Application of the rule in the context of an action for declaratory relief, however, is far more difficult.[40] The problem stems from the rigid rule that the federal question must appear on the face of the well-pleaded complaint.[41] In *Skelly Oil v. Phillips Petroleum Co.*,[42] the Court concluded that declaratory judgment actions should be heard by federal courts only if the coercive ac-

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also Effects Associates, Inc. v. Larry Cohen, 817 F.2d 72 (9th Cir. 1987). Plaintiff, a film production company, sued defendant for copyright infringement. *Id.* at 73. The district court dismissed the claim for lack of a federal question. *Id.* The Ninth Circuit reversed, holding that the claim presented a federal question under the federal copyright laws. *Id.* at 74. The court, citing Louisville and N.R.R. v. Mottley, 211 U.S. 149, 152, stated that " . . . a claim arises under federal law for purposes of federal question jurisdiction on the basis of a well-pleaded complaint, not from anticipation of possible affirmative defenses." *Id.* at 73.

39. Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59 (1978). Plaintiffs filed a complaint, seeking a declaration that the Price-Anderson Act, which placed the liability limit of a nuclear power plant at 560 million dollars, was unconstitutional. *Id.* at 67. The Supreme Court found that the federal courts had jurisdiction to hear the case. *Id.* at 71. It also found that the Price-Anderson Act was constitutional. *Id.* at 84. Justice Rehnquist, writing in concurrence, observed: "This Court has held that the well-pleaded complaint rule applied in *Mottley* is fully applicable in cases seeking only declaratory relief, because the Declaratory Judgment Act merely expands the remedies available in the district courts without expanding their jurisdiciton." *Id.* at 98.

40. J. FRIEDENTHAL, M. KANE, AND A. MILLER, CIVIL PROCEDURE § 2.4 (1985). *See also* Trautman, *Federal Right Jurisdiction and the Declaratory Remedy*, 7 VAND. L. REV. 445 (1954) (Examines the relationship between the Declaratory Judgment Act and federal question jurisdiction, and concludes that reforms are needed. Trautman reasons that determination of federal issues should not be determined solely from the plaintiff's complaint); Note, *Developments in the Law - Declaratory Judgments*, 62 HARV. L. REV. 787 (1949) (Examines development of the declaratory judgment as a remedy; nature and functions of declaratory relief; availability of the remedy in conjunction with federal question and other bases of subject matter jurisdiction; surveys recent cases); Comment, *Federal Question Jurisdiction and the Declaratory Judgment Act*, 55 KY L.J. 150 (1966) (Examines the nexus between federal question jurisdiction and the Declaratory Judgment Act. Concludes there is a need for greater judicial clarification of the relationship between the Declaratory Judgment Act and federal question jurisdiction); Note, *Federal Question Jurisdiction of the Federal Courts and the Declaratory Judgment Act*, 4 VAND. L. REV. 827 (1951) (Focuses on the relationship between the Declaratory Judgment Act and federal question jurisdiction. Concludes that the rule forbidding the anticipation of a defense was not designed to cover the Declaratory Judgment Act).

41. C. WRIGHT, A. MILLER, AND M. KANE, FEDERAL PRACTICE AND PROCEDURE, § 2767 (1984).

42. 339 U.S. 667 (1950). In *Skelly*, an oil company filed a complaint for declaratory relief against three oil producers in an effort to enforce a contract between the oil company and the producers. *Id.* at 670-71. The Supreme Court held that an action under contract does not raise a federal question, and therefore dismissed the case for lack of federal jurisdiction. *Id.* at 678-79. The Court also stated that the Declaratory Judgment Act is procedural only; it does not expand or limit the bounds of federal jurisdiction. *Id.* at 671-74.

tion that would have been necessary, absent the declaratory judgment procedure, could have been heard in federal court.[43] Thus, if a court would have had jurisdiction over an action brought by a plaintiff seeking a traditional form of relief, it would also have power to hear that plaintiff's declaratory relief action.[44] Similarly, a declaratory relief action seeking to test a defense is triable in the federal courts provided this defense would normally arise in an answer to a complaint which itself would properly raise a federal question.[45] In *Clippers*, the NBA was attempting to test its defense to the Clippers threatened antitrust action. The NBA wanted the Ninth Circuit to declare that the league would not be in violation of the antitrust laws if it sought sanctions against the Clippers.[46] In this type of declaratory relief action, where the plaintiff seeks protection from conduct on behalf of the defendant which would possibly violate federal law, the positions of the parties are reversed; the issue then becomes whether the declaratory relief defendant could raise a federal question in a complaint.[47] If yes, the dispute falls within the court's subject matter jurisdiction.[48]

