

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

ROSS TRUCKING, INC. and
STANDARD FRUIT AND STEAMSHIP COMPANY, :

Defendants. :

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Civil Action No. 70-C-1228

Filed: September 28, 1970

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §1), commonly known as the Sherman Act, in order to prevent and restrain the continuing violation by the defendants, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. §1).

2. The defendant, Ross Trucking, Inc., transacts business within the Eastern District of New York.

3. The defendant, Standard Fruit and Steamship Company, maintains an office, transacts business and is found within the Eastern District of New York.

II

THE DEFENDANTS

4. Ross Trucking, Inc. is made a defendant herein. It is organized and exists under the laws of the State

of New York and has its principal place of business in New York, New York. It is a trucking firm engaged in the business of carting bananas from piers in the Port of New York to jobbers and supermarkets located in the Metropolitan New York area. Although incorporated in July 1966, Ross Trucking, Inc. did not become actively engaged in this business until in and around September 1969 when all of the assets and business of Ross Trucking Co., an unincorporated New York company which had been engaged in the carting of bananas in the Metropolitan New York area since prior to 1957, were transferred to it. As hereinafter used, the term Ross shall refer to Ross Trucking Co. and Ross Trucking, Inc., the defendant, during applicable periods.

5. Standard Fruit and Steamship Company is made a defendant herein. It is organized and exists under the laws of the State of Delaware and has its principal place of business in New Orleans, Louisiana. It has been actively engaged in business as a banana importer since in and around December 1968. Before that, its business had been conducted, since prior to 1957, by another corporation, also named Standard Fruit and Steamship Company (Old Standard) which was organized under the laws of the State of Delaware and had its principal place of business in New Orleans, Louisiana. In 1964 Castle & Cooke Inc., an Hawaiian corporation, began acquiring the stock of Old Standard and by July 1968 had control of at least 90% of that stock. In December 1968 Castle & Cooke Inc. merged Old Standard into itself and transferred all of Old Standard's assets and business

to the defendant, a previously inactive corporation, the name of which was simultaneously changed to Standard Fruit and Steamship Company. As hereinafter used, the term Standard shall refer to Old Standard and Standard Fruit and Steamship Company, the defendant, during applicable periods.

III

CO-CONSPIRATORS

6. Various persons, not named as defendants in this Complaint, have participated as co-conspirators in the offense charged herein and have performed acts and made statements in furtherance thereof.

IV

DEFINITIONS

7. As used herein:
- a. "Banana importer" means any person engaged in whole or in part in the business of importing bananas into the United States.
 - b. "Jobber" means any person engaged in whole or in part in the business of buying bananas from a banana importer, ripening the bananas, and selling them to retailers for resale.
 - c. "Port of New York" means the various piers, docks, and other port facilities in the States of New York and New Jersey lying on or adjacent to the Hudson River south of Spuyten Duyvil Junction, the East River, The Narrows, Newark Bay, Kill Van Kull and Arthur Kill.

- d. "Metropolitan New York area" means the area generally included in the five boroughs of New York City, Nassau, Suffolk, and Westchester Counties in the State of New York, and Essex, Bergen, Hudson, Union, Middlesex, Monmouth, Morris, and Passaic Counties in the State of New Jersey.
- e. "Person" means any individual, partnership, corporation, or other legal or business entity.

V

TRADE AND COMMERCE

8. Bananas are grown in various countries in Central and South America and are transported, by banana importers, exclusively by ship into various ports of entry in the United States. They are then sold by the banana importers, in a green and unripened condition, primarily to jobbers throughout the nation. The jobbers ripen the bananas in a process involving the use of ethylene gas and sell them to retail outlets for resale to the ultimate consumer. Some supermarkets also buy bananas directly from banana importers, ripen them and sell them to the ultimate consumer. Generally, most of these jobbers and supermarkets regularly buy bananas from more than one banana importer.

9. There are several banana importers operating in the Port of New York and selling bananas to customers located in Metropolitan New York. Standard imports about 30 percent, or the second largest share, of bananas sold

to customers in Metropolitan New York.

