UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

Brave Optical Inc. v. Luxottica of America Inc.

No. 1:23-cv-793 (S.D. Ohio Feb. 11, 2026) · No. 1:23-cv-793 · Decided February 11, 2026

SUMMARY

The United States District Court for the Southern District of Ohio considers Brave Optical Inc.'s motion for reconsideration of an earlier order dismissing claims against Luxottica of America Inc. The court concludes that the prior dismissal order was interlocutory and that reconsideration is timely. It declines to reconsider its interpretation of the continuing-violations doctrine but grants reconsideration to allow Brave Optical to seek leave to amend its antitrust and fraud claims; related motions are denied as moot.

CASE DETAILS

COURT	United States District Court for the Southern District of Ohio, Western Division
WRITING FOR THE COURT	Douglas R. Cole
JURISDICTION	U.S. District Court, Southern District of Ohio, Western Division
DECIDED	February 11, 2026
DOCKET	1:23-cv-793
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for reconsideration of the court's interlocutory order dismissing certain claims and sought leave to amend. Defendant opposed the motion and separately sought leave to file exhibits under seal and a sur-reply.
STANDARD OF REVIEW	Interlocutory orders may be reconsidered at the district court's discretion before final judgment, subject to considerations such as an intervening change in controlling law, newly available evidence, clear error, or manifest injustice. Motions for reconsideration may not be used to relitigate matters or raise arguments that could have been presented earlier. Motions for leave to amend are governed by Federal Rule of Civil Procedure 15(a)(2), under which leave should generally be freely given unless factors such as undue delay, bad faith, repeated failure to cure deficiencies, undue prejudice, or futility weigh against amendment.

PRECEDENTIAL VALUE	unpublished, nonprecedential district-court opinion

TOPICS

motion for reconsideration · motion to amend · statute of limitations · commercial litigation · civil procedure

PRACTICE AREAS

civil procedure · commercial litigation · antitrust · contracts

QUESTIONS PRESENTED

1. Whether the March 31, 2025 dismissal order was interlocutory and therefore subject to discretionary reconsideration rather than Rule 59(e)'s strict 28-day deadline.
2. Whether reconsideration was warranted based on Plaintiff's argument that the court misapplied the continuing-violations doctrine to the alleged price-fixing conspiracy.
3. Whether Plaintiff should be permitted to amend its antitrust claims to allege a timely overt act by Luxottica within the applicable limitations period.
4. Whether Plaintiff should be permitted to amend its fraud claims to allege that it discovered the alleged Eyecon-related misrepresentations later than the court previously found.
5. Whether the 2024 Master Agreement could establish injury or a continuing violation for Brave Optical.

HOLDINGS

1. An order dismissing claims while expressly allowing the plaintiff an opportunity to amend is interlocutory rather than a final judgment, so Rule 59(e)'s strict 28-day deadline does not govern reconsideration of that order.
2. A later sale does not automatically constitute a continuing antitrust violation or restart the limitations period for every participant in an alleged price-fixing conspiracy. A continuing violation requires a new and independent overt act by the defendant that inflicts a new and accumulating injury; later conduct that merely reaffirms or implements an earlier agreement is insufficient.
3. Reconsideration was warranted to allow Brave Optical to seek leave to amend its antitrust claims because it might be able to plead a timely overt act by Luxottica during the limitations period.
4. Reconsideration was warranted to permit Brave Optical to seek leave to amend Counts 5 and 6 with additional allegations that it did not discover the alleged Eyecon-related misrepresentations as early as the court previously determined.
5. Brave Optical cannot rely on the 2024 Master Agreement to establish injury or a continuing violation because it no longer owned a Luxottica franchise when that agreement was entered.

KEY QUOTATIONS

> "*With interlocutory orders, by contrast, the Court has more flexibility as to reconsideration.*" (#1039)

> *"But, if Brave Optical contends the Court got the legal framework wrong, then appeal, not reconsideration, is the path it should pursue."* (#1046)

> *"The Court DISMISSES WITHOUT PREJUDICE Plaintiff's antitrust claims and fraud claims (Counts 1, 2, 3, 5, and 6) because Plaintiff potentially could cure the deficiencies identified above."* (#1055–57)

FACTUAL BACKGROUND

Brave Optical operated a Luxottica franchise from 2016 to 2022 and allegedly maintained a separate contractual relationship with Vision Service Plan. The complaint alleged that a Master Agreement between Luxottica and VSP imposed below-market reimbursement rates on franchisees and involved the Eyecon system, while Brave Optical sought to allege later agreements or acts that could constitute continuing antitrust violations and later-discovered misrepresentations.

