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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

JOHN L. LEWIS AND JOSEPHINE ROCHE,)
as TRUSTEES of the UNITED MINE WORKERS)
OF AMERICA WELFARE AND RETIREMENT FUND,)
Plaintiffs,)

VS.

CIVIL ACTION
NO. 3431

JAMES M. PENNINGTON, RALPH E. PHILLIPS)
and BRUCE PHILLIPS, Individually and)
trading as PHILLIPS BROTHERS COAL)
COMPANY, a partnership,)
Defendants.)



ANSWER OF DEFENDANTS

I.

The partnership referred to in this Complaint is a partnership composed of James M. Pennington, Raymond E. Phillips, and Burse Phillips. Ralph E. Phillips is not a member of the partnership but is an employee of the partnership, and he responds for the purpose of denying all allegations of the bill, including the averment that he is a member of said partnership.

II.

Respondents are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph I of the Complaint respecting the residence of John L. Lewis and Josephine Roche and respecting the residence and the place of business of the Trust therein referred to. Respondents do not admit that plaintiffs have a right under the terms of said Trust agreement to maintain this suit.

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III.

The averment in Paragraph II contained respecting the amount in controversy is admitted.

IV.

Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment contained in Paragraph III respecting the time and manner of the establishment of the United Mine Workers of America Welfare and Retirement Fund.

V.

In response to the averments contained in Paragraph IV, these respondents say that the Phillips Brothers Coal Company did execute the agreements therein referred to, but deny that it was the understanding between the parties that respondents were to pay unto the United Mine Workers of America Welfare and Retirement Fund the sum of forty cents (40¢) per ton on each ton of coal produced for use or sale.

VI.

Respondents do not deny the averment contained in Paragraph V of the Complaint to the effect that respondents produced approximately 39,000 tons of coal for use or sale, but deny that they are indebted to the plaintiffs in the amount alleged.

VII.

And now further responding to the Complaint, these defendants say:

1. That they deny the right of the plaintiffs to maintain this suit alone and show to the Court that the so-called

Trust agreement sued upon was a part of the National Bituminous Coal Wage Agreement of 1950, which agreement was entered into by and between respondents and United Mine Workers of America and was, by its express terms, an integrated contract containing the express statement that "this agreement is an integrated instrument and its respective provisions are interdependent and shall be effective from and after March 5, 1950." Accordingly, the United Mine Workers of America is a necessary party plaintiff to this action, particularly so as the provision just quoted affords respondents the benefit of all available rights of setoff growing out of the breach of said contract by said United Mine Workers of America, which rights of setoff are not available should plaintiff Trustees alone be permitted to maintain this cause of action.

2. These respondents plead that the agreements entered into by them and all payments made and action taken thereunder by these respondents were performed by reason of the duress practiced upon them by the United Mine Workers of America. The contracts referred to were executed as a result of a program of terrorism conducted by the United Mine Workers of America in the section in which the defendants' mine was located during the time the United Mine Workers of America, through its members, was, by threats of violence and intimidation, forcing the mines to sign and perform their agreements. These agreements were signed by these respondents because of their knowledge that they would be closed down by the United Mine Workers of America and would not be permitted to operate their coal mine unless said agreements were signed. Accordingly, these respondents plead that said contracts were signed unwillingly and were not in accordance with the will of these respondents but constituted the imposition of the will of the

United Mine Workers upon these respondents, which these respondents involuntarily assumed through fear, which deprived them of their self-control in this respect. The fear under which respondents dwelt in signing said contracts, and of which the officers of the United Mine Workers of America had full knowledge, not only constituted a duress of property but duress of person in that the methods employed by the United Mine Workers of America embraced the infliction of bodily punishment upon those who did not adhere to its will.

3. It is shown to the Court that these respondents and the other operators of coal mines in the general community in which said mine was located were engaged in the mining and shipping of coal in interstate commerce and to various agencies of the United States Government, particularly the Tennessee Valley Authority and the Atomic Energy Commission at Oak Ridge, Tennessee. The said contract was forced upon defendants by the plaintiffs for the purpose of restraining the shipment of coal by respondents and other of said coal mines in interstate commerce and to the governmental agencies before referred to. To attain their purpose, the United Mine Workers used coercion, threats and intimidation. The purpose of the United Mine Workers in this treatment of respondents and other small operators was to suppress them to the end that said coal might be supplied by certain large operators who were amenable to the wishes of the United Mine Workers of America. It is shown to the Court that there was co-operation amounting to a conspiracy between the United Mine Workers of America and certain large producers of coal, the purpose of which was to place such financial burdens upon respondents and other small operators similarly situated that could not possibly be paid out of funds realized from the operation of the mine, and thus respondents, being unable to meet the demands, would, either

through violence, or action such as this in the courts, be closed down, leaving the business of shipping coal in interstate commerce and to the governmental agencies to the said large coal operators. Respondents were not only placed under the burdens as provided by the contracts before referred to, but the United Mine Workers of America and the large companies hereinbefore referred to continually conspired together to increase the burdens of defendants by increasing the wage scale, both by virtue of modifications of the contracts between said mines and the United Mine Workers of America and by co-operating together in having the Walsh-Healey Act apply to the coal industry and having the minimum wage determined thereunder. After the Walsh-Healey Act became applicable to the coal industry, respondents state on information and belief that representatives of the Wage and Hour Division of the Labor Department of the United States Government co-operated with the United Mine Workers of America in harassing ~~XXXXXXXXXXXX~~ ~~XXXX~~ small operators so situated for the purpose of suppressing their business to the end, as stated, that the shipments of coal in interstate commerce and to the agencies aforesaid might be monopolized by the said large operators. It is, accordingly, plead that the United Mine Workers of America, in the entering into of said contract and its conduct aforesaid, was acting in violation of an act passed by Congress known as the Sherman Antitrust Act appearing in 26 Stat. 209, incorporated in Title 15, USCA, Sections 1, 2, and 3.

