“Until I Die, I Will be Suing the NBA”: An Analysis of The Major Legal Issues Raised by the Donald Sterling Saga

Jeffrey Levine, University of Louisville
Craig Esherick, George Mason University
Jordan Kobritz, State University of New York at Cortland

Legal aspects  Friday, June 5, 2015  20-minute oral presentation (including questions) (Bytowne)
Abstract 2015-121  1:20 PM

On August 12, 2014 the National Basketball Association [the “NBA” or the “League”] Board of Governors officially approved the transfer of the Los Angeles Clippers from the Sterling Family Trust to Steve Ballmer (Witz, 2014). Ballmer, the former Microsoft chief executive, won the right to purchase the Clippers for a record price of $2 billion (Raine, 2014). However, events leading up to this purchase included nasty and credibility shaking litigation involving a controversial and litigious owner, allegations of racism and a debate centered on the League’s legal right to sell the team without the current owner’s consent.

The relevant facts are as follows: On April 25, 2014 an audio recording of Donald Sterling making racially insensitive and offensive remarks during a conversation with his purported mistress was released to the public via the gossip website TMZ (Goyette, 2014). The recording and Sterling’s subsequent behavior created a media firestorm that engulfed the entire NBA, arguably threatening irreparable harm to the League’s brand. Clippers’ sponsors severed ties with the team and League sponsors threatened to do likewise; fans threatened to boycott the team and the League (Armour, 2014); Clippers’ players staged a protest of Sterling during the pre-game warmup of a Clippers-Golden State Warriors playoff game (Boren, 2014); and the Players’ Union sought legal advice on how to deal with the controversy (Golliver, 2014).

On April 29, 2014, after a brief investigation, the NBA responded by (1) imposing a $2.5 million fine on Sterling, the maximum allowed under the League’s Constitution, (2) announcing that the League would sell the Clippers, and (3) banning Sterling from the NBA for life (Bolch, 2014). The trustees of the Sterling Family Trust were Sterling and his estranged wife, Shelly. After the NBA appointed an interim CEO to run the team, Mrs. Sterling began probate proceedings to declare her husband mentally incapacitated. If successful, the declaration would leave her as the sole voting trustee, authorized to sell the team as she saw fit (McCann, 2014). Mr. Sterling threatened legal action against the NBA and his wife.

There are two primary issues central to the Sterling Saga: (1) whether the League had the authority under the NBA’s governing documents to take such unprecedented measures and terminate an owner’s interest without consent; and (2) whether Donald Sterling possessed the competency to continue in his capacity as trustee of the Sterling Family Trust. The NBA Constitution allows for termination of a current owner’s interest in a franchise pursuant to three-fourths vote by the NBA Board of Governors (the “Board”) (NBA Const. Art. 13). Termination of a member’s ownership interest is authorized if that owner “[w]illfully violate[s] any of the provisions of the [NBA] Constitution and By-Laws, resolutions, or agreements of the Association” (NBA Const. Art. 13(a)).

The NBA Constitution also contains language stating that the League may foreclose an owner’s interest if he “[f]ail[es] or refuse[s] to fulfill its contractual obligations to the Association, its Members, Players, or any other third party in such a way as to affect the Association or its Members adversely” (NBA Const. Art. 13(d)). Also relevant given the fine imposed on Sterling by the League, the Board may terminate an owner’s interest if he fails “to pay any dues or other indebtedness owing to the Association within thirty (30) days after Written Notice from the Commissioner of default in such payment” (NBA Const. Art. 13(c)).

Ultimately, the Clippers were sold to Ballmer not by the League, but by Shelly Sterling as the sole trustee of the Sterling Family Trust after Donald Sterling was declared mentally incompetent by a California probate court (Dillon & Red, 2014).
This presentation examines several legal and policy issues raised by the Donald Sterling Saga. Part one reviews the NBA governing documents and how they were applied in this case; Part two examines the probate court issues with respect to the Sterling Family Trust and Mr. Sterling’s mental capacity; Part three compares the NBA’s governing documents with Major League Baseball’s governance procedures as they relate to the facts of the Sterling Case and the ability of a professional sports league to terminate an owner’s membership; and Part four examines the Sterling Saga’s policy implications on the NBA and other sports leagues and possible unintended consequences of the League’s actions moving forward.