IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MOUNTAIN CREST SRL, LLC,

Plaintiff,

v.

ANHEUSER-BUSCH InBEV SA/NV, individually and as successor to InBev SA/NV and Interbrew S.A. and MOLSON COORS BREWING COMPANY, individually and as successor to Molson Canada Inc.,

Defendants.

OPINION and ORDER

17-cv-595-jdp

Plaintiff Mountain Crest SRL, LLC, which owns and operates Minhas Brewery in Monroe, Wisconsin, is suing defendants Anheuser-Busch InBev SA/NV (ABI) and Molson Coors Brewing Company (Molson Coors) for alleged anticompetitive behavior in Ontario, Canada. The case is now on remand after the Court of Appeals for the Seventh Circuit affirmed in part and reversed in part the judgment dismissing all of Mountain Crest's claims. *See Mountain Crest SRL, LLC v. Anheuser-Busch InBev SA/NV*, 937 F.3d 1067 (7th Cir. 2019).

This court dismissed the case under the act of state doctrine, which prohibits federal courts from invalidating the public acts of a foreign government. The court understood Mountain Crest's challenge to be limited to the so-called "six-pack rule," which prohibits some Ontario liquor stores from selling larger packs of beer or offering discounts for buying multiple six-packs.[1] Because the six-pack rule is embodied in Ontario law, Liquor Control Act, R.S.O. 1990, c. L.18, § 10(3) (Can.), the act of state doctrine required dismissal.

[1] *See* Dkt. 60, at 10 n.3 ("[B]oth sides have assumed in their briefing that Mountain Crest's claims under the Sherman Act are limited to restrictions on selling larger packs of beer and

The court of appeals agreed that the act of state doctrine required dismissal of Mountain Crest's challenge to the six-pack rule. But the court concluded that Mountain Crest was also challenging other conduct not implicated by the act of state doctrine. The court did not determine whether the other challenges should proceed but instead directed "the district court [to] address these claims in due course." *Id.* at 1086.

Now defendants have filed a new motion to dismiss all of the claims remanded by the court of appeals. Dkt. 75. For its part, Mountain Crest moves for reconsideration of the decision that its challenge to the six-pack rule is barred by the act of state doctrine, contending that a new bill by the Ontario legislature undermines that decision. Dkt. 73.

The court isn't persuaded that the bill cited by Mountain Crest requires reconsideration of the holding regarding the six-pack rule, so the court will deny Mountain Crest's motion. As for defendants' motion to dismiss, the court concludes that Mountain Crest hasn't stated a claim upon which relief may be granted. Some of Mountain Crest's claims arise out of injuries caused by the Ontario government's conduct, not defendants' conduct. And the remaining claims relate to conduct by an Ontario cooperative that is not a party to this case. Although Mountain Crest includes conclusory allegations in its complaint that defendants were involved in a conspiracy to control the cooperative to harm American beer exporters, conclusory allegations are not enough to state a claim, especially in a complex lawsuit involving alleged antitrust violations. So the court will grant defendants' motion to dismiss.

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pack-up pricing, so the court has made the same assumption.").

BACKGROUND

A full summary of Mountain Crest's allegations may be found in the court of appeals's decision, *Mountain* Crest, 937 F.3d at 1069–77, and in this court's decision granting defendants' original motion to dismiss, Dkt. 60, at 2–9, so only a brief overview of factual and regulatory background is provided here.

Under Ontario law, there are only two places that an individual may purchase beer for off-site consumption in Ontario: (1) stores operated by the Liquor Control Board of Ontario (LCBO); and (2) The Beer Store, which is operated by Brewers Retail Inc. (BRI). The LCBO is a government agency that regulates liquor sales. BRI is a cooperative of Ontario brewers. The primary members of BRI are Labatt Breweries of Canada and Molson Inc. (Canada), which each own 49 percent of the cooperative. Labatt is a subsidiary of defendant ABI and Molson is a subsidiary of defendant Molson Coors.

