



Klor's, Inc. v. Broadway-Hale Stores, Inc.

359 U.S. 207 (1959)

Mr. Justice BLACK delivered the opinion of the Court.

Klor's, Inc., operates a retail store on Mission Street, San Francisco, California; Broadway-Hale Stores, Inc., a chain of department stores, operates one of its stores next door. The two stores compete in the sale of radios, television sets, refrigerators and other household appliances. Claiming that Broadway-Hale and 10 national manufacturers and their distributors have conspired to restrain and monopolize commerce in violation of §§ 1 and 2 of the Sherman Act, Klor's brought this action for treble damages and injunction in the United States District Court.

In support of its claim Klor's made the following allegations: George Klor started an appliance store some years before 1952 and has operated it ever since either individually or as Klor's, Inc. Klor's is as well-equipped as Broadway-Hale to handle all brands of appliances. Nevertheless, [well-known] manufacturers and distributors . . . have conspired among themselves and with Broadway-Hale either

not to sell to Klor's or to sell to it only at discriminatory prices and highly unfavorable terms. Broadway-Hale has used its 'monopolistic' buying power to bring about this situation. The business of manufacturing, distributing and selling household appliances is in interstate commerce. The concerted refusal to deal with Klor's has seriously handicapped its ability to compete and has already caused it a great loss of profits, goodwill, reputation and prestige.

The defendants did not dispute these allegations, but sought summary judgment and dismissal of the complaint for failure to state a cause of action. They submitted unchallenged affidavits which showed that there were hundreds of other household appliance retailers, some within a few blocks of Klor's who sold many competing brands of appliances, including those the defendants refused to sell to Klor's. . . .

[T]he District Court concluded that the controversy was a 'purely private quarrel' between Klor's and Broadway-Hale, which did not amount to a 'public wrong proscribed by the (Sherman) Act.' On this ground the complaint was dismissed and summary judgment was entered for the defendants. The Court of Appeals for the Ninth Circuit affirmed the summary judgment. It stated that 'a violation of the Sherman Act requires conduct of defendants by which the public is or conceivably may be ultimately injured.' It held that here the required public injury was missing since 'there was no charge or proof that by any act of defendants the price, quantity, or quality offered the public was affected, nor that there was any intent or purpose to effect a change in, or an influence on, prices, quantity, or quality.' The holding, if correct, means that unless the opportunities for customers to buy in a competitive market are reduced, a group of powerful businessmen may act in concert to deprive a single merchant, like Klor, of the goods he needs to compete effectively. We granted certiorari to consider this important question in the administration of the Sherman Act.

We think Klor's allegations clearly show one type of trade restraint and public harm the Sherman Act forbids, and that defendants' affidavits provide no defense to the charges.

Section 1 of the Sherman Act makes illegal any contract, combination or conspiracy in restraint of trade, and Section 2 forbids any person or combination from monopolizing or attempting to monopolize any part of interstate commerce. In the landmark case of *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 59-60 (1911), this Court read § 1 to prohibit those classes of contracts or acts which the common law had deemed to be undue restraints of trade and those which new times and economic conditions would make unreasonable. The Court construed § 2 as making 'the prohibitions of the act all the more complete and perfect by embracing all attempts to reach the end prohibited by the 1st section, that is, restraints of trade, by any attempt to monopolize, or monopolization thereof.' *Id.* at 61. The effect of both sections, the Court said, was to adopt the common-law proscription of all 'contracts or acts which it was considered had a monopolistic tendency' and which interfered with the 'natural flow' of an appreciable amount of interstate commerce. *Id.*, at pages 57, 61; *Eastern States Retail Lumber Dealers' Ass'n v. United States*, 234 U.S. 600, 609 (1914).

The Court recognized that there were some agreements whose validity depended on the surrounding circumstances. It emphasized, however, that there were classes of restraints which from their 'nature or character' were unduly restrictive, and hence forbidden by both the common law and the statute. *Standard Oil*, 221 U.S. at pages 58, 65. As to these classes of restraints, the Court noted, Congress had determined its own criteria of public harm and it was not for the courts to decide whether in an individual case injury had actually occurred. *Id.*, at pages 63-68.

Group boycotts, or concerted refusals by traders to deal with other traders, have long been held to be in the forbidden category.⁵ They have not been saved by allegations that they were reasonable in the specific circumstances. . . . Even when they operated to lower prices or temporarily to stimulate competition they were banned. . . .

Plainly the allegations of this complaint disclose such a boycott. This is not a case of a single trader refusing to deal with another, nor even of a manufacturer and a dealer agreeing to an exclusive distributorship. Alleged in this complaint is a wide combination consisting of manufacturers, distributors and a retailer. This combination takes from Klor's its freedom to buy appliances in an open competitive market and drives it out of business as a dealer in the defendants' products. It deprives the manufacturers and distributors of their freedom to sell to Klor's at the same prices and conditions made available to Broadway-Hale and in some instances forbids them from selling to it on any terms whatsoever. It interferes with the natural flow of interstate commerce. It clearly has, by its 'nature' and 'character,' a 'monopolistic tendency.' As such it is not to be tolerated merely because the victim is just one merchant whose business is so small that his destruction makes little difference to the economy. Monopoly can as surely thrive by the elimination of such small businessmen, one at a time, as it can by driving them out in large groups. In recognition of this fact the Sherman Act has consistently been read to forbid all contracts and combinations 'which 'tend to create a monopoly,' whether 'the tendency is a creeping one' or 'one that proceeds at full gallop.' *International Salt Co. v. United States*, 332 U.S. 392, 396 (1947).

The judgment of the Court of Appeals is reversed and the cause is remanded to the District Court for trial.

Reversed.

⁵ See, e.g., *Eastern State Retail Lumber Dealers' Ass'n v. United States*, 234 U.S. 600 (1914); *Binderup v. Pathe Exchange, Inc.*, 263 U.S. 291 (1923); *Fashion Originators' Guild v. Federal Trade Commission*, 312 U.S. 457 (1941), 61 S.Ct. 703, 85 L.Ed. 949; . . . *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594 (1953); *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1 (1958).