

No. 3

728

IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, *Appellant*,

v.

E. I. DU PONT DE NEMOURS & COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

**BRIEF FOR APPELLEES CHRISTIANA SECURITIES
COMPANY AND DELAWARE REALTY AND INVEST-
MENT COMPANY**

PHILIP C. SCOTT,
LEONARD JOSEPH,

DEWEY, BALLANTINE, BUSHBY,
PALMER & WOOD,
40 Wall Street,
New York 5, New York.

October 13, 1956.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

No. 3

UNITED STATES OF AMERICA, *Appellant*,
v.
E. I. DU PONT DE NEMOURS & COMPANY, *et al.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

**BRIEF FOR APPELLEES CHRISTIANA SECURITIES
COMPANY AND DELAWARE REALTY AND INVEST-
MENT COMPANY**

OPINION BELOW

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, dismissing the complaint (R. 289-466), is reported at 126 F. Supp. 235.

JURISDICTION

This action was brought under Section 4 of the Act of July 2, 1890 (26 Stat. 209), as amended (15 U. S. C. § 4), and Section 15 of the Act of October 15, 1914 (38 Stat. 736), as amended (15 U. S. C. § 25). The judgment of the District Court (R. 466-467) was entered on Decem-

ber 9, 1954, and notice of appeal was filed on February 4, 1955 (R. 467-474). Probable jurisdiction was noted on October 10, 1955 (R. 474). Jurisdiction of this Court to review the judgment below on direct appeal is invoked under Section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended by Section 17 of the Act of June 25, 1948 (15 U. S. C. § 29).

STATUTES INVOLVED

The pertinent provisions of Sections 1 and 2 of the Sherman Act (Act of July 2, 1890, 26 Stat. 209, 15 U. S. C. §§ 1, 2) are as follows:

“Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, * * *.”

“Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.”

Section 7 of the Clayton Act as it read at the date of the filing of the complaint (Act of October 15, 1914, 38 Stat. 731, 15 U. S. C. [1946 ed.] § 18), is involved in the case as to the other parties but not as to these appellees.

QUESTIONS PRESENTED

The District Court after a full trial dismissed the amended complaint against appellees Christiana Securities

Company (Christiana) and Delaware Realty and Investment Company (Delaware), finding a failure of proof of the Government's charge that they had been parties to an unlawful combination and conspiracy to restrain and monopolize trade and commerce.

The Government has not here challenged these adverse findings. It nevertheless presented the question to this Court whether, notwithstanding the findings, in the event of a reversal as to appellees E. I. du Pont de Nemours & Company (du Pont) and General Motors Corporation (General Motors) the Court should also reverse as to Christiana and Delaware to subject them to the decree of the District Court. The Government has abandoned this question in its brief, so that no question remains for decision as to Christiana and Delaware.

STATEMENT

The Government is here appealing from a portion of the judgment of the District Court which dismissed a complaint, filed under Section 4 of the Sherman Act and Section 15 of the Clayton Act, against these appellees and a great many other defendants.

The amended complaint in its final form charged appellees Christiana and Delaware with participation in a conspiracy to restrain and monopolize trade and commerce in violation of Sections 1 and 2 of the Sherman Act. It alleged that the conspiracy consisted of an agreement among Christiana and Delaware, which hold stock in du Pont, and three individual defendants (Pierre, Irene and Lamot du Pont) to acquire and perpetuate control of du Pont, and through it of General Motors and United States Rubber Company, and to utilize such control to make du Pont, General Motors and U. S. Rubber protected markets for each other and otherwise to restrain and monopolize trade and commerce. (R. 219-225)

These charges were fully tried before the District Court. Numerous witnesses appeared and a large number of exhibits were introduced with respect to the phases of the case relating to Christiana and Delaware. The issues involved were thoroughly briefed, proposed findings of fact were submitted by all parties and extensive oral arguments were presented. The culmination was a lengthy and detailed opinion by the trial court, a year in preparation, in which the court found that there had been a complete failure of proof with respect to the Government's charges. With respect to the charges against Christiana and Delaware, the court stated (R. 297, 464) :

"The Government has failed to prove that the stock held by the defendant individuals and members of the du Pont family in Christiana and Delaware was for the purpose of perpetuating control over the du Pont Company, and has failed to prove that there was any agreement, understanding, or conspiracy that they would continue to hold such stock, keep it within their families or dispose of or vote the Delaware stock for the purpose of utilizing du Pont to create protected markets for du Pont, or to otherwise restrain or monopolize trade. The Government has further failed to prove that either Christiana or Delaware, or both, were formed, and their stock held, for the purpose of creating protected markets for du Pont and to otherwise restrain or monopolize trade.

