JAN 12 1973

UNITED STATES DISTRICT COURT CLERK, U. S. DISTRICT COURT
GREENSBORO, N. C.

Middle District of North Carolina 2:30pm

RUFUS A. SNEED, Plaintiff	)	
vs.	)	COMPLAINT
SWIFT & COMPANY: WILSON LAUREL FARMS, INC.; HOLLY FARMS POULTRY INDUSTRIES, INC.; and A. W. PERDUE, Defendants	)	C-19-WS-73

JURISDICTION AND VENUE

1. This action is brought against the above-named defendants under Section 4 of the Act of Congress of October 14, 1914, Ch. 323, 38 Stat. 731, as amended (15 USC § 15) commonly known as the Clayton Act, to recover treble the damages sustained by the plaintiff due to the violation of Section 1 of the Act of Congress of July 2, 1890, Ch. 637, 26 Stat. 209 (15 USC § 1) commonly known as the Sherman Act, and for other relief, said violations having occurred in the engagement and disengagement of poultry producers, as hereinafter defined.

2. The plaintiff is a producer of poultry in northwestern North Carolina, more specifically located in the county of Surry.

3. Each of the Defendants transact business or the practices alleged herein affect business within the Middle District of North Carolina.

4. That the defendant, Swift & Company is a Delaware Corporation authorized to do business and is doing business in the State of North Carolina with its office and registered agent, C. T. Corporation System, 111 Corcoran Street, Durham, North Carolina. That the defendant, Wilson Laurel Farms, Inc., is a Delaware Corporation authorized to do business and is doing business in the State of North Carolina with its office in Dobson, North Carolina. That the defendant, Holly Farms Poultry Industries, Inc., is a North Carolina corporation organized and existing under the laws of the State of North Carolina with its principle office and place of business in Wilkesboro, North Carolina. That the defendant, A. W. Perdue, is a corporation organized and existing under the laws of the State of Maryland, with its principle office

and place of business in Salisbury, Maryland, and is authorized to do business in the State of North Carolina, with its office in Statesville, North Carolina.

TERMS

5. As used herein:

(a) The term poultry producer means that party who is under contract with a poultry company, the terms of such contract being more specifically stated in paragraph 6.

(b) The term poultry company refers to that party who by agreement with the poultry producer furnishes such producer with laying hens for the specific purpose of supplying said poultry company with hatching eggs.

(c) The term flock supervisor means that person employed by the poultry company to supervise the production of hatching eggs while such eggs are in the possession of the poultry producer.

(d) The term laying hen means a chicken the age of approximately one day to 18 to 20 weeks which is supplied to the poultry producer by the poultry company.

NATURE OF TRADE AND COMMERCE

6. The nature of the business which is the subject of this complaint is as follows: An agreement is entered into between the poultry producer and the poultry company whereby the producer is furnished with from 8,500 to 10,000 young hens along with necessary feed and medical supplies to accomplish the laying of hatching eggs, the poultry producer furnishes all lights, water, housing, feeders, drinkers, liter, labor and other equipment and facilities necessary for rearing and laying to properly care for said chickens according to the recommendations of the poultry company. The poultry company supplies to the poultry producer the young hens at an age of from one day to 18 to 20 weeks. At an age of approximately 22 weeks the hens begin laying eggs which are collected, graded and cleaned and placed in cooling facilities by the poultry producer. Approximately twice weekly the company collects the eggs from the poultry producer, such eggs are then transported by the poultry company to its hatcheries where the eggs are placed in incubators for the period necessary for them to hatch. Upon hatching, the young birds are cared for up until the time they are slaughtered and prepared for distribution through both intrastate and interstate.

7. The acts alleged in this complaint to have been done by each of the defendants were authorized, ordered, or done by the officers, agents, employees or representatives of each defendant, while actively engaged in the management, direction, or control of its affairs and acting on its behalf within the scope of their employment.

OFFENSE CHARGED

8. Beginning approximately around October, 1971, and continuing until the filing of this suit, the defendants engaged in an unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce in poultry production in violation of Section 1 of the Act of Congress of July 2, 1890 as amended (15 USC § 1) commonly known as the Sherman Act.

9. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the Defendants to discontinue the supplying of young laying hens to the plaintiff at a time in which the plaintiff had complied with the terms of the contract between himself and the defendants. That the said defendants control the production and growing of eggs, hatching of chickens and the entire poultry producing process in the area in which the plaintiff has an opportunity to do business and to sell his poultry products, where no other market is available to the plaintiff other then the market which is controlled by the defendants. That the combination and conspiracy between the defendants to discontinue supplying young laying hens to the plaintiff constitutes a monopoly over the poultry production industry in Northwestern North Carolina.

10. In formulating and effectuating the aforesaid combination and conspiracy, the defendants in combination and conspiracy did the following:

That on or about 1967, the plaintiff entered into a contract with a poultry company no longer in existence for the purpose of production of hatching eggs. That on or about August, 1969, the plaintiff entered into a similar contract for the production of hatching eggs with the defendant, A. W. Perdue and Company, such contract being for a term of one year. On or about August, 1970, the plaintiff entered into an additional one year contract with the defendant, A. W. Perdue. That the plaintiff complied with the terms and conditions of said contract and received good reports from defendant's flock supervisor, and on or about April, 1971, the plaintiff was informed by the flock supervisor of A. W. Perdue and Company that the plaintiff would not receive an additional flock of young laying hens from Perdue. The defendant ceased supplying the plaintiff with young laying hens. Whereupon the plaintiff inquired as to the possibility as to his being supplied with young laying hens by other poultry companies, additional defendants herein, each defendant refused to supply the plaintiff with young laying hens at a time when the plaintiff was reputed to have the best equipment and facilities for the production of hatching eggs in the area. The concerted action of the defendant poultry companies has resulted in a concerted refusal to deal with the plaintiff such concerted refusal being a per se violation of Section 1 of the Act of Congress of July 2, 1890, Ch. 637, 26 Stat. 209 (15 USC § 1) commonly known as the Sherman Act.

11. The aforesaid combination and conspiracy has had the following effects among others:

(a) The poultry producers including the plaintiff have been deprived of free and open competition in the production of poultry.

(b) The poultry producers including the plaintiff have been deprived of their major means of livelihood.

(c) The poultry producers, including the plaintiff, have been forced to make large investments in order to enter the poultry business and now as a result of the illegal action of the defendants are faced with a loss of such investments.

12. By reason of the defendants conspiracy herein above alleged, the plaintiff has been unable to continue his business of poultry production such business he could have continued under natural conditions of competition in absence of any such conspiracy, and the plaintiff has thereby been damaged.

13. As a result of the above described wrongful acts and conduct of the defendants, the plaintiff has suffered loss and damages in the amount of $50,000.00 and under the provisions of Section 4 of the Act of Congress of October 14, 1914, Ch. 323, 38 Stat. 731, as amended (15 USC § 15) commonly known as the Clayton Act, the plaintiff is entitled to recover of the defendants threefold the damages by him sustained, together with the costs of this suit and reasonable attorney's fee.

WHEREFORE, Plaintiff demands:

(a) Judgment against defendants in favor of plaintiff for threefold the damages sustained by him, together with the costs of suit including a reasonable attorney's fee;

(b) That the defendants, their present and future officers, directors, employees, agents, successors, assigns, be preliminarily and perpetually enjoined, restrained, and prohibited from entering into, adhering to, renewing, maintain, or futhering, directly and indirectly, any like or similar combination and conspiracy to restrain trade and commerce in the production of poultry as hereinbefore alleged.

This the 10 day of January, 1973.

Franklin Smith

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