

Superior Court of Maine, Kennebec County.

State of MAINE

v.

GETCHELL BROS., INC., a Maine corporation with offices in Brewer, Penobscot County, Maine, Willard Farnham, an individual residing in Penobscot County, Maine, F.J. O'Hara & Sons, Inc., a Maine corporation with offices in Rockland, Knox County, Maine, and Francis J. O'Hara, II, an individual residing in Camden, Knox County, Maine.

Civ. A. No. 89-413.

Sept. 14, 1989.

Consent Decree of Getchell Bros., Inc. and Willard Farnham

MORTON A. BRODY, Justice.

Plaintiff, State of Maine, having filed its Complaint on September 14, 1989, and Plaintiff and Defendants Getchell Bros., Inc. and Willard Farnham (hereinafter referred to as Defendants) having consented to the entry of this Consent Decree without trial or adjudication of any issue of any fact or law herein and without this Decree constituting any evidence against, or an admission by, any party with respect to such issue; now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered and decreed as follows:

I. Definitions

A. Wholesale ice business. For purposes of this Consent Decree, the term "wholesale ice business" shall mean any person who engages in the regular and continuous sale of bulk or packaged ice.

B. Bulk ice. For purposes of this Consent Decree, the term "bulk ice" shall mean ice sold in any form, including cubes, fragments or blocks, to the ultimate end user but not including users who purchase ice at retail establishments for personal, household or family use.

C. Packaged ice. For purposes of this Consent Decree, the term "packaged ice" shall mean ice sold in any form, including cubes, fragments or blocks, to a retail business which then sells that ice to the ultimate end user for personal, household or family use.

D. Chain stores. For purposes of this Consent Decree, the term "chain stores" shall mean two or more retail establishments such as supermarkets, convenience stores or drug stores operated by the same person.

II. Jurisdiction

This Court has jurisdiction of the subject matter of this action.

III. *Relief*

A. *Injunctions*

1. Defendants, their agents, employees or other persons acting for them or under their control, are hereby permanently enjoined pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104 from soliciting, entering into, or engaging in any contract, combination or conspiracy with any competing wholesale ice business to:

a. refrain from soliciting particular customers for the sale of packaged or bulk ice;

b. divide or allocate the geographic areas in which Defendants or any competing wholesale ice business will sell packaged or bulk ice; and

c. divide or allocate the customers to whom Defendants or any competing wholesale ice business will sell packaged or bulk ice.

Nothing in this paragraph shall prohibit Defendants from establishing otherwise lawful distributorship arrangements for the sale of packaged or bulk ice.

2. Defendants, their agents, employees or other persons acting for them or under their control, are hereby permanently enjoined pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104 from entering into any agreement or contract with Defendants F.J. O'Hara & Sons, Inc. and Francis J. O'Hara, II with respect to the sale of packaged or bulk ice to chain stores within the State of Maine. The permanent injunction ordered by this paragraph A.2. shall become effective 180 days after the date this Consent Decree is entered by the Superior Court and shall expire three years thereafter.

B. *Penalties*

1. Defendant Getchell Bros., Inc. shall pay to the State of Maine a civil penalty in the amount of \$30,000 pursuant to 10 M.R.S.A. § 1104 (Supp.1988).

2. Defendant Willard Farnham shall pay to the State of Maine a civil penalty in the amount of \$5,000 pursuant to 10 M.R.S.A. § 1104 (Supp.1988).

C. *Costs*

Defendants shall pay to the State of Maine the amount of \$2,925 as reimbursement for investigative costs and costs of suit pursuant to 5 M.R.S.A. § 209 (Supp.1988).

IV. Retention of Jurisdiction

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of the Consent Decree, for the modification of or termination of any of the provisions hereof, and for the enforcement of compliance herewith.

It is hereby Ordered and Decreed as set forth above.