

BP (Ireland)



THE HIGH COURT

1982 No. 2012 P
1982 No 2014 P

BETWEEN:

B.P. IRELAND LIMITED

Plaintiffs

and

SHREELAWN OIL COMPANY LIMITED AND
EAST CORK OIL COMPANY LIMITED

Defendants

JUDGMENT OF MR. JUSTICE COSTELLO

Delivered the 29th day of March 1982

The plaintiffs commenced two separate actions against two separate but associated companies to which they supply fuel products in bulk for distribution in an area of Cork shown on a map annexed to the agreements. They then brought these motions for interlocutory relief. They claim that in breach of their supply agreements the companies have obtained supplies from companies other than the plaintiff company and they seek to injunct them from so doing during the currency of the agreements. The plaintiffs filed affidavits to establish the conduct of which they complain. An affidavit filed on the defendants behalf admitted that they had acted as the plaintiffs claimed but submitted that their supply agreements were unenforceable as they were in unreasonable restraint of trade. The issues on the motion before me turn on the effect of the restraints contained in paragraph 3 of a written agreement of the 1st April 1981 into which both companies entered. This paragraph, having defined by reference to a map the area of the defendants' distributorship, went on:

"It is also a condition of this distributorship that you will not either directly or indirectly through any other person company subsidiary or associate company or otherwise handle or deal in any petroleum fuels or lubricants supplied by any person or company other than B.P. Ireland Limited within the boundary of your distributorship area either during the currency of your distributorship or for a period of eighteen months after termination for any reason."

The plaintiffs have not suggested that the supply agreements were the type of agreements to which the doctrine of restraint of trade do not apply. In which connection see Esso Petroleum Company Limited .v. Harper's Garage Stoutport Limited 1968 Appeal Cases 269 at pages 328 and 336. Their case is that the restraints imposed on the defendants were reasonable and that the obligations undertaken by them are accordingly enforceable. The onus of proof as to the reasonableness of the restraint is on the plaintiffs. They must show that it was no more than was reasonably necessary to protect their lawful trade interests.

The plaintiffs' case is that although the supply agreements are for a term of five years they can be determined by a years notice as therein set out and so the restraint on the defendants' freedom is a reasonable one. Mr. Cross on the defendants' behalf says that this argument ignores an important provision of the agreements to the effect that after termination the defendants are prohibited from carrying on any trade in petroleum fuels or lubricants for a period of eighteen months. In reply to this contention Mr. McCracken does not suggest that the doctrine of severance applies (in respect of which

see Chitty on "Contracts" 24th Edition paragraphs 10 49 et seq.) but argues that I am not concerned with the post-termination restraints at the present time and that the Court should now only consider those which restrain the defendants during the currency of their distributorship. So the issue which the trial Judge will be required to determine can be stated as follows:

1. Whether in considering the reasonableness of the contractual restraints the Court should ignore the post-distributorship eighteen-month prohibition. If the answer is in the affirmative, whether the Clause 3 restraint is reasonable.
2. If the answer to 1 is in the negative whether the restraints contained in Clause 3 are reasonable.

I am not required to determine these issues today. What I must firstly decide is whether or not the plaintiffs have made out a prima facie case in relation to them. I think they have, but before I can now grant the plaintiffs interlocutory relief I have to take into account the balance of convenience of the parties in relation to the granting of an injunction at this stage of the action. I must

ascertain the nature of the injury which the defendants on the one hand would suffer if the injunction was granted and they should ultimately turn out to be right and that which the plaintiffs on the other hand might sustain if the injunction was refused and they should ultimately turn out to be right. A director of the defendant companies has sworn that if an injunction is granted that the defendant companies will not be able to trade profitably and "Might well be forced out of business before the trial of the issue". On the other hand it has been urged on the plaintiffs' behalf that if an injunction is not granted that their goodwill will be damaged. Every case must, of course, depend on its own facts but I think I should observe that the submissions in this case are similar to those which influenced the Chief Justice in Esso Petroleum Company Limited .v. Fogarty 1965 Irish Reports 531 to refuse the plaintiff interlocutory relief and Mr. Justice Budd in Irish Shell and B.P. Limited .v. Ryan 1966 Irish Reports 75 likewise to refuse an interlocutory injunction. In the light of the defendants' sworn testimony I have come to the conclusion that even if the plaintiffs' evidence established a fair prima facie case they have not shown that this is a case in which I

should grant them relief. If they succeed at the trial their loss of trade can be quantified and I do not think that they will have suffered any significant damage to their goodwill because of the defendants' wrongful conduct. On the other hand if an injunction is now granted which, after all the evidence is heard is shown to have been incorrectly given, the defendants may have been wrongfully forced out of business. In refusing relief I will require the defendants to give an undertaking to keep monthly accounts of their purchases and sales and make them available for the plaintiffs' inspection prior to the hearing.

Approved

DL

31.3.82