Maple Flooring Manufacturers Association v. United States

268 U.S. 563 (1925)

Mr. Justice STONE delivered the opinion of the Court.

By bill in equity filed March 5, 1923, the United States asked an injunction restraining the defendants, . . . from violating section 1 of the Act of Congress of July 2, 1890, . . . commonly known as the Sherman Act.

The defendants are the Maple Flooring Manufacturers' Association, an unincorporated 'trade association'; 22 corporate defendants, members of the association, engaged in the business of selling and shipping maple, beech, and birch flooring in interstate commerce. . . . [T]he several individual representatives of the corporate members of the association; and George W. Keehn, secretary of the association. . . .

Estimates . . . indicate that in the year 1922 the defendants produced 70% of the total production of [maple] types of flooring. [T]he percentage [had] gradually diminished during the five years preceding [from] 74.2%. . . . The defendants own only a small proportion of the total stand, in the United States, of maple, beech, and birch timber from which the various types of flooring produced and sold by defendants is manufactured.

In March 1922, the corporate defendants organized the defendant the Maple Flooring Manufacturers' Association. [F]or many years prior to that time, and certainly since 1913, a substantial number of the corporate defendants have participated actively in maintaining numerous successive trade associations of the same name, which were predecessors of the present association.

The oral testimony and documentary evidence have covered a wide range and have reached a great volume which it will be impossible, within the limits of an opinion, to review in detail. The defendants have engaged in many activities . . . which are admittedly beneficial to the industry and to consumers, such as co-operative advertising and the standardization and improvement of its product. The activities, however, of the present association of which the government complains may be summarized as follows:

> (1) The computation and distribution among the members of the association of the average cost to association members of all dimensions and grades of flooring.
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> (2) The compilation and distribution among members of a booklet showing freight rates on flooring. . . .
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> (3) The gathering of statistics which at frequent intervals are supplied by each member of the association to the secretary of the association given complete information as to the quantity and kind of flooring sold and prices received by the reporting members, and the amount of stock on hand, which information is summarized by the secretary and

> transmitted to members without, however, revealing the identity of the members in connection with any specific information thus transmitted.
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> (4) Meetings at which the representatives of members congregate and discuss the industry and exchange views as to its problems.

Before considering these phases of the activities of the association, it should be pointed out that it is neither alleged nor proved that there was any agreement among the members of the association either affecting production, fixing prices, or for price maintenance. Both by the articles of association and in actual practice, members have been left free to sell their product at any price they choose and to conduct their business as they please. Although the bill alleges that the activities of the defendants hereinbefore referred to resulted in the maintenance of practical uniformity of net delivered prices as between the several corporate defendants, the evidence fails to establish such uniformity.

[I]t was not seriously urged before this court that any substantial uniformity in price had in fact resulted from the activities of the association. [However], it was conceded by defendants that the dissemination of information as to cost of the product and as to production and prices would tend to bring about uniformity in prices through the operation of economic law. Nor was there any direct proof that the activities of the association had affected prices adversely to consumers. On the contrary, the defendants offered a great volume of evidence tending to show that the trend of prices of the product of the defendants corresponded to the law of supply and demand and that it evidenced no abnormality when compared with the price of commodities generally. There is undisputed evidence that the prices of members were fair and reasonable and that they were usually lower than the prices of nonmembers, and there is no claim that defendants were guilty of unfair or arbitrary trade practices.

[The government's theory consists of several elements]:

> [(1)] there is a combination among the defendants, which is admitted;
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> [(2)] the effect of the activities of the defendants carried on under the plan of the association must necessarily be to bring about a concerted effort on the part of members of the association to maintain prices at levels having a close relation to the average cost of flooring reported to members; and . . . consequently
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> [(3)] there is a necessary and inevitable restraint of interstate commerce; and . . . therefore the plan of the association itself is a violation of Section 1 of the Sherman Act, which should be enjoined regardless of its actual operation and effect so far as price maintenance is concerned.

The case must turn, therefore, on the effect of the activity of the defendants in the gathering and dissemination of information as to the cost of flooring. . . .

Computation and Distribution, Among the Members, of Information as to the Average Cost of Their Product.

There are three principal elements which enter into the computation of the cost of

finished flooring. They are the cost of raw material, manufacturing cost, and the percentage of waste in converting rough lumber into flooring. The information as to the cost of rough lumber was procured by the secretary from reports of actual sales of lumber by members in the open market. From five to ten ascertained sales were taken as standard and the average was taken as the estimated cost of raw material. Manufacturing costs were ascertained by questionnaires sent out to members by which members. . . . The net total cost thus ascertained of all members reporting was then averaged. The percentage of waste in converting the rough lumber into flooring was ascertained by test runs made by selected members of the association under the direction of the secretary of the association. . . .

