UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE BROILER CHICKEN ANTITRUST LITIGATION	No. 16 C 8637 Judge Thomas M. Durkin

ORDER

Nothing that happens in the pending Track One trials will undermine the Court's grants of summary judgment to Agri Stats, Foster Farms, Claxton, Perdue, and Wayne Farms. For this reason, the Court assumes that those judgments are final for purposes of Federal Rule of Civil Procedure 54(b). Based on the judgments' finality, the End User Class has moved for entry of those judgments under Federal Rule of Civil Procedure 54(b), so they can be immediately appealed. Specifically, the End Users seek to appeal the Court's grant of summary judgment on the End Users "rule of reason" claims under the Sherman Act.

A final judgment under Rule 54(b) can only be immediately appealed if the Court finds "that there is no just reason for delay." Whether a delay is just "is left to the sound judicial discretion of the district court to determine the appropriate time when each final decision in a multiple claims action is ready for appeal." *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980). Because this discretion is "to be exercised in the interest of sound judicial administration," an important consideration is whether the "appellate court would have to decide the same issues more than once even if there were subsequent appeals." *Id.* In other words, the

ultimate goal in application of Rule 54(b) is "to prevent piecemeal appeals in cases which should be reviewed only as single units." *Id.* at 10.

Plaintiffs argue that the Court's earlier entry of judgment on claims against Rabobank is "particularly instructive." R. 6816 at 4. That judgment was entered on a grant of a motion to dismiss under Rule 12(b)(6). Rabobank was added as a defendant late in the case, so the grant of Rabobank's motion to dismiss came well after the Court had denied motions to dismiss the original 14 defendants. Permitting appeal of the dismissal of the Rabobank claims allowed those claims to catch-up to the rest of the case because the judgment was entered with enough time for the Seventh Circuit to decide the appeal before trial. Had the Seventh Circuit reversed, Rabobank could have caught up to the summary judgment process, and if denied, participated in the trial that is taking place at this very moment.

Here, by contrast, the End Users ask the Court to permit the rule of reason claims to skip ahead of related claims that remain in this Court set for trial on the same underlying facts. The End Users' rule of reason claims are premised on the allegation that Defendants' sharing of information through Agri Stats had a "substantial anticompetitive effect" such that it violated the Sherman Act. The End Users per se claim is also based, in part, on the same information-sharing allegation. The End Users allege that sharing Agri Stats reports was one of the primary means by which Defendants facilitated the alleged price fixing agreement. Both the per se and rule of reason claims require evaluation of the anticompetitive nature of Defendants' use of Agri Stats reports. Both claims require evaluation of the content

of Agri Stats reports and the potential impact of that information on the industry. Both claims require analysis of economic evidence to understand how the improper use of the Agri Stats reports may have impacted the market. In other words, the per se and rule of reason claims are not separate claims, but merely different theories of liability for the same defendant conduct. This is not analogous to the limited allegations against Rabobank.

Considering the inextricable relationship of the per se and rule of reason claims, the fact that the Court granted summary judgment to some defendants on some claims is not an adequate reason to permit immediate appeal. Indeed, the End Users argue that if the Seventh Circuit reversed the grant of summary judgment on the rule of reason claims to Agri Stats, Foster Farms, Claxton, Perdue, and Wayne Farms, the Court would be required to reconsider its grant of summary judgment on the rule of reason claims to the other defendants still in the case. *See* R. 6816 at 5. This shows that like the per se and rule of reason claims, the defendants in this case are also inextricably linked. Because of this link, any decision from the Seventh Circuit on the rule of reason claim would necessarily at least discuss the facts of the case and thus have implications for the per se claim. These implications would be difficult to assess and implement in the midst of trial, further complicating an already complex case.

By the same token it would be unfair to ask the Seventh Circuit to address the rule of reason claims apart from the per se claims. In such a complicated case, the Seventh Circuit must receive a complete record for any appeal from summary

judgment rulings and trial, not piecemeal issues. The Seventh Circuit should receive appeal in a similar posture to how this Court received summary judgment—as a single unit. Permitting appeal while trials of related facts are in progress adds unnecessary complexity to the case. And the Seventh Circuit should not be forced to digest the facts of this already complex case more than is necessary.

The Court entered judgment against Rabobank because doing so allowed the claims against Rabobank to catch up to the rest of the case and keep the claims in line together. Here, by contrast, the End Users ask the Court to permit their rule of reason claims to skip ahead. An appellate ruling on the rule of reason claims at this point in the case would not clarify the issues remaining in the case. Rather, an appeal could increase the complexity of an already complex case. The risk of increasing complexity, both for this Court and the Seventh Circuit, means that entry of judgment under Rule 54(b) is not in the interests of judicial economy.

Therefore, the End Users' motion for entry of judgment [6717] is denied.

ENTERED:

Thomas M Durkin

Honorable Thomas M. Durkin
United States District Judge

Dated: September 25, 2023