

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WINN-DIXIE STORES, INC., <i>et al.</i>,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
EASTERN MUSHROOM MARKETING COOPERATIVE, <i>et al.</i>,	:	
Defendants.	:	No. 15-6480
	:	

MEMORANDUM

Schiller, J.

January 26, 2022

With trial in this matter finally on the horizon, Plaintiff Winn-Dixie and Defendant the Eastern Mushroom Marketing Cooperative (the “EMMC”) filed competing motions for summary judgment with respect to the EMMC’s ability to invoke the protections of the Capper-Volstead Act. Both parties’ motions were filed late. In the normal course, this would be sufficient reason to deny them both. However, given the importance of this issue at the parties’ upcoming trial, the Court considered the parties’ arguments. The Court will grant Plaintiff’s motion and deny Defendant’s motion for the reasons that follow.

I. Background

The history in this case, related cases, and “between the parties to this antitrust lawsuit is lengthy, convoluted and contentious.” *In re Mushroom Direct Purchaser Antitrust Litig.*, 621 F. Supp. 2d 274, 278 (E.D. Pa. 2009). The underlying facts and procedural labyrinth of this case have been repeated several times since Winn-Dixie opted out of a related class action and sued the EMMC and related entities (“Defendants”) in 2015. The Court will not spill unnecessary ink recounting the background in full here and confines its discussion to the precise issue at hand.

As explained further below, in 2009, Judge O’Neill held that the EMMC and its members were not entitled to invoke the protections of the Capper-Volstead Act as a defense to allegations that they violated the federal antitrust laws. *See id.* at 291. Judge O’Neill’s ruling was not issued as a part of this action, but rather in a related case against Defendants based on the same underlying facts (the “Direct Purchaser Action”). Although the two cases are similar in many respects, one significant difference is that the plaintiffs in the Direct Purchaser Action only sought to recover damages sustained through August 2005. *See, e.g., In re Mushroom Direct Purchaser Litig.*, 319 F.R.D. 158, 166-67 (E.D. Pa. 2016). Here, Winn-Dixie seeks damages resulting from Defendants’ actions “at least through 2008.” (First Am. Compl. ¶ 3.)

The parties never addressed whether Judge O’Neill’s Capper-Volstead ruling also applied to the EMMC’s conduct after August 2005 and, if not, whether the EMMC could invoke the statute’s protections with respect to its conduct during that period. At oral argument in November 2021, the Court posed these questions to counsel for both parties. Shortly thereafter, the parties filed the instant motions for summary judgment regarding Capper-Volstead immunity.

II. The Capper-Volstead Act

“The Capper-Volstead Act provides agricultural cooperatives a limited exemption from antitrust laws.” *In re Mushroom Direct Purchaser Antitrust Litig.*, 621 F. Supp. 2d at 282; *see also* 7 U.S.C. §§ 291-92. The statute permits “farmer-producers to organize together, set association policy, fix prices at which their cooperative will sell their produce, and otherwise carry on like a business corporation without thereby violating the antitrust laws.” *Md. & Va. Milk Producers Ass’n v. United States*, 362 U.S. 458, 466 (1960). Given farmers’ “particularly harsh economic position,” Congress enacted the Capper-Volstead Act to enable them “to join together in cooperatives” as a means of “bolster[ing] their market strength and to improve their ability to

weather adverse economic periods and to deal with processors and distributors.” *Nat’l Broiler Mktg. Ass’n v. United States*, 436 U.S. 816, 825-26 (1978).

In order to claim the statute’s protection, a cooperative must satisfy the following: (1) the cooperative and its members are “engaged in the production of agricultural products as farmers”; (2) each member must receive an equal vote; (3) the cooperative may not pay dividends exceeding 8% per year; and (4) the cooperative may “not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.” 7 U.S.C. § 291; *see also In re Mushroom Direct Purchaser Antitrust Litig.*, 621 F. Supp. 2d at 283 n.8.

