Marquette Law Review

Volume 28
Issue 2 *Summer 1944*

Article 7

Equity - Discretion of Court to Deny Injunction upon Cessation of Violations of Price Control Act

Michael J. Pulito

Equity—Discretion of Court to Deny Injunction Upon Cessation of Violations of Price Control Act.—*Hecht Company* v. *Bowles,* (64 Sup. Ct. 587, 1944) was an action by Chester Bowles, as Price Administrator of the Office of Price Administration, against the Hecht Company for an injunction to restrain the defendant from violating the Emergency Price Control Act and regulations promulgated thereunder.

Sec. 205(a) of the Emergency Price Control Act of 1942[1] provides: "that whenever in the judgment of the administrator any person has engaged or is about to engage in any acts or practices which violate any provision of sec. 4 of this act, the administrator may make application to the appropriate court for an injunction and upon a showing by the administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

The alleged infractions by the Hecht Company were violative of sec. 4(a) of the Act. The regulations provided: that no person shall sell or deliver any commodity at a price higher than the authorized maximum price as fixed by regulation,[2] existing records shall be preserved and examined,[3] current sales records were required to be kept,[4] and maximum prices should be fixed with the administrator.[5]

The question in the case was: is the administrator, having established that the defendant did engage in acts or practices violative of sec. 4 of the Price Control Act, entitled as of right to an injunction enjoining the defendant from engaging in such acts notwithstanding that violations have been discontinued by the defendant, or has the court discretion to withhold or to grant such relief?

It was clear that numerous violations both as respects prices and records were revealed, that statements filed with the administrator proved deficient, and that there were no records kept about many items. The present suit was brought praying for an order enjoining the Hecht Company from future violations of the regulations. The Hecht Company pleaded that any failure or neglect to comply with the regulations was involuntary and was corrected as soon as discovered; as a corroboration of their good faith and diligence, the Hecht Company attested to the fact that an inexperienced company price control office, previously beset with many difficulties in attempting to interpret the regulations, had now been greatly expanded and

[1] 56 U. S. STAT. 23, 50 U.S.C.A. App. 901.
[2] 7 Fed. Reg. 3153, 1499.1.
[3] 7 Fed. Reg. 3153, 1499.11.
[4] 7 Fed. Reg. 3153, 1499.12.
[5] 7 Fed. Reg. 3153, 1499.13.

internally reorganized; furthermore, the Company had sought to repay all overcharges to customers indentifiable, and they propose to contribute the amount of such overcharges to charity.

Nevertheless, the administrator insisted that the mandatory character of 205(a) is clear from its language, history, and purpose. He argued that "should be granted" is not permissive but mandatory upon a showing of illegal practices. He urged that the senate report in its analysis of 205(a) had stricken the words "upon a proper showing" and had replaced them with the words "upon a showing by the administrator that such person has engaged or is about to engage in any such acts or practices."[6] Such key phrases as "upon a proper showing"[7] and "for cause shown"[8] which clearly indicated the reserve of discretion by the equity courts in other acts do not appear in 205(a), and so the administrator insisted that Congress did wish to make the issuance of an injunction mandatory upon application.

The Supreme Court held that the ambiguities of 205(a) should be resolved in favor of that interpretation which affords "a full opportunity for equity courts to treat enforcement proceedings under this emergency legislation in accordance with their traditional practices as conditioned by the necessities of the public interest which Congress has sought to protect."[9] It was held that the Act falls short of making mandatory the issuance of an injunction merely because the administrator asks it.

Decisions involving the Fair Labor Standard Act of 1938[10] are in accord with the principal case. In *Fleming* v. *National Bank of Commerce*[11] it was held that the Act providing that the District Courts shall have jurisdiction for cause shown to restrain violations of the Act does not mean that the court should automatically issue an injunction in all cases where violations are shown; each case must be measured according to its own circumstances. It does not follow that the administrator is entitled to an injunction merely on a showing of past violations. A decision given under the Norris La Guardia Act[12] held that an injunction will not be issued when the wrong is fully terminated before the institution of the suit and where there is no likelihood of repetition.[13] In still other instances, an injunction

[6] S. Rep. No. 931, 77th. Cong. 2d. Sess., p. 25.
[7] SECURITIES EXCHANGE ACT of 1934, 48 U.S. STAT. 899, 15 U.S.C.A. 78u(e).
[8] FAIR LABOR STANDARD ACT, 52 U.S. STAT. 1069, 29 U.S.C.A. 217.
[9] United States v. Morgan, 307 U.S. 183, 59 Sup. Ct. 795, 83 L.Ed. 1211 (1939).
[10] *Supra,* note 8.
[11] Fleming v. National Bank of Commerce, 41 F. Supp. 833 (D.C. W.Va., 1941).
[12] NORRIS LA GUARDIA ACT, 29 U.S.C.A. 108.
[13] Yellow Cab Operating Co. v. Local Union, 35 F. Supp. 403 (D.C. S.D. N.Y., 1940); United States v. United States Steel Corporation, 251 U.S. 417, 40 Sup. Ct. 293, 64 L.Ed. 343, 343 A.L.R. 1121 (1920); Shore et al v. United States, 282 Fed. (2d) 857 (C.C.A. 7th, 1922); Blease v. Safety Transit Co., 50 Fed. (2d) 852 (C.C.A. 4th, 1931); Brookings State Bank v. Federal Reserve Bank, 281 Fed. 222 (D.C. Oregon, 1922).

was denied where the acts ceased and future violations were almost certain not to occur. It was held that the question has then become moot.[14] In *Fleming* v. *Phipps*[15] the court said that there was no indication within the act showing a Congressional intent which made the issuance of an injunction mandatory. Under the Fair Labor Standard Act the provisions for an injunction to restrain violations and for the criminal prosecution were alternative remedies and an injunction should not be granted unless there is adequate cause in accordance with applicable principles of equity.

