UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

BADER FARMS, INC. and BILL BADER	)	
Plaintiffs,	)	**MDL No. 1:18md2820-SNLJ**
v.	)	**Case No. 1:16cv299-SNLJ**
MONSANTO CO. and BASF CORP.,	)	
Defendants.	)	

MEMORANDUM and ORDER

After a three-week-long jury trial, this Court entered judgment for plaintiff Bader Farms, Inc. and against defendants Monsanto Company and BASF Corporation and awarded actual damages in the amount of $15,000,000 and punitive damages in the amount of $250,000,000. Currently before the Court are BASF's renewed motion for judgment as a matter of law [#579], BASF's alternative motion for a new trial [#581], BASF's motion to alter judgment [#583], Monsanto's renewed motion for judgment as a matter of law on punitive damages or motion for new trial or remittitur [#585], Monsanto's renewed motion for judgment as a matter of law or new trial [#587], Monsanto and BASF's motions for hearing [#621, #624], BASF's motion to join Monsanto's supplemental brief [#643], and plaintiff's motion to strike [#642].

Plaintiff Bader Farms grows peaches and other crops in the Missouri Bootheel region. Plaintiff claims that its peach orchards suffered injury beginning in 2015 after defendants Monsanto Company (a company that sells crop seed and herbicide) and BASF

Corporation (a company that sells herbicide) conspired to develop and market dicamba-tolerant ("DT") seeds and dicamba-based herbicides. Dicamba had long been used as an agricultural herbicide, as it kills many plants not genetically modified to withstand its use. The defendants sought to make DT seeds to combat weeds that had become resistant to Roundup and other herbicides. Dicamba, however, was known for being prone to drift and volatilization, which can cause injury to non-DT crops, so defendants had to formulate a low-volatility herbicide to be used with the DT seed.

Plaintiff claims the defendants conspired to create an "ecological disaster," where Monsanto released its DT seeds in 2015 and 2016 with no corresponding low-volatility dicamba herbicide. As a result, farmers illegally sprayed an old formulation of dicamba herbicide that was unapproved for in-crop, over-the-top use and was prone to drift. Drifting dicamba would cause damage to neighboring, non-tolerant crops, forcing neighboring farmers to plant Monsanto's dicamba-tolerant seed defensively, and that increased demand for both defendants' new dicamba herbicide during the 2017 growing season. Some farmers, like plaintiff here, could not plant a DT crop, and they say they suffered injuries from the nearby dicamba use as a result.

Numerous lawsuits were filed against defendants based on these circumstances, and the cases filed in federal court have been consolidated into the *In re Dicamba Herbicides Multi-District Litigation*,1:18-MD-2820-SNLJ (E.D. Mo.) (the "MDL"). The present case was filed on November 23, 2016 and was consolidated into the MDL. Numerous MDL plaintiffs have joined the Master Crop Damage complaint, which focuses on soybean growers in several states. The *Bader* plaintiff did not join in the Master Crop Damage

complaint and followed its own litigation schedule. The parties are in the process of settling the soybean-related and other claims, but the *Bader* plaintiffs are not involved in those settlement discussions.

I. BASF's Renewed Motion For Judgment As A Matter Of Law [#579]

Federal Rule of Civil Procedure 50 states that a court should grant judgment as a matter of law when a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue. Fed. R. Civ. P. 50(a)(1); *Duban v. Waverly Sales Co*., 760 F.3d 832, 835 (8th Cir. 2014). The Court must "(1) resolve direct factual conflicts in favor of the nonmovant; (2) assume as true all facts supporting the nonmovant which the evidence tended to prove; (3) give the nonmovant the benefit of all reasonable inferences; and (4) deny the motion if the evidence so viewed would allow reasonable jurors to differ as to the conclusions that could be drawn." *Roberson v. AFC Enters., Inc*., 602 F.3d 931, 933 (8th Cir. 2010) (quoting *Larson ex rel. Larson v. Miller*, 76 F.3d 1446, 1452 (8th Cir. 1996) (en banc)).

