

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**T.W. Electrical Service, Inc., Shigeru Shinno dba Fairway Electric,
Allied Electric Incorporated, N.N. Electric Company, Inc., Tri-
Electric, Inc., Oskins Electric Co., Inc., Wasa Electrical Services, Inc.,
and Globe Electric, Inc. v. Pacific Electrical Contractors Association**

809 F.2d 626 (9th Cir. 1987) · No. No. 86-1646 · Decided February 5, 1987

SUMMARY

The Ninth Circuit affirmed summary judgment for Pacific Electrical Contractors Association in an action brought by eight Hawaii electrical contractors alleging federal and state antitrust, unfair competition, and waste-of-assets claims. The court held that the contractors did not produce sufficient evidence of a conspiracy requiring all electrical contractors to contribute to an association fund, and that the state antitrust claim was likewise unsupported. The court also applied summary judgment principles under Federal Rule of Civil Procedure 56 and the evidentiary standards governing antitrust conspiracy claims.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Nelson, Circuit Judge; Reinhardt, Circuit Judge; Wiggins, Circuit Judge
JURISDICTION	Federal
DECIDED	February 5, 1987
DOCKET	No. 86-1646
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff electrical contractors appealed the district court's grant of summary judgment for Pacific Electrical Contractors Association on federal antitrust, state antitrust, state unfair-competition, and waste-of-assets claims.
STANDARD OF REVIEW	Summary judgment and the legal rules governing the federal and state claims were reviewed de novo. The court applied the Rule 56 standard and viewed evidence and reasonable inferences in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	published and precedential Ninth Circuit opinion

PARTIES

T.W. Electrical Service, Inc., Shigeru Shinno dba Fairway Electric, Allied Electric Incorporated, N.N. Electric Company, Inc., Tri-Electric, Inc., Oskins Electric Co., Inc., Wasa Electrical Services, Inc., Globe Electric, Inc. v. Pacific Electrical Contractors Association

TOPICS

summary judgment commercial litigation construction law civil procedure appellate procedure

PRACTICE AREAS

antitrust commercial litigation labor law civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the contractors produced sufficient evidence of a conspiracy under section 1 of the Sherman Act to create a genuine issue of material fact.
2. Whether the contractors produced sufficient evidence of a violation of Hawaii Revised Statutes section 480-4.
3. Whether the contractors produced sufficient evidence of an unfair or deceptive act or practice under Hawaii Revised Statutes section 480-2.
4. Whether the contractors produced sufficient evidence that PECA improperly wasted or used fund assets outside the purposes stated in the master agreements.
5. Whether PECA was entitled to attorney fees under 28 U.S.C. section 1927 for the appeal.

HOLDINGS

1. A nonmoving party opposing summary judgment must produce specific facts showing a genuine issue for trial; it may not rely on the pleadings, speculation, credibility determinations, or the hope that evidence will emerge at trial.
2. Where an alleged section 1 conspiracy is supported only by ambiguous indirect evidence, the plaintiff must produce specific facts capable of sustaining a rational inference of conspiracy and tending to exclude the possibility that the defendant acted independently.
3. The contractors could not establish a section 1 claim merely by showing an agreement requiring contributions from PECA members or contractors that authorized PECA to represent them, particularly without evidence of injury to competition.
4. Summary judgment was proper on the Hawaii antitrust claim because Hawaii Revised Statutes section 480-4 is construed consistently with analogous federal antitrust statutes and the contractors failed to withstand summary judgment on their section 1 Sherman Act claim.
5. The contractors failed to produce sufficient evidence of an unfair or deceptive act, injury, damages, and the other requirements for a private action under Hawaii Revised Statutes sections 480-2 and 480-13.

6. The contractors failed to create a genuine issue of material fact regarding PECA's alleged misuse or waste of fund assets.
7. The court declined to award PECA attorney fees because the appeal, although nonmeritorious, was not shown to have been brought in bad faith or to have unreasonably and vexatiously multiplied the proceedings.

KEY QUOTATIONS

“antitrust law limits the range of permissible inferences from ambiguous evidence.” (¶ 14)

“Where an antitrust plaintiff's allegation of a conspiracy is based solely on indirect evidence that is capable of inferences of both lawful and unlawful behavior, the plaintiff must produce some evidence tending to exclude the possibility that the defendant acted independently.” (¶ 16)

“The contractors have not produced sufficient evidence to withstand the motion for summary judgment on the federal antitrust and related state claims. Accordingly, we affirm the district court's grant of summary judgment in favor of PECA.” (¶ 41)

FACTUAL BACKGROUND

The plaintiffs were Hawaii electrical contractors whose employees were represented by Local 1186 of the International Brotherhood of Electrical Workers. PECA negotiated collective-bargaining agreements and financed its activities through contributions to industry funds under master agreements. The contractors alleged that PECA, Local 1186, the national IBEW, and others conspired to require all union electrical contractors to contribute to the fund, but the agreements on their face required contributions only from PECA members, signatories, or contractors authorizing PECA to bargain for them. The contractors also challenged PECA's conduct under Hawaii law and alleged that fund assets were improperly used.