The court did hold in *Walling* v. *Peavy-Wilson Lumber Company*[16] that the cessation of violations shortly prior to the filing of suit considered alone is not a ground for denying an injunction. Apparently permanent cessation of violations was not likely for the past conduct of the defendant did not warrant such belief. In *Fleming* v. *Salem Box Company*[17] it was held that Congress does have the power to permit the issuance of injunctions without the ordinary showing of irreparable injury required by equity tribunals, and this is especially held to be true where an agency of the government is given the right to apply for an injunction in the public interest. A glance at tht Securities Exchange Act and at the decision delivered in *Security and Exchange Co.* v. *Otis and Co.*[18] will reveal that the court regarded the evidence presented as insufficient to warrant an injunction on the ground that the defendant would commit future violations of the Act if not enjoined.

The wording of the Securities Exchange Act, of the Fair Labor Standard Act, and of the Emergency Price Control Act each contain alternative remedies. The Price Control Act provides that a permanent or temporary injunction, restraining order, or other order shall be granted. If the remedies are set forth in the alternative and if some order is deemed necessary, the court may use its discretion as to the type of order which it shall grant.[19] The cases cited tend to show that the discretionary power of the court of equity cannot be divested by implication. The statutory prohibition must be so rigid as to prevent the application of any equitable doctrine. Discretion as to how to act has not as yet been restricted by Congress

[14] Walling v. Shenandoah-Dives Mining Co., 134 Fed. (2d) 395 (C.C.A. 10th, 1943); Walling v. T. Buettner and Co., 133 Fed. (2d) 306 (C.C.A. 7th, 1943).
[15] Fleming v. Phipps, 35 F. Supp. 627 (D.C. Md., 1940).
[16] Walling v. Peavy-Wilson Lumber Co., 94 F. Supp. 846 (D.C. La., 1943); Holland v. Amoskeag Machinery Co., 44 F. Supp. 884 (D.C. N.H., 1942); Fleming v. Tidewater Optical Co., 35 F. Supp. 1015 (D.C. Va., 1940).
[17] Fleming v. Salem Box Co., 38 F. Supp. 997 (D.C. Oregon, 1940); American Fruit Growers v. United States, 105 Fed. (2d) 722 (C.C.A. 9th, 1939).
[18] Securities and Exchange Co. v. Otis and Co., 18 F. Supp. 100 (D.C. S.D. N.Y. 1940).
[19] Brown v. Southwest Hotels, 50 F. Supp. 147 (D.C. Ark., 1943).

when the court was given the power to act at all. However, power to act at all has been restricted by Congress. The Norris La Guardia Act has restricted the court to enjoin in circumstances designated in the Act. The limiting of this power of the courts was held to be a valid exercise of the power of Congress,[20] for Congress may within fixed limits give either whole or restricted jurisdiction to the District Courts.[21]

MICHAEL J. PULITO

Pleading—Married Woman's Right to Sue in Her Own Name.—*Singer* v. *Singer* (14 N.W. (2d) 43, Wisconsin 1944) was an action by Angeline F. Singer, plaintiff, against Anthony A. Singer, Max Singer, and Catherine Fuerstenburg, defendants, to recover for damages sustained by her as a result of a willful conspiracy among the defendants, plaintiff's husband, his brother, and their employee. Anthony A. Singer, the husband demurred to the complaint. From an order sustaining the demurrer, the plaintiff appealed.

The court held that inasmuch as the statute 246.07[1] did not give a married woman the right to maintain an action in her own name other than for injury to person or character, or the alienation of her husband's affections without joining him, she must sue in her husband's name in an action for conspiracy to injure her marital rights; and that as it was manifest that the husband could not be both plaintiff and defendant in the same action, the cause of action for conspiracy must fail.

The statute 6.015[2] which gave women equal rights and privileges was construed as to be limited by the earlier statute allowing women

[20] International Ladies' Garment Workers Union v. Donnelly Garment Co., 305 U.S. 662, 59 Sup. Ct. 364, 83 L.Ed. 430 (1939).
[21] 293 U.S. 595, 55 Sup. Ct. 110, 79 L.Ed. 688 (1934).

[1] WIS. STAT. § 246.07 "May sue in her own name. Every married woman may sue in her own name and shall have all the remedies of an unmarried woman in regard to her separate property or business and to recover the earnings secured to her by 246.05 and 246.06, and shall be liable to be sued in respect to her separate property or business, and judgment may be rendered against her and be enforced against her and her separate property in all respects as if she were unmarried. And any married woman may bring and maintain an action in her own name for any injury to her person or character the same as if she were sole. She may also bring and maintain an action in her own name and for her own benefit, for the alienation and the loss of the affection and society of her husband. Any judgment recovered in any such action shall be the separate property and estate of such married woman. Nothing herein contained shall affect the right of the husband to maintain a separate action for any such injuries as are now provided by law."

[2] WIS. STAT. § 6.015 "Women to have equal rights. (1) Women shall have the same rights and privileges under the law as men in the exercise of suffrage, freedom of contract, choice of residence for voting purposes, jury service, holding office, holding and conveying property, care and custody of children, and in all other respects. The various courts, executive and administrative