Mandating Students to Stay in University Housing is not an Antitrust Violation

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U.S. District Court Judge Barbara J. Rothstein recently dismissed an antitrust lawsuit filed by Edinboro Park Pennsylvania landlords against Edinboro University Foundation ("Foundation") and its president. The plaintiffs alleged that Edinboro University’s decision to build new suite style apartments on campus and require students to live in those suites for four semesters violated the Sherman Act and interfered with their prospective business.

In 2006, the University decided to construct eight new on-campus housing facilities and it reached out directly to the Foundation to construct and operate these new housing facilities.

The Foundation received two tax-exempt bonds from the Pennsylvania Higher Educational Facilities Authority which it used to fund the construction and administration of the new housing facilities. All revenue generated from the housing facilities would be used to repay these bonds. In May 2011, the University changed its on-campus residence policy. The former policy required most first year and transfer students to live in university-owned housing for two consecutive semesters. Under the new policy, students were required to live in the university owned affiliate housing for four consecutive semesters or until they completed 59 credit hours. The new campus facilities are a part of the affiliate housing.

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3 Id.
Allegations under the Sherman Antitrust Act

The plaintiffs claimed that the Foundation violated the Sherman Antitrust Act by entering an anticompetitive partnership with the University to unfairly compete against the plaintiffs. The Sherman Act “prohibits every contract or combination or conspiracy in restraint of interstate or foreign commerce, including monopolization or attempted monopolization by any person or combination of persons of any part of interstate or foreign commerce.”

According to the plaintiffs, the partnership between the University and the Foundation gave the Foundation an unfair advantage because it could construct student housing facilities on campus and impose student housing restrictions to ensure market share and financial success. Thus, the plaintiffs alleged a fifty percent decline in business. The plaintiffs also asserted that because of the Foundation’s conduct, students were harmed because they were being forced to pay higher rates for housing and participate in the University’s meal plans.

Immunity Under the Parker Doctrine

The District Court granted the Foundation’s motion to dismiss. The Foundation moved to dismiss this suit on the basis that it is immune from federal antitrust liability under the Parker state action doctrine. The court reasoned that a plaintiff may not bring an antitrust action against a state or its officers or agents when their activities are directed by the state. Parker immunity has also been extended to private parties involved in state action because

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4 Id. at 2.
5 Edinboro College Park Apartments v. Edinboro University Foundation, 850 F.3d 567, 571 (3rd Cir. 2017).
7 Id. at *2. See Parker v. Brown, 317 U.S. 341 (1943).
plaintiffs could have been able to sue private parties and thus thwart state policies. Applying the Parker doctrine, the district court analyzed where 1) the University engaged in “state action” as defined by Parker and 2) if the relief sough against the Foundation was related solely to injuries which the University enjoys immunity.\(^9\)

Whether the University engaged in state action is determined by whether the state agency engaged in the relevant action and if that action is a traditional area of state power. Pennsylvania’s constitution expressly states that the Pennsylvania State Assembly must provide for the support of a thorough and efficient system of public education.\(^{10}\) Thus, the General Assembly created the Pennsylvania state System of Higher Education (PASSHE) and mandated each PASSHE institution provide appropriate educational facilities and student living facilities. The court reasoned that the University is a PASSHE institution and that the University is an “arm of the state power by way of its affiliation with PASSHE.”\(^{11}\) Student housing concerns are an area of traditional state power and it is well established in the Third Circuit that the maintenance of an efficient system of higher education is a state function.\(^{12}\) Plaintiff’s argued that the University was not fulfilling a state action because its actions were limited to its own campus and the court found this argument meritless.\(^{13}\)

The District Court also reasoned that the Foundation shared the State’s immunity. The Foundation was entitled to the same immunity as the University because every antitrust violation that was alleged in the complaint arose directly from the Foundation and University’s

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\(^9\) Id. at *3.
\(^{10}\) Id.
\(^{11}\) Id.
\(^{12}\) Id.
\(^{13}\) Id. at *4.
partnership.\textsuperscript{14} The plaintiff argued that the University and the Foundation were not entitled to \textit{Parker} immunity because the University was not acting under its sovereign capacity, but as a competitor in the student housing market. The plaintiff asserted that there was a “market participant exception” to \textit{Parker} immunity, however the Supreme Court and the Third Circuit have never recognized a “market participant exception.”\textsuperscript{15} Furthermore, every circuit has rejected this “exception.” The district court dismissed plaintiff’s complaint and the Foundation’s motion to dismiss was granted.\textsuperscript{16}

\textbf{The Court of Appeals Affirms on a Different Theory}

The plaintiffs appealed this case, and the Court of Appeals held that dismissal was warranted, but not based on \textit{Parker} immunity.\textsuperscript{17} The Court of Appeals found that University’s actions were not “sovereign” for the purposes of \textit{Parker} and thus the court found that it must apply heightened scrutiny. The court concluded that the proper test would be \textit{Hallie} Scrutiny.\textsuperscript{18} \textit{Hallie} scrutiny applies to municipalities that conform with a clearly articulated state policy. Furthermore, applying \textit{Hallie}, the court stated that a municipality which is in the “arms of the state” is entitled to a presumption that it acts in the public interest and there is little danger that the municipality would become involved in a price fixing arrangement.\textsuperscript{19} Here, \textit{Hallie} review was appropriate because the University is more analogous to a municipality acting pursuant to state authorization. The Court of Appeals reasoned that the University is not a

\textsuperscript{14} Id.
\textsuperscript{15} Id.
\textsuperscript{16} Id. at *5.
\textsuperscript{17} \textit{Edinboro College Park Apartments}, 850 F.3d at 570.
\textsuperscript{19} \textit{Edinboro College Park Apartments}, 850 F.3d at 572.
sovereign actor, but is still an arm of the State presumed to act in the state interest. The court held that a plaintiff may not bring an antitrust claim against a state, nor may it bring a claim against the state’s officers or agents when their activities are directed by the state. The University was complying with a clear articulated state policy because mandating on-campus housing is a foreseeable consequence of the legislative mandate to provide appropriate student living. The court also reasoned that the Sherman Act was not meant to restrain actions by the state, but to restrain monopolies by individuals and corporations.

Conclusion

This case has demonstrated that providing for higher education is a traditional state function and that a university does not yield traditional sovereign power. This case had demonstrated, that private companies in the housing industry suing universities and colleges under antitrust laws will likely lose. It is sufficient for a college or university to establish that it is acting under a clearly articulated state policy, in this case to provide a safe environment for its students.

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20 Id. at 580.
21 Thompson, supra note 1.
22 Id.
23 Id.