

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. E. L. Bruce Company, Inc., J. E. Higgins Lumber Company, White Brothers, Inlaid Floor Company, Strable Hardwood Company, Clifford E. Coates, John S. Ferraro, Alfred J. Bowman, J. E. Higgins, Jr., Cecil S. Lean, Frank O'Connor, Charles A. Koenig, B. E. Bryan., U.S. District Court, N.D. California, 1940-1943 Trade Cases ¶56,121, (Feb. 14, 1941)

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United States of America v. E. L. Bruce Company, Inc., J. E. Higgins Lumber Company, White Brothers, Inlaid Floor Company, Strable Hardwood Company, Clifford E. Coates, John S. Ferraro, Alfred J. Bowman, J. E. Higgins, Jr., Cecil S. Lean, Frank O'Connor, Charles A. Koenig, B. E. Bryan.

1940-1943 Trade Cases ¶56,121. U.S. District Court, N.D. California, Southern Division. Civil No. 21783 W. February 14, 1941.

Upon the consent of all parties a decree is entered in civil proceedings under the Sherman Anti-Trust Act perpetually enjoining the defendants from combining to fix prices or regulate the distribution of hardwood flooring, from participating in price fixing conferences or methods, from inducing manufacturer discrimination against dealers, distributors or purchasers, from compiling, publishing, or enforcing compliance with any basic price schedule, and from allocating sales or markets.

Tarahurman Arnold, Assistant Attorney General, Frank J. Hennessy, United States Attorney for the Northern District of California, Southern Division, Post Office Building, San Francisco, California, Tom Clark and Charles C. Pearce, Special Assistants to the Attorney General, for the Plaintiff.

Waraalter A. Dold, Monadnock Building; Heller, Ehrman, White & McAuliffe (Jerome B. White), Nevada Bank Building; Linforth, Cannon & Miller (Jesse H. Miller), de Young Building; Carl H. Allen, Merchants Exchange Building, all of San Francisco, California, for the Defendants.

Before Welsh, District Judge.

Consent Judgment

WELSH, D. J.: This cause came on to be heard on this 14th day of February, 1941, the complainant being represented by Frank J. Hennessy, United States Attorney for the Northern District of California, Southern Division, and Tom C. Clark and Charles C. Pearce, Special Assistants to the Attorney General, and the defendants being represented by their counsel, and said defendants having appeared voluntarily and generally and having waived service of process, and having consented in writing to the making and entry of this decree;

[Adequacy of Remedy]

And it appearing to the Court that this judgment will provide suitable relief concerning the matters alleged in the complaint herein; and it further appearing that by reason of the aforesaid consent of the parties, it is unnecessary to proceed with the trial of the cause or to take testimony therein or to make any adjudication of the facts,

Now, Therefore, upon motion of complainant and upon the consent of all parties hereto and without taking any testimony or evidence, it is hereby

Ordered, Adjudged, And Decreed:

I. That this Court has jurisdiction of the subject matter of this action as alleged in the complaint herein and of all persons and parties herein.

[Basis of Action]

II. The complaint herein states a cause of action against all of the defendants under the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," (26 Stat. 209) commonly known as the Sherman Act, and the acts amendatory thereof and supplemental thereto.

[*Definitions*]

III. The term "hardwood flooring" as used in this decree means strips of oak and maple wood, cut to various sizes and used as flooring in dwellings and other types of construction. The term "national manufacturers" as used in this decree signifies those companies, associations, firms, or individuals which manufacture hardwood flooring by milling from raw materials, to-wit: oak and maple timber, and which distribute said hardwood flooring in interstate commerce to wholesale and retail outlets located in various States of the United States, and which sell, ship, and deliver said hardwood flooring in interstate trade and commerce into the San Francisco Bay Area. The term "hardwood flooring dealers" as used in this decree means those companies, firms, or individuals which, as wholesalers, purchase hardwood flooring from the national manufacturers thereof for resale to hard wood flooring contractors and others desirous of purchasing such hardwood flooring at retail. The term also means such companies, firms, or individuals as act as agencies or representatives of the national manufacturers in such retail sales. The term "hardwood flooring contractors" as used in this decree means those companies, firms, or individuals which have secured the requisite state and local licenses lawfully to engage in the installation, alteration, and repair of hardwood floors, and which purchase hardwood flooring from the hardwood flooring dealers.

