UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE BROILER CHICKEN ANTITRUST LITIGATION	No. 16 C 8637 Judge Thomas M. Durkin

MEMORANDUM OPINION AND ORDER

This antitrust price-fixing conspiracy case consists of a number of actions consolidated for pretrial management. Four newly consolidated complaints[1] and one amended complaint[2] include claims that Defendants engaged in "bid-rigging," mimicking charges in a recent criminal indictment in the District of Colorado. Defendants move to strike or sever these bid-rigging claims, arguing that they are not part of this case, because the original complaints only alleged claims of conspiracies to reduce Broiler supply and to manipulate the Georgia Dock price index. In response, Plaintiffs argue that bid-rigging has been at the heart of the case since its inception and indicate that they intend to amend all the consolidated complaints to include this claim.

The Court has consolidated actions in this case pursuant to Local Rule 40.4, which provides that "[t]wo or more civil cases may be related if . . . the cases involve some of the same issues of fact or law; [or] the cases grow out of the same transaction or occurrence." Designating a case as related under Rule 40.4 is only permitted if:

[1] 20 C 3450; 20 C 3454; 20 C 3458; 20 C 3459.

[2] 20 C 2013.

> the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort; the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and the cases are susceptible of disposition in a single proceeding.

Similarly, under Federal Rule of Civil Procedure 42(a), when actions "involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." In addition, under Rule 42(b), "[f]or convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues [or] claims." These rules give the Court "virtually unlimited freedom" to manage related or consolidated cases "in whatever way trial convenience requires." 9A Fed. Prac. & Proc. Civ. § 2387 (3d ed.); *see also id.* § 2388 (3d ed.) ("sound discretion"); *id.* § 2388 ("the district court may order separate trials on its own motion"); *Houskins v. Sheahan*, 549 F.3d 480, 495 (7th Cir. 2008) ("The ultimate decision to order a separate trial under Rule 42(b) is at the court's discretion and will be overturned only upon a clear showing of abuse."). This includes limiting discovery to a "possibly dispositive issue . . . until after its resolution." 9A Fed. Prac. & Proc. Civ. § 2387. A district court may also "order a separate trial of independent issues raised in pleadings that are interposed by any party subsequent to the initial complaint[.]" *Id.* § 2389. In other words, "Rule 42(b) provides the district court with discretion to subdivide the case in whatever manner seems dictated by the circumstances." *Id.*; *see also id.* § 2383 ("In addition, the district

court may deny consolidation when one of the actions has proceeded further in the discovery process than the other.").

The Court is aware that some courts in this district have found there to be a distinction between "relatedness" under Local Rule 40.4 and "consolidation" under Federal Rule 42(a). *See*, *e.g.*, *Saleh v. Merch.*, 2017 WL 2424229, at *2 (N.D. Ill. June 5, 2017); *Peery v. Chicago Hous. Auth.*, 2013 WL 5408860, at *2 (N.D. Ill. Sept. 26, 2013). But the foregoing review shows that if there is a distinction, it is one of semantics or degree only. A finding that cases are "related" is necessary for them to be "consolidated." But "consolidation"—and by extension "relatedness"—permits a wide range of joint case management options, from the cases simply being presided over by the same judge at one end of the spectrum, to a single trial at the other. Thus, the Court does not see the utility in precisely delineating where "relatedness" ends and "consolidation" begins.

In this case, the three putative class actions and numerous direct actions have been found to be related, reassigned to the undersigned judge, and consolidated for pretrial purposes. Plaintiffs point out that the cases have not officially been consolidated for trial. *See* R. 256. But certainly, the Court and the parties have contemplated that the cases likely will be consolidated to some extent, whether for class certification determinations, summary judgment, or even for trial. And in any event, the cases the Court has found to be related and "consolidated" under the caption *In re Broiler Chicken Antitrust Litigation* are subject to this Court's "virtually unlimited" management discretion. This order is an exercise of that discretion.

There is a substantial relationship between the alleged bid-rigging claim and the alleged supply reduction and Georgia Dock price index manipulation claims. All three claims have the same goal of maintaining a high price for Broilers, involving the same industry and defendants. These similarities mean that discovery for all three claims is thoroughly intertwined in terms of the scope of relevant documents, document custodians, and deponents. Further, legal rulings, factual findings, or settlements regarding any of the claims will undoubtedly impact the others. This is a sufficient basis for the Court to have found the four recently filed direct-action complaints to be related and ordered them reassigned and consolidated at least for pretrial purposes.

Defendants argue that the bid-rigging claim is distinct from the others because it employed different means to fix prices during a different time period. But it is plausible for a single conspiracy to use different means at different times. The Court permitted the supply reduction and Georgia Dock claims to proceed together for just this reason. *See* R. 541 at 63 (*In re Broiler Chicken Antitrust Litig.*, 290 F. Supp. 3d 772, 809 (N.D. Ill. 2017)). The Court does not perceive there to be a material difference in the relationship between the supply reduction and Georgia Dock claims, which have proceeded together for almost four years; and the relationship between either of those two claims and the bid-rigging claim. Absent such a difference there is not a principled reason to force the bid-rigging claim to proceed in a separate action.[3]

[3] Defendants' argument that not all defendants have been implicated in the bid-rigging allegations is well-taken with respect to the criminal indictment. But all defendants would be at least significant third-parties in discovery on the bid-rigging

To the extent there is merit to Defendants' argument that the bid-rigging claim is substantively distinct such that severance is appropriate, there remains extensive overlap among the parties, document custodians, deponents, and counsel. If the bid-rigging claim was severed and filed before another judge, it is likely that scheduling orders issued in that case would interfere with the progress of this case. The parties and counsel would be required to negotiate the demands of an additional judge or two, and it is likely that the judges already on this case would need to coordinate with the new judges. There is no reason to add that complication to an already complicated case.

However, in litigation as in life, timing is everything. Even though the bid-rigging claim is properly related to this case, it cannot be denied that the bid-rigging claim is *new*, while the supply reduction and Georgia Dock claims have been in the case since its inception four years ago.[4] In that time, an immense amount of motion practice and discovery has occurred. This sprawling case already consists of: 56 related actions, 40 direct actions, and three classes (including every purchaser of chicken meat in the United States), with each complaint more than 100 pages long; 252 attorney appearances and more than 3,800 entries on the docket; discovery of more than 8 million documents (totaling millions more in pages), hundreds of

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claim whether they are named defendants or not. And Plaintiffs point out that there are indications that more defendants will be implicated in that claim.

[4] Plaintiffs contend that the bid-rigging claim is not so new because discovery has revealed hints of bid-rigging. But the fact is the claim was not added to any complaint until after the criminal indictment was returned on June 3, 2020, little more than three months ago. While Plaintiffs claim that bid-rigging has always been at the "heart" of this case, that contention is simply not credible.

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