If it is assumed that the federal courts had jurisdiction to hear this case, it must be determined whether the grant of summary judgment under Federal Rule of Civil Procedure 56 was

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43. *Id.* at 673-74. In *Skelly*, the Supreme Court held that the district court lacked jurisdiciton to entertain a federal declaratory claim seeking to establish what was in effect a reply to an anticipated federal defense. *Id.* With regard to *Skelly*, one commentator has observed: "In order to state a proper claim for declaratory relief under the [federal declaratory relief] statute, a complainant in a declaratory judgment action may assert rights that ordinarily would only be invoked as defenses or as replies to defenses in actions for traditional forms of relief." Waldman, *Federal Jurisdiction over Declaratory Suits Challenging State Controversy*, 79 COLUM. L. REV. 983, 987 (1979).

44. *Skelly*, 339 U.S. 667.

45. Note, *Developments in the law - Declaratory Judgments*, 62 HARV. L. REV. 787, 803 (1949). *See supra* note 40.

46. *Clippers*, 815 F.2d at 563.

47. Levin Metals Corp. v. Parr-Richmond Terminal Co., 799 F.2d 1312 (9th Cir. 1986). In *Levin*, the court stated:

> When a declaratory judgment plaintiff asserts a claim that is in the nature of a defense to a threatened or pending action, the character of the threatened or pendeing action determines whether federal jurisdiction exists with regard to the declaratory judgment action. If . . . the declaratory judgment defendant could have brought a coercive action in federal court to enforce its rights, jurisdiction exists for declaratory relief.

Id. at 1315. (For the facts to this case, *see infra* note 93).

48. *Id.* at 1315.

appropriate.[49] It is proper for a federal court to grant a motion for summary judgment only if there are no genuine issues of material fact.[50] Antitrust actions, by their very nature, are poorly suited for disposition by summary judgment.[51] In antitrust cases, questions of motive or intent, credibility, and conspiracy frequently prevent summary judgment from being entered because these issues involve subjective questions regarding state of mind that can only be decided after a full trial.[52] The Supreme Court has indicated that summary procedures should be used only sparingly in complex antitrust litigation.[53]

IV. BACKGROUND

In 1890, Congress approved the Sherman Act.[54] Comprised of several laws,[55] the Act was designed to control the exercise of private economic power by preventing monopolies, punishing

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49. FED. R. CIV. P. 56.

50. Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1961). The action was initiated in district court by Poller on behalf of an organization that once operated a local television station in Wisconsin. *Id.* at 467. Poller asserted that CBS violated the antitrust laws when it allegedly conspired with another local television station in an effort to monopolize the Milwaukee market. *Id.* The district court granted summary judgment to CBS, and the circuit court affirmed. *Id.* The Supreme Court, however, found that there were genuine issues of material fact and therefore reversed. *Id.* at 474. The Court stated that summary procedures should be used sparingly in complex antitrust litigation. *Id.* at 473. *See also* California Steel and Tube v. Kaiser Steel Corp., 650 F.2d 1001 (9th Cir. 1981). California Steel and Tube brought an antitrust action alleging that Kaiser Steel's acquisition of a steel tubing division violated the Sherman Act. *Id.* In reversing the district court's grant of summary judgment, the Ninth Circuit stated "that summary judgment is to be used sparingly in complex antitrust litigation in which motive and intent play leading roles." *Id.* at 1003, *citing* Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1961).

51. *Poller*, 368 U.S. at 473.

52. *Id.*

53. *Id.* at 473.

54. Sherman Antitrust Act, 15 U.S.C. §§ 1-7 (1983).

55. *Id.* Section 1 is of primary importance here. It provides:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal . . . Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

cartels, and otherwise protecting competition.[56] It is the freedom of competition that ostensibly promotes general welfare in the economy.[57]

The application of antitrust law to sports league restrictions on franchise movement is a recent development, and the Ninth Circuit has acknowledged that its application here is unusual.[58]

