

MORTON'S MARKET, INC.; J & J Produce and Deli, Inc., Plaintiffs-Appellants,

v.

GUSTAFSON'S DAIRY, INC., Defendant,

Borden, Inc.; T.G. Lee Foods, Inc., et al., Defendants-Appellees.

No. 98-2498.

United States Court of Appeals,

Eleventh Circuit.

May 5, 2000.

Appeal from the United States District Court for the Middle District of Florida (Nos. 93-1077-CIV-T-23B, 93-1264-CIV-23A, 94-1437-CIV-T-23A, 95-35-CIV-23B); Steven D. Merryday, Judge.

Before ANDERSON, Chief Judge, HILL, Senior Circuit Judge, and COOK*, Senior District Judge.

BY THE COURT:

This case is before the court upon plaintiff's Motion for Clarification, filed on January 10, 2000. Defendant Pet, Inc. filed its response on January 20, 2000. The motion is GRANTED to the following extent: the Clerk is directed to amend the opinion entered in this case on December 20, 1999, and published at 198 F.3d 823 by (1) adding a phrase and a sentence to the end of the second sentence in Part III, which shall read as follows:

As to Pet, we hold that it effectively withdrew from the conspiracy in 1985 and, as to it, these actions are not timely-filed *unless the statute was equitably tolled by fraudulent concealment. If so, Pet would be liable for any price-fixing activity prior to its withdrawal.*

and (2) amending the holding, which now reads "AFFIRM IN PART, REVERSE IN PART and REMAND" to "*REVERSE and REMAND*," all as shown on pages 839-40 of the opinion. The motion is DENIED in all other respects.

*Honorable Julian Abele Cook, Jr., Senior U.S. District Judge for the Eastern District of Michigan, sitting by designation.