

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

JANUARY TERM 2012

LINDA FRANKLIN, AS PERSONAL, ETC.,

Appellant,

v.

Case No. 5D10-1848

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, James D. Clark and
Don Greiwe of Alley, Cark & Greiwe,
Tampa, Gregory D. Prysock of Morgan &
Morgan, P.A., Jacksonville, and Keith R.
Mitnik of Morgan & Morgan, P.A., Orlando,
for Appellant.

David L. Ross, Elliott H. Scherker and
Brigid F. Cech Samole of Greenberg
Traurig, P.A., Miami, for Appellee Lorillard
Tobacco Company.

Kelly Anne Luther, Maria H. Ruiz and
Giselle Gonzalez Manseur of Kasowtiz,
Benson, Torres & Friedman, LLP, Miami,
for Appellees Liggett Group, LLC and
Vector Group Ltd.

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, and Jeffrey E. Bigman of Smith, Hood, Loucks, Stout, Bigman & Brock, P.A., Daytona Beach, for Appellee Philip Morris USA, Inc.

PER CURIAM.

Appellant challenges 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. Appellant argues 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.