10. Standard's bananas are regularly unloaded at piers in the Port of New York. At or before the arrival of a shipment at one of these piers, Standard sells the bananas to jobbers and supermarkets located in states throughout the eastern United States. As soon as the ship docks, the bananas are loaded, under Standard's supervision, onto trucks and trailers for delivery to these customers. In order to protect the bananas from damage in transit, these vehicles are often equipped with insulation and temperature control units. Title passes to the customers when the bananas are loaded onto the trucks and trailers at the piers. The customers bear the expense of carting the bananas from the piers to their places of business. Standard does not provide such service.

11. In purchasing bananas from Standard, jobbers and supermarkets located within the Metropolitan New York area are required, as a condition of sale, to hire Ross to cart the bananas from the piers in the Port of New York to their places of business. Jobbers and supermarkets located outside the Metropolitan New York area are free to use their own vehicles or those of any trucking firm of their own choosing for such purpose.

12. Ross has since 1965 carted over 8 million boxes of Standard's bananas, having a dollar value in excess of \$20,000,000, to jobbers and supermarkets in the Metropolitan New York area. Ross' annual gross revenues are approximately \$425,000.

13. During all or part of the period covered by this Complaint, Ross has regularly carted a substantial quantity of Standard's bananas in interstate commerce from piers in the Port of New York located in the State of New York to jobbers and supermarkets in the State of New Jersey, and from piers in the Port of New York located in the State of New Jersey to jobbers and supermarkets in the State of New York.

VI

OFFENSE CHARGED

14. Beginning sometime prior to 1957, the exact date being unknown, and continuing up to and including the date of the filing of this Complaint, the defendants and the co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §1), commonly known as the Sherman Act. This offense is continuing and will continue unless the relief prayed for in this Complaint is granted.

15. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and the co-conspirators, the substantial terms of which have been that Standard will require, as a condition of sale of bananas, that jobbers and supermarkets located within the Metropolitan New York area hire Ross to cart the bananas from piers in the Port of New York to their places of business.

16. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and the co-conspirators have done those things which they have combined and conspired to do.

VII

EFFECTS

17. The aforesaid offense has had the following effects, among others:

- a. Jobbers and supermarkets in the Metropolitan New York area have been precluded from using their own vehicles or those of any trucking firm other than Ross to cart Standard's bananas from piers in the Port of New York to their places of business;
- b. trucking firms other than Ross have been precluded from carting Standard's bananas to jobbers and supermarkets in the Metropolitan New York area; and
- c. competition among trucking firms for the business of carting Standard's bananas to jobbers and supermarkets in the Metropolitan New York area has been eliminated.

VIII

PRAYER

WHEREFORE, the plaintiff prays that:

1. The Court adjudge and decree that the defendants have combined and conspired to unreasonably restrain the

aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

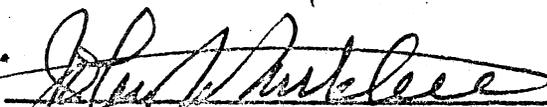
2. The defendants, their successors, assignees, and transferees, and all other persons acting in their behalf or under their direction or control be permanently enjoined from:

- a. Directly or indirectly continuing, renewing, or reviving the aforesaid combination and conspiracy and from engaging in any practices, acts, or agreements having a like or similar purpose or effect;
- b. Causing or requiring, or attempting to cause or require any jobber or supermarket to hire any designated person to cart bananas;
- c. Preventing, hindering, or impeding any jobber or supermarket from using its own vehicles or those of any other person, or from hiring any person, to cart bananas.

3. The defendants be ordered to distribute to each of their customers a copy of any final judgment or decree within 60 days of the date of entry of such judgment or decree.

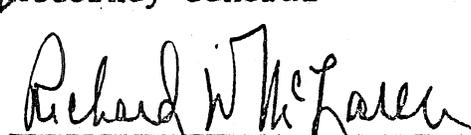
4. The plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

5. The plaintiff recover the costs of this suit.



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