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56. Standard Oil v. FTC, 340 U.S. 231 (1951). Standard Oil sold gasoline to "jobbers" at 1.5 cents less per gallon than it did to retail gas stations. *Id.* at 235. ("Jobbers" were gas distributors who sold at both retail and wholesale prices. *Id.* at 235). The Supreme Court held that such activity did in fact have an adverse impact on competition, but was justified by Standard Oil's good faith belief that the price differential was necessary to retain the "jobbers" as customers. *Id.* at 246. Justice Burton, writing for the Court, commented, "The heart of our national economic policy long has been faith in the value of competition." *Id.* at 248. *See also* Balian Ice Cream Co. v. Arden Farms Co., 104 F. Supp. 796 (S.D. Cal. 1952), *aff'd* 231 F.2d 356 (9th Cir. 1955), *cert. denied* 350 U.S. 991 (1956), *reh'g denied* 351 U.S. 928 (1956). The United States District Court for the Central District of California held that the antitrust laws were not violated when an ice cream company cut prices, because there was no intent to destroy competition. *Id.* at 807. Chief Judge Yankwich stated, "the object of the antitrust law is to encourage competition." *Id.*

57. Northern Pac. Ry. v. United States, 356 U.S. 1, 4 (1958). In *Northern Pacific Railway*, the federal government brought suit to enjoin a railroad from the practice of "preferential routing." *Id.* at 3-4. Under this practice, the railroad would lease land on the condition that the lessee would ship all goods produced on the land via the railroad. *Id.* at 3. The government alleged that such routing imposed a restraint on trade, and was therefore in violation of the Sherman Act. *Id.* at 3-4. The Supreme Court agreed, and held that "preferential routing" was a violation of the antitrust laws. *Id.* at 12.

58. NBA v. SDC Basketball Club, Inc., 815 F.2d 562, 567 (9th Cir. 1987). Antitrust laws have been applied to sports leagues in other contexts, such as player contracts and the draft. *See* North Am. Soccer League v. National Football League, 670 F.2d 1249, (2nd Cir. 1982), *cert. denied*, 459 U.S. 1074 (1982) (Professional soccer league filed suit alleging a professional football league's ban on ownership by its members of teams in competing leagues violated the Sherman Act. Held: Sherman Act violated); Smith v. Pro Football, Inc., 593 F.2d 1173 (D.C. Cir. 1978) (Player alleged that the NFL draft violated the Sherman Act because it limited a player's ability to compete economically. Held: Draft has an anticompetitive impact on players); Mackey v. National Football League, 543 F.2d 606 (8th Cir. 1976) (Rule requiring a team which acquires a player in a trade to compensate the player's former team (The Rozelle Rule) was held to violate the Sherman Act); Kapp v. National Football League, 390 F.Supp 73 (N.D. Cal. 1974), *appeal vacated*, 586 F.2d 644 (9th Cir. 1978), *cert. denied*, 441 U.S. 907 (1979) (The "Rozelle Rule," as well as the draft rule, among other league practices, were deemed to violate the antitrust laws); Neeld v. National Hockey League, 594 F.2d 1297 (9th Cir. 1979) (Player argued that league rule banning one-eyed hockey players for safety reasons was anticompetitive. Held: Antitrust laws not violated); Brenner v. World Boxing Council, 675 F.2d 445 (2nd Cir. 1982) *cert. denied* 459 U.S. 835 (1982) (Boxing promoter was suspended by the World Boxing Council for violation of safety regulations. Held: No antitrust violation); Hayes v. National Football League, 469 F. Supp. 247. (C.D. Cal. 1979) (Use of a "standard player contract" form when a player signed with an NFL team did not result in any restraint of trade. Held: No antitrust violation); United States Football League v. National Football League, 634 F. Supp. 1155 (S.D.N.Y. 1986) (USFL

Nonetheless, the Ninth Circuit held in *Raiders I* that the National Football League had violated the antitrust laws when it attempted to prevent the Oakland Raiders from moving to Los Angeles.[59]

The *Raiders I* court held that the rule of reason antitrust analysis, and not the per se analysis, applies to sports league created restraints on franchise movement.[60] The expression "per se violation" refers to those activities which are manifestly anticompetitive, and therefore violate the antitrust laws.[61] These per se violations include price fixing, bid rigging, market division, and certain types of group boycotts.[62] Under the per se analysis, the court need only identify the activity complained of, and determine if it fits within one of the proscribed categories.[63] If the activity does not constitute a per se violation, the court must conduct the more elaborate inquiry necessary under the rule of reason analysis.[64]

When applying the rule of reason, the trier of fact examines all the surrounding circumstances to determine if the restraint tends to promote or suppress competition.[65] If the restraint pro-

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asserted that the existence of contracts between the NFL and the three major television networks violated the antitrust laws. Held: Antitrust laws not violated).

