United States Court of Appeals
For the First Circuit

No. 17-2131

MARGARET LEE, on behalf of herself and all others similarly situated,

Plaintiff, Appellant,

v.

CONAGRA BRANDS, INC.,

Defendant, Appellee,

ROCHE BROS. INC.; ROCHE BROS. SUPERMARKETS, INC.; ROCHE BROS. SUPERMARKETS, LLC; STOP & SHOP SUPERMARKET COMPANY LLC,

Defendants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Richard G. Stearns, U.S. District Judge]

Before

Howard, Chief Judge,
Kayatta, Circuit Judge,
and Torresen,* U.S. District Judge.

Patrick J. Vallely, with whom Edward F. Haber and Shapiro Haber & Urmy LLP were on brief, for appellant.

Angela M. Spivey, with whom R. Trent Taylor and McGuire Woods LLP were on brief, for appellee.

* Of the District of Maine, sitting by designation.

May 7, 2020

HOWARD, **Chief Judge**. Margaret Lee purchased Wesson brand vegetable oil ("Wesson Oil") from grocery stores in Brookline and Mashpee, Massachusetts. The Wesson Oil label advertised that it was "100% Natural." After learning that Wesson Oil contained genetically modified organisms ("GMOs"), which Lee regarded as quite unnatural, she sued the manufacturer and distributer, Conagra Brands, Inc. ("Conagra"), in Massachusetts Superior Court. She sued on her own behalf and on behalf of others similarly situated. Lee alleged that, by labeling Wesson Oil "100% Natural," Conagra violated Massachusetts's prohibition against unfair or deceptive trade practices. See Mass. Gen. Laws ch. 93A ("Chapter 93A").[1] Conagra removed the action to federal court, and the district court dismissed Lee's complaint for failure to state a claim. The district court determined that Wesson Oil's label was neither unfair nor deceptive as a matter of law because it conformed to the Food and Drug Administration's ("FDA") labeling policy. We reverse.

I.

We review de novo an order dismissing a complaint for failure to state a claim, and we reverse the dismissal if "the combined allegations, taken as true . . . state a plausible, not

[1] Lee originally named as co-defendants the supermarkets from which she bought Wesson Oil, but she later voluntarily dismissed them from the case.

a merely conceivable, case for relief." Sepúlveda-Villarini v. Dep't of Educ. of P.R., 628 F.3d 25, 29 (1st Cir. 2010) (citing Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "In undertaking this review, 'we accept as true all well-pleaded facts alleged in the complaint and draw all reasonable inferences therefrom in the pleader's favor.'" Lanza v. Fin. Indus. Regulatory Auth., 953 F.3d 159, 162 (1st Cir. 2020) (quoting Nystedt v. Nigro, 700 F.3d 25, 30 (1st Cir. 2012)). To the extent that Lee's Chapter 93A complaint sounds in fraud, it must meet Federal Rule of Civil Procedure 9(b)'s heightened pleading requirements. See Shaulis v. Nordstrom, Inc., 865 F.3d 1, 13 n.6 (1st Cir. 2017). "The circumstances to be stated with particularity under Rule 9(b) generally consist of the who, what, where, and when of the allegedly misleading representation." Kaufman v. CVS Caremark Corp., 836 F.3d 88, 91 (1st Cir. 2016) (alteration and quotation marks omitted).

Although Conagra moved to dismiss the complaint on four grounds, the district court only addressed one; it agreed with Conagra that Wesson Oil's label was not unfair or deceptive as a matter of law because the label "conforms to FDA labeling policy." That policy essentially permits labeling a product as "natural" so long as it includes no added synthetic ingredients, like artificial colors or flavors. The district court also noted that the FDA

does not require the affirmative disclosure of GMOs' presence. Conagra raises three other arguments that the district court did not discuss. It submits: (1) that Lee fails to allege a cognizable Chapter 93A injury; (2) that the FDA affirmatively permits the "100% Natural" representation on Wesson Oil's label; and (3) that federal statutes -- namely, the Nutrition Labeling and Education Act, 21 U.S.C. § 343-1, and the National Bioengineered Food Disclosure Standard, 7 U.S.C. § 1639 et seq. -- preempt Lee's requested relief.

II.

We begin, as ever, with subject matter jurisdiction. Conagra removed the case and justifies federal jurisdiction under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). CAFA requires minimal diversity and that at least $5,000,000 be in controversy. 28 U.S.C. § 1332(d)(2). Diversity is met because Lee is a resident of Massachusetts and Conagra is a Delaware corporation with its headquarters in Illinois. See id. § 1332(d)(2)(A). Conagra is the removing party, so it "bears the burden to show with a 'reasonable probability' that the amount in controversy requirement is satisfied." Cooper v. Charter Commc'ns Entm'ts I, LLC, 760 F.3d 103, 106 (1st Cir. 2014). Lee does not contest jurisdiction, and we are at ease finding federal jurisdiction proper based upon the allegations in Lee's amended

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