UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Glen J. Travis et al. v. Anthes Imperial Limited et al.

473 F.2d 515 (8th Cir. 1973) · No. No. 71-1587 · Decided January 12, 1973

SUMMARY

The Eighth Circuit reversed the dismissal of a private civil action alleging securities fraud, self-dealing, common-law fraud, and breach of fiduciary duty arising from a Canadian tender offer and merger involving U.S. shareholders. The court held that the plaintiffs were sellers or forced sellers of securities, that significant conduct and effects occurred in the United States, and that federal subject-matter jurisdiction and venue were proper. It also held that the district court could exercise pendent jurisdiction over the related common-law claims.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Heaney, Circuit Judge; Matthes, Chief Judge; Lay, Circuit Judge
JURISDICTION	Federal
DECIDED	January 12, 1973
DOCKET	No. 71-1587
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed the district court's dismissal of their first amended complaint before trial for lack of subject matter jurisdiction and improper venue. The defendants had also moved based on lack of personal jurisdiction, insufficient service of process, and failure to state a claim, but the district court did not decide those issues.
STANDARD OF REVIEW	De novo review of the district court's dismissal for lack of subject matter jurisdiction and improper venue; the appellate court considered the complaint, affidavits, briefs, and oral argument, accepting plaintiffs' allegations and reasonable inferences as true where material facts were disputed.
PRECEDENTIAL VALUE	Published and precedential federal appellate opinion
PARTIES	Glen J. Travis, Travis family, St. Louis Union Trust Company v. Anthes Imperial Limited, Molson Industries Limited, Dominion Securities Limited, Individual defendants who were controlling shareholders, officers, and/or directors of Anthes and/or Molson

TOPICS

securities fraud · subject matter jurisdiction · personal jurisdiction · venue · civil procedure

PRACTICE AREAS

securities law · civil procedure · corporate law · international law

QUESTIONS PRESENTED

1. Whether plaintiffs were purchasers or sellers of securities with standing to assert claims under section 10(b) and Rule 10b-5.
2. Whether the alleged fraud was sufficiently connected with the purchase or sale of securities.
3. Whether significant conduct or substantial effects in the United States supported subject matter jurisdiction over claims involving foreign securities and Canadian conduct.
4. Whether the alleged self-dealing by controlling shareholders and officers was actionable under section 10(b) and Rule 10b-5.
5. Whether the federal court had pendent subject matter jurisdiction over the related common-law fraud and fiduciary-duty claims.
6. Whether venue was proper in the Eastern District of Missouri.
7. Whether the court had personal jurisdiction over the defendants, and whether personal jurisdiction over the remaining defendants required further discovery.

HOLDINGS

1. Plaintiffs satisfied the purchaser-seller requirement because they sold their Anthes securities to Molson.
2. The alleged misrepresentations and nondisclosures were directly connected with plaintiffs' sale of Anthes stock because they allegedly induced plaintiffs to retain their stock until a later sale at a lower price.
3. Plaintiffs could alternatively proceed under the forced-seller doctrine because a de facto merger had occurred, the market for Anthes stock had disappeared, and Molson was effectively the only purchaser able to dictate the price.
4. Subject matter jurisdiction attached because defendants engaged in significant conduct in the United States with respect to the alleged violations, even though the securities were foreign and substantial conduct occurred in Canada.
5. The alleged self-dealing by defendants constituted conduct actionable under section 10(b) and Rule 10b-5 because it allegedly violated fiduciary obligations to minority shareholders and was connected with a securities sale.
6. The district court had pendent subject matter jurisdiction over the common-law fraud and breach-of-fiduciary-duty claims because the federal claims were substantial and the state-law claims arose from the same nucleus of operative fact.

7. Venue was properly laid in the Eastern District of Missouri for all counts because significant acts constituting the alleged violations occurred there and the consequences of Canadian conduct were felt there.
8. The district court had personal jurisdiction over Anthes, Molson, and individual defendants J. D. Molson, Orser, and Willmot based on service and conduct in Missouri or foreseeable consequences there. Personal jurisdiction over the remaining defendants required further factual development and discovery.