With respect to the first requirement, the Supreme Court has held that a cooperative that includes “even one” non-producing member “is not entitled to the limited protection of the Capper-Volstead Act.” *Nat’l Broiler*, 436 U.S. at 828-29. “Accordingly, if non-producers participate as members in an agricultural cooperative, that cooperative is not entitled to avail itself of the Capper-Volstead exemption.” *In re Mushroom Direct Purchaser Antitrust Litig.*, 621 F. Supp. 2d at 284. Similarly, a cooperative protected by the Capper-Volstead Act may not “act[] in concert or enter[] into an agreement with persons or entities not engaged in agricultural production.” *Id.* at 286.

A. Judge O’Neill’s Direct Purchaser Action Capper-Volstead Ruling

In 2009, Judge O’Neill issued a Memorandum and Order in the Direct Purchaser Action denying the Capper-Volstead Act’s protection to the EMMC based on two independent grounds: (1) the EMMC included at least one non-grower member and (2) the EMMC conspired with third parties. *See id.* at 285-86, 290-91.

1. EMMC Membership

First, Judge O’Neill found that EMMC member “M. Cutone was a non-grower member who had the power to participate in the control and policy making of the association through

voting.” *Id.* at 285. He rejected the EMMC’s argument that M. Cutone’s membership in the EMMC was “a technical, de minimis violation” that did not destroy Capper-Volstead immunity “because there is complete identity of ownership between M. Cutone, which is not a grower, and M & V, which is a grower.” *Id.* at 284. Instead, Judge O’Neill found M. Cutone was “a mushroom distributor and a middleman, the very type of entity from which Capper-Volstead was designed to protect the interests of farmer/producers.” *Id.* at 285. Since “even one non-farmer member in an agricultural cooperative is sufficient to destroy Capper-Volstead immunity,” Judge O’Neill held that the EMMC could not rely on the statute’s protection. *Id.* at 286.

Given the rigidity of the statute’s requirements, after determining that M. Cutone destroyed Capper-Volstead immunity, it was unnecessary to “extend [the] analysis to other members of the EMMC which plaintiffs allege have problematic memberships including Leone Pizzini and Son, Inc., Brownstone Mushroom Farms, Inc., and LRP-M Mushrooms LLC.” *Id.* at 286 n.13. Judge O’Neill therefore made “no determination” regarding the propriety of their memberships in the EMMC or whether any of them (or any other EMMC member not specifically named) may have independently prevented the EMMC from invoking Capper-Volstead immunity. *Id.*

2. Conspiracy with Non-Members

Second, Judge O’Neill held the EMMC impermissibly conspired with third party distributors. *Id.* at 291. The Capper-Volstead “exemption does not extend to protect cooperatives that conspire with non-cooperatives. . . . Cooperatives cannot, for example, conspire or combine with nonexempt entities to fix prices or control supply, even though such activities are lawful when engaged in by cooperatives alone.” *Id.* at 286. Judge O’Neill’s analysis focused on two EMMC members (Kaolin and LRP-M) and their respective distributors. *See id.* at 289-91.

The EMMC argued it was entitled to Capper-Volstead immunity “because each EMMC member and its affiliated distributors are commonly owned and operated” such that they both comprised “a single economic entity.” *Id.* at 287. Accordingly, the EMMC member and its distributor would be unable to conspire with one another (and by extension, the EMMC could not have conspired with the distributors) under *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984) and *Sunkist Growers, Inc. v. Winckler & Smith Citrus Prods. Co.*, 370 U.S. 19 (1962). *Id.* at 287-88.

Judge O’Neill rejected this argument and found that EMMC members Kaolin and LRP-M “were not under common control” with their affiliated distributors. *Id.* at 290. Specifically, Kaolin’s two owners held only a “50% interest in the distribution centers during the relevant period with another man who also had a 50% interest in the distribution centers” and the two entities were engaged in litigation against each other. *Id.* at 289-90. LRP-M was owned jointly by “Dominic Manfredini and his nephew Lucio Pizzini,” but because its affiliated grower was owned by Manfredini’s wife, the entities were not commonly controlled. *Id.* at 290. With respect to his conclusion regarding LRP-M’s ownership, Judge O’Neill noted that

[t]he involvement of family relationships in these varying ownerships is immaterial to determining common ownership and control. That partners in a company or between companies are related by blood or marriage—no matter how closely—does not ensure that they will uniformly agree on how to control the companies. Merely because two people are related does not mean that they have the same views and interests in their family businesses.

Id.

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