4. In addition to the violation of the Act in the manner aforesaid, that is, by conspiring with others to restrain the shipment of coal in interstate commerce, it is further plead that the United Mine Workers of America and the Trustees aforesaid are not exempt from the terms of said antitrust act as provided by Title 15, USCA, Section 16, as they are conducting various businesses for profit and are, therefore,

independent of any conspiracy with others, through violence, intimidation, and other coercive methods, of which their dealings with respondents are a part, engaged in the restraining of the mining and shipping of coal in interstate commerce, and that, therefore, the United Mine Workers and its members constitute an illegal combination in restraint of trade under the antitrust laws aforesaid. Accordingly, the contract sued upon is illegal and unenforceable, as it is a part of their scheme to restrain said trade.

5. It is further plead that the conspiracy and agreement entered into between the United Mine Workers of America and large coal operators is in violation of Section 69-112 of the Code of Tennessee, which reads as follows:

"69-112. Conspiracy or agreement to limit the output or to raise the price of coal--Penalty.-- Any person who, directly or indirectly, enters into a conspiracy or agreement with intent to limit the output of coal in this state, for the purpose of raising the price to the consumer, or to any intermediate dealer, or who enters into any conspiracy or agreement, directly or indirectly, of any nature whatsoever to so raise the price of coal to the consumer or to any intermediate dealer, shall be guilty of a misdemeanor, and fined not less than one thousand dollars (\$1,000)."

6. It was a part of the agreements alleged in the Complaint that the respondents would employ only persons who were members of the United Mine Workers of America, which was an unlawful contract entered into in violation of Sections 50-209 and 50-210 of the Tennessee Code Annotated, which sections read as follows:

"50-209. Contracting for exclusion from employment because of affiliation or nonaffiliation with labor union unlawful.--It shall be unlawful for any person, firm, corporation or association of any kind to enter into any contract, combination or agreement, written or oral, providing for exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor union or employee organization of any kind."

"50-210. Exclusion from employment for payment of or failure to pay union dues unlawful.--It shall be unlawful for any person, firm, corporation or association of any kind to exclude from employment any person by reason of such person's payment of or failure to pay dues, fees, assessments, or other charges to any labor union or employee organization of any kind."

In this connection defendants plead Section 164(b), Title 29, USCA, which reads as follows:

"(b) Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

Therefore, said alleged contract is illegal and unenforceable--it having been entered into with reference to the law of Tennessee.

It is plead that the United Mine Workers of America not having complied with the National Labor Relations Act with respect to the matter of filing certain reports, etc., as required by Title 29, USCA, Section 159 (f), (g), and (h), the execution of said contract was in violation of Title 29, USCA, Section 158, particularly subsection (3) thereof, and is therefore illegal.

7. For further defense to this action, these respondents plead that the United Mine Workers of America breached the contracts sued upon in that its members, acting with due authority, did, by threats and intimidation, force the respondents to close their mine and to cease operations over a period of time and that the United Mine Workers and its members have for years inaugurated and maintained a reign of fear and dread in the minds of the defendants and their employees, which also is inconsistent with and violative of the aim and purpose of said agreement as expressed therein that

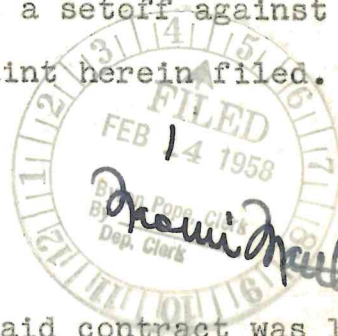
"the rules and practices of the industry pertaining to management" would not be changed and that "the mine workers intend no intrusion upon the rights of management as heretofore practiced and understood." The agreement sued upon by plaintiffs is a part of the agreements alleged in the Complaint which provides that it "is an integrated instrument and its respective provisions are interdependent."

8. Respondents further plead that at the time the alleged contract was entered into, the employees of the respondent partnership were not members of the United Mine Workers of America but that some time thereafter said employees, through coercion, intimidation and fear, were persuaded to become members of said Union and that the acts and conduct of the United Mine Workers of America in thus attaining the result of said employees becoming members of said Union violated Title 29, USCA, Section 158(b).

9. These respondents plead the damages occasioned to them by reason of the acts and conduct of the United Mine Workers of America as herein alleged as a setoff against all demands made against them in the Complaint herein filed.

COUNTERCLAIM

It is further plead that if said contract was legal, the plaintiff trustees have not fulfilled their obligations to the employees of the respondent partnership in the manner and to the extent as said Trust agreement provided and that, accordingly, the said Trustees and the United Mine Workers of America have in this way breached their alleged contract with the respondent partnership. Plaintiff Trustees and the United



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Mine Workers of America not having fulfilled their obligations as in said contract provided, the respondents are entitled to recover the full amount paid into said Welfare Fund, as would be true, also, if said contract was void from the beginning.

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