

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil No. C-75-0377L(A)
 v.)
) Filed: November. 18, 1975
 STEWART MECHANICAL)
 ENTERPRISES, INC.,)
)
 Defendant.)

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendant named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain the violation by the defendant, as hereinafter alleged, of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

2. During the period of time covered by this complaint, the defendant transacted business, maintained an office, and was found within the Western District of Kentucky.

II

DEFINITIONS

3. As used herein, the term:

- (a) "mechanical contracting services" means the contracting for and the installation of all phases of plumbing, pipe fitting, and sheet

metal work in or at job sites for new construction or for renovation purposes;

- (b) "mechanical contracting supplies" means products, including, but not limited to, pipe, sanitary plumbing fixtures, valves, faucets, fittings, hangers, connectors, and heating and air conditioning units, sold and installed by companies rendering mechanical contracting services;
- (c) "mechanical contracting companies" means those companies engaged in the business of purchasing mechanical contracting supplies from wholesale outlets, manufacturers' representatives, or directly from manufacturers, for resale to and installation at job sites of commercial, industrial, institutional, and governmental customers; and
- (d) "Louisville market" means the territory encompassed by the City of Louisville and Jefferson County in the Commonwealth of Kentucky.

III

DEFENDANT

4. Stewart Mechanical Enterprises, Inc. is hereby made a defendant herein. The defendant is incorporated and exists under the laws of the Commonwealth of Kentucky and has its principal place of business in Louisville, Kentucky. During the period of time covered by this complaint, the defendant engaged in the business of providing mechanical contracting supplies and mechanical contracting services in the Louisville market.

IV

CO-CONSPIRATORS

5. Various firms, corporations, and individuals engaged in the business of providing mechanical contracting supplies and mechanical contracting services in the Louisville market, not made defendants in this complaint, participated as co-conspirators in the violation hereinafter alleged and performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

6. The furnishing and installing of mechanical contracting supplies in new construction or for renovation purposes is a specialized field of business engaged in by a limited group of companies equipped by technical training and experience to perform this work.

7. Mechanical contracting supplies and services are purchased by customers on a direct basis from, through negotiations with, or through the solicitation of bids from mechanical contracting companies. The nature and extent of the project, as well as the time within which it must be completed, are often determinative factors influencing a customer in the means used in selecting a mechanical contracting company to provide the required supplies and services. The principal customers for these supplies and services in the Louisville market are commercial, industrial, and institutional concerns, and governmental units such as the Louisville Board of Education and the Jefferson County Board of Education.

8. During the period of time covered by this complaint, the defendant was among the leading mechanical contracting companies serving commercial, industrial, institutional, and

governmental customers located in the Louisville market. In 1971, the defendant had revenues of approximately \$8.8 million from providing mechanical contracting supplies and services to customers located primarily in that market.

9. Substantial amounts of mechanical contracting supplies purchased by the defendant for resale were manufactured in states outside of Kentucky and shipped regularly and continuously in interstate commerce from such other states for sale and installation by the defendant in projects located primarily in the Louisville market.

VI

VIOLATION ALLEGED

10. Beginning some time prior to 1967, the exact date being unknown to the plaintiff, and continuing thereafter up to and including May 22, 1972, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the above-described interstate trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act. Said combination and conspiracy may continue or reoccur unless the relief hereinafter prayed for is granted.

11. The aforesaid combination and conspiracy consisted of an agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were:

- (a) to discuss or provide information concerning bid amounts or bid ranges with respect to specific mechanical contracting jobs;
- (b) to submit noncompetitive, collusive, complementary bids on mechanical contracting projects.

12. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators have done those things which, as hereinbefore alleged, they combined and conspired to do.

VII

EFFECTS

14. The combination and conspiracy alleged herein has had the following effects, among others:

- (a) price competition in the sale of mechanical contracting supplies and mechanical contracting services in the Louisville market has been restrained; and
- (b) customers in the Louisville market have been deprived of the benefits of full, free, and open competition in the purchase of mechanical contracting supplies and mechanical contracting services.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that the defendant and co-conspirators engaged in an unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce in the sale of mechanical contracting supplies and mechanical contracting services in the Louisville market in violation of Section 1 of the Sherman Act.

2. That the defendant, its officers, directors, agents and employees, its subsidiaries and successors, if any, and all persons acting or claiming to act on its behalf, be perpetually enjoined and restrained from continuing, maintaining, reviving, or renewing the aforesaid illegal combination and conspiracy, and from engaging in any other agreement, contract,

combination, conspiracy, understanding, or concert of action having a similar purpose or effect upon the sale of mechanical contracting supplies and mechanical contracting services in the Louisville market and elsewhere in the United States.

3. That, for a period of five years following the date of entry of such judgment, the defendant be required to affix to every bid or quotation for the sale of mechanical contracting supplies and mechanical contracting services a written certification, signed by an officer of the defendant, that such bid or quotation was not in any way the result of any agreement, understanding, or communication between the defendant and any other mechanical contracting company.

4. That the plaintiff have such other and further relief as the nature of the case may require and as the Court may deem just and proper.

5. That the plaintiff recover its taxable costs.

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