UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Gordon Gamm v. Sanderson Farms, Inc.

No. 18-0284-cv, United States Court of Appeals for the Second Circuit (December 10, 2019)

SUMMARY

In a securities fraud class action under Section 10(b) and Rule 10b-5, the Second Circuit held that when a complaint alleges that statements were rendered false or misleading through the nondisclosure of illegal activity (here, an antitrust conspiracy), the facts of those underlying illegal acts must be pleaded with particularity under Rule 9(b) and the PSLRA. The court affirmed dismissal because plaintiffs failed to allege the basic elements of an antitrust conspiracy—such as an agreement, restraint of trade, or effect on interstate commerce—with sufficient particularized facts, relying instead on conclusory allegations of parallel conduct and opportunities to conspire. The decision clarifies that the heightened pleading standard applies to predicate illegal conduct that forms the basis of the securities fraud claim.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Ralph K. Winter; John M. Walker Jr.; Christopher F. Droney
JURISDICTION	Federal
DECIDED	December 10, 2019
DOCKET	18-0284-cv
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Southern District of New York (Richard M. Berman, Judge) granting appellees' motion to dismiss appellants' complaint for failure to plead securities fraud with particularity.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	Gordon Gamm and Don Pritchard v. Sanderson Farms, Inc., Joe F. Sanderson, Jr., Michael D. Cockrell, Lampkin Butts

TOPICS

securities fraud · pleadings · motions to dismiss · standard of review · appellate procedure · class actions · civil procedure

PRACTICE AREAS

Securities Litigation · Antitrust

QUESTIONS PRESENTED

1. Whether, in a securities fraud action based on the nondisclosure of illegal activity, the facts of the underlying illegal acts must be pleaded with particularity under Rule 9(b) and the PSLRA.
2. Whether appellants sufficiently pleaded the underlying antitrust conspiracy with particularity.

HOLDINGS

1. When a securities fraud complaint claims that statements were rendered false or misleading through the nondisclosure of illegal activity, the facts of the underlying illegal acts must be pleaded with particularity in accordance with Rule 9(b) and the PSLRA.

KEY QUOTATIONS

> *"For the foregoing reasons, we hold that when a securities fraud complaint claims that statements were rendered false or misleading through the nondisclosure of illegal activity, the facts of the underlying illegal acts must be pleaded with particularity in accordance with the requirements of Rule 9 and the PSLRA. Because appellants have failed to meet this pleading standard for the underlying allegations of illegal antitrust conspiracy, their complaint was deficient. Accordingly, we affirm."* (28)

> *"The pleadings are typically subject to Federal Rule of Civil Procedure 8, requiring a 'short and plain statement of the claim.' This is understood to require 'more than an unadorned, the defendant-unlawfully-harmed-me accusation' but does not require 'detailed factual allegations.' Iqbal, 556 U.S. at 678."* (16)

> *"Under Rule 9(b) and the PSLRA, the circumstances of a fraud include 'the basis' for that contention. First, in this matter, the alleged fraud and the facts of the alleged anticompetitive conspiracy are inseparable and the clear language of the statute requires that underlying facts be pleaded with particularity."* (17-18)

> *"Applying that standard here, appellants were required to plead with particularity sufficient facts to support their contention that Sanderson Farms' financial disclosures were misleading. This necessarily requires that facts of the underlying anticompetitive conduct be pleaded with particularity."* (23-24)

FACTUAL BACKGROUND

Sanderson Farms is a poultry processing company. The chicken industry is vertically integrated and has an inelastic market, historically marked by boom-and-bust cycles. Appellants alleged that from 2008, Sanderson Farms and other large chicken producers colluded to inflate chicken prices by coordinating supply reductions and manipulating the Georgia Dock price index. They alleged that Sanderson Farms destroyed breeder hens and eggs, exported eggs, and dumped excess inventories in foreign markets. They also alleged that the conspiracy was facilitated through Agri Stats data sharing and industry meetings. The nondisclosure of this alleged conspiracy rendered Sanderson Farms' SEC filings and public statements false and misleading.

PROCEDURAL HISTORY

Appellants filed a putative class action in the Southern District of New York, were appointed lead plaintiffs, and filed an amended complaint. After pre-motion letters, they filed a second amended complaint. The district court granted appellees' motion to dismiss with prejudice, concluding that appellants failed to support their allegation of a chicken supply reduction conspiracy with particularized facts. This appeal followed.

DISPOSITION

affirmed

CASES CITED

- Novak v. Kasaks, 216 F.3d 300 (2d Cir. 2000)
- Eastman Kodak Co. v. Henry Bath LLC, 936 F.3d 86 (2d Cir. 2019)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)
- S.E.C. v. Pimpco Advisors Fund Mgmt., LLC, 341 F. Supp. 2d 454 (S.D.N.Y. 2004)
- Kramer v. Time Warner, Inc., 937 F.2d 767 (2d Cir. 1991)
- Mills v. Polar Molecular Corp., 12 F.3d 1170 (2d Cir. 1993)
- ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87 (2d Cir. 2007)
- In re IBM Corp. Sec. Litig., 163 F.3d 102 (2d Cir. 1998)
- In re Axis Capital Holdings Ltd. Sec. Litig., 456 F. Supp. 2d 576 (S.D.N.Y. 2006)
- In re Banco Bradesco S.A. Sec. Litig., 277 F. Supp. 3d 600 (S.D.N.Y. 2017)
- Hogan v. Pilgrim's Pride Corporation, 2018 WL 1316979 (D. Col. Mar. 14, 2018)
- In re Tyson Foods, Inc. Sec. Litig., 275 F. Supp. 3d 970 (W.D. Ark. 2017)
- Maric v. St. Agnes Hosp. Corp., 65 F.3d 310 (2d Cir. 1995)
- Mayor and City Council of Baltimore v. Citigroup, Inc., 709 F.3d 129 (2d Cir. 2013)
- Todd v. Exxon Corp., 275 F.3d 191 (2d Cir. 2001)
- Twombly v. Bell Atlantic Corp., 425 F.3d 99 (2d Cir. 2005)
- Capital Imaging Associates, P.C. v. Mohawk Valley Medical Associates, Inc., 996 F.2d 537 (2d Cir. 1993)
- AD/SAT, Div. of Skylight, Inc. v. Associated Press, 181 F.3d 216 (2d Cir. 1999)
- Chicago Title & Trust Co. v. Fox Theatres Corp., 182 F. Supp. 18 (S.D.N.Y. 1960)
- Decker v. Massey-Ferguson, Ltd., 681 F.2d 111 (2d Cir. 1982)
- In re Corning Sec. Litig., 01 Civ. 6580(CJS), 2004 WL 1056063 (W.D.N.Y. Apr. 9, 2004)
- In re Hudson Techs. Sec. Litig., 98 Civ. 1616(JGK), 1999 WL 767418 (S.D.N.Y. Sept. 28, 1999)