This Court applies the same standard as that for granting summary judgment. *Tatum v. City of Berkeley*, 408 F.3d 543, 549 (8th Cir. 2005). The motion "must be granted when the non-movant's case rests solely upon speculation and conjecture lacking in probative evidentiary support." *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1050 (8th Cir. 2000) (quotation omitted).

A. Joint Venture Claim

The jury found that defendants BASF and Monsanto were in a joint venture. BASF argues that the joint venture theory fails as a matter of law because (1) their relationship

was fully governed by express written contracts, and (2) there is no evidence of any implied agreement meeting the requirements of a joint venture.

1. Legal framework

A joint venture is "an association of two or more persons to carry out a single business enterprise for profit." *Ritter v. BJC Barnes Jewish Christian Health Sys.*, 987 S.W.2d 377, 387 (Mo. App. 1999). The elements of a joint venture are (1) "an express or implied agreement among members of the association," (2) "a common purpose to be carried out by the members," (3) "a community of pecuniary interest in that purpose," and (4) an "equal voice" among all members "in determining the direction of the enterprise." *Id.* In other words, a joint venture is a partnership that is limited to a single business purpose. *See Jeff-Cole Quarries, Inc. v. Bell*, 454 S.W.2d 5, 14-15 (Mo. 1970).

The crux of BASF's first argument is that "corporations may become members of joint ventures only by express agreement or contract," relying on *In re Genetically Modified Rice Litig.*, 666 F. Supp. 2d 1004, 1027 (E.D. Mo. 2009), *adhered to on reconsideration*, 4:06MD1811 CDP, 2011 WL 5024548 (E.D. Mo. Oct. 21, 2011). BASF's premise appears to be an overstatement of the law. As this Court observed in its Memorandum & Order denying summary judgment [#288 at 16], the *Rice* decision nonetheless reserved the joint venture question for the jury where the express agreements between defendants showed the companies were operating under their express corporate forms or as a joint venture. *Id.*

The oft-cited case in support of BASF's argument is *Ritter*, which states that "courts will not imply a joint venture where the evidence indicates that the parties created a different business form." *Ritter*, 987 S.W.2d at 387 (relying on *Rosenfeld v. Brooks*, 895 S.W.2d 132, 135 (Mo. App. E.D. 1995)). That is because "the unequivocal existence of a

definite business form is the most reliable expression of the relationship among the parties." *Rosenfeld*, 895 S.W.2d at 135, *cited by Ritter*, 987 S.W.2d at 387. Ritter states that "Although Missouri courts hold that a corporation may be an arm of a joint venture, we will not imply this arrangement." *Id.* (citing *Rosenfeld*, 895 S.W.2d at 135). That said, *Ritter* went on to consider whether the corporate parties' relationship met the elements of a joint venture and concluded that it did not. *Id*.

Looking to *Rosenfeld*, then, the plaintiff there sought to show that the corporation he had created with other individuals was a joint venture and that a sale in stock of a corporation to another company had created a joint venture. *Rosenfeld*, 895 S.W.2d at 133. The court held that the express contracts governing those transactions did not support that a joint venture existed, nor could plaintiff show any existence of an oral contract. *Id.* at 135. The court then observed,

> Nor can plaintiff show an implied joint venture agreement. Although plaintiff presented several facts consistent with an implied agreement, it is inappropriate for a court to imply a joint venture where, as here, it is evident that there is a different business form involved. "The existence of a different type of express contract is in itself inconsistent with a claimed relationship of a joint venture by implication." *Jeff–Cole Quarries, Inc. v. Bell*, 454 S.W.2d 5, 16 (Mo. 1970). This principle dictates that the unequivocal existence of a definite business form is the most reliable expression of the relationship among the parties. In this case, the unequivocal existence of the corporate form of SCC precludes plaintiff from demonstrating the joint venture by implication.

Rosenfeld, 895 S.W.2d at 135. The *Ritter-Rosenfeld* rule appears to be, then, simply that an "unequivocal existence of a definite business form is the most reliable expression of the relationship." *Id.* However, *Rosenfeld* goes on to say "that it is possible for a corporation to exist as an arm of a joint venture. However, courts will not *imply* such arrangements." *Id.* (emphasis in original). *Rosenfeld*'s pronouncement that courts will not imply corporate

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