Interestingly, baseball is exempt from antitrust scrutiny. The Supreme Court first considered the application of federal antitrust law to professional sports in Federal Baseball Clubs, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922). The Court held that professional baseball is not involved in interstate commerce, and therefore is not subject to the Sherman Act. *Id.* at 209. The Court reached this conclusion even though teams from different states competed against one another. *Id.* at 207. Baseball's unique exemption status persists to the present day. Annotation, *Application of Federal Antitrust Laws to Professional Sports*, 18 ALR FED 489, 504 (1974).

59. Los Angeles Memorial Coliseum Comm'n v. National Football League, 726 F.2d 1381, 1398 (9th Cir.) *cert. denied*, 469 U.S. 990 (1984) [hereinafter *Raiders I*].

60. *Id.* at 1391.

61. National Soc'y of Professional Eng'rs v. United States, 435 U.S. 679, 692 (1978). *See infra* note 106.

62. ABA ANTITRUST SECTION, ANTITRUST LAW DEVELOPMENTS, 22 (1984).

63. Gough v. Rossmoor Corp., 585 F.2d 381, 386-89 (9th Cir. 1978), *cert. denied*, 440 U.S. 936 (1979). The owner of a furniture store brought an antitrust action against three condominium complexes alleging that they conspired to restrain trade by refusing to allow him to advertise in their paper. *Id.* at 383. The court held that there was no antitrust violation. *Id.* at 381.

64. Northern Pac. Ry. v. United States, 356 U.S. 1, 5 (1958). *See supra* note 57.

65. Chicago Bd. of Trade v. United States, 246 U.S. 231, 238 (1918). The Chicago Board of Trade adopted what is known as the "Call" rule. *Id.* at 237. This rule provided that no trading shall take place between the close of call and the opening of the trade session on the next business day. *Id.* Justice Brandeis found that the "Call" rule created

motes competition, it is reasonable.[66] Conversely, if the restraint suppresses competition, it is unreasonable and in violation of the antitrust laws.[67] In contrast to the per se approach, the mere existence of a restraint does not necessitate a finding of antitrust violations.[68]

The *Raiders I* court, citing *Kaplan v. Burroughs*,[69] held that the plaintiff, under the rule of reason analysis, must prove three elements to establish a prima facie antitrust case.[70] The plaintiff must show: (1) there was an agreement between two or more persons; (2) the agreement was intended to restrict or restrain competition or trade; and (3) that competition or trade was in fact hindered by the agreement.[71]

In *Raiders I*, the NFL asserted that it was not subject to the antitrust laws because it is a single entity.[72] As such, it was incapable of making an agreement with itself which was intended to keep the Raiders in Oakland. The Ninth Circuit held, however, that the NFL is not a single entity for antitrust purposes.[73] Rather, it is a league of twenty eight (28) teams - twenty two (22) of which voted to keep the Raiders in Oakland.[74] The Ninth Circuit concluded that the NFL's restraint on trade and compe-

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a restraint on trade. *Id.* at 239. In finding the restraint reasonable - and therefore not in violation of the antitrust laws - Justice Brandeis utilized the following test: "The true test of legality is whether the restraint imposed is such as merely regulates and thereby perhaps promotes competition or whether it is such as may suppress or even destroy competition." *Id.* at 238. *See also* Bork, *The Rule of Reason and the Per Se Concept: Price Fixing and Market Division*, 74 YALE L.J. 775 (1965) (An in-depth examination of the author's perspective on the appropriate role of the rule of reason and per se concept as applied to price fixing and market division).

66. *Chicago Bd.*, 246 U.S. at 238.

67. *Id.*

68. *Id.*

69. 611 F.2d 286, 290 (9th Cir. 1979), *cert. denied*, 447 U.S. 924 (1980). Kaplan was a trustee in bankruptcy for a data processing corporation. *Id.* at 267. He filed an antitrust action against Burroughs, a computer manufacturer, claiming that Burroughs had conspired with another data processing corporation to restrain trade. *Id.* at 288. Kaplan's suit was unsuccessful, however, because he failed to establish a relevant market in which the alleged restraint occurred. *Id.* at 296.

70. In *Clippers*, the establishment of these three elements was left to the district court on remand. *Clippers*, 815 F.2d at 570.

71. *Id.* at 567.

72. *Raiders I*, 726 F.2d at 1387. The first element of *Kaplan* requires an agreement. *Id.* at 1391. A single entity cannot conspire to agree with itself. *Id.* at 1387.

73. *Id.* at 1390.

