

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

**Unity Ventures, an Illinois Partnership, LaSalle National Bank, as
Trustee Under Trust No. 103331, and William Alter v. County of
Lake, Village of Grayslake, Norman C. Geary, George Bell and
Edwin M. Schroeder**

841 F.2d 770 (7th Cir. 1988) · No. Nos. 86-1620, 86-1706 · Decided May 5, 1988

SUMMARY

The Seventh Circuit affirmed judgment notwithstanding the verdict in a dispute over the denial of sewage-service connections for a development in Lake County, Illinois. The court held that the plaintiffs’ equal protection, due process, and Sherman Act claims were not ripe because they had not obtained a final governmental decision, and it further indicated that the defendants’ conduct would be protected by the state-action doctrine.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Harlington Wood, Jr.; Cummings, Circuit Judge; Wood, Circuit Judge; Eschbach, Senior Circuit Judge
JURISDICTION	Federal
DECIDED	May 5, 1988
DOCKET	Nos. 86-1620, 86-1706
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from the district court's judgment notwithstanding the verdict entered for defendants and denial of plaintiffs' procedural due process claims and request for injunctive relief. Defendants cross-appealed the denial of their motion for a new trial.
STANDARD OF REVIEW	Review of a judgment notwithstanding the verdict is de novo. The court views the evidence and reasonable inferences in the light most favorable to the nonmoving party, without assessing witness credibility or substituting its judgment for the jury's weighing of the evidence.
PRECEDENTIAL VALUE	published federal appellate opinion

PARTIES

Unity Ventures, an Illinois partnership, LaSalle National Bank, as Trustee under Trust No. 103331, William Alter v. County of Lake, Village of Grayslake, Norman C. Geary, George Bell, Edwin M. Schroeder

TOPICS

ripeness section 1983 due process appellate procedure municipal law

PRACTICE AREAS

constitutional law civil rights antitrust municipal law appellate procedure

QUESTIONS PRESENTED

1. Whether plaintiffs' equal protection and substantive due process claims concerning denial of a sewer connection were ripe for adjudication without a final governmental decision on a formal sewer-connection application.
2. Whether plaintiffs' procedural due process claim was ripe before they used the available administrative procedures and obtained a final decision on the requested sewer connection.
3. Whether plaintiffs' Sherman Act claim was ripe before the governmental entities made a final decision on the sewer-connection request.
4. Whether defendants' agreement allocating sewage treatment capacity was protected by the state-action exemption from federal antitrust liability.
5. Whether defendants' cross-appeal from denial of their motion for a new trial should be reached.

HOLDINGS

1. Land-use-related equal protection and substantive due process claims challenging denial of a sewer connection are not ripe until the plaintiff obtains a final, reviewable governmental decision on a formal application or proposal for the connection.
2. A plaintiff cannot establish futility merely by asserting that further administrative applications would be useless; at least one meaningful application or legitimate effort to follow administrative procedures is required.
3. A procedural due process claim challenging the adequacy of procedures for denying a sewer connection is premature until the plaintiff has used the available procedures and the governmental entity has made a final decision.
4. The Sherman Act claim was premature because defendants had not made a final decision on plaintiffs' sewer-connection application and therefore had not yet exercised the challenged contractual powers in a final, reviewable manner.
5. If the antitrust claim were ripe, the agreement allocating sewage treatment capacity would be immune from federal antitrust liability under the state-action doctrine because Illinois authorized local

governmental cooperation in providing sewage treatment and anticompetitive effects were a foreseeable consequence of that authorization.

KEY QUOTATIONS

“A final decision must be demonstrated by a development plan submitted, considered, and rejected by the governmental entity.” (¶ 19)

“The law requires a greater legitimate effort to follow administrative procedures than plaintiffs have made.” (¶ 23)

“We therefore hold that the defendants' agreement allocating sewage treatment capacity was authorized and that the Illinois legislature intended that such cooperative agreements not be the subject of federal antitrust suits.” (¶ 33)

FACTUAL BACKGROUND

William Alter and the other plaintiffs sought sewage service for the Unity property, a 585-acre development parcel in Lake County, Illinois. Under an agreement between Lake County and the Village of Grayslake, Grayslake had authority to approve connections to the County's Northeast Interceptor within a designated sphere of influence that included the Unity property. Alter submitted sewer connection plans to the County's public works director, but did not make a formal application to the Grayslake Board of Trustees, Lake County Board, Illinois Environmental Protection Agency, or the Northwest Interceptor; Grayslake's mayor informally declined to consent at that time. Plaintiffs then sued, alleging equal protection, substantive and procedural due process, and Sherman Act violations.

PROCEDURAL HISTORY

After a jury returned verdicts for plaintiffs on equal protection, substantive due process, and Sherman Act claims and awarded \$9.5 million in damages, the district court trebled the antitrust award and entered judgment for \$28.5 million. On defendants' post-trial motion, the district court granted judgment notwithstanding the verdict, denied a new trial, and denied plaintiffs' procedural due process and injunctive-relief requests. The Seventh Circuit affirmed because plaintiffs' claims were not ripe; it did not reach defendants' cross-appeal.

DISPOSITION

affirmed

CASES CITED

- Graefenhain v. Pabst Brewing Co., 827 F.2d 13, 15 (7th Cir. 1987)
- La Montagne v. American Convenience Products, 750 F.2d 1405, 1410 (7th Cir. 1984)
- Unity Ventures v. County of Lake, 631 F. Supp. 181 (N.D. Ill. 1986)
- Regional Rail Reorganization Act Cases, 419 U.S. 102, 138 (1974)
- MacDonald, Sommer & Frates v. Yolo County, 477 U.S. 340 (1986)
- Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985)

- *Herrington v. County of Sonoma*, 834 F.2d 1488, 1494-96 (9th Cir. 1987)
- *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1454-56 (9th Cir. 1987)
- *Martino v. Santa Clara Valley Water District*, 703 F.2d 1141, 1146 n. 2 (9th Cir. 1983), cert. denied, 464 U.S. 847 (1983)
- *Suburban Trails, Inc. v. New Jersey Transit Corp.*, 800 F.2d 361, 368 (3d Cir. 1986)
- *Parker v. Brown*, 317 U.S. 341 (1943)
- *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 410, 413 (1978)
- *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 39 (1985)
- *LaSalle National Bank v. DuPage County*, 777 F.2d 377, 379, 381-82 (7th Cir. 1985), cert. denied, 476 U.S. 1170 (1986)
- *Krol v. County of Will*, 38 Ill. 2d 587, 590, 233 N.E.2d 417 (1968)
- *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974)
- *Griffin High School v. Illinois High School Association*, 822 F.2d 671, 674-76 (7th Cir. 1987)