1979

Keene Corporation v. R. W. Taylor Steel Company et al : Brief of Plaintiff-Respondent in Opposition to Petition for Rehearing

Utah Supreme Court

R. Brent Stephens; Richard K. Crandall; Attorneys for Defendants and Appellants;
Chris McCarthy; Attorneys for Plaintiff and Respondent;

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

- -

KEENE CORPORATION,
a corporation,

Plaintiff and
Respondent,

vs.

15787

R. W. TAYLOR STEEL
COMPANY, a corporation,
RALPH W. TAYLOR and
LOU JEAN M. TAYLOR,

Defendants and
Appellants.

- -

FILED

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BRIEF OF PLAINTIFF-RESPONDENT KEENE CORPORATION IN OPPOSITION TO DEFENDANTS-APPELLANTS' PETITION FOR REHEARING

Appeal from Judgment of the Second Judicial
District Court, Weber County, State of Utah
The Honorable John H. Wahlquist

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CASES AND AUTHORITIES CITED

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STATEMENT OF THE CASE

By unanimous opinion filed April 13, 1979, this Court held and determined that the Defendants could not assert the defense that Keene had violated the federal antitrust laws to a claim by Keene for the agreed price of goods sold, accepted, and delivered and, therefore, that Defendants were not entitled to a stay of this action pending the outcome of a lengthy and protracted antitrust action pending in Federal Court.

DISPOSITION IN THE LOWER COURT

A summary of the proceedings in the District Court of Weber County is set forth in the Brief of Plaintiff-Respondent Keene Corporation herein and the Court is respectfully referred thereto.

RELIEF SOUGHT

Keene seeks the denial of Defendants' Petition for Rehearing so as finally to terminate Defendants' nonpayment of the long overdue and admitted debt which is the subject of this action.

STATEMENT OF FACTS WITH CITATIONS TO THE RECORD

A summary of each fact Keene believes relevant to the disposition of this action, together with full and complete citations to the record appears in the Brief of Keene Corporation herein and the Court is respectfully referred thereto.

ARGUMENT

1.

THE DISTRICT COURT AND THIS COURT WERE JURISDICTIONALLY EMPOWERED TO PREVENT THE ASSERTION BY DEFENDANTS OF A DEFENSE IN THIS ACTION THAT KEENE VIOLATED THE FEDERAL ANTITRUST LAWS AND DEFENDANTS WILL LOSE NO DEFENSE, VALID OR INVALID, IN BEING REQUIRED TO PAY THE AGREED PRICE OF GOODS SOLD, ACCEPTED, AND DELIVERED BEFORE THE RESOLUTION OF AN ANTITRUST ACTION PENDING IN FEDERAL COURT.

Defendants, in their Brief in Support of Petition for Rehearing (page 6), accuse this Court of being "Procrustean" and committing "technical subterfuge" in its Opinion of April 13, 1979.

Defendants continue by resurrecting the same arguments they presented to this Court in their opening Brief, Reply Brief, and oral argument in the apparent hope that they can make those arguments persuasive by repetition alone. Since Defendants have presented nothing new, the purpose of their Petition for Rehearing only can be further to delay the payment of their long overdue and admitted debt. Keene respectfully submits that the Findings of Fact and Conclusions of Law of the District Court and this Court's Opinion of April 13, 1979, obviously are correct, and Defendants' Petition for Rehearing should be denied.

Insofar as Keene is able to understand Defendants' arguments in their Brief in Support of Its Petition for Rehearing, they can be summarized as follows:

1) This Court's determination in its April 13, 1979 Opinion that no basis existed in the record in this action to find that Grating, Inc.'s contracts of purchase and sale with Keene fell within the narrow ambit of circumstances where the antitrust defense has been permitted, in effect enforced federal antitrust law, which this Court has no power to do under Section 15 of the Clayton Antitrust Act, 15 U.S.C.A., Section 15.

2) Since this Court merely should have dismissed the antitrust defense without prejudice, it also should have stayed the enforcement of the judgment in this action until the resolution of the federal antitrust action.

