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Appeal No. : 209 U.S. 423

Appellant : Shawnee Compress Co.

Respondent : Anderson

Judgement :

Shawnee Compress Co. v. Anderson - 209 U.S. 423 (1908)
U.S. Supreme Court Shawnee Compress Co. v. Anderson, 209 U.S. 423 (1908)

Shawnee Compress Company v. Anderson

No. 140

Argued March 2, 3, 1908

Decided April 13, 1908

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APPEAL FROM THE SUPREME COURT

OF THE TERRITORY OF OKLAHOMA

SYLLABUS

Where the Supreme Court of the Territory of Oklahoma reversed the judgment of the trial court, the reviewing power of this Court is limited to determining whether there was evidence supporting the findings and whether the facts found were adequate to sustain the legal conclusions.

In this case, the Supreme Court of the territory having found that a lease, being made to further an unlawful enterprise, was void as an unreasonable restraint of trade and as against public policy, this Court sustains the judgment, there being proof supporting the conclusions to the effect that the lessor company agreed to go out of the field of competition, not to enter that field again, and to render every assistance to prevent others from entering it, other acts in aid of a scheme of monopoly also being proved.

It is not necessary to determine whether the supreme court of the territory based its judgment holding such a lease void, on the common law, on the Sherman law, or on the statutes of the territory; the restraint placed upon the lessor was greater than the protection of the lessee required.

17 Okl. 231 affirmed.

This suit was brought in the District Court of the County of Pottawatomie, Territory of Oklahoma, by appellees as stockholders of the Shawnee Compress Company against appellants to cancel a lease made by the Shawnee Compress Company to the Gulf Compress Company.

The original petition alleged that the compress companies were, respectively, corporations of Oklahoma and the State of Alabama; that the plaintiffs, appellees here, were minority stockholders of the Shawnee Company; that certain of the stockholders of the Shawnee Company, claiming to be its officers,

"conceived the idea of leasing the entire property and business of said company, together with its goodwill and the right to the business thereof to said defendant, Gulf Compress Company, a foreign corporation;"

that subsequently the

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same stockholders, claiming to be the directors of the corporation, in certain meetings and by certain resolutions, executed the purpose. These meetings were alleged to be invalid as not being in conformity with the bylaws, and that the proceedings therein were "wholly illegal and beyond the powers and authority of the said stockholders and directors of said corporation;" that the corporation was organized to construct and operate a cotton compress in the City of Shawnee, and that its officers and stockholders were not authorized to execute a lease for a period of years, vesting in another and foreign corporation the rights, duties, and business of the company, and that the lease was void as against the rights of plaintiffs, being minority stockholders of the company. A copy of the lease was attached to the petition.

The petition was amended, making the allegations somewhat fuller, and alleged that appellants Stubbs and Beatty, who assumed to act, respectively, as president and secretary of the company, and certain other stockholders who joined with them in the negotiation of the lease, were induced thereto by certain advantages personal to themselves, and not by the interest of the company. It was also alleged that the "exigencies of the business" of the company did not demand or justify the lease, and that its revenues for the season 1904-1905, over and above taxes and insurance, notwithstanding negligent and incompetent management, were $7,485.89, and, plaintiffs expressed the belief, could be made greater for the years covered by the lease. It was alleged that the Gulf Compress Company was in the business of leasing and operating competing compresses for the purpose of monopolizing, as far as possible, the business of compressing cotton in a large portion, if not all, the cotton-raising districts of the United States, and that the lease was procured from the Shawnee Company in pursuance of said scheme, and other leases of other compresses were also secured for like purposes, and that the Gulf Company is, in its operation and method of conducting business, a trust, combine, and conspiracy, in restraint of trade

and commerce, in violation of the federal antitrust law and the antitrust law of the Territory of Oklahoma, and that it is the design of the Gulf Compress Company to increase the charge of compressing cotton, and that it will be able to enforce such charges by reason of the fact that it will control all of the compresses in the territory.