74. *Id.* at 1387-90.

tition was unreasonable, and therefore violated the antitrust laws.[75]

In 1986, the Ninth Circuit rendered its decision in *Raiders II*.[76] In this action, the court held that the Raiders recovery from the NFL for violation of the antitrust laws must be off-set against the amount the NFL lost when the Raiders seized the Los Angeles area franchise opportunity.[77] Thus, through *Raiders I* and *Raiders II*, the Ninth Circuit developed an analytical framework for application of the antitrust laws in the area of sports league relocation rules. Utilizing this framework, the Ninth Circuit again considered the application of antitrust law to sports league created restrictions on franchise movement in the *Clippers* case.[78]

V. COURT'S ANALYSIS

A. PROCEDURE

In NBA v. SDC Basketball Club, Inc.,[79] both the Los Angeles Memorial Coliseum and the San Diego Clippers argued that there was no "actual controversy" which would allow federal jurisdiction over the NBA's request for declaratory judgment.[80] They claimed that since the NBA had taken no affirmative action to sanction the Clippers or deny them scheduling rights in Los Angeles, the issues of the case were not sufficiently refined to allow federal jurisdiction.[81] The defendants asserted that it was unlikely that the NBA would be willing to sanction the Clip-

75. *Id.* at 1401. Actually, the court affirmed the district court's judgment upholding the jury's verdict. *Id.* at 1398. It must be presumed, therefore, that all three Kaplan elements were proven to the satisfaction of the jury.

76. Los Angeles Memorial Coliseum Comm'n v. National Football League, 791 F.2d 1356 (9th Cir. 1986) [hereinafter *Raiders II*].

77. *Id.* at 1373.

78. *Clippers*, 815 F.2d at 563.

79. National Basketball Ass'n v. SDC Basketball Club, 815 F.2d 562, (9th Cir. 1987).

80. *Id.* at 565. The Clippers and the Los Angeles Memorial Coliseum were co-defendants in this action. *Id.*

81. *Id.* The defense asserted that the reasoning of Hendrix v. Poonai, 662 F.2d 719 (11th Cir. 1981), was applicable here. In *Hendrix*, a hospital sought a declaration that its refusal to hire a doctor would not violate the antitrust laws. *Id.* at 720. Since the hospital had not yet refused to hire the doctor, there was no actual controversy. *Id.* at 722. The Eleventh Circuit held that no jurisdiction existed over such an abstract question "based upon the possibility of a factual situation that may never develop." *Id.*

pers.[82] To resolve the actual controversy issue, the court used the test provided in *Maryland Casualty Co. v. Pacific Coal and Oil Co.*[83] There, the Supreme Court stated that declaratory judgments are justiciable if "there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment."[84]

The Ninth Circuit rejected the defendant's argument that the claim for declaratory relief was based on a hypothetical set of facts.[85] Rather, the court determined that the NBA's claim for declaratory relief was not overly speculative.[86] It found the NBA's complaint for declaratory relief to seek a determination which would, in essence, permit the league to evaluate and assess limits on franchise movement without violating the antitrust laws.[87] As further evidence of an actual controversy, the court stated that the defendants have been in direct conflict with the NBA on many issues.[88] The court, citing *Societe de Conditionnement en Aluminium v. Hunter Eng'g Co.*,[89] held that the claim for declaratory relief was justiciable due to the NBA's "real and reasonable apprehension" that any action on the Clippers move could result in antitrust liability.[90]

The Coliseum further attacked by asserting that the court had no federal question jurisdiction.[91] The Coliseum argued that the antitrust issues were in fact contract issues, and therefore

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82. *Clippers*, 815 F.2d at 566.

83. 312 U.S. 270, (1941). *See supra* notes 30-34.

84. *Maryland Casualty*, 312 U.S. at 23. *See supra* notes 30-34.

85. *Clippers*, 815 F.2d at 565-66.

86. *Id.*

87. *Id.*

88. *Id.* at 568. There were several genuine issues of fact: 1) The purpose of the restraint as demonstrated by the NBA's use of a variety of criteria in evaluating franchise movement; 2) the market created by professional basketball, which the NBA alleged is substantially different from that of professional football; 3) the actual effect the NBA's limitations on movements might have on trade; and 4) whether the mere requirement that a team seek NBA Board of Governor approval before it seizes a new franchise location violates the Sherman Act. *Id.*

89. 655 F.2d 938, 943 (9th Cir. 1981). In *Societe*, plaintiff brought an action seeking a declaratory judgment that a patent owned by the defendant was invalid. *Id.* at 940. The court held that there is a "case or controversy" if the plaintiff has a real and reasonable apprehension of liability. *Id.* at 944.

