

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

JANUARY TERM 2012

PHILIP D. HETZNER, AS PERSONAL, ETC.,

Appellant,

v.

Case No. 5D10-2005

LORILLARD TOBACCO COMPANY, ET AL.,

Appellees.

Opinion filed March 9, 2012

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

Christopher V. Carlyle, B.C.S., and
Shannon McLin Carlyle, B.C.S., of The
Carlyle Appellate Law Firm, The Villages,
Rod Smith and Dawn M. Vallejos-Nichols
of Avera & Smith, LLP, Gainesville, for
Appellant.

Frank Cruz-Alvarez, David B. Thorne and
Jennifer M. Voss of Shook Hardy & Bacon,
L.L.P., Tampa, Gary L. Sasso of Carlton
Fields, P.A., Tampa, and Jeffrey E.
Bigman of Smith, Hood, Loucks, Stout,
Bigman & Brock, P.A., Daytona Beach, for
Appellee Philip Morris USA, Inc.

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

Karen H. Curtis of Clarke Silverglate, P.A.,
Miami, for Liggett Group LLC and Vector

Group, Ltd., Inc.

PER CURIAM.

Philip D. Hetzner ("Appellant"), as personal representative for his deceased wife, Carol E. Hetzner, appeals the trial court's order granting summary judgment in favor of Philip Morris USA, Inc., Liggett Group, LLC, and Vector Group Ltd., Inc., in this *Engle*¹-progeny case. Appellant raises three issues on appeal. In issues I and III, Appellant challenges the grant of summary judgment on all counts. 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). It is unnecessary that we address the remaining issue regarding the affidavit of Appellant's expert.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.