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Antitrust: Storer Cable Communication, Inc. v. City  
Of Montgomery, Alabama, 826 F. Supp. 1338  
(M.D. Ala. 1993)

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**ANTITRUST****STORER CABLE COMMUNICATION, INC. v. CITY OF MONTGOMERY,  
ALABAMA, 826 F. Supp. 1338 (M.D. Ala. 1993).**

A new local cable television operator, Montgomery Cablevision Entertainment, Inc. ("MCE"), intervened as a defendant in a suit against the City of Montgomery ("City") by the existing cable operator, Storer Cable Communication, Inc. ("Storer"), and its programming suppliers and distributors. MCE filed a counterclaim against the plaintiffs and others alleging violations of the Sherman Act, the Alabama Code, Alabama state common law governing monopolies, a city ordinance and state tort law.

As a start-up cable company competing against the incumbent Storer, which reached 92% of the market, MCE approached supplier Turner Network Television, Inc. ("Turner") and ESPN, Inc. ("ESPN") and requested to carry their high demand programming. Such programming was essential to MCE's ability to attract customers and compete. Turner and ESPN refused to sell MCE their programming, and, at the same time, they entered into exclusive supply contracts with Storer. MCE claims that Storer entered into these contracts with the intent of protecting its monopoly, and that these actions had the effect of restraining competition and injuring MCE. The counterclaim defendants filed a motion to dismiss, asserting that MCE had not sufficiently alleged, as required under § 1 of the Sherman Act, the existence of relevant markets which were adversely affected based on a contract or conspiracy in restraint of trade. Further, it was claimed that MCE had not sufficiently alleged monopolization, attempted monopolization, or conspiracy to monopolize under § 2 of the Sherman Act.

*Held:* The court held that MCE alleged sufficient facts to state a claim against the counterclaim defendants for all of the alleged causes of action, with the exception of the state law tort of intentional interference with business relations to the extent that it related to prospective rather than current customers. The court also held that MCE must plead sufficient facts so that each element of the alleged antitrust violation can be identified, and that the claim should only be dismissed if the underlying theory of the complaint is "economically senseless."

Under the claim involving § 1 of the Sherman Act, the court found the allegation of exclusive dealing among the counterclaim defendants sufficient, and after a thorough analysis of both intrabrand and interbrand competition, concluded that MCE did allege plausible relevant markets as well as anti-competitive effects.

Under § 2 of the Sherman Act, the court found sufficient facts of possession and maintenance of monopoly power, intentional anti-competitive conduct, and deliberate concerted action with the intent to monopolize. Additionally, the court held the claims to be sufficient under Alabama law, which was analytically identical to federal antitrust law.

J.S.

## SHERMAN ACT

CALDWELL V. AMERICAN BASKETBALL ASS'N, 825 F. Supp. 558  
(S.D.N.Y. 1993).

A former star basketball player who was suspended from his team opposes defendant's motion for summary judgement on his antitrust and tort action against a basketball association, its commissioner, his former team, and its owners. Plaintiff, Joseph L. Caldwell, negotiated a contract with the Carolina Cougars, an American Basketball Association ("ABA") team, in 1970. The contract incorporated only some provisions of the ABA Uniform Player's Contract, giving the Cougars authority to suspend a player without pay for violations of established rules, and the power to terminate the contract in case of breach by the player. The contract did not incorporate the clause binding the player to the ABA Constitution and by-laws, which provide that a suspended player is placed on a "reserve list" and cannot "contract with" another team until the suspending team gives written notice to the ABA Commissioner. The subsequently renamed and relocated team, The Spirits of St. Louis, suspended Caldwell for allegedly advising another star player to "negotiate" a better contract by missing an important game. Caldwell claimed that he then automatically ended up on the reserve list "forever" in December of 1974, pursuant to the ABA by-laws. Thus, Caldwell alleged that the defendants "combined and conspired to blacklist him" resulting in Caldwell never playing professional basketball again, thus violating § 1 of the Sherman Act. Caldwell further alleged that defendants monopolized the players' market in violation of § 2 of the Sherman Act and state tort law. Defendants argued that Caldwell's inability to play again arose from his age and physical condition.

*Held:* The court held that Caldwell failed to present sufficient evidence to allow a reasonable jury to find that a conspiracy or monopoly existed. The ABA's by-laws, providing for automatic placement of a suspended player on the "reserve list," are not sufficient by themselves to meet the concerted action requirement of