90. *Clippers*, 815 F.2d at 566.

91. *Id.*

should have been resolved in state court.[92] The court was not persuaded by this argument.[93] Citing *Levin Metals Corp. v. Parr-Richmond Terminal Corp.*,[94] the court said, "If . . . the declaratory judgment defendant could have brought a coercive action in federal court to enforce its rights, jurisdiction exists for declaratory relief."[95] Since the Clippers and the Coliseum had threatened the NBA with antitrust litigation for any interference with the move, the NBA could seek declaratory relief from that liability.[96] The court further held that the existence of a state contract defense did not defeat federal jurisdiction over the antitrust dispute.[97]

The court also held that the grant of summary judgment was inappropriate in this case.[98] Granting a motion for summary judgment is appropriate only if there are no genuine issues of material fact.[99] In this case, there were several antitrust issues in dispute which could be resolved only by a trier of fact.[100] Summary judgment is disfavored in heavily factual settings such as complex antitrust cases that involve issues of motive and intent.[101] While the proper case may warrant summary judgment, the court held that in this case there remain genuine issues of material fact, and that summary judgment should not have been granted.[102]

B. ANTITRUST

The Ninth Circuit's analysis of the antitrust issues was con-

92. *Id.* The contractual relationship is a joint venture under the laws of New York State. *Id.* at 564.

93. *Id.* at 566.

94. 799 F.2d 1312 (9th Cir. 1986). Parr-Richmond sold some contaminated land to Levin Metals. *Id.* at 1314. Levin Metals threatened to sue under the federal Comprehensive Environmental Response, Compensation, and Liability Act [hereinafter CERCLA]. *Id.* A suit by Levin Metals would be within the court's federal question jurisdiction. *Id.* at 1315. Therefore, the court held, a counterclaim by Parr-Richmond seeking declaratory relief under CERCLA would also fall within the court's jurisdiction. *Id.*

95. *Id.* at 1315.

96. *Clippers*, 815 F.2d at 566.

97. *Id.*

98. *Id.* at 566-67.

99. *Id.* On review, the court will view the facts in the light most favorable to the nonmoving party. *Id.* at 567.

100. *See supra* note 87.

101. *Clippers*, 815 F.2d at 567. *See supra* notes 49-53.

102. *Clippers*, 815 F.2d at 567. *See supra* note 87.

sistent with the precedent established in *Raiders I* and *Raiders II*.[103] The court asserted that the resolution of the Clipper's case would be controlled by those opinions.[104] It rejected the defendants' contention that a restriction on franchise movement in and of itself violates the antitrust laws.[105]

Pursuant to *Raiders I*, the court held that the antitrust analysis of a sports league's franchise relocation rule is governed by the rule of reason.[106] To be successful, the antitrust plaintiff must establish that the procompetitive attributes of a restraint are outweighed by its anticompetive attributes.[107] If such is the case, the restraint will be deemed unreasonable.[108]

The *Clippers* court — again following the lead of the *Raiders* court — asserted that the antitrust plaintiff must meet the three elements of *Kaplan*.[109] The *Raiders* court had carefully examined the structure of professional football using the *Kaplan* standard.[110] It concluded that the relevant market for professional football, the history and purpose of the franchise movement rule, and the lack of justification for the rule under the ancillary restraint doctrine supported the jury's verdict.[111] In so

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103. *Clippers*, 815 F.2d at 567-69.

104. *Id.* at 567.

105. *Id.*

106. *Id. See supra* notes 60-68.

107. National Soc'y of Professional Eng'rs v. United States, 435 U.S. 679, 691 (1978). This antitrust action was brought by the United States to nullify an association's cannon of ethics prohibiting bidding by its member engineers. *Id.* at 681. The key inquiry is whether the restraint will promote competiton, or suppress it. *Id.* at 690. If the restraint tends to regulate and thereby enhance competition, it will be deemed reasonable. *Id.* at 691. If the restraint tends to suppress and thereby diminish competition, it will be deemed unreasonable. *Id.*

108. *Id.* at 691.

109. *Clippers*, 815 F.2d at 567. *See supra* notes 69-71, and accompanying text.

110. *Clippers*, 815 F.2d at 567.

