

A New Test of the Commissioner's Authority to Act "In the Best Interests of Baseball": The Los Angeles Dodgers' Bankruptcy¹

Feb. 2004, Frank McCourt, a Boston real estate developer, purchased the Los Angeles Dodgers from Rupert Murdoch's News Corporation. News Corp. had lost \$165 million over the course of the six years since purchasing the team from the O'Malley family, who had owned and operated the team since the Brooklyn days of the early 1950s. They sought to sell the franchise (Reports, W. 2003). The News Corp deliberated over McCourt's proposal, which was highly leveraged by loans from the News Corp. and Bank of America. With minor alteration, the News Corp. accepted the \$430 million purchase price. The agreement then hinged upon the approval of Major League Baseball. On January 30, 2004 the owners approved McCourt's purchase, finding the offer fell within the confines of MLB financial regulations (Press, A. 2004). Over the course of the next five years, McCourt struggled to repay his debt due to his profligate lifestyle and imprudent financial decisions, including the diversion of \$100 million from the team's funds used to support his family's personal lavish spending. His financial situation worsened when wife, then-Dodgers' CEO of the Dodger's and alleged part owner, Jamie McCourt, filed for divorce, claiming half-ownership in the franchise. After the over-leveraging of the Dodger's Club and a \$30 million personal loan from a potential media deal, Major League Baseball Commissioner Bud Selig intervened, based on his authority under the MLB Constitution to act to promote "the best interest of baseball" (Hoffarth, T. 2011, May 04). McCourt's over-leveraging was inconsistent with of the company also goes against the Fiscal Responsibility clause of his ownership agreement with Major League Baseball, which requires each MLB club to comply with any rules pertaining to fiscal arbitration. Specifically, it appeared that McCourt had allowed the Dodgers go violate the terms of the Debt Service Rule, which prevents teams from exceeding 10 times its annual earnings in debt and strives to prevent over-leveraging of a club. Selig has authority over enforcing this law (Shaikin, B. 2011 June 02). The Commissioner's intervention has raised a series of legal issues concerning whether or not the intervention was an appropriate use of the Commissioner's power, and whether the Commissioner has treated McCourt fairly in comparison to other owners with whom Bud Selig has a closer personal relationship.

Frank McCourt's tenure as Los Angeles Dodgers' owner began in 2004. The leveraging of the purchase meant that After McCourt purchased the club, he was required to make debt payments periodically to the News Corp, and at the same time he began extracting money from the Dodger franchise for personal use, a sum totaling \$100 million (Risling, G. 2011, June 17). In 2006, McCourt's financial woes became apparent, as he was unable to repay the loans from News Corp used to purchase the Dodgers, forcing him to sell Boston real estate property that had been pledged as collateral in Boston to avoid a default on his loan from News Corp. (Van Voorhis, S 2006). Then his personal life began deteriorating and in October of 2006, he and his wife Jamie McCourt, the CEO and alleged part owner, filed for divorce. The divorce proved to be potentially the most costly legal battle in California's history (Shaikin, B. 2010, May 05). Jamie claimed part ownership of the Dodgers, citing the Marital Property Agreement signed in March 2004,

¹ The assistance of Chelsea Kearney is acknowledged with appreciation.

where they agreed to divide the property in order to protect the seizure of personal assets if the Dodgers' debt became insurmountable (Munson, L. 2010). As While the divorce proceedings continued, McCourt was in the process of negotiating an agreement with FOX Television Network in order pay debts. The agreement was worth \$3 billion over a 17-year period, and a \$385 million upfront payment to finance the teams payroll and legal fees (Sandomir, R.). While this media deal was pending the approval by the Commissioner's office required by the MLB constitution, McCourt received a \$30 million personal loan from FOX in order to secure his April monthly payroll. Selig saw the "personal loan" as poor financial judgment, and on April 25, 2011 appointed former Texas Rangers president Tom Schieffer as trustee, ordering the Dodgers to seek Schieffer's approval for any transactions exceeding \$5000 (Hoffarth, T.2011, May 04).

The divorce litigation finally resulted in a settlement between Jamie and Frank McCourt, contingent upon Selig's approval of the FOX deal. Then on June 20, 2011 Selig vetoed the television deal, concluding it was against the "best interest of baseball," clause in the MLB Constitution. He said the FOX deal provided an immediate fix to the Dodger's financial woes, but was viewed as an inadequate in the long term. Also Selig claimed that McCourt's deal with FOX was motivated by personal issues such as payments for the mounting legal fees from the divorce (Hoffarth, T. 2011 June 20).

Seeing no other way to provide financially for the franchise, McCourt filed for bankruptcy on June 27, 2011. After bankruptcy court proceedings, a judge ruled that McCourt must negotiate with MLB in order to ensure financial stability instead of obtaining it through an outside investment group (Chase, R 2011). The Dodgers and MLB reached an agreement as mandated by the judge, calling for a \$150 million in loans with a 7% interest rate (Shaikin, B. 2011 August 05). The financial future and divorce proceedings are still in negotiations. McCourt was then faced with selling the Dodgers, securing loans in order to stabilize the team or facing expulsion by a ¾ majority of his fellow owners, pursuant according to the MLB Constitution Article V, Section 2.

Analysis

The MLB constitutional provisions authorizing the Commissioner "to investigate...any act, transaction, or practice charged, alleged, or suspected to not be in the best interest of the national game of Baseball..." gives Bud Selig the authority to take action as he sees fit for the preservation of the game. He has the power to ensure that all decisions made by, owners, executives, and players benefit the league as a whole. The power, as granted by the constitution, allows for Selig to veto any action or decision he sees as being detrimental. The broad scope of power in the phrase "best interest" can constitute arguments in which the commissioner's decisions can be considered bias. Prior to the Bud Selig versus Frank McCourt battle, commissioners had not used the "best interest of baseball" clause on the basis of poor management.

Allowing the commissioner to intervene has several repercussions in the McCourt case. First, by intervening and imposing a guardian to the Dodger's financial assets, Selig halted the financial buildup of the debt. McCourt was putting the Dodger's franchise into financial ruin by over-leveraging the team. By lessening McCourt's powers, he potentially stopped the demise of a franchise. Selig's intervention could also be seen as over-stepping the boundaries of the commissioner-owner relationship. The owner's job is to manage a franchise. When Selig intervened, stripping McCourt of many of his powers as owner, and replacing him with his personal choice of a suitable guardian, he could be seen as overriding the decision by the other 29 Major League Clubs that were granted ownership prerogatives to elect McCourt. Using this model as precedent may in turn change the dynamic of the powers the owners and executives have by creating an authoritarian commissioner.

In addition to general claims of improper intervention, McCourt alleged that Selig's refusal to approve the television deal and appointing a trustee was seen as an act of personal bias. No trustee has been appointed for the New York Mets, even after owner Fred Wilpon was sued in connection to the Bernie Maddoff scandal (McCann, M. 2011). So why in a similar situation did Selig use the "best interest clause" in McCourt's case and not Wilpon?

Finally, rather than pursue these matters in litigation, the parties eventually reached an agreement permitting McCourt to sell the teams on terms favorable to his interests. In this agreement, both parties will undergo a "court-supervised process" in order to sell the team and the media rights to "maximize value for the Dodgers and McCourt" (Risling, G. 2011, November 2).

The McCourt versus the Selig battle raises many questions pertaining to the vagueness of "the best interest of baseball" clause. Bud Selig in his opinion acted accordingly to the constitution, appointing advisors and vetoing decisions for the betterment of the league. McCourt sees it as an abuse of power, using this clause as a front to advance Selig's cause to remove him as owner of the Dodgers.

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