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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

JEFF BOARDMAN, et al.,)	
)	
Plaintiffs,)	Case No. 1:15-cv-00108-PA
)	
v.)	
)	
PACIFIC SEAFOOD GROUP, et al.)	January 23, 2015
)	
Defendant.)	Portland, Oregon
_____)	

Telephonic Temporary Restraining Order Hearing

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE OWEN M. PANNER

UNITED STATES DISTRICT COURT SENIOR JUDGE

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APPEARANCES

FOR THE PLAINTIFFS: Mr. Michael E. Haglund
Mr. Michael K. Kelley
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Portland, OR 97201

FOR THE DEFENDANTS: Mr. John W. Stephens
Mr. Michael J. Esler
Esler, Stephens & Buckley, LLP
121 S.W. Morrison Street, Suite 700
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ALSO PRESENT: Mr. Daniel Occhipinti

COURT REPORTER: Bonita J. Shumway, CSR, RMR, CRR
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1 (P R O C E E D I N G S)

2 THE CLERK: Good morning. This is Judge Panner's
3 chambers. We're ready for the temporary restraining order
4 hearing in Boardman v. Pacific Seafood Group, Case No.
5 15-108.

6 We do have a court reporter, and could the parties
7 on the line please identify themselves.

8 For the plaintiff?

9 MR. HAGLUND: Mike Haglund and Mike Kelly.

10 THE CLERK: And the defendant?

11 MR. STEPHENS: John Stephens. And then also I
12 think -- I believe that Mike Esler is on the line. He's on
13 separately. And then also Dan Occhipinti, who is the
14 in-house lawyer for Pacific Seafood, I believe is also on
15 the line.

16 THE CLERK: All right. Thank you.

17 And who was the one -- Mike Hessler, did you say?

18 MR. STEPHENS: Mike Esler.

19 THE CLERK: Okay. Right. Okay. Thank you very
20 much.

21 Here is Judge Panner.

22 THE COURT: Good morning, gentlemen. I hope that
23 each of you will give your name to the court reporter as you
24 speak along the way.

25 It's plaintiffs' motion for a temporary

1 restraining order. I have looked at the papers.

2 I understand, John, you probably have not had a
3 lot of opportunity to look at them. When did you receive
4 them?

5 MR. STEPHENS: Judge Panner, this is John
6 Stephens. I received a copy of the complaint and the moving
7 papers yesterday morning, and then -- but I didn't learn
8 about this hearing until 8:55 today.

9 And so in response to that -- I'm kind of getting
10 ahead a little bit, but there's -- well, first of all, you
11 know, there is no closing pending in this case, so there
12 really isn't any reason for a TRO. But beyond that, we do
13 have a dispute under the stipulation that resolved the last
14 action that was before Your Honor. And that stipulation
15 contains a dispute resolution provision that provided that
16 Judge Hogan would, by name, would resolve all of these.

17 And yesterday, after we received the complaint and
18 moving papers, we sent an email submitting this dispute
19 under the stipulation to Judge Hogan for resolution, and so
20 what I filed this morning, just recently, was a quick
21 memorandum in opposition to the TRO, and particularly
22 attaching the email to Judge Hogan by which we have tendered
23 this dispute or invoked the dispute resolution provision
24 under the stipulation that resolved the prior action.

25 So I wanted to make sure that the Court was aware

1 that we had filed that and that the Court had that available
2 to it.

3 THE COURT: Let me ask you just, John, my quick
4 reading of the plaintiffs' papers and the exhibits attached
5 indicates that the stipulation to have Judge Hogan decide --
6 involved in the case called upon him to make the orders.
7 And you understand now that he is no longer a judge of this
8 court?

9 MR. STEPHENS: Right. And what I would call the
10 Court's attention to is that there are two provisions. One
11 is paragraph 3(b), which deals with the question that I
12 think is really the -- where the dispute centers. And that
13 one just calls upon Judge Panner -- excuse me, Judge Hogan
14 to make a determination with respect to any proposed
15 agreement by which Pacific Seafood would be selling Ocean
16 Gold's products; that that would be -- Judge Hogan would
17 make a determination whether the proposed agreement was
18 pro-competitive or not.

