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Maximum Price Fixing Agreements and the Sherman Anti-Trust Act

P. T. Liamos, Jr.

MAXIMUM PRICE FIXING AGREEMENTS AND THE SHERMAN ANTI-TRUST ACT

The petitioner brought suit in a United States District Court in Indiana for treble damages under the Sherman Anti-Trust Act.[1] The complaint charged that the defendants conspired not to sell to the complianant unless it agreed to their fixed maximum prices and obligated themselves not to sell over prices set by the defendants. It was further alleged and proved that the plaintiff refused to join in this plan and as a conclusion was denied the liquor products of the defendants. The jury rendered a verdict for the plaintiff. Appeal to the Court of Appeals for the Seventh Circuit resulted in a reversal,[2] the ground being that fixing maximum prices furthered and promoted competition rather than restricting or impeding competition. The case was then taken to the Supreme Court. *Held,* the judgment of the Court of Appeals must be reversed and that of the trial court affirmed. The conspiracy alleged and proved violated the Serman Anti-Trust Act. *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.,* 71 S. Ct. 259.

Under the Sherman Anti-Trust Act, a combination or conspiracy entered into for the purpose and with the corresponding effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se.[3] The reasonableness of the prices fixed or the desirability of price stabilization in the particular industry is of no importance in determining the validity of the combination or conspiracy.[4] The fact that the price agreements are not arbitrary but are designed to maintain prices at the market level or some other fair and equitable standard does not prevent the practice from violating the Sherman Anti-Trust Act.[5] Today's fair price may readily become unfair tomorrow or next week.[6] Minimum price agreements have been held illegal and void under the Sherman Anti-Trust Act.[7] The agreements need not be express but may be implied from the acts of the parties.[8] Reasonableness of the prices is no defense[9] nor necessity of price stabilization a defense.[10] Likewise financial ruin of the defendant is no defense for a conspiracy to fix prices.[11] Maximum price argreements are illegal.[12] The fact that the

1. 15 U.S.C.A. Sec. 1.
2. Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc., 182 F. (2d) 228, (7th Cir. 1950).
3. United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S. Ct. 811, 84 L. Ed. 1129 (1940).
4. Ibid.
5. Ibid.
6. Ibid.
7. United States v. Paramount Pictures, 334 U.S. 131, 68 S. Ct. 915, 92 L. Ed. 1260 (1948).
8. Ibid.
9. United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S. Ct. 811, 84 L. Ed. 1129 (1940).
10. Ibid.
11. United States v. National Wholesale Druggist Assn., 61 F. Supp. 590 (N.J. 1945).
12. Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc., 340 U.S. 211, 71 S. Ct. 259, 95 L. Ed. 186 (1951).

plaintiff sought to form a conspiracy to cut prices is no defense.[13] The defendant in the name case could have brought suit under the Sherman Anti-Trust Act to break the conspiracy.[14]

The gathering and dissemination of information regarding cost, production, or prices do not, however, come within the prohibitions of the Act and are not in themselves illegal, though this would tend to make prices more uniform throughout the industry.[15] If the publication is designed for the attainment of an illegal end such as price fixing, the publication is illegal.[16]

The Supreme Court has laid down a hard and fast rule, price agreements violate the Sherman Act; the benevolent effect is immaterial, they are illegal per se. The reasoning is sound, maximum price agreements do not help or benefit the public but only the manufacturer. The public should not be the victim. Price fixing by agreement of the manufacturers does not allow the cost of goods to be dictated by competition and the market, thus keeping prices at an arbitrary level for the financial advantage of industry's owners.

P. T. LIAMOS, JR.

WILLFUL ABANDONMENT AND ENFORCEMENT OF A MECHANICS' LIEN

Plaintiff brought this action to recover judgment, and to enforce said judgment for foreclosure of a mechanics' lien which had been filed against the defendant's real property. Under the terms of the contract the plaintiff agreed to move, alter and repair the defendant's house, furnish all labor, and complete the contract in October, 1946. The defendant was to furnish all materials. The plaintiff failed to perform upon the agreed date, but continued to work upon the dwelling from time to time until December 15, 1946, at which time he willfully and without cause abandoned the work leaving a substantial part of the contract unfinished. *Held,* that abandonment is a fact made up of an intention to abandon, and the external act by which the abandonment is carried into effect. Where a contractor fails to perform a considerable part of the contract, his failure, regardless of his intentions, constitutes a bar to the enforcement of a lien for the work performed. This rule is applied in the more recent cases, and it seems clear that the plaintiff's labor lien ceased to be enforceable

13. Ibid.
14. Ibid.
15. Maple Flooring Manufacturers' Association v. United States, 268 U.S. 563, 45 S. Ct. 578, 69 L. Ed. (1925).
16. United States v. Swift and Co., CCH Trade Reg. Service (9th ed.) 1941-1943, pg. 53, 382 (N.D. Ill. 1942).