

09w6610

ORDER

Based upon the stipulation of counsel and for good cause shown, the Court hereby orders as follows:

1. For the reasons set forth below, and with the consent of all parties, the Court certifies its January 23, 2014 Memorandum Opinion and Order (the “1/23/14 Order”) for interlocutory appeal pursuant to 28 U.S.C. § 1292(b):

a. The 1/23/14 Order grants Defendants’ motion for reconsideration of an order from Judge Susan Illston of the U.S. District Court for the Northern District of California (the “MDL court”), *In re TFT-LCD (Flat Panel) Antitrust Litig.*, Case No. 07-md-1827, 2012 WL 3276932 (N.D. Cal. Aug. 9, 2012), which denied Defendants’ motion for summary judgment seeking dismissal pursuant to the Foreign Trade Antitrust Improvements Act (the “FTAIA”) of the portion of Motorola’s Sherman Act Claim that is “based on overseas purchases by its foreign affiliates.”

b. Motorola Mobility LLC (“Motorola”) filed this lawsuit in this district alleging that Defendants conspired to raise prices of liquid crystal display (“LCD”) panels in violation of the Sherman Act. The case was subsequently transferred to the MDL court for pretrial proceedings. Defendants twice moved under the FTAIA to dismiss the portion of Motorola’s Sherman Act Claim that is “based on overseas purchases by its foreign affiliates.” The MDL court granted Defendants’ initial motion to dismiss, but denied their second motion to dismiss after Motorola amended its complaint.

c. Following the close of merits and expert discovery, Defendants moved for summary judgment based upon application of the FTAIA. The MDL court denied Defendants’ motion. The case was then transferred back to this district, and Defendants requested that the Court reconsider the MDL court’s summary judgment order.

d. In the 1/23/14 Order, the Court granted Defendants' motion for reconsideration and reversed the MDL court's summary judgment ruling.

e. Certification for interlocutory appeal under 28 U.S.C. §1292(b) is appropriate where: "(1) the appeal presents a question of law; (2) it is controlling; (3) it is contestable; [and] (4) its resolution will expedite the resolution of the litigation." *Boim v. Quranic Literacy Inst. & Holy Land Found. for Relief & Dev.*, 291 F.3d 1000, 1007 (7th Cir. 2002) (citing *Ahrenholz v. Bd. of Trs. of the Univ. of Ill.*, 219 F.3d 674, 677 (7th Cir. 2000)).

f. The Court finds that the 1/23/14 Order involves a controlling question of law that is contestable, as evidenced by the fact that this Court and the MDL court reached different conclusions on how the FTAIA should be applied.

g. The Court further finds that immediate appellate review of the 1/23/14 Order will expedite the resolution of this litigation. The 1/23/14 Order dismissed approximately 99% of Motorola's Sherman Act Claim. Absent interlocutory review, the parties and the Court will face a lengthy and costly trial in which very little will be at stake before Motorola is able to seek appellate review of the appropriate application of the FTAIA. If the 1/23/14 Order is reversed on appeal, the parties and the Court face the prospect of a second lengthy and costly trial involving many of the same issues. This would be a waste of judicial resources and an impracticable way to continue this litigation. Moreover, the parties have stipulated to the dismissal of Motorola's pendant state law claims upon issuance of this Order pursuant to 28 U.S.C. § 1292(b) by this Court, so the Sherman Act Claim will be the only one that remains for resolution in this case.

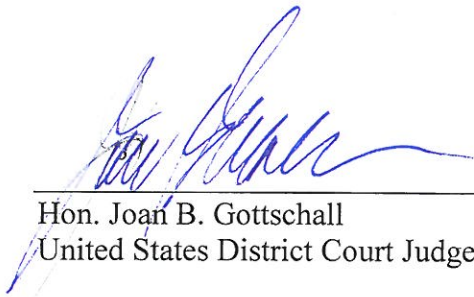
h. In addition, the Order implicates matters of substantial practical importance with respect to how broadly the U.S. antitrust laws are applied. This factor alone warrants interlocutory appellate review.

i. Accordingly, the Court certifies the issues set forth in the 1/23/14 Order for interlocutory appeal.

2. All further proceedings with respect to the remaining portion of Motorola's Sherman Act Claim are stayed pending resolution of proceedings on appeal;

3. Motorola's Third, Fourth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Fifteenth, Sixteenth, Seventeenth, and Eighteenth Claims For Relief, claims for breach of contract and unjust enrichment under Illinois state law, are hereby DISMISSED WITH PREJUDICE pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure. Each party shall bear its own costs and fees with respect to those claims.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Hon. Joan B. Gottschall  
United States District Court Judge

2/15/14