111. *Id.* Analysis of violations under section I of the Sherman Act requires inquiry into several complex matters. There must be proof of a contract, combination, or conspiracy; proof that the restraint is unreasonable; and proof that the restraint affects interstate commerce. *Id. See supra* note 28, and accompanying text. The most difficult of these inquiries is whether the restraint is reasonable. The court must decide whether the case should be analyzed under the per se approach, or under the rule of reason. The Raiders cases were analyzed under the rule of reason. *See supra* notes 60-71, and accompanying text. Therefore the court had to determine whether there was a restraint, and if there was, whether it was reasonable. *See supra* notes 60-71, and accompanying text.

In the *Clippers* case, the Ninth Circuit merely determined that the rule of reason should be applied to the dispute. *Clippers*, 815 F.2d at 568. The actual analysis under the rule of reason, however, was to be conducted by the district court on remand. *Id.* at

doing, the *Raiders I* court did not establish an absolute rule for sports leagues.[112] Rather, it examined the facts before it and concluded that the NFL violated the antitrust laws.[113]

Since the district court did not apply the rule of reason analysis, the Ninth Circuit reversed the summary judgment, and remanded the case for trial in accordance with the dictates of *Raiders I* and *Raiders II*.[114]

VI. CRITIQUE

A. PROCEDURE

To bring a declaratory relief action in federal court, the plaintiff must demonstrate the existence of an actual controversy and argue that the case raises a federal question.[115]

The U.S. Constitution[116] and the Declaratory Judgment Act[117] require that the parties have an actual controversy before the federal courts will have jurisdiction.[118] When the Clippers moved to Los Angeles in 1984, the League did not have a restriction against team moves.[119] The NBA adopted Article 9A and brought suit against the Clippers after the team had relocated.[120] The League had previously adopted no restrictions which could have prevented the Clippers move, nor hindered the franchise's ability to compete.[121] The Clippers argued that the team had no reason to file an antitrust action, and therefore the NBA's complaint for declaratory relief must fail for lack of an actual controversy.[122] An understanding of the sequence of events is very

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570. *See supra* notes 102-13, and accompanying text.

112. *Clippers*, 815 F.2d at 567.

113. *Id.*

114. *Id.* at 570.

115. *See supra* notes 28-48, and accompanying text.

116. U.S. Const. art. III § 2, cl. 1. *See supra* note 28.

117. Federal Declaratory Judgment Act, 28 U.S.C. § 2201 (1982). *See supra* note 28.

118. Maryland Casualty Co. v. Pacific Coal and Oil Co., 312 U.S. 270, 273 (1941). The parties must have adverse legal interests. *Id. See supra* notes 28-48, and accompanying text.

119. National Basketball Ass'n v. SDC Basketball Club, 815 F.2d 562, 564 (9th Cir. 1987).

120. *Id.*

121. *Id.* The League's constitution required the Clippers to secure permission from the Los Angeles Lakers. *Id.* The Clippers complied with this provision. *Id.*

122. *Id.* at 565. Arguably the Clippers' move violated the team's obligations under

important to this argument. When the Clippers moved to Los Angeles, the league arguably had no mechanism to restrict them.[123] The NBA sought a declaratory judgment stating that the league would not be in violation of the antitrust laws if they attempted to sanction the Clippers.[124] But the Clippers were already in Los Angeles, and therefore had no reason to file an antitrust action against the NBA. They had moved prior to the adoption of Article 9A and therefore, arguably, there was no actual controversy.[125] The NBA countered that Article 9A was merely a codification of previous practice and therefore enforceable against the Clippers.[126] The court, recognizing that the Clippers had threatened the NBA with an antitrust suit for any efforts to prevent the move — including attempts to sanction the team after the move — appropriately determined that there was an actual controversy.[127]

In addition to an actual controversy, the complaint raised a federal question.[128] When seeking a traditional form of relief, the well-pleaded complaint rule requires that the complaint raise a federal question, rather than assert what the defendant might raise as a defense.[129] Were this a traditional action, the court would not have had jurisdiction because the antitrust issue would arise only as a defense to the NBA's efforts to sanction the Clippers.[130] A declaratory judgment action, however, may be entertained in federal court if, in addition to an actual controversy, the subject matter of the suit falls within the court's jurisdiction.[131] In this case, an actual controversy existed involving the Sherman Act, presenting a federal question which gave the court subject matter jurisdiction. If this were a traditional action, it could have been brought by the Clippers, but not the

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the joint venture laws of the State of New York. Though this contract issue could be resolved in state court, it does not negate the federal court's antitrust jurisdiction. *Id.* at 566.

123. *Id.* at 564.

