

IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT

MARION COUNTY, ILLINOIS

FILED  
CLERK OF THE CIRCUIT COURT

1997

*Charles R. Soles*  
MARION COUNTY  
ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, )  
ex. rel. JAMES E. RYAN, Attorney General, )  
Plaintiff, )

vs )

GREG HENSLEY, )  
Defendant. )

No: 97-CH-49

ORDER

This cause comes on for hearing on defendant Greg Hensley's Motion to Dismiss and the trial of all remaining issues. The People of the State of Illinois were represented by Don R. Sampen and Marija Popovic, Assistant Attorneys General, and the defendant Greg Hensley was present along with his attorney Robert H. Wood, and the Court having heard the evidence and arguments of counsel finds as follows:

1. This Court has jurisdiction of the parties and subject matter of this cause.
2. The complaint states a cause of action under the Illinois Antitrust Act, and Section 10/5(5) of the act does not apply to the activity in this case in that it is not the activity of an insurer. The motion to dismiss of defendant Hensley is, therefore, denied.
3. The evidence in this case established that defendant Greg Hensley, with others, signed a document dated October 18, 1993, which set the labor rate at \$36 per hour and the material rate at \$18 per hour for body shops in the Centralia, Illinois, area (see Plaintiff's Exhibit No. 6.) The evidence further shows that Greg Hensley began charging the rate of \$36 per hour for services and \$18 per hour for materials after October 18, 1993, and prior thereto had been charging \$32 per hour for services and \$14 per hour for materials (see Plaintiff's Exhibits 17 through 36). The State Farm Insurance Company's survey forms of May 1992 and June 1993 show a prevailing labor rate of \$32 per hour for services and a material rate of \$12-\$14 per hour for materials in the the Centralia, Illinois, area (see Plaintiff's Exhibits No. 57 and 58). The State Farm

Insurance Company's survey forms of November 1993 show a prevailing labor rate of \$36 per hour for services and a material rate of \$18 per hour for materials for body shops in the Centralia, Illinois, area (see Plaintiff's Exhibit No. 60). The testimony of Mark Brendel from Country Companies Insurance Company established that the body shops in the Centralia, Illinois, area including that of Greg Hensley all raised their labor rates in October of 1993 to \$36 per hour for services from a previous rate of \$32 per hour (see Plaintiff's Exhibit No. 64).

4. Defendant is charged with a civil violation of Section 10/3(1)(a) of the Illinois Antitrust Act which provides that: "Every person shall be deemed to have committed a violation of this act who shall make any contract with, or engage in any combination or conspiracy with, any other person who is, or but for a prior agreement would be, a competitor of such person for the purpose or with the effect of fixing, controlling, or maintaining the price or rate charged for any commodities sold or bought by the parties thereto, or the fee charged or paid for any service performed or received by the parties thereto."

5. The plaintiff has proven by a preponderance of the evidence that the body shops in the Centralia area were competitors; that Greg Hensley and the others who were party to the October 18, 1993, document entered into an agreement and that the purpose of the agreement was to maintain a price to be charged for a service. The plaintiff has proven all the required elements of a per se violation of the act.

6. This Court does not find any willful violation of the act by this defendant or any of the others similarly charged. This Court does not find that the agreement was induced by State Farm Insurance Company but, even if it was, finds a violation of the act by Greg Hensley.

7. This Court finds that a permanent injunction should issue against this defendant with appropriate monetary penalties assessed.

8. This Court does not find any undue lack of cooperation by defendant or defendant's counsel to warrant any additional monetary damages. Any additional pleadings required were due in this Court's view to the defendant's attorney's approach to this litigation and that defendant should not be penalized for this conduct by his counsel. Therefore, plaintiff's prayer for attorney's fees should not be granted.

**IT IS THEREFORE ORDERED THAT:**

A. Defendant Greg Hensley is hereby permanently enjoined from engaging in any conduct violative of the Illinois Antitrust Act, 740 ILCS 10/1 et. seq., and in particular Section 3(1) thereof which among other things prohibits agreements with competitors relating to rates.

B. That defendant Greg Hensley shall pay the monetary penalty of \$5,000 to be paid within 90 days to the Attorney General's Court Ordered and Voluntary

Compliance Payment Project's Fund.

- C. That plaintiff's prayer for attorney's fees is denied.
- D. The Court finds that there is no just reason for delaying enforcement or appeal of this order.

Dated this 12<sup>th</sup> day of January, 2000.

Patrick J. HPPAS  
PATRICK J. HPPAS  
CIRCUIT JUDGE