19 And so that -- we're dealing with two separate
20 provisions. I agree that the dispute resolution provision
21 specifically talks about his ability to make orders, but the
22 way that I think the two provisions properly are taken
23 together is that the first one is squarely -- would amount
24 to an arbitration provision, given the fact that Judge Hogan
25 is no longer a U.S. district judge; and that the second

1 clause, that Judge Hogan should be able to have the
2 opportunity to determine whether he is, quote, available or
3 not, which is what the language is in Section 10. And if he
4 makes the determination that he's available, then it would
5 be similarly treated as an arbitration clause, and to the
6 extent that any orders, you know, judicial-type orders were
7 appropriately to be entered following a determination by
8 Judge Hogan, then those would be made by Judge Jelderks
9 under the other -- the alternative provision of Section 10
10 of the agreement.

11 MR. HAGLUND: Your Honor, this is Mike Haglund.
12 Could we be heard on this topic?

13 THE COURT: You can. You bet.

14 MR. HAGLUND: Your Honor, we disagree strongly
15 that the settlement agreement, class action settlement
16 agreement provided that Judge Hogan, once he was no longer a
17 sitting federal judge, would have any authority to act in
18 connection with that agreement. If there's a dispute under
19 the agreement with him no longer as a federal judge, with
20 the power and -- associated with the clear reference to this
21 Court and only the Court having continuing jurisdiction over
22 the matter, it would have to go to Judge Jelderks.

23 Now, we have three -- in our original complaint,
24 we had three claims, two under the Sherman Act --
25 monopolization and attempted monopolization -- and a

1 declaratory judgment claim under the settlement agreement.

2 This morning at approximately 8:30, we filed an
3 amended complaint that dropped the settlement agreement
4 claim because we do believe it would have to go before Judge
5 Jelderks. We want to proceed with the TRO under the Sherman
6 Act claims, and so we have asked -- we were told yesterday
7 that there's no imminent transaction to close, but we want
8 an order in place that there will be no closing on this
9 proposed -- on this deal pending a determination by this
10 Court in connection with the -- either a preliminary
11 injunction or a permanent injunction or the two could be
12 consolidated for a trial, you know, several months from now.

13 But the bottom line is we do not view Judge Hogan
14 as having any authority, and we have dropped the claim
15 regarding the class action settlement and we're strictly
16 under the Sherman Act at this point.

17 MR. STEPHENS: Yeah, and -- Your Honor, this is
18 John Stephens. I haven't seen the amended complaint. I
19 don't think -- well, I guess it's not served on me, perhaps.
20 But, you know, more to the point I think to also note, this
21 is, you know, many, many times I've heard Your Honor say
22 that so many problems can be avoided if lawyers just pick up
23 the phone and call each other, and I think that this is a
24 perfect example of that. It is certainly correct that we
25 were in the process of negotiating with Ocean Gold -- or

1 excuse me, with respect to the shareholders of Ocean Gold,
2 and working on proposed transactions, but the fact of the
3 matter was that any sort of a closing in the case was going
4 to depend upon what the outcome of our phone call was to
5 Mike Haglund. We called Mike back on December 12th, and
6 then I followed that up with a call to Tim Nord of the
7 Oregon Department of Justice on December 18th, and told them
8 about the pending transaction and discussed with them
9 whether or not they considered it to be something that was
10 under the -- subject to Section 3(b) of the stipulation or
11 not. And he said that he couldn't get back to us until
12 after the new year.

13 He and I spoke last week, and he indicated to me
14 that he needed another week. And so we finally learned from
15 him on this last Wednesday that indeed they didn't believe
16 that it was subject to Section 3(b) under the stipulation,
17 which that's the provision that submits any disputes to
18 Judge Hogan regarding future acquisitions.

19 And on the basis of that, I got back that they did
20 dispute -- that they did object to it, and that was -- you
21 know, any sort of pending closing was off. And if Mike had
22 called us up after that conversation, before filing the
23 complaint, he would have learned that it wasn't.

