

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FLAMINGO INDUSTRIES (USA) LTD.;
ARTHUR WAH,

Plaintiffs-Appellants,

v.

UNITED STATES POSTAL SERVICE, an
entity created pursuant to the
Postal Reorganization Act,

Defendant-Appellee.

No. 01-15963

D.C. No.

CV-00-02484-MMC

Northern District
of California,
San Francisco

ORDER

On Remand from the United States Supreme Court

Filed April 30, 2004

Before: Donald P. Lay,* David R. Thompson, and
Richard C. Tallman, Circuit Judges.

ORDER

This matter is before us on remand from the United States Supreme Court. *United States Postal Service v. Flamingo Industries (USA) Ltd., et al.*, 540 U.S. ___, 124 S. Ct. 1321 (2004). In light of the Supreme Court's conclusion that the United States Postal Service is not a person separate from the United States under the Sherman Act, 15 U.S.C. § 7, and is not amenable to suit under federal antitrust laws, the district court's dismissal of the plaintiffs-appellants' antitrust claims against the Postal Service is affirmed.

*The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

The plaintiffs-appellants' antitrust claims were the only claims before the Court. *Flamingo Industries*, 124 S. Ct. at 1324. Because the Court did not consider the plaintiffs-appellants' remaining claims, our resolution of those claims in our opinion published at 302 F.3d 985 (9th Cir. 2002) remains undisturbed. We, therefore, reiterate our resolution of those claims, affirming the district court's dismissal of the plaintiffs-appellants' claims against the Postal Service for the alleged breach of the covenant of good faith and fair dealing, for the violation of California Business and Professions Code § 17200, and for the violation of 42 U.S.C. § 1983. We also reiterate our decision reversing the district court's dismissal of the plaintiffs-appellants' claims against the Postal Service for the alleged violation of the Postal Service Procurement Manual.

This case is remanded to the district court for further proceedings consistent with the Supreme Court's decision in *United States Postal Service v. Flamingo Industries (USA) Ltd., et al.*, 540 U.S. ___, 124 S. Ct. 1321 (2004), our decision in *Flamingo Industries v. U.S. Postal Service*, 302 F.3d 985 (except as to the resolution of the plaintiffs-appellants' federal antitrust claims), and this Order.

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