124. *Id.*

125. *Id.*

126. *Id. See supra* note 18.

127. *Clippers*, F.2d at 568.

128. Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 772 (1950). *See supra* notes 42-44, and accompanying text.

129. *Id.*

130. *See supra* notes 28-48, and accompanying text. In a traditional action, the NBA could not have brought an antitrust action against the Clippers in federal court. *Id.*

131. *Id.*

NBA. The Declaratory Judgment Act, however, permits the NBA to raise the antitrust question on the face of its complaint.[132]

Since the case presented an actual controversy involving an issue within the subject matter jurisdiction of the federal courts, it is apparent that the court had the power to hear this case.

B. ANTITRUST

The Ninth Circuit's opinion carefully follows the dictates of *Raiders I* and *Raiders II*, and appears to be an appropriate application of antitrust law. The *Raiders I* court found that the NFL was not immune from the antitrust laws as a single business entity.[133] Moreover, the *Raiders I* court held that the rule of reason analysis governs a professional sports league's efforts to restrict franchise movement.[134] Consistently, the *Clippers* court determined that the rule of reason analysis applies to the NBA's attempt to control franchise moves,[135] and that whether the NBA is a single entity for purposes of antitrust analysis remains a question of fact.[136]

Raiders I did not hold that league created restrictions on franchise movement constitute per se violations of the antitrust laws.[137] More narrowly, the *Raiders I* court found that a jury, applying the rule of reason standard, could reasonably have found that the NFL violated antitrust laws in restraining the Raiders from moving to Los Angeles.[138]

Whether the NBA restrained the Clippers from moving to Los Angeles or not is a difficult question of fact.[139] The Clippers asserted that they were in Los Angeles before the NBA created rules regarding franchise moves.[140] As such, the NBA could not

132. *Id.*

133. Los Angeles Memorial Coliseum Comm'n v. National Football League, 726 F.2d 1381, 1390 (9th Cir.), *cert denied*, 469 U.S. 990 (1984) [hereinafter *Raiders* I].

134. *Id.* at 1390-92. *See supra* notes 58-71, and accompanying text.

135. *Clippers*, 815 F.2d at 567-68.

136. *Id.*

137. *Id.* at 567.

138. *Id.*

139. *Id.*

140. *Id.* at 564.

have restrained the move.[141] Conversely, the NBA argued that Article 9A of the NBA Constitution essentially codified past practice within the NBA, and prohibited the Clippers from moving.[142] Thus, it is unclear whether the Clippers were restricted from moving, much less whether there were any unreasonable restraints on trade. These are questions of fact which will be answered by a jury on remand.

The district court's assertion that the NBA "could not possibly win this case" is without foundation.[143] Even if the Clippers do in fact establish that restrictions on trade or competition were created by the NBA Constitution, the NBA need only establish that those restrictions were reasonable.[144] The mere existence of a restraint on trade does not constitute an antitrust violation.[145] Recognizing this, the Ninth Circuit appropriately reversed the summary judgment and remanded the case for trial.[146]

VII. CONCLUSION

The Ninth Circuit is the leading authority on the application of antitrust law to sports league created restraints on franchise movement. Though the results of the *Raiders* and *Clippers'* cases may ultimately be different, the underlying framework of analysis has been applied consistently in each opinion. In the *Raiders I* and *Raiders II* opinions, the court established the method for antitrust analysis in this area. The *Clippers* opinion reasserted and confirmed the soundness of the court's antitrust approach. Specifically, the Ninth Circuit has recognized that the activities of the NFL and the NBA are within the flow of interstate commerce. As such, they are subject to the dictates of the federal antitrust laws. An attempt by a league to restrict teams from relocating is not a per se violation of the Sherman Act. Rather, the court will apply the rule of rea-

141. *Id.*
142. *Id.*
143. *Id.* at 565.
144. *Id.* at 567. To establish reasonableness, the NBA need only show that the procompetitive effects of the restraint outweigh its anticompetitive effects. *See supra* text note 65, and accompanying text.
145. *See supra* text accompanying note 65.
146. *Clippers*, 815 F.2d at 570.

son analysis to determine, on a case by case basis, if the restriction constitutes a violation of the antitrust laws. This approach is more beneficial than the per se approach because it recognizes the team's legitimate interest in moving to a market where greater profits may be realized, as well as the league's legitimate interest in restricting franchise moves to enhance the league's economic stability. Though it is certain that antitrust law was not created with this situation in mind, the analysis used by this court makes its application here seem clearly appropriate.

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