FOX SOLID PRESSED STEEL CO. v. SCHOEN MFG. CO. et al.

(Circuit Court of Appeals, Third Circuit. January 24, 1898.)

No. 31.

INTERPRETATION OF CONTRACTS—MANUFACTURE OF CAR TRUCKS.

Complainants and defendants were making center plates for car trucks under rival patents, and complainant, besides, was making a truck frame known as the pressed metal frame. They made a contract with the purpose, as expressed in its preamble, of adjusting their differences relating to pressed metal centers for truck frames. The contract, however, contained the clause forbidding defendants to make truck frames, "or any part of such frames, when made of pressed metal." At the time of the contract, defendants, with complainant's knowledge, were making pressed metal parts of diamond truck frames, and continued to do so for several years without objection. *Held*, that this clause, construed in the light of the circumstances, merely prohibited defendants from making the pressed metal truck frames or parts thereof which complainants were putting on the market, and did not prevent them from making pressed metal parts of other kinds of truck frames. 77 Fed. 29, affirmed.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

This was a suit in equity by the Fox Solid Pressed Steel Company against the Schoen Manufacturing Company and others to restrain them from violating a contract. The circuit court dismissed the bill, with costs (77 Fed. 29), and the complainants have appealed.

Edwin H. Brown, for appellants.

John G. Johnson and Strawbridge & Taylor, for appellees.

Before DALLAS, Circuit Judge, and BUTLER and KIRKPATRICK, District Judges.

KIRKPATRICK, District Judge. The appellants (complainants below) filed their bill in the circuit court for the Western district of Pennsylvania, to restrain the respondents from manufacturing truck frames for moving vehicles, or parts of truck frames, when made of pressed metal, in violation of an agreement between the parties. The clause of the contract upon which the complainants rely is in these words, viz.:

"It is further agreed that the parties of this second part will not engage during the life of the agreement in the manufacture of truck frames for moving vehicles, or any part of such frames, when made of pressed metal."

The complainants' contention is that, by this clause of the agreement, the defendants were prohibited from manufacturing parts of truck frames when such parts were made of pressed metal. The specific offense complained of is that the defendants have manufactured pressed metal truck bolsters to be used as a part of the ordinary diamond truck. The defendants, by their answer, admit that they have placed on the market pressed metal steel bolsters to be used in connection with Diamond truck frames, but insist that they are not prohibited from so doing by the terms of the agreement, which, properly construed, applies only to the parts of truck frames which were composed of pressed metal. It will be perceived that the clause of the contract in question, standing alone, is susceptible of either construction which has been put upon it by the parties. In

order that it may be properly interpreted, it will be necessary to examine the entire instrument, consider its subject-matter, the motives that led to it, the circumstances surrounding its execution, and the object intended to be effected. Davis v. Barney, 2 Gill & J. 382.

It appears from the record that both the complainants and defendants, prior to and at the time of the execution of the agreement, were the owners of certain patents relating to the manufacture of center plates for car trucks, concerning the validity of which suits were pending between them. The complainants were also engaged in the manufacture of pressed metal truck frames, with which business the defendants in no way interfered. A large part of defendants' business, outside of making center plates for all kinds of car trucks, was the manufacture of pressed metal parts of truck frames which were known as "Diamond truck frames," and which were constructed partly of wood and partly of iron or steel. The only business for which the parties competed was that of furnishing metal center plates, which were used in common by both styles of truck frames, as well as those specially manufactured by the complainants, and known as "pressed metal truck frames," as those in more general use, and known as "Diamond truck frames." The object of the agreement, as set out in its preamble, was to adjust the differences between the parties so far as they related to pressed metal centers for truck frames. Except in the clause in controversy, no other subject is mentioned in the agreement. It seems to have been injected as an afterthought, to accomplish some object outside of the subject-matter of the agreement. That it was not for the purpose of compelling the defendants to abandon any part of the then existing business is apparent from the testimony. It is the evidence on the part of the defendants, and not denied by the complainants, that, at the time the contract was entered into, the defendants were, with the knowledge of the complainants, manufacturing, and offering to the trade, parts of Diamond truck frames which were made of pressed metal, and that they continued to do so after the making of this agreement. The character of the business was not changed, and no objection was made to it until about the time of the filing of this bill, a period of over three years. It was not only acquiesced in by the complainants, but their bill avers that up to about February 1, 1895, the defendants had complied with the terms of the contract.