The LCBO controls the sale and delivery of beer at BRI stores and establishes specific terms and conditions related to the operation of such stores. When the Beer Store and an LCBO store are in the same community, their inventories differ. LCBO "ordinary" stores sell wine and spirits as well as beer in packages of six or fewer; the Beer Store may sell larger packages of beer. This arrangement was reflected in a 2000 agreement between BRI and LCBO and is now codified in a 2015 Ontario law.

Mountain Crest entered the Ontario beer market in 2009. Since then, Mountain Crest alleges that its ability to sell its beer in Ontario has been unfairly restricted, both at LCBO stores and at the Beer Store. As for the LCBO, Mountain Crest says that the six-pack rule is harmful, especially to a "value beer" such as Mountain Crest, because it prevents Mountain Crest from offering discounts on purchases for larger quantities of beer. Mountain Crest says

that defendants are responsible for the six-pack rule because they pressured the LCBO into adopting the rule, using tactics that are prohibited under antitrust law. As for the Beer Store, Mountain Crest says that the stores are stocked and laid out in a way that discriminates against Mountain Crest and other American brands not owned by defendants.

MOTION FOR RECONSIDERATION

Mountain Crest seeks reconsideration of the portion of this court's decision that was affirmed by the court of appeals. Dkt. 73. Specifically, Mountain Crest says that the act of state doctrine has no application to this case in light of a bill passed by the Ontario legislature in June 2019.

The parties disagree about whether Mountain Crest is entitled to a consideration of the merits of its motion. Mountain Crest cites footnote 78 of the court of appeals's decision, in which the court declined to consider any effect that the bill might have, stating instead that "the most expeditious manner of evaluating this development is to permit the district court to address it on remand." *Mountain Crest*, 937 F.3d at 1085. Defendants don't directly address footnote 78, but they contend that Mountain Crest must still meet the requirements of either Rule 59 or Rule 60 of the Federal Rules of Civil Procedure if it wants to disturb the judgment. Rule 59 motions must be brought within 28 days of entering judgment, and Rule 60 motions must be brought within one year or "within a reasonable time," depending on which provision is at issue. Defendants contend that Mountain Crest has failed to meet any of those deadlines.

Rule 59 and Rule 60 apply only to final judgments. After the court of appeals remanded the case, "the earlier final judgment became interlocutory. What had been a judgment on all claims in the case became a judgment on only some claims. And without a Rule 54 certification,

that judgment was not final." *Carmody v. Bd. of Trustees of Univ. of Illinois*, 893 F.3d 397, 408 (7th Cir. 2018). So the court need not determine whether Mountain Crest's motion complied with the time limits in Rule 59 or Rule 60. Rather, the more appropriate question is whether reconsideration is permitted by the mandate rule and the law of the case doctrine, which "prohibit a district court from revisiting on remand any issues expressly or impliedly decided on appeal." *United States v. Fox*, 783 F. App'x 630, 632 (7th Cir. 2019). In this case, the court of appeals did decide that the act of state doctrine precluded some of Mountain Crest's claims. But footnote 78 appears to give this court permission to consider the June 2019 bill, so that is what the court will do. *See also Carmody*, 893 F.3d at 408 ("[T]he law-of-the-case doctrine may yield if an intervening change in the law, or some other special circumstance, warrants reexamining the claim." (internal quotation marks omitted)).

Mountain Crest attached a copy of the bill to its motion. Dkt. 73-1. The bill "enacted an amendment to the Liquor Control Act terminating the 2015 Agreement," but "[t]he effective date of the termination is to be announced by the province's Lieutenant Governor" and "this date has not yet been announced." *Mountain Crest*, 937 F.3d at 1077.

The court is not persuaded that a bill that has not been given legal effect is enough to require a different result in this case. The court of appeals described the act of state doctrine as "a judicial rule that generally forbids an American court to question the act of a foreign sovereign that is lawful under that sovereign's laws." *Id.* at 1080 (internal quotation marks omitted). The court articulated a two-part test for determining whether the doctrine applied in this case: (1) "whether the six-pack rule is attributable to the government of Ontario for the purposes of the act of state doctrine"; and (2) "whether a decision in Mountain Crest's favor

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