

Roger Williams University Law Review

Volume 8 | Issue 2

Article 7

Spring 2003

2002 Survey of Rhode Island Law: Cases: Antitrust

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Recommended Citation

Stockwell, Joshua A. (2003) "2002 Survey of Rhode Island Law: Cases: Antitrust," *Roger Williams University Law Review*: Vol. 8: Iss. 2, Article 7.

Available at: http://docs.rwu.edu/rwu_LR/vol8/iss2/7

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Antitrust. *Siena v. Microsoft Corp.*, 796 A.2d 461 (R.I. 2002). The Rhode Island Supreme Court held that the plaintiff owners and lessees were indirect purchasers that lacked standing to sue under the Antitrust Act, and neither the end user license agreement nor the consumer warranty vested them with standing to sue as direct purchasers.

FACTS AND TRAVEL

The plaintiffs sued Microsoft Corp. (Microsoft) for anticompetitive practices in violation of Rhode Island's Antitrust Act.¹ The plaintiffs alleged that Microsoft unlawfully used its monopoly power to set prices for its Windows 98 operating system far exceeding what it could charge in a competitive market.² None of the plaintiffs, however, purchased or leased their Windows 98 software directly from Microsoft.³ The superior court dismissed the complaint for lack of standing to bring suit under the Antitrust Act.⁴ The hearing justice determined that indirect purchasers were barred from bringing suits alleging antitrust violations in view of the United States Supreme Court's ruling in *Illinois Brick Co. v. Illinois*,⁵ and that Microsoft's End User License Agreement did not create a direct relationship between the plaintiffs and Microsoft.⁶

ANALYSIS AND HOLDING

The Rhode Island Supreme Court noted that section 6-36-2 of the Antitrust Act specifically requires that the Act be construed in harmony with federal antitrust law unless the provisions were expressly contrary to one another.⁷ In *Illinois Brick Co.*, the United States Supreme Court held that indirect purchasers were barred from bringing antitrust suits because the Court did not want to become involved in determining which purchasers in a chain suffered harm and the extent of harm they suffered.⁸ Furthermore, the court noted that the plaintiffs were not entirely without rem-

1. *Siena v. Microsoft Corp.*, 796 A.2d 461, 462 (R.I. 2002) (citing R.I. GEN. LAWS § 6-36-1 et seq. (2000)).

2. *Id.*

3. *Id.* at 463.

4. *Id.*

5. 431 U.S. 720 (1977).

6. *Siena*, 796 A.2d at 463 (citing § 6-36-2).

7. *Id.* at 464.

8. *Id.* (citing *Illinois Brick Co.*, 431 U.S. at 744-46).

edy because under section 6-36-12, the attorney general has the right to sue on behalf of indirect purchasers as *parens patriae*.⁹ Because the plaintiffs did not purchase their Windows 98 software directly from Microsoft, they lacked standing to bring suit.¹⁰

Even though Microsoft required the plaintiffs to agree to Microsoft's End User License Agreement before the plaintiffs could use Windows 98, and gave a consumer warranty directly to the plaintiffs, this relationship did not create direct purchaser privity between Microsoft and the plaintiffs.¹¹ The court noted that the license agreement was only an agreement not to infringe Microsoft's copyright, and that the consumer warranty is a common service provided by manufacturers to end users of their products.¹² The enormous amount of legal exposure created by adopting an exception for seller's employing such licenses and warranties, led the court to conclude that the Supreme Court could not have intended such consequences from its holding in *Illinois Brick Co.*¹³

CONCLUSION

The Rhode Island Supreme Court held that indirect purchasers of products lacked standing to sue under Rhode Island's Anti-trust Act. Furthermore, the granting of a consumer warranty or use of a licensing agreement did not change the character of the relationship into that of a direct purchaser with standing to sue. Because the plaintiffs in this case were indirect purchasers, the trial justice's grant of summary judgment to Microsoft was correct.

Joshua A. Stockwell

9. *Id.* at 464-65.

10. *Id.* at 465.

11. *Id.*

12. *Id.*

13. *Id.*