There was a demurrer to the petition, which was overruled. An answer was then filed which in detail asserted the validity of the proceedings preceding the execution of the lease; that the company was indebted in the sum of $17,250 -- $6,000 to the Shawnee National Bank and $11,250 to the Webb Press Company, Limited, which was past due; that its creditors were pressing for payment, and that the lease was necessary in order to procure money by which to pay the Shawnee Bank and to secure the extension of time on the indebtedness due the Webb Press Company, and that, for these reasons, the negotiations for the lease were entered into and the lease finally made. And it is alleged that the consideration paid was fair and reasonable, and for the best interest of the stockholders of the Shawnee Company; that defendants could procure said second mortgage money in no other way, and that the property of the Shawnee Company would have been sold at a great sacrifice unless the lease had been made.

It is alleged that appellees are firms of cotton buyers, and, in order to obtain an unfair advantage over other buyers, have conspired together for the purpose of forming a monopoly of all the compresses in the territory and destroying competition in compressing, and, in order to carry out the conspiracy, have for more than six months endeavored to obtain a majority of the stock of the Shawnee Company, and, knowing that Beatty and Stubbs were involved and in need of money, have in all ways oppressed said Beatty and Stubbs to compel them to sell their stock to appellants for an inadequate consideration and conspired to compel the Shawnee Company, knowing it was involved and its demands pressing, to sell and convey its property to them for the inadequate consideration of $25,000.

And it is alleged that the lease was made to defeat such conspiracy. Other plans of the appellees to harass the Shawnee Company are averred.

The case went to trial on the issues thus formed, and resulted in a judgment for defendants (appellants here). The judgment recited that

"the court having heard all the evidence offered . . . , and, being fully advised in the premises, finds for the defendants and against the plaintiffs that the allegations of the petition of plaintiffs are not supported by the law and the evidence."

A motion for a new trial was denied, and the case was then taken to the supreme court of the territory, which court reversed the judgment of the court below, and the case was remanded to the district court with instructions to that court to render judgment for plaintiffs in the case (appellees here) in accordance with the opinion of the supreme court, and the prayer of the amended petition.

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MR. JUSTICE Mc KENNA, after making the foregoing statement, delivered the opinion of the Court.

The supreme court of the territory, in its opinion, discussed only two of the questions urged upon its consideration, to-wit, (1) the legal power of the Shawnee Compress Company to execute the lease, and (2) the purpose in its execution to secure a monopoly of the business of compressing cotton and to unlawfully restrict competition. Of the first, the court said:

"We find no express authority to lease set out in the articles of incorporation, but we are nevertheless of the opinion the weight of authority is that, when a strictly private corporation finds it cannot profitably continue operations, it may lawfully make a lease of its entire property for a term of years. "

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The court cited cases, and continued: "It is only when such exigencies exist as necessitate or render appropriate such or similar action that the right can be exercised." And it was observed that, while there was no special finding of fact

"in that regard by the trial court, yet this feature must necessarily have been considered in the light of the evidence introduced at the trial and the judgment based thereon."

The court further said that it found "ample authority in the record for the action," and, following the rule "often reiterated," the court further said: "We must hold that, where the record contains some evidence to support the finding of the trial court," the judgment will not be disturbed.

The ruling sustaining the power of the Shawnee Company to execute the lease is attacked by appellees, but we do not find it necessary to express an opinion upon it on account of the view we entertain of the second proposition.

In passing on the second proposition, the supreme court decided adversely to the view taken by the trial court. The court therefore must either have considered that there was not some evidence supporting the conclusions of fact of the trial court or must have deemed the principles of law which the trial court upheld were not sustained by its conclusion of fact. As our review, in the nature of things, is confined to determining whether the court below erred, it follows that our reviewing power under the circumstances is coincident with the authority to review possessed by the court below, and therefore we are confined, as was the court below, to determining whether there was some evidence supporting the findings, and whether the facts found were adequate to sustain the legal conclusions. *Southern Pine Lumber Co. v. Ward,* 208 U. S. 126 .

