1970 WL 532
United States District Court; S.D. New York.

Oscar Robertson, et al.
v.
National Basketball Assn., et al.

No. 70 Civ. 1526
|
Dated April 17, 1970

Excerpt of transcript of proceedings before LLOYD F. MACMAHON, D. J.

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[On Motion for Temporary Restraining Order]

THE COURT: There is no longer any question that the Sherman antitrust law applies to sports other than baseball in the same way it applies to other commercial enterprises engaged in interstate commerce. *Radovich v. National Football League* [1957 TRADE CASES P 68,628], 352 U. S. 445 (1957).

Patently, merger or other combination of the National Basketball Association and the American Basketball Association will eliminate one of two competitors and leave only one surviving major professional basketball league in the market of professional basketball in the United States. Such a merger raises serious questions as to its legality under Sections 1 and 2 of the Sherman Act.

It is plain from the very arguments of defense counsel that these two competitors for plaintiffs' services are at this very moment negotiating and taking steps looking to a "merger," a consolidation, a combination or agreement, the net effect of which would be to eliminate all competition between them. That result would work an immediate and irreparable injury on the plaintiffs.

Some of the players who are members of the class plaintiffs purport to represent have already signed contracts to play in the rival league in future seasons. Thus, players who are now free to negotiate for future contracts with either of the rivals would instantly lose that competitive advantage if one of the rivals is eliminated by merger or other combination.

When we consider that youth passes away and consequently basketball players have limited professional careers, the threat of immediate and irreparable injury to the plaintiffs seems clear enough. Equitable relief is warranted in the circumstances to maintain the status quo of the present competitive structure at least until the issues of fact and questions of law raised in this lawsuit can be more fully presented, considered and decided on a hearing of plaintiff's application for a preliminary injunction pending trial.

This is not to suggest that the Court questions in any way the good faith of defense counsel's representations that there will not be a merger forthwith. All too often, however, lawyers cannot control their clients, particularly where there are as many parties involved as there are here.

The plaintiffs have made a sufficient showing of reasonable grounds to believe that a merger is imminent, as appears from the many exhibits attached to their papers. Should a merger occur and later be found to be illegal under the Sherman Act, the Court would be confronted with the unscrambling complexities inherent in divestiture which might well work severe hardship upon innocent parties.

These considerations, plus the threat of immediate and irreparable injury to the plaintiffs, should the merger occur, weigh heavily on the side of granting a temporary restraining order.

Accordingly, the Court will grant the temporary restraining order and, on consent of counsel, will set the hearing on the application for a preliminary injunction for two weeks.

All Citations

Not Reported in F.Supp., 1970 WL 532, 1970 Trade Cases P 73,282