Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.

429 U.S. 477 (January 25, 1977)

This case raises important questions concerning the interrelationship of the antimerger and private damages action provisions of the Clayton Antitrust Act.

I

Petitioner is one of the two largest manufacturers of bowling equipment in the United States. Respondents are three of the 10 bowling centers owned by Treadway Companies, Inc. Since 1965, petitioner has acquired and operated a large number of bowling centers, including six in the markets in which respondents operate. Respondents instituted this action contending that these acquisitions violated various provisions of the antitrust laws.

In the late 1950's, the bowling industry expanded rapidly, and petitioner's sales of lanes, automatic pinsetters, and ancillary equipment rose accordingly. Since this equipment requires a major capital expenditure $12,600 for each lane and pinsetter, most of petitioner's sales were for secured credit.

In the early 1960's, the bowling industry went into a sharp decline. Petitioner's sales quickly dropped to preboom levels. Moreover, petitioner experienced great difficulty in collecting money owed it; by the end of 1964 over $100,000,000, or more than 25%, of petitioner's accounts were more than 90 days delinquent. Repossessions rose dramatically, but attempts to sell or lease the repossessed equipment met with only limited success. Because petitioner had borrowed close to $250,000,000 to finance its credit sales, it was, as the Court of Appeals concluded, "in serious financial difficulty."

To meet this difficulty, petitioner began acquiring and operating defaulting bowling centers when their equipment could not be resold and a positive cash flow could be expected from operating the centers. During the seven years preceding the trial in this case, petitioner acquired 222 centers, 54 of which it either disposed of or closed. These acquisitions made petitioner by far the largest operator of bowling centers, with over five times as many centers as its next largest competitor. Petitioner's net worth in 1965 was more than eight times greater, and its gross revenue more than seven times greater, than the total for the 11 next largest bowling chains. Nevertheless, petitioner controlled only 2% of the bowling centers in the United States.

At issue here are acquisitions by petitioner in the three markets in which respondents are located. . . . Respondents initiated this action in June 1966, alleging, inter alia, that these acquisitions might substantially lessen competition or tend to create a monopoly in violation of § 7 of the Clayton Act. Respondents sought damages, pursuant to § 4 of the Act, for three times "the reasonably expectable profits to be made (by respondents) from the operation of their bowling centers." Respondents also sought a divestiture order, an

injunction against future acquisitions, and such "other further and different relief" as might be appropriate under § 16 of the Act.

Trial was held in the spring of 1973, following an initial mistrial due to a hung jury. To establish a § 7 violation, respondents sought to prove that because of its size, petitioner had the capacity to lessen competition in the markets it had entered by driving smaller competitors out of business. To establish damages, respondents attempted to show that had petitioner allowed the defaulting centers to close, respondents' profits would have increased. At respondents' request, the jury was instructed in accord with respondents' theory as to the nature of the violation and the basis for damages. The jury returned a verdict in favor of respondents in the amount of $2,358,030, which represented the minimum estimate by respondents of the additional income they would have realized had the acquired centers been closed. As required by law, the District Court trebled the damages. It also awarded respondents costs and attorneys' fees totaling $446,977.32, and, sitting as a court of equity, it ordered petitioner to divest itself of the centers involved here.

The Court of Appeals, while endorsing the legal theories upon which respondents' claim was based, reversed the judgment and remanded the case for further proceedings. The court found that a properly instructed jury could have concluded that petitioner was a "'giant' whose entry into a 'market of pygmies' might lessen horizontal retail competition, because such a 'giant' has greater ease of entry into the market, can accomplish cost-savings by investing in new equipment, can resort to low or below cost sales to sustain itself against competition for a longer period, and can obtain more favorable credit terms." . . .

Both sides petitioned this Court for writs of certiorari. . . .

II

The issue for decision is a narrow one. . . . Petitioner questions only whether antitrust damages are available where the sole injury alleged is that competitors were continued in business, thereby denying respondents an anticipated increase in market shares.

. . .

Plainly, to recover damages respondents must prove more than that petitioner violated § 7, since such proof establishes only that injury may result. . . .

Every merger of two existing entities into one, whether lawful or unlawful, has the potential for producing economic readjustments that adversely affect some persons. But Congress has not condemned mergers on that account; it has condemned them only when they may produce anticompetitive effects. [Under the Court of Appeals' holding, Brunswick's acquisitions] were unlawful, it is because they brought a "deep pocket" parent into a market of "pygmies." . . . [R]espondents' injury was not of the type that the statute was intended to forestall.

But the antitrust laws are not merely indifferent to the injury claimed here. At base, respondents complain that by acquiring the failing centers petitioner preserved competition, thereby depriving respondents of the benefits of increased concentration. The damages respondents obtained are designed to provide them with the profits they would have realized had competition been reduced. The antitrust laws, however, were enacted for "the protection of competition not competitors," *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962). . . .

We therefore hold that the plaintiffs to recover treble damages on account of § 7 violations, they must prove more than injury causally linked to an illegal presence in the market. Plaintiffs must prove antitrust injury, which is to say injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful. The injury should reflect the anticompetitive effect either of the violation or of anticompetitive acts made possible by the violation. . . .

The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.