By combining the three elements of cost thus arrived at, the total cost per thousand feet of the aggregate of the different types and grades of flooring produced from a given amount of rough lumber was estimated. To this cost there was at one time added an estimated 5% for contingencies, which practice, however, was discontinued by resolution of the association of July 19, 1923. . . .

. . . [The government does not claim] that the preparation of these estimates of cost were not made with all practicable accuracy, or that they were in any respect not what they purported to be. . . . [The government argues] . . . that the distribution of cost [figures for] types and grades of finished flooring . . . was necessarily arbitrary and that it might be or become a cover for price fixing. . . .

The Gathering and Distributing Among Members of Trade Statistics.

It is contended by the government that an analysis of the reporting system adopted by the defendants shows that there is no information withheld by one member from another, and that every member is perfectly familiar not only with the summaries which show the exact market condition generally, but also with the exact condition of the business of each of his fellow members.

An examination of the record discloses that this is not an accurate statement of the statistical information distributed among members of the association. . . . [The Association established standards for reporting by the members of a variety of business activities]. . . . The association promptly reported back to the members statistics compiled from the reports of members including the identifying numbers of the mills making the reports, and information as to quantities, grades, prices, freight rates, etc., with respect to each sale. The names of purchasers were not reported, and from and after July 19, 1923, the identifying number of the mill making the report was omitted.

All reports of sales and prices dealt exclusively with past and closed transactions. The statistics gathered by the defendant association are given wide publicity. They are published in trade journals, which are read by from 90% to 95% of the persons who purchase the products of association members. They are sent to the Department of Commerce, which publishes a monthly survey of current business. They are forwarded to the Federal Reserve and other banks and are available to anyone at any time desiring to use them.

[T]he statistics gathered and disseminated do not include current price quotations; information as to employment conditions; geographical distribution of shipments; the names of customers or distribution by classes of purchasers; the details with respect to new

orders booked, such as names of customers, geographical origin of orders; or details with respect to unfilled orders, such as names of customers, their geographical location; the names of members having surplus stocks on hand; the amount of rough lumber on hand; or information as to cancellation of orders. Nor do they differ in any essential respect from trade or business statistics which are freely gathered and publicly disseminated in numerous branches of industry producing a standardized product such as grain, cotton, coal oil, and involving interstate commerce whose statistics disclose volume and material elements affecting costs of production, sales price, and stock on hand.

Association Meetings.

The articles of the defendant association provide for regular meetings for the transaction of business on the third Wednesday of April, July and October of each year, and that special meetings may be called by the president or a majority of the board of trustees. During the year in which the bill of complaint was filed, meetings appear to have been held monthly.

Minutes of meetings were kept, although it is not contended that they constituted a complete record of the proceedings. Trade conditions generally, as reflected by the statistical information disseminated among members, were discussed; the market prices of rough maple flooring were also discussed, as were also manufacturing and market conditions. . . . [T]here was no discussion of prices in meetings. There was no occasion to discuss past prices, as those were fully detailed in the statistical reports and the association was advised by counsel that future prices were not a proper subject of discussion. It was admitted by several witnesses, however, that upon occasion the trend of prices and future prices became the subject of discussion outside the meeting among individual representatives of the defendants attending the meeting. The government, however, does not charge, nor is it contended, that there was any understanding or agreement, either express or implied, at the meetings or elsewhere, with respect to prices.

Upon this state of the record, the District Court . . . held that the plan or system operated by the defendant had a direct and necessary tendency to destroy competition; that the methods employed by them had at all times a controlling influence to impeding the economic laws of supply and demand, and tending to increase prices, and to stifle competition; [and] that the plan of the association was therefore inherently illegal. The court accordingly decreed the dissolution of the defendants' association and enjoined them from engaging in activities complained of by the government.

In arriving at this result, it was admitted that it was impossible to measure, either accurately or even approximately, the effect of the activities of the defendants upon prices, production, and competition in the flooring industry, for the reason that there could be . . . no satisfactory standards of comparison. The court found no agreement to fix prices and that in fact lower prices have usually been quoted by members than by nonmembers of the association.

[The District Court concluded that] . . . the past history of the association and its predecessors [was indicative of] probable purpose on the part of the members of the association to use the plan as a medium for effecting actual and undue restraint on interstate commerce. [The government claims] that the history of the successive associations

organized by the members of the defendant association, or a majority of them, establishes a systematic purpose on the part of the corporate defendants to restrain interstate commerce. . . .