It is clear from Defendants' Brief in Support of the Petition for Rehearing that Defendants' entire argument fails if this Court is empowered to make the decisions it did in this case. In its Opinion in this case, this Court did not purport to enforce the federal antitrust laws. What it did determine was that on the basis of the evidence disclosed by the record there was no basis "to compel a finding that Grating's contracts of purchase from Keene were inherently illegal, nor that enforcing collection of the stated purchase price for the steel products would be invoking the powers of the Court to aid an unlawful activity." (Opinion, p.2.) In this decision, the Court was neither enforcing nor construing the antitrust laws. Rather, it was following principles of law as ~~enumerated~~ enunciated by the federal courts, including the United States Supreme Court, as well as by the overwhelming majority of other state courts that have considered the same problem. (See cases cited at footnote 6, page 2, of this Court's Opinion.)

As pointed out in Keene's Brief, most state courts when faced with an antitrust defense, have proceeded to determine whether the facts as alleged would fall within the narrow situation where such a defense has been permitted based on the federal statutes, as that statute and its application have been construed by the United States Supreme Court. To follow and apply to particular allegations or evidence principles of law as laid down by the United States Supreme Court, is not only within the

jurisdiction of this Court, but also is an important part of its duty. Such procedure by a state court does not involve construction nor enforcement of the federal antitrust laws.

Defendants' argument to the contrary would lead to an absurd result. Whenever confronted with a defense based on the federal antitrust statute in a simple action for breach of contract, the state court must roll over and play dead, since, according to the defendants, it would have no jurisdiction to proceed but would have to wait upon some future and indefinite adjudication in a federal court.

Indeed, Bruce's Juices, Inc. v. American Can Co., 330 U.S. 743, 67 S.Ct. 1015, 91 L.Ed. 1219 (1947), one of the United States Supreme Court cases relied upon by this Court in its Opinion herein, was an appeal from the Florida State Supreme Court. In that case, the Supreme Court affirmed the holding of the Florida Supreme Court that under the facts alleged an anti-trust defense could not be asserted to a claim for the agreed price of goods sold and delivered because violations of the Sherman Act did not inhere in the particular contract there in suit. 330 U.S. at 755. Moreover, in each case, except the first, cited by thie Court in Footnote 6 on page two of its Opinion, a state court reached the same result.

In its Opinion this Court performed exactly the same analysis as other state courts have done when presented with a

similar situation. This Court correctly determined that the record herein did not support a finding that the purchase orders and invoices which were the subject of this action reflecting a contract for the agreed price of goods sold and delivered were inherently illegal or involved the precise conduct made illegal by the Sherman Act, as that Act had been construed by the federal courts. That should be the end of the matter.

Defendants in this action need no stay to see what another court may or may not do in the future, since this Court clearly had the power to hold as it did in its Opinion in this case. However, even assuming the contrary and, further, assuming that Grating, Inc. is successful in its antitrust defense to Keene's Counterclaim in the federal court action, defendants' request for a stay of this action still would make no sense. That would mean that Grating, Inc. also would have been successful as Plaintiff with regard to its antitrust claims against Keene because the antitrust defense by Grating, Inc. and its antitrust claim against Keene are the same. Thus, Grating, Inc. would have received a judgment against Keene for three times the damage to Grating, Inc.'s business or property. How Defendants here could be prejudiced by that result is impossible to understand. That judgment would have absolutely no effect on the judgment entered in this action. That judgment would not somehow magically render the judgment in this action void, as asserted by Defendants.

Obviously, Keene cannot collect the judgment in this action against trade account guarantors and also collect the same debt against Grating, Inc., the primary obligor, in another action, and Keene has no intention of attempting to do so. It is, of course, the purest fiction and a sham attempt by Defendants to elevate form over substance for them to attempt to distinguish Grating, Inc., R. W. Taylor Steel Co., and Ralph W. Taylor from one another. R. W. Taylor is the president and sole shareholder of both R. W. Taylor Steel Co. and Grating, Inc.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that Defendants' Petition for Rehearing should be denied.

DATED this 31st day of May, 1979.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By _____
Dennis McCarthy

By _____
David A. Greenwood

CERTIFICATE OF MAILING

I hereby certify that two copies of the foregoing Brief of Plaintiff-Respondent Keene Corporation In Opposition To Defendants-Appellants' Petition For Rehearing was mailed this ___ day of May, 1979, postage prepaid, to:

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