The court, in its opinion, gives a summary of the pleadings and states the salient points of the lease to be that it conveys all of the property of the Shawnee Company to the Gulf Company, that the Shawnee Company covenants that it will not, "directly or indirectly, engage in the compressing of cotton

within fifty miles of any plant operated by the" Gulf Company, and that the Shawnee Company "agrees and pledges" to the Gulf Company

"its goodwill, moral, and real support, and that it, individually and collectively, will render the . . . [Gulf Company] every assistance in discouraging unreasonable and unnecessary competition."

And from the evidence, the court deduces the following conclusions (p. 236):

"It further appears from the evidence at the trial that C.C. Hanson is the president of both the Atlanta Compress Company and the Gulf Compress Company, being a stockholder in each, and is the one who negotiated the lease in question. That the Atlanta Compress Company operates in the states of Alabama, Georgia, and Florida, and was organized and is owned and controlled solely by the carriers, for their benefit. That the board of directors and stockholders of said corporation are composed entirely of railroad officials. That the Atlanta Company controls the operation of twenty-five plants. That the Gulf Compress Company is a close corporation, chartered in Mobile, Alabama, and operating in the States of Alabama, Mississippi, Tennessee, Louisiana, Arkansas, Indian Territory, and Oklahoma, and controlling the operation of twenty-seven compresses in those states, located at various points therein. That none of the Gulf Compress Company's plants and the Atlanta Compress Company's compresses are operated at the same points."

"It is further disclosed by the evidence that the capital stock of the Gulf Company, as originally incorporated, was $25,000, but that it has, within the past year, been increased to $1,000,000, of which $600,000 is treasury stock. That its field of operation has been rapidly extended from Alabama to all the cotton-growing territory; that it is at the present time engaged in the purchase or leasing of compresses at various points, and, as testified to by its president, is 'prepared to buy or lease, whichever proposition suits us best.' It appears from the evidence that negotiations conducted by Mr. Hanson with Stubbs and Beatty for the lease of the Shawnee

plant were in pursuance of an effort to avoid, 'directly or indirectly, the possibility, if not probability, of unnecessary and unreasonable competition.'"

"It is further disclosed by the testimony that the carrier pays for the compression of cotton, incorporating the cost thereof in its tariff. That tariffs for the hauling of cotton are established by the railroad as well as hauling districts or territories, within which the haul of cotton must be one way, or otherwise the higher rate, denominated the terminal rate, applies, rendering it unprofitable to ship to other than the established point in the hauling district."

And the court says that from these facts and others referred to supporting them, it cannot be doubted that the object of the Gulf Company and its allied corporation, the Atlanta Compress Company, "is to prevent competition in compression of cotton throughout the cotton-producing states." The court declared it to be its judgment that

"not only is the enterprise in which the Gulf Compress Company is engaged an unlawful one as now conducted, but the contract in question in this case, being made to further its objects and purposes, in void on the ground that it is in unreasonable restraint of trade and against public policy."

This conclusion is the direct antithesis of that drawn by the trial court, and we are brought to the inquiry, is it justified?

The evidence cannot be given in detail, and we may say at the outset that there is no question as to its weight -- we are not confronted with conflicting testimonies. This branch of the case is constituted of the lease, principally of the testimony of one witness, the president of the Gulf Company, and of facts which are not disputed. The other testimony, a great deal of which is documentary, is mostly directed to the financial condition of the Shawnee Company as the inducement of the lease and to the proceedings taken to authorize its execution. There is also testimony directed against the purpose and motives of the appellees, and some tending to show that one of the officers and stockholders of the Shawnee

Company

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had been loaned money by the president of the Gulf Company whereby control of the Shawnee Company might be obtained and the lease authorized. This, however, we may put out of view.