24 And then the second thing that he would have
25 learned was that it was our intention to submit the dispute

1 to Judge Hogan for resolution on whether, one, the provision
2 applied; and two, he was going to be determining whether the
3 proposed -- essentially making a determination that the
4 proposed agreement was pro-competitive, and we would have
5 had an orderly resolution of the matter under the terms that
6 the parties agreed to in the stipulation.

7 Instead, they -- and I think very precipitously --
8 filed this complaint, filed the motion for a TRO. And it is
9 completely unnecessary because, as I've said, the -- there
10 is no action pending, based upon my conversation with --
11 with Mike on Wednesday.

12 I would add to that that on Wednesday afternoon,
13 we got an email inquiry from Tim Nord at the Oregon
14 Department of Justice, also asking about the transaction.
15 And those two things taken together, that meant anything and
16 everything was off until those two issues were resolved.

17 And that's -- we -- you know, we are consistently
18 and -- intend to go forward and obtain a resolution to it.
19 That's why immediately upon receiving the complaints
20 yesterday -- in fact, this is where we were -- the direction
21 we were going anyway, we immediately submitted our email to
22 Judge Hogan for resolution of the matter.

23 I appreciate that they have -- they dispute
24 whether it's something for Judge Hogan to resolve or not,
25 but I think the law is pretty clear that in the first

1 instance that that's something that Judge Hogan should
2 resolve as the designated person under the agreement, and,
3 you know, if the outcome of that is that no, it's not
4 something for Judge Hogan, then the agreement is clear that
5 it goes to Judge Jelderks.

6 But, you know, the fact is that there is a dispute
7 under the agreement, it was an avenue that the parties set
8 up and agreed to, and that's the appropriate way to handle
9 it. Instead, we're before this Court on an unnecessary TRO,
10 where they aren't able to make any of the requisite
11 showings. It's based on the worst sort of hearsay, not any
12 sort of evidence that would -- you know, that an order could
13 properly be based upon.

14 MR. HAGLUND: Your Honor, this is Mike Haglund.
15 As my declaration sets out, I did talk with John on
16 Wednesday. We asked specifically whether he was willing to
17 stipulate that there would be no closing. He indicated to
18 me that he did not know when a closing would occur, was not
19 willing to enter into such a stipulation, and we got the
20 information I related in my declaration, that it was
21 scheduled to close today. We had no choice, in terms of
22 protecting our clients, but to file the case. And as the
23 case sits today, with no class action settlement agreement
24 claim in it, there's nothing to go to Judge Hogan or to
25 Judge Jelderks. And they're still unwilling to stipulate on

1 the record.

2 I -- lawyers -- we need, given Mr. Dulcich's at
3 Pacific Seafood Group's monopolistic and predatory history
4 over the last two decades, we need the protection of a court
5 order that this transaction cannot close. The reason for
6 that is that the law is very clear that it's incredibly more
7 difficult to unscramble the eggs once a transaction closes,
8 as opposed to stop a transaction in the first instance. The
9 standards are completely different, and we should at least
10 be entitled to an order that there will be no transactions
11 until such time as the -- there's a further order of the
12 Court.

13 MR. STEPHENS: And, Your Honor, if I might
14 respond. My conversation with Mike on Wednesday, he asked
15 me was closing imminent, and I -- what I said is I didn't
16 know, but that I thought, based upon our conversation, that
17 was essentially not going to be the case. I don't recall my
18 precise words, but I made a specific reference that in light
19 of the conversation that we were having, that was -- that
20 was an important piece. And that's why I say if he had
21 called me up before filing the case, he would have
22 discovered indeed, based on what I was suggesting in our
23 call on Wednesday, that it was off.

24 Insofar as a, quote, stipulation, that
25 conversation occurred yesterday, in which they wanted us to

1 stipulate to an order, and we weren't -- I said that we
2 weren't willing to stipulate to an order, because, you know,
3 an order suggests that something is imminent and about to
4 happen, and the fact of the matter is that it isn't. It
5 suggests that there's something -- there's some need in
6 order to restrain conduct, and there isn't any need to
7 restrain conduct here. It's not an appropriate use of a
8 restraining order in this particular case, where we are
9 undertaking and have undertaken to get the matter resolved
10 in an orderly manner, in accordance with the agreement of
11 the parties in the stipulation.

