

PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1088

IN RE: PROCESSED EGG PRODUCTS ANTITRUST
LITIGATION

T.K. RIBBINGS FAMILY RESTAURANT, LLC;
JOHN A. LISCIANDRO, DBA Lisciandro's Restaurant
EBY-BROWN COMPANY LLC; KARETAS
FOODS INC.,

Appellants

No. 19-1188

IN RE: PROCESSED EGG PRODUCTS ANTITRUST
LITIGATION

Rose Acre Farms, Inc,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-08-md-02002)
District Judge: Hon. Gene E.K. Pratter

Argued
March 25, 2020

Before: JORDAN, RESTREPO, and FUENTES, *Circuit
Judges.*

(Filed: June 22, 2020)

Ronald J. Aranoff, Esq.
Wollmuth Maher & Deutsch
500 Fifth Avenue
12th Floor
New York, NY 10110

Stanley D. Bernstein, Esq.
Bernstein Liebhard
10 East 40th Street
22nd Floor
New York, NY 1001

Michael D. Hausfeld, Esq.
Hausfeld
1700 K Street, N.W.
Suite 650
Washington, DC 20006

Stephen R. Neuwirth, Esq.
Kathleen M. Sullivan, Esq. [ARGUED]
Quinn Emanuel Urquhart & Sullivan
51 Madison Avenue
22nd Floor
New York, NY 10010

Mindee J. Reuben, Esq.
Lite DePalma Greenberg
1835 Market Street
Suite 2700
Philadelphia, PA 19103

Stephen D. Susman, Esq.
Susman Godfrey
1301 Avenue of the Americas
32nd Floor
New York, NY 10019
*Counsel for Appellants T.K. Ribbings Family
Restaurant, LLC;
John A. Lisciandro, DBA Lisciandro's Restaurant;
Eby-Brown Company LLC; Karetas Foods Inc.*

Donald M. Barnes, Esq.
Jay L. Levine, Esq. [ARGUED]
Porter Wright Morris & Arthur
2020 K Street, N.W.
Suite 600
Washington, DC 20006

James A. King, Esq.
Porter Wright Morris & Arthur
41 South High Street
Suite 2900
Columbus, OH 43215

Leah A. Mintz, Esq.
Robert M. Palumbos, Esq.
Duane Morris
30 South 17th Street
United Plaza
Philadelphia, PA 19103
Counsel for Appellee Rose Acre Farms, Inc.

Michael A. Lindsay
Dorsey & Whitney
50 South Sixth Street – Ste. 1500
Minneapolis, MN 55402
*Counsel for Amicus National Council of Farmer
Cooperatives*

OPINION OF THE COURT

JORDAN, *Circuit Judge.*

In this antitrust class action brought by egg purchasers,¹ the plaintiffs claim that egg producers conspired to inflate

¹ Claims were also brought by the purchasers of egg products, but those claims are not now at issue.

prices through three stratagems: (1) early slaughtering of hens and similar supply-reducing steps; (2) creation of an animal-welfare program that was actually designed to reduce the egg supply; and (3) coordinated exports of eggs. Before the District Court, the plaintiffs argued that all three of those contrivances were part of a single overarching conspiracy that was anticompetitive *per se* and therefore unlawful under the Sherman Act, 15 U.S.C. § 1 et seq. The defendants countered that the District Court should look at each alleged stratagem of the conspiracy separately and determine whether to apply the *per se* standard for antitrust liability or, instead, the more commonly applied rule of reason. In summary judgment briefing, the parties focused on one of the three alleged stratagems, and the District Court decided to evaluate it under the rule of reason. The case then proceeded to trial with all three stratagems being evaluated under that standard. Following the jury's verdict, the District Court entered judgment for the defendants.

The plaintiffs' primary argument on appeal is that, contrary to the District Court's approach, the alleged conspiracy should have been evaluated under the standard of *per se* illegality rather than the rule of reason. We conclude that the District Court was right and, accordingly, will affirm.

I. BACKGROUND

The plaintiffs represent a class of “[a]ll individuals and entities that purchased shell eggs produced from caged birds in the United States directly from Defendants during the Class Period from September 24, 2004 through December 31,

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.