It may be conceded that the evidence shows that the Shawnee Company was financially embarrassed, and its condition might have justified a lease of its property if that had been all it did. It however covenanted for its assistance in discouraging competition against its tenant, and bound itself not to "directly or indirectly engage in the compressing of cotton within fifty miles of any plant operated by the tenant." So far it covenanted to aid in the restraint of trade. It went out of the field of competition; it covenanted not to enter into that field again, and it pledged itself to render every assistance to prevent others from entering it. And it could not misunderstand the purpose for which its lease was solicited. It was told by the president of the Gulf Compress Company. In a letter dated April 18, 1905, addressed to it by the president of that company, among other inducements, the following was expressed:

"Our getting together on a lease proposed means the avoiding for each other, directly or indirectly, of the possibility, if not probability, of unnecessary competition."

And what was the condition to which the Shawnee Company contributed? It appears from the letter just mentioned that the writer was president of two companies which operated "forty-odd compresses." Twenty-seven of them, it appears from the testimony, were operated by the Gulf Company, six only of which it owned. Most of the latter were acquired in the summer preceding the lease, and the president of the Gulf Company testified that "we are prepared to buy or lease, whichever proposition suits us best." To what object was the assembling in one ownership or management so many compresses, and keeping the means and declaring the purpose of acquiring more? The answer would seem to be obvious.

The first effect would necessarily be the cessation of competition. If there was left a possibility of other compresses' being constructed,

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it was made less by the power that could be opposed to them. The Gulf Company was a close corporation which, starting in Alabama, rapidly extended from Alabama to all the cotton-growing territory. These are some of the points of the testimony which, taken in connection with other testimony and with the terms of the lease and the restriction upon the Shawnee Company, support the conclusions of the supreme court of the territory. This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress -- of a mere addition to its business. It presents acts in aid of a scheme of monopoly. *Swift & Co. v. United States,* 196 U. S. 375 .

It does not appear whether the supreme court based its judgment upon the common law, the Sherman law, or the statutes of Oklahoma. The appellees insist that the law applicable to the case comes from all three sources. The Sherman law provides that

"Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia . . . is hereby declared illegal."

And it has been decided that not only unreasonable, but all direct restraints of trade are prohibited, the law being thereby distinguished from the common law. But it is contended that it was held in *United States v. Trans-Missouri Freight Association,* 166 U. S. 290 , and in *United States v. Joint Traffic Association,* 171 U. S. 505 , that the sale of the goodwill of a business with an accompanying agreement not to engage in a similar business was not a restraint of trade within the meaning of the Sherman act.

Counsel has discussed with an affluent citation of cases the principle which regulates such contracts and insists that the lease by the Shawnee Company conforms to such principle. The principle is well understood. The restraint upon one of the parties must not be greater than protection to the other

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party requires, and it needs no further explanation than is given in *Gibbs v. Baltimore Gas Company,* 130 U. S. 396 . The supreme court of the territory recognized the principle, but said:

"Tested by the general principles applicable to contracts of this character, this agreement is far more extensive in its outlook and more onerous in its intent than is necessary to afford a fair protection to the lessee."

And in this conclusion the statute of the territory may have had its influence. That statute makes void every contract by which anyone is restrained from exercising a lawful profession, trade, or business, except, however, that one who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or part thereof. Wilson's Statutes,. 819, 820. It is clear that the lease of the Shawnee Company to the Gulf Company does not literally comply with this requirement. Whether it can be limited by construction, as it is contended by appellants it can be, we need not decide. As written, it was, no doubt, considered with other considerations by the court in concluding that

"the real, the veritable, purpose actuating the officers of the Gulf Compress Company, as disclosed by its plan of organization and mode of operation, and as manifested by the circumstances surrounding the conduct of its business and the results of its management by them is, beyond reasonable question, to place within their power the control of the compress industry by purchasing or leasing those plants which are advantageously located in each of the hauling districts or territories established by the carriers [railroads] in their cotton tariffs. Within certain boundaries, the haul must be one certain way, and when the Gulf Company seizes

the strategic point under its leases, competition within that district is annihilated."

Decree affirmed.