Reading the controverted clause in the light of its context, with due consideration of the motives leading to and the object to be accomplished by the agreement (Chicago, R. I. & P. Ry. Co. v. Denver & R. G. R. Co., 143 U. S. 596, 12 Sup. Ct. 479), and giving to it that practical construction which both parties have put upon it (District of Columbia v. Gallaher, 124 U. S. 505, 8 Sup. Ct. 585), we cannot construe it as prohibiting the defendants from manufacturing pressed metal parts for any other truck frames than the pressed metal truck frames which the complainants are engaged in putting on the market. Entertaining this view, it is unnecessary for us to determine the other questions presented in the argument. The judgment of the circuit court will be affirmed.

KING v. STUART et al.

(Circuit Court, W. D. Virginia. October 7, 1897.)

1. INJUNCTION AGAINST TRESPASS.
Injunction will lie against trespass whenever the injury threatened would be irreparable, or when the trespass is a continuing one, so that a single action for damages would not be an adequate remedy.

2. SAME—CUTTING TIMBER.
Injunction against cutting trees is not limited to shade and ornamental trees, but extends to the cutting and carrying away of trees from forest lands, when the trespass is a continuing one, which would result in denuding the land of valuable timber.

This was a suit in equity by Henry C. King against H. C. Stuart and others to enjoin defendants from cutting timber from certain lands claimed by the complainant.

Maynard F. Stiles and Daniel Trigg, for complainant.
Burns & Ayres, for defendants.

PAUL, District Judge. This is a suit brought by the plaintiff, Henry C. King, to restrain the defendants from cutting and carrying away the timber of the plaintiff on certain lands claimed by him, lying in Buchanan county, Va., the same being part of a tract of 500,000 acres lying in the states of Virginia, West Virginia, and Kentucky. The plaintiff traces his title from a grant by the commonwealth of Virginia to Robert Morris, dated June 23, 1795, and, through successive conveyances to himself. The bill, after setting out the plaintiff's title, alleges:

"That the title of your orator, as above set forth, has been sustained and held to be valid by repeated adjudications of this court, as well as of the circuit court of the United States for the district of West Virginia, in which court said land was for many years held and managed as a trust estate. That said tract of land is wild and mountainous, and heavily timbered with valuable growth of poplar, oak, walnut, and other valuable trees, which constitute the principal and almost sole value of said land, the same being practically worthless for agricultural, grazing, and other like purposes, and wholly worthless for such purposes to your orator, and unsalable therefor; and the portion of said land which is situated in said district was purchased by your orator solely on account of the timber aforesaid, and for the purpose of cutting, manufacturing, and marketing the same, and employing your orator's capital therein, and securing the profits therefrom. That that portion of said tract of land which lies in the state of Virginia is bounded on the western side by the state of Kentucky, and on the northern and eastern sides by the state of West Virginia, towards which states all the creeks and streams flow, which form the natural and only roadways to and from said lands, and the timber upon said lands can only be practicably removed therefrom to the markets therefor by hauling or floating the same out of the said state and into the state of Kentucky or West Virginia; and the said creeks, especially Knox creek and its tributaries, and a wagon road leading therefrom down Bull creek, in West Virginia, to the Norfolk & Western Railroad, furnish ready means and facilities for the removal of timber from said land. That defendant Pleasants, under a pretended purchase from defendant Stuart, has wrongfully and unlawfully, and without the consent of, and against the warning and protest of, your orator, entered upon your orator's said land in said district, and has cut down, and is preparing and threatening to remove, a large quantity of valuable walnut and other timber, and to cut and remove other timber, and your orator believes and avers that, unless restrained by order of this court, said Pleas-