It is conceded, however, [that past plans that prior associations had were] abandoned and that the present association, both by the terms of its articles of association and in actual practice, has confined itself to the [described] activities.

[* * *]

[The record indicates that] the defendants [were not] persistent violators of law [and acted with] a purpose to keep within the boundaries of legality as rapidly as those boundaries were marked out by the decisions of courts interpreting the Sherman Act. Whether, however, their general purpose was to become law-abiding members of the community or law breakers, it is not, we think, very material unless the court either can infer from this course of conduct a specific and continuing purpose or agreement or understanding on their part to do acts tending to effect an actual restraint of commerce. . . . [Compared to *American Column & Lumber*, here, the government did not establish that the purpose of the Association was to suppress competition].

[T]his court has often announced that each case arising under the Sherman Act must be determined upon the particular facts disclosed by the record, and that the opinions in those cases must be read in the light of their facts and of a clear recognition of the essential differences in the facts of those cases, and in the facts of any new case to which the rule of earlier decisions is to be applied. . . . [There are material differences between this case and cases like *Eastern States* and *American Column & Lumber*].

[T]he dissemination of pertinent information concerning any trade or business tends to stabilize that trade or business and to produce uniformity of price and trade practice. Exchange of price quotations of market commodities tends to produce uniformity of prices in the markets of the world. Knowledge of the supplies of available merchandise tends to prevent overproduction and to avoid the economic disturbances produced by business crises resulting from overproduction. But the natural effect of the acquisition of wider and more scientific knowledge of business conditions . . . can hardly be deemed a restraint of commerce, [let alone] an unreasonable restraint.

It is the consensus of opinion of economists and of many of the most important agencies of government that the public interest is served by the gathering and dissemination, in the widest possible manner, of information with respect to the production and distribution, cost and prices in actual sales, of market commodities because the making available of such information tends to stabilize trade and industry, to produce fairer price levels and to avoid the waste which inevitably attends the unintelligent conduct of economic enterprise.

'Free competition' means a free and open market among both buyers and sellers for the sale and distribution of commodities. Competition does not become less free merely because the conduct of commercial operations becomes more intelligent through the free distribution of knowledge of all the essential factors entering into the commercial transaction. General knowledge that there is an accumulation of surplus of any market

commodity would undoubtedly tend to diminish production, but the dissemination of that information cannot in itself be said to be restraint upon commerce in any legal sense. The manufacturer is free to produce, but prudence and business foresight based on that knowledge influences free choice in favor of more limited production. Restraint upon free competition begins when improper use is made of that information through any concerted action which operates to restrain the freedom of action of those who buy and sell.

It was not the purpose or the intent of the Sherman Anti-Trust Law to inhibit the intelligent conduct of business operations. . . . Persons who unite in gathering and disseminating information in trade journals and statistical reports on industry, who gather and publish statistics as to the amount of production of commodities in interstate commerce, and who report market prices, are not engaged in unlawful conspiracies in restraint of trade merely because the ultimate result of their efforts may be to stabilize prices or limit production through a better understanding of economic laws and a more general ability to conform to them. [T]he Sherman Law neither repeals economic laws nor prohibits the gathering and dissemination of information. Sellers of any commodity who guide the daily conduct of their business on the basis of market reports would hardly be deemed to be conspirators engaged in restraint of interstate commerce. They would not be any the more so merely because they became stockholders in a corporation or joint owners of a trade journal, engaged in the business of compiling and publishing such reports.

[In prior cases, such as *Eastern States Retail Lumber Association* and *American Column & Lumber*, we] held that the defendants . . . engaged in conspiracies against interstate trade and commerce because it was found that the character of the information which had been gathered and the use which was made of it led irresistibly to the conclusion that they had resulted, or would necessarily result, in a concerted effort of the defendants to curtail production or raise prices of commodities shipped in interstate commerce. The unlawfulness of the combination arose, not from the fact that the defendants had effected a combination to gather and disseminate information, but from the fact that the court inferred from the peculiar circumstances of each case that concerted action had resulted or would necessarily result in tending arbitrarily to lessen production or increase prices.

. . . [I]n the absence of proof of . . . agreement or concerted action having been actually reached or actually attempted, under the present plan of operation of defendants we can find no basis in the gathering and dissemination of such information by them or in their activities under their present organization for the inference that such concerted action will necessarily result within the rule laid down in those cases. . . .

The decree of the District Court is reversed.

Mr. Chief Justice TAFT, Mr. Justice SANFORD, and Mr. Justice McREYNOLDS dissent.