PROCEDURAL HISTORY

On March 31, 2025, the court granted Defendant's motion to dismiss, dismissing the Sherman Act, misrepresentation, and tortious-interference claims with prejudice as time-barred, dismissing the contract claims for lack of supporting contractual provisions, concluding Ohio law did not apply, and dismissing the negligence claims under the economic-loss doctrine. The court dismissed several remaining claims without prejudice and allowed Plaintiffs an opportunity to seek leave to amend. Brave Optical then moved for reconsideration and leave to amend; the court granted reconsideration in part, amended the prior dismissal of the antitrust and fraud claims to be without prejudice, denied the existing motion for leave to amend as moot, and denied related defense motions as moot.

DISPOSITION

other

CASES CITED

- Russell v. GTE Gov't Sys. Corp., 141 F. App'x 429, 436 (6th Cir. 2005)
- Phillips v. Riley, No. 23-5829, 2023 WL 8726053, at *1 (6th Cir. Nov. 15, 2023)
- Intera Corp. v. Henderson, 428 F.3d 605, 620 (6th Cir. 2005)
- Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 12 (1983)
- Rodriguez v. Tenn. Laborers Health & Welfare Fund, 89 F. App'x 949, 959 & n.7–8 (6th Cir. 2004)
- Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008)
- U.S. ex rel. Am. Textile Mfrs. Inst., Inc. v. The Limited, Inc., 179 F.R.D. 541, 547 (S.D. Ohio 1998)
- Gen. Elec. Co. v. Sargent & Lundy, 916 F.2d 1119, 1130 (6th Cir. 1990)
- Leisure Caviar v. U.S. Fish & Wildlife Serv., 616 F.3d 612, 616 (6th Cir. 2010)
- Holland v. Mercy Health, 375 F. Supp. 3d 819, 820 (N.D. Ohio 2019)
- Klehr v. A.O. Smith Corp., 521 U.S. 179 (1997)
- In re Pre-Filled Propane Tank Antitrust Litig., 860 F.3d 1059 (8th Cir. 2017)

- In re Travel Agent Comm'n Antitrust Litig., 583 F.3d 896, 902 (6th Cir. 2009)
- Z Techs. Corp. v. Lubrizol Corp., 753 F.3d 594, 599–600 (6th Cir. 2014)
- Peck v. Gen. Motors Corp., 894 F.2d 844, 849 (6th Cir. 1990)
- Barnosky Oils, Inc. v. Union Oil Co. of Cal., 665 F.2d 74, 81 (6th Cir. 1981)
- Pace Indus., Inc. v. Three Phoenix Co., 813 F.2d 234, 237 (9th Cir. 1987)
- Grand Rapids Plastics, Inc. v. Lakian, 188 F.3d 401, 406 (6th Cir. 1999)
- American Civil Liberties Union of Ky. v. McCreary Cnty., Ky., 607 F.3d 439, 447 (6th Cir. 2010)
- In re Mallinckrodt PLC, No. 20-12522, 2021 WL 4876908, at *9 (Bankr. D. Del. Oct. 19, 2021)
- In re Southeastern Milk Antitrust Litig., 555 F. Supp. 2d 934, 947 (E.D. Tenn. 2008)
- Solidstrip Inc. v. U.S. Tech. Corp., 723 F. Supp. 3d 593, 608–09 (N.D. Ohio 2024)
- Directv, Inc. v. Treesh, 487 F.3d 471, 476 (6th Cir. 2007)
- Gregory v. Shelby Cnty., 220 F.3d 433, 446 (6th Cir. 2000)
- United States v. Martirossian, 917 F.3d 883, 886 (6th Cir. 2019)
- Midland Asphalt Corp. v. United States, 489 U.S. 794, 798 (1989)
- Azar v. Conley, 480 F.2d 220, 223 (6th Cir. 1973)
- Allied Erecting & Dismantling Co. v. U.S. Steel Corp., 76 F. Supp. 3d 691, 693 n.3 (N.D. Ohio 2015)
- Citibank N.A. v. FDIC, 857 F. Supp. 976, 981 (D.D.C. 1994)