KEY QUOTATIONS

> *"A de facto merger had taken place; there was only one purchaser for Anthes stock; and Molson was able to fix the price at which such stock would be purchased."* (at 521)

> *"If the incidents listed above are considered in their totality, it is clear that they were of such significance as to subject the defendants to the jurisdiction of the trial court."* (at 523)

> *"The District Court has the power to exercise pendent jurisdiction in this case because substantial federal claims have been alleged providing the primary basis for jurisdiction, and the common law claims alleged in Count II are derived from the same "nucleus of operative fact.""* (at 526)

> *"Reversed and remanded for action consistent with this opinion."* (at 528)

FACTUAL BACKGROUND

Plaintiffs, Missouri residents and a Missouri corporate trustee, held a substantial block of Anthes Imperial Limited stock. Molson Industries Limited made a tender offer to Canadian Anthes shareholders while excluding United States shareholders, and plaintiffs alleged that defendants represented that a separate, economically equivalent offer would later be made to them and encouraged them to retain their shares. After Molson obtained more than ninety percent of Anthes's stock and the market for Anthes shares ceased to exist, plaintiffs sold their shares to Molson at an allegedly depressed price after being told that market support would be withdrawn unless they sold promptly. Plaintiffs alleged that the exclusion and related conduct constituted securities fraud and self-dealing that injured United States shareholders.

PROCEDURAL HISTORY

Plaintiffs brought a putative class action asserting Securities Exchange Act section 10(b), Rule 10b-5, fraud, and breach-of-fiduciary-duty claims arising from the defendants' treatment of United States shareholders during and after a Canadian tender offer and merger. The Eastern District of Missouri dismissed the action for lack of subject matter jurisdiction and improper venue. The Eighth Circuit reversed, held that subject matter jurisdiction and venue were present, decided personal jurisdiction as to certain defendants, and remanded for further proceedings, including discovery concerning the remaining defendants' personal jurisdiction and whether the action could proceed as a class action.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Proceed consistently with the opinion; determine personal jurisdiction over the remaining corporate and individual defendants after giving plaintiffs an adequate opportunity for discovery, and determine whether the action may proceed as a class action.

CASES CITED

- Stockwell v. Reynolds & Co., 252 F. Supp. 215 (S.D.N.Y. 1965)
- A. T. Brod. & Co. v. Perlow, 375 F.2d 393 (2d Cir. 1967)
- Vine v. Beneficial Finance Co., 374 F.2d 627 (2d Cir.), cert. denied, 389 U.S. 970 (1967)
- Dudley v. Southeastern Factor & Finance Corp., 446 F.2d 303 (5th Cir.), cert. denied sub nom. McDaniel v. Dudley, 404 U.S. 858 (1971)
- Coffee v. Permian Corp., 434 F.2d 383 (5th Cir. 1970)
- Crane Co. v. Westinghouse Air Brake Co., 419 F.2d 787 (2d Cir. 1969), cert. denied, 400 U.S. 822 (1970)
- Greenstein v. Paul, 400 F.2d 580 (2d Cir. 1968)
- Leasco Data Processing Equipment Corp. v. Isidore Kerman, 468 F.2d 1326 (2d Cir. 1972)
- Superintendent of Insurance v. Bankers Life & Casualty Co., 404 U.S. 6 (1971)
- United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945)
- Ohio v. Wyandotte Chemicals Corp., 401 U.S. 493 (1971)
- United Mine Workers v. Gibbs, 383 U.S. 715 (1966)
- Drachman v. Harvey, 453 F.2d 722 (2d Cir. 1971), reversed on rehearing, 453 F.2d 736 (2d Cir. 1972) (en banc)
- Matheson v. Armbrust, 284 F.2d 670 (9th Cir. 1960), cert. denied, 365 U.S. 870 (1961)
- Hooper v. Mountain States Securities Corp., 282 F.2d 195 (5th Cir. 1960), cert. denied, 365 U.S. 814 (1961)
- Errion v. Connell, 236 F.2d 447 (9th Cir. 1956)
- McGee v. International Life Insurance Co., 355 U.S. 220 (1957)
- Erling v. Powell, 429 F.2d 795 (8th Cir. 1970)
- Iroquois Industries, Inc. v. Syracuse China Corp., 417 F.2d 963 (2d Cir. 1969), cert. denied, 399 U.S. 909 (1970)
- Mutual Shares Corp. v. Genesco, Inc., 384 F.2d 540 (2d Cir. 1967)
- Jannes v. Microwave Communications, Inc., 461 F.2d 525 (7th Cir. 1972)
- City National Bank of Fort Smith, Ark. v. Vanderboom, 422 F.2d 221 (8th Cir. 1970), cert. denied, 399 U.S. 905 (1970)
- Tcherepnin v. Knight, 389 U.S. 332 (1967)
- Schoenbaum v. Firstbrook, 405 F.2d 200 (2d Cir. 1968), affirmed in part and reversed in part on other grounds, 405 F.2d 215 (2d Cir. 1968) (en banc), cert. denied sub nom. Manley v. Schoenbaum, 395 U.S. 906 (1969)
- United States v. Diebold, 369 U.S. 654 (1962)
- Zunamon v. Brown, 418 F.2d 883 (8th Cir. 1969)