[*Application of Decree*]

IV. This decree is directed to and shall bind each of the defendants named in the complaint herein, their respective officers, directors, trustees, agents, employees, and all persons acting or authorized to act on their behalf, and is likewise directed to and shall bind any and all corporations, partnerships, associations, and individuals who hereafter may succeed to or acquire, directly or indirectly, in whole or in part, the ownership or control of the hardwood flooring business of any defendant.

[*Prohibited Activities*]

V. That the defendants and each of them, and all of their respective officers, directors, trustees, agents, servants, employees, and all persons acting under, through, by, or in behalf of them or any of them, or claiming so to act, be and they hereby are perpetually enjoined, restrained, and prohibited from engaging in, pursuing, continuing, carrying out or extending, directly or indirectly, expressly or impliedly, any combination or conspiracy to restrain interstate trade and commerce in hardwood flooring in violation of the aforesaid Act of Congress as alleged in the complaint herein; from entering into, pursuing, or carrying out by any means whatsoever any other combination or conspiracy of similar character or effect; from combining, conspiring, or agreeing among themselves or with others, directly or indirectly, to do or engage in any of the following acts and practice and from doing or engaging in any such acts and practices, as follows:

[*Price Fixation*]

(a) Raising, lowering, fixing, establishing, maintaining, or stabilizing the prices charged for hardwood flooring;

[*Distribution Regulation*]

(b) Formulating, adopting, maintaining, or enforcing uniform rules, regulations, practices, or policies governing the distribution, purchase or sale of hardwood flooring;

(c) Preventing, suppressing, or restraining any hardwood flooring dealer, distributor, contractor, or purchaser of hardwood flooring from purchasing, selling, receiving, or distributing the same;

[*Price Conferences*]

(d) Sponsoring, calling, holding, attending, or participating in any meeting or conference for the purpose of raising, lowering, fixing, establishing, maintaining, or stabilizing the price of hardwood flooring;

[Bid Depositories]

(e) Sponsoring, establishing, maintaining, operating or participating in the operation of any system, scheme; plan, device, or program for depositing, filing, or exchanging among themselves or with others bids, invoices, quotations, price lists, statistics, or prices of hardwood flooring which has the purpose or effect of fixing, raising, lowering, establishing, maintaining, or stabilizing the sale price of hardwood flooring; or having the effect of restricting or impairing the free choice of any bid awarding authority or agency in selecting a bona fide competitive bid on any proposal, order, or project;

[Price Information]

(f) Exchanging or disseminating, either orally or in writing, any information concerning future prices of hardwood flooring;

[Advisory Service]

(g) Recommending, advising, or suggesting the raising, lowering, fixing, maintaining, or stabilizing of prices of hardwood flooring;

[Dealer Discrimination]

(h) Persuading, forcing, or in any manner inducing any hardwood flooring manufacturer, distributor, broker, or other agents, to discriminate against any hardwood flooring dealer, distributor, or purchaser with respect to purchases, sales, prices, charges, terms, or conditions of sale of hardwood flooring;

[Price Schedules]

(i) Compiling, publishing, subscribing to, following or enforcing compliance with any standard, average, basic or group price, price list, schedule, or bulletin which recommends or provides for uniform prices, differentials, minimums, discounts, rebates, concessions, or exchange prices with respect to the distribution, purchase, or sale of hardwood flooring;

(j) Setting up, establishing, maintaining, contributing to or participating in any confidential or secret system, scheme, or plan for reporting data or statistics as to purchases, sales, past prices, orders or deliveries of hardwood flooring, which data and statistics are not publicly disseminated or otherwise available to any interested person;

[Sale Restriction]

(k) Artificially or arbitrarily allocating or apportioning or in any manner arbitrarily restricting sales of hardwood flooring;

[Customer Allocation]

(l) Artificially or arbitrarily allocating customers or markets or marketing territories in the sale of hardwood flooring.

[Compliance Investigation]

VI. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to the defendants be permitted (1) reasonable access during the office hours of the defendants to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to the matters contained in this decree, (2) subject to the reasonable convenience of the defendants and without restraint or interference from them, to interview officers or employees of the defendants regarding any such matters; and the defendants on request of the Attorney General or an Assistant Attorney General shall submit such reports in respect to any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of

the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

[*Retention of Jurisdiction*]

VII. Jurisdiction of this cause is hereby retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time (upon due and reasonable notice to the adverse party or parties) for such further orders and directions as may be necessary or appropriate for the construction of or the carrying out of this decree, for the modification thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

[*Effective Date*]

VIII. This decree shall be effective from the date of the entry hereof.