

BLOGS

Antitrust

Eleventh Circuit Affirms Dismissal of Boycott Conspiracy Claim Against Heavy Equipment Dealers

The Eleventh Circuit Court of Appeals has recently affirmed a summary judgment order dismissing all claims by an importer of new Chinese construction equipment alleging a conspiracy to boycott and tortious interference with contractual relations against three Caterpillar dealers. *Int'l Const. Prods., LLC v. Ring Power Corp.*, 2023 WL 7127515 (11th Cir. Oct. 30, 2023).

The Eleventh Circuit Court of Appeals has recently affirmed a summary judgment order dismissing all claims by an importer of new Chinese construction equipment alleging a conspiracy to boycott and tortious interference with contractual relations against three Caterpillar dealers. *Int'l Const. Prods., LLC v. Ring Power Corp.*, 2023 WL 7127515 (11th Cir. Oct. 30, 2023). The case arose from a merger between two auction services companies: IronPlanet, an online auction company that focused on sales of used heavy construction equipment, and Cat Auction Services (CAS), an in-person auction company owned by Caterpillar, Inc. and some of its dealers. Plaintiff International Construction Products (ICP) was a distributor of new heavy construction equipment manufactured in China that sold its products online directly to customers. While the IronPlanet–CAS merger discussions were ongoing, ICP entered into a deal to sell its new equipment through IronPlanet's online storefront. A month after those sales began, IronPlanet unilaterally terminated its deal with ICP.

ICP alleged that the termination was the result of IronPlanet caving to pressure from various manufacturers of heavy equipment including Caterpillar, as well as at least three Caterpillar dealers, who ICP believed were conspiring to exclude it from the US market for new heavy construction equipment. ICP alleged that each of the three dealer defendants had threatened to boycott IronPlanet unless IronPlanet agreed to cancel its deal with ICP—either by threatening to withhold from IronPlanet used construction equipment to be used in auctions, or by killing the IronPlanet–CAS merger.

The Eleventh Circuit concluded that ICP's allegations against the three Caterpillar dealers failed because there was no direct evidence that the dealers conspired to boycott IronPlanet, no circumstantial evidence that would permit an inference that the defendants conspired, and no "plus factors" that would tend to establish that parallel business behavior by the dealers was more likely the result of a conspiracy than independent self-interest. At most, the court concluded, ICP had put forth evidence tending to show that the dealers independently harbored concerns about the effects IronPlanet's contract with ICP would have on the heavy construction equipment industry and their own respective businesses, and communicated those concerns to IronPlanet in the form of requests for additional information. Because such conduct is not illegal under the Sherman Act, and because the evidence did not demonstrate "threats" that improperly interfered

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with ICP's contract, the Eleventh Circuit affirmed summary judgment dismissing the claims.

Lathrop GPM represented one of the dealers in this lawsuit.