UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

IBEW Local No. 58 Annuity Fund v. EveryWare Global, Inc.

849 F.3d 325 (6th Cir. 2017) · No. 16-3445 · Decided February 21, 2017

SUMMARY

The United States Court of Appeals for the Sixth Circuit affirmed dismissal of investors' securities-fraud claims against EveryWare Global, Inc., its officers, directors, shareholders, and underwriters. The court held that the plaintiffs failed to plead the requisite scienter for claims under the Securities Exchange Act and failed to plead material misrepresentations or omissions under the Securities Act.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	Rogers, Circuit Judge; Gibbons, Circuit Judge; McKeague, Circuit Judge
JURISDICTION	Federal
DECIDED	February 21, 2017
DOCKET	16-3445
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed the Southern District of Ohio's dismissal of their private securities-fraud complaint under the Securities Exchange Act of 1934 and the Securities Act of 1933.
STANDARD OF REVIEW	Not expressly stated in the opinion; the court reviewed the district court's dismissal of the complaint.
PRECEDENTIAL VALUE	Published and precedential; recommended for full-text publication
PARTIES	IBEW Local No. 58 Annuity Fund, Electrical Workers Pension Trust Fund of IBEW Local No. 58, Detroit, Michigan, IBEW Local No. 58 v. EveryWare Global, Inc., John K. Sheppard, Bernard F. Peters, Daniel Collin, Stephen W. Presser, Monomoy Capital Partners, LLC, Monomoy Executive Co-Investment Fund, L.P., Monomoy Capital Partners II, L.P., MCP Supplemental Fund II, L.P., Monomoy General Partner, L.P., Monomoy General Partner II, L.P., Monomoy Ultimate GP, LLC, Oppenheimer & Co. Inc., CJS Securities, Inc., Telsey Advisory Group, LLC, Imperial Capital, LLC, BTIG, LLC, Thomas J. Baldwin, Michael Jurbala, Barry L. Kasoff, Ronald D. McCray,

William J. Krueger, Joseph A. De Perio, Ron Wainshal, Monomoy Capital Partners, L.P., MCP Supplemental Fund, L.P.

TOPICS

securities fraud | commercial litigation | corporate law | appellate procedure

PRACTICE AREAS

securities litigation | corporate law | appellate procedure

QUESTIONS PRESENTED

1. Whether the complaint adequately pleaded that EveryWare's January 2013 financial projections violated § 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.
2. Whether the complaint adequately pleaded that EveryWare officers' August 2013 statements that the company was on track to meet its financial projections violated § 10(b) or Rule 10b-5.
3. Whether the complaint adequately pleaded primary violations necessary to support secondary-liability claims under § 20(a) of the Securities Exchange Act.
4. Whether the registration statement and prospectus contained materially misleading statements or omissions sufficient to state claims under §§ 11 and 12(a)(2) of the Securities Act of 1933.
5. Whether the complaint could state secondary liability under § 15 of the Securities Act absent a substantive Securities Act violation.

HOLDINGS

1. The complaint failed to state a claim because the projections were forward-looking statements and plaintiffs did not plead particularized facts giving rise to a strong inference that CEO John Sheppard had actual knowledge that the projections were false or misleading.
2. The complaint failed to state a claim because plaintiffs did not plead facts giving rise to a strong inference that CEO Sheppard and CFO Bernard Peters acted with a mental state embracing intent to deceive, manipulate, or defraud.
3. The § 20(a) claims failed because plaintiffs failed to state substantive violations of the Securities Exchange Act.
4. The complaint failed to state claims under §§ 11 and 12(a)(2) because plaintiffs did not plausibly plead that the registration statement or prospectus contained material misrepresentations.
5. The § 15 claims failed because plaintiffs did not state a substantive violation of the Securities Act.

KEY QUOTATIONS

> *"Because the district court's opinion fully responds to plaintiffs' arguments on appeal, we adopt the reasoning of the district court, as indicated below, with respect to those issues necessary to resolve this appeal."*
> (opinion at 3)

> *“Because plaintiffs have failed to meet the heightened pleading standards for defendants’ requisite scienter, they have failed to state a violation of § 10(b) or Rule 10b-5 upon which relief can be granted, as the district court properly concluded.”* (opinion at 4)

FACTUAL BACKGROUND

EveryWare Global, Inc., an Ohio kitchenware manufacturer, later became bankrupt. Plaintiffs purchased EveryWare securities between May 21, 2013, and May 16, 2014, and alleged a scheme by principal shareholders and officers to inflate the share price before selling their shares. The complaint challenged 2013 financial projections, statements that the company was on track to meet those projections, and registration-statement and prospectus disclosures associated with a September 2013 offering.

PROCEDURAL HISTORY

Plaintiffs alleged that EveryWare officers, directors, principal shareholders, and underwriters made material misrepresentations and omissions concerning EveryWare's finances and securities offering. The district court dismissed the complaint, concluding that the Exchange Act claims did not plead particularized facts supporting a strong inference of scienter and that the Securities Act claims did not identify a well-pleaded material misstatement or omission. The Sixth Circuit affirmed and adopted the district court's reasoning.

DISPOSITION

affirmed

CASES CITED

- In re EveryWare Global, Inc. Sec. Litig., 175 F. Supp. 3d 837 (S.D. Ohio 2016)