12 THE COURT: I think I understand both parties'
13 positions at this time. I think it requires further
14 development. It's plain here you have competent lawyers on
15 both sides and I can understand both views in this case, but
16 I want some briefing in detail on, number one, whether or
17 not this matter should go to any sort of a procedure before
18 either Judge Hogan or Judge Jelderks.

19 Number two, I want to know any objections to the
20 injunction that I'm preparing to issue, and we will set
21 another hearing on this very process. But I will issue an
22 injunction today, as of now, that is very simple. It will
23 simply hold everything in abeyance until this has been
24 thoroughly briefed by the parties on these issues.

25 Any questions about that?

1 MR. STEPHENS: Your Honor, this is John Stephens.
2 Was the Court -- are you -- I didn't know what the Court was
3 intending to do regarding bond requirements.

4 THE COURT: Well, in light of the fact that the
5 defendant has apparently said carefully, "We're going to
6 hold everything up," I'm not sure a bond is required.
7 Ordinarily it would be. Do you want a bond?

8 MR. STEPHENS: Well, I guess that's -- I mean, I
9 do think that in the long run there is serious harm to the
10 other shareholders in Ocean Gold, and that that's an
11 important component. The Court certainly is correct that we
12 are not closing right now because we want to get a
13 resolution of that. So I totally understand the Court's
14 point with respect to that. And, of course, you know,
15 really what -- and I've already said it, so I will only say
16 it in one sentence, that in light of that, that there isn't
17 a need for -- at all for an injunction, but --

18 THE COURT: I've already ruled.

19 MR. STEPHENS: And I understand that, Your Honor.

20 THE COURT: All right. What's your position about
21 a bond, Mr. Haglund?

22 MR. HAGLUND: Your Honor, we don't think it's
23 appropriate, given the representations that have been made
24 by the defendants as to the transaction being completely on
25 hold, given the pending dispute. We would want to brief the

1 issue if the Court was inclined to consider one. The client
2 group has significant financial limitations in terms of the
3 size of any bond.

4 The only other issue I'd like to raise regarding
5 the injunction, Your Honor, is we requested access to the
6 documentation that relates to the transaction. It's hard to
7 brief the issue thoroughly without knowing what the deal is,
8 and we had asked in connection with our draft order that
9 they be -- defendants be ordered to provide the
10 documentation, which we understand goes back to July, in
11 connection with the negotiations over what the deal is.

12 THE COURT: All right. I'm going to set a \$10,000
13 bond. I recognize that defendants' position in that regard
14 is that some bond is necessary, but I do understand that
15 these are fishermen, and no further bond is required.

16 I will issue an order on this today. I'm going to
17 set a hearing for two weeks from now so that we can take
18 another look at it. What's that date?

19 February 7th at 10:00.

20 MR. HAGLUND: February 7th is a Saturday.

21 THE COURT: That won't work.

22 MR. STEPHENS: Your Honor, this is John Stephens.
23 Would it be possible that it was the following Monday? I
24 was going to be out of town that day. But, I mean, assuming
25 the 6th was the alternative, I could certainly be available

1 the 6th no matter what, but --

2 THE COURT: The Monday following, what date would
3 that be?

4 MR. STEPHENS: My calendar -- Oh, I'm sorry.

5 THE COURT: February 9th. February the 9th, at
6 10:00.

7 MR. HAGLUND: Your Honor, this is Mike Haglund.
8 Can we have ten days to post the bond?

9 THE COURT: Yes, you can.

10 MR. HAGLUND: Thank you.

11 THE COURT: Anything further at this time?

12 MR. HAGLUND: Nothing for plaintiff, Your Honor.

13 MR. STEPHENS: Nothing for defendants, Your Honor.

14 THE COURT: The subsequent hearing will be on the
15 telephone unless one or both parties request an in-person
16 hearing.

17 Thank you.

18 MR. STEPHENS: Thank you, Your Honor.

19 MR. HAGLUND: Thank you, Your Honor.

20 (Proceedings concluded.)

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature or conformed signature is not certified.

/s/Bonita J. Shumway

3/26/2015

BONITA J. SHUMWAY, CSR, RMR, CRR
Official Court Reporter

DATE