* * * *

The Court finds that none of the actions taken in concert had as their objective, or necessary consequence, the imposition of any limitation upon the free flow of trade and commerce. A number of such actions, such as the formation of Christiana in 1915 and Delaware in 1924, were undertaken for purely personal reasons of the participants, largely financial and unrelated to restraint of trade and commerce or the monopolization thereof. * * *"

Following the filing of the trial court's opinion, judgment was entered dismissing the complaint against all defendants (R. 466-467).

In its notice of appeal and jurisdictional statement the Government did not challenge the findings as to Christiana and Delaware. It did, however, make them parties to the appeal, for the purpose of presenting to the Court the following question, which was designated question 5 of the questions presented by the Government (R. 470; jurisdictional statement, pp. 5-6) :

“Whether the United States is entitled to relief which, in addition to appropriate injunctive provisions, would require du Pont to divest itself of its General Motors stock, and would require Christiana Securities Company and Delaware Realty & Investment Corporation (if du Pont should be permitted to divest through a distribution of General Motors stock to du Pont stockholders) to dispose of all General Motors stock received as a result of such distribution.”

The Government's brief now eliminates this question from the questions presented to the Court. With respect to the relationship of Christiana and Delaware to problems of relief, the Government's brief contains only a footnote (p. 149, n. 51), which does not raise the question of the propriety of subjecting these appellees to a decree, but merely states that in view of their large holdings of du Pont stock adequate relief would require more than a distribution of du Pont's holdings of General Motors stock to du Pont stockholders.

ARGUMENT**I.****The Appeal Should Be Dismissed As to Christiana and Delaware Because the Government Has Abandoned the Only Question Presented to the Court Which Involved These Appellees.**

The sole question relating in any way to the appellees Christiana and Delaware which was presented by the Government in its notice of appeal and jurisdictional statement (Question 5) has now been abandoned. It is deliberately omitted from the statement of questions presented in the Government's brief (p. 2) and is in no way adverted to except in a concluding footnote which is consistent with the complete elimination of the question (p. 149, n. 51). This appeal should therefore be dismissed as to appellees Christiana and Delaware.

Neither in its jurisdictional statement nor in its brief has the Government challenged the adverse findings of the District Court with respect to the charges of violation of law by Christiana and Delaware, upon which the dismissal of the complaint as to them was based. Christiana and Delaware were made parties to this appeal to tender a single question to this Court, namely, whether upon a reversal they should be required to divest themselves of General Motors stock in the event the District Court should permit du Pont to divest through a distribution of General Motors stock to du Pont stockholders. This question now having been eliminated from the Government's brief, there is no issue left in this appeal relating to Christiana and Delaware.

II.**Even if the Question Relating to Christiana and Delaware Had Been Pressed, a Dismissal of the Appeal as to Them Would Have Been Required.**

The question relating to Christiana and Delaware initially presented by the Government posed the issue whether parties who have been found innocent of the charges made against them may nonetheless be subjected to an adverse decree, even though the appellant has not challenged the finding of innocence. Merely to state the issue is to provide the answer, which is undoubtedly the reason why the Government has abandoned the question.

The District Court, after an extensive inquiry into the history, operations and relationships of Christiana and Delaware, made specific findings that they were not parties to any violation of law (R. 293-297, 464) and entered a judgment dismissing the complaint (R. 466-467). In taking this appeal against these defendants the Government in no way challenged the adequacy of the evidence to support these findings nor their sufficiency to justify the dismissal of the complaint. Nonetheless, the Government asked a reversal of the judgment as to Christiana and Delaware. While the Government did not articulate the basis for this request, it was necessarily the Government's position that an appellate court may reverse a judgment entered in favor of parties who have been found innocent, in order to keep the parties in the case and amenable to relief, notwithstanding the complete failure of the appellant to challenge the finding of innocence. Nowhere in the Government's brief is there the slightest suggestion of justification for such a procedure, and we submit that there can be none.

Thus, even if the Government had pressed the question initially presented in its jurisdictional statement as "Ques-

tion 5," Christiana and Delaware would clearly have been entitled to be dismissed from this appeal.

CONCLUSION -

For the foregoing reasons, this appeal should be dismissed as to Christiana and Delaware.

Respectfully submitted,

PHILIP C. SCOTT,
LEONARD JOSEPH,

DEWEY, BALLANTINE, BUSHBY,
PALMER & WOOD,
40 Wall Street,
New York 5, New York.

*Attorneys for Appellces Christiana
Securities Company and Delaware
Realty and Investment Company.*

October 13, 1956.