

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2012

DANA D. GARNER, AS PERSONAL, ETC., ET AL.,

Appellants,

v.

Case No. 5D10-1838

LORILLARD TOBACCO COMPANY, ET AL.,

Appellees.

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Opinion filed March 9, 2012

Appeal from the Circuit Court
for Volusia County,
William A. Parsons, Judge.

Steven L. Brannock, Celene H. Humphries,
and Tyler K. Pitchford of Brannock &
Humphries, Tampa, and Gregory D.
Prysock, of Morgan & Morgan, Jacksonville,
and Keith R. Mitnik, of Morgan & Morgan,
Orlando, for Appellant.

David L. Ross, Elliot H. Scherker and Brigid
F. Cech Samole, of Greenberg Traurig, P.A.,
Miami, and Dawn Giebler Milner, of
Greenberg Traurig, L.L.P., Orlando, for
Appellees Lorillard Tobacco Company.

Kelly Luther, Maria H. Ruiz and Giselle
Gonzalez Manseur, of Kasowitz, Benson,
Torres & Friedman, L.L.P., Miami, for
Appellees Liggett Group L.L.C. & Vector
Group Ltd.

Jeffrey E. Bigman, of Smith, Hood, Loucks,
Stout, Bigman & Brock, P.A., Daytona
Beach, and David B. Thorne and Jennifer M.

Voss, of Shook, Hardy & Bacon, L.L.P., Tampa, and William P. Geraghty and Frank Cruz-Alvarez, of Shook, Hardy & Bacon, L.L.P., Miami, for Appellees Phillip Morris USA, Inc.

PER CURIAM.

Appellants challenge the summary judgment in favor of Lorillard Tobacco Company, Philip Morris USA, Inc., R.J. Reynolds Tobacco Company, Vector Group, Ltd., Inc., and Liggett Group, LLC (collectively "Appellees") in this *Engle*¹-progeny case. Appellants argue that: (1) summary judgment was premature; (2) summary judgment was improper because Appellees did not prove the absence of fact issues; and (3) summary judgment was improper as to the civil conspiracy count. We affirm the trial court's summary judgment on all counts, except the civil conspiracy count. As to that count, we adopt the well-reasoned opinion of our sister court in *Rey v. Philip Morris, Inc.*, 75 So. 3d 378 (Fla. 3d DCA 2011).²

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

GRIFFIN, TORPY and LAWSON, JJ., concur.

¹ *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246 (Fla. 2006).

² At oral argument, counsel alerted this Court that Vector Group, Ltd., had not been a defendant in *Engle* and might have other defenses not yet addressed below. For clarity, our decision today only addresses issues that were properly before us.