PROCEDURAL HISTORY

The contractors filed suit alleging that PECA, labor unions, and others conspired to require electrical contractors using union labor to contribute to a PECA fund, violating federal and Hawaii antitrust and unfair-competition laws. The district court granted PECA summary judgment on all claims. The Ninth Circuit affirmed, concluding that the contractors failed to produce sufficient evidence of a conspiracy, injury to competition, unfair conduct, or misuse of fund assets.

DISPOSITION

affirmed

CASES CITED

- 49er Chevrolet, Inc. v. General Motors Corp., 803 F.2d 1463 (9th Cir. 1986)
- In re McLinn, 739 F.2d 1395 (9th Cir. 1984) (en banc)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)
- Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)

- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970)
- First National Bank v. Cities Service Co., 391 U.S. 253 (1968)
- Kaiser Cement Corp. v. Fischbach & Moore, Inc., 793 F.2d 1100 (9th Cir. 1986)
- Barnes v. Arden Mayfair, Inc., 759 F.2d 676 (9th Cir. 1985)
- Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752 (1984)
- O.S.C. Corp. v. Apple Computer, Inc., 792 F.2d 1464 (9th Cir. 1986)
- Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464 (1962)
- Souza v. Estate of Bishop, 799 F.2d 1327 (9th Cir. 1986)
- National Electrical Contractors Association v. National Constructors Association, 678 F.2d 492 (4th Cir. 1982), cert. dismissed, 463 U.S. 1233 (1983)
- Fisher v. City of Berkeley, 475 U.S. 260 (1986)
- Mutual Fund Investors, Inc. v. Putnam Management Co., 553 F.2d 620 (9th Cir. 1977)
- United States v. Topco Associates, Inc., 405 U.S. 596 (1972)
- National Society of Professional Engineers v. United States, 435 U.S. 679 (1978)
- Robert's Waikiki U-Drive, Inc. v. Budget Rent-A-Car System, Inc., 732 F.2d 1403 (9th Cir. 1984)
- Abood v. Detroit Board of Education, 431 U.S. 209 (1977)
- Bartley's Town & Country Shops, Inc. v. Dillingham Corp., 530 F. Supp. 499 (D. Haw. 1982)
- Island Tobacco Co. v. R.J. Reynolds Industries, Inc., 513 F. Supp. 726 (D. Haw. 1981)
- Island Tobacco Co. v. R.J. Reynolds Tobacco Co., 63 Haw. 289, 627 P.2d 260 (1981)
- Robert's Waikiki U-Drive, Inc. v. Budget Rent-A-Car System, Inc., 491 F. Supp. 1199 (D. Haw. 1980), aff'd, 732 F.2d 1403 (9th Cir. 1984)
- Cunha v. Ward Foods, Inc., 804 F.2d 1418 (9th Cir. 1986)
- Rosa v. Johnston, 3 Haw. App. 420, 651 P.2d 1228 (1982)
- Wiginton v. Pacific Credit Corp., 2 Haw. App. 435, 634 P.2d 111 (1981)
- Ailetcher v. Beneficial Finance Co., 2 Haw. App. 301, 632 P.2d 1071 (1981)
- Eastern Star, Inc. v. Union Building Materials Corp., 712 P.2d 1148 (Haw. App. 1985)
- Charles D. Bonanno Linen Service, Inc. v. NLRB, 454 U.S. 404 (1982)
- LaSalvia v. United Dairymen, 804 F.2d 1113 (9th Cir. 1986)
- Hennegan v. Pacifico Creative Service, 787 F.2d 1299 (9th Cir. 1986), cert. denied, 479 U.S. 990 (1986)
- Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980)
- United States v. Associated Convalescent Enterprises, 766 F.2d 1342 (9th Cir. 1985)
- Lone Ranger Television, Inc. v. Program Radio Corp., 740 F.2d 718 (9th Cir. 1984)
- McConnell v. Critchlow, 661 F.2d 116 (9th Cir. 1981)
- Limerick v. Greenwald, 749 F.2d 97 (1st Cir. 1984)
- United States v. Potamkin Cadillac Corp., 697 F.2d 491 (2d Cir. 1983), cert. denied, 462 U.S. 1144 (1983)
- Boksa v. Keystone Chevrolet Co., 553 F. Supp. 958 (N.D. Ill. 1982)

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