

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 76-CV-170  
 :  
 : Filed: April. 23, 1976  
 CARROLS DEVELOPMENT CORPORATION; :  
 and :  
 TRIPLE SCHUYLER ROME CORPORATION, :  
 :  
 Defendants. :  
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COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action to obtain equitable relief against the defendants named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants named herein under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the violations by the defendants, as hereinafter alleged, of Section 7 of said Act, as amended (15 U.S.C. § 18).

2. The defendants are found and transact business within the Northern District of New York.

II

DEFENDANTS

3. Carrols Development Corporation (hereinafter referred to as "Carrols") is made a defendant herein. Carrols is a

corporation organized and existing under the laws of the State of Delaware and maintains its principal offices in Syracuse, New York. Carrols, through its subsidiaries and divisions, is engaged in the operation of fast food restaurants and the exhibition of motion pictures under the trade name "CinemaNational". In 1973, Carrols had total revenues of \$45.7 million.

4. Triple Schuyler Rome Corporation (hereinafter referred to as "TSR") is made a defendant herein. TSR is a corporation organized and existing under the laws of the State of New York and maintains its principal offices in Syracuse, New York. TSR is a wholly-owned subsidiary of Carrols, organized to acquire certain of the motion picture theatres operated by Hallmark Releasing Corp. (hereinafter referred to as "Hallmark") in the Greater Utica Area.

### III

#### DEFINITIONS

5. As used in this complaint, the term:

- (a) "Kallet theatres" means the motion picture theatres operated by Kallet Realty, Inc. and its wholly-owned subsidiaries, Kallet Theatres, Inc. and Oneida Theatre Company, Inc. (hereinafter collectively referred to as "Kallet") in the Greater Syracuse and Greater Utica Areas;
- (b) "Hallmark theatres" means the motion picture theatres operated by Hallmark in the Greater Utica Area;
- (c) "Greater Syracuse Area" means the area within a radius of approximately 12 miles from the center of the City of Syracuse, including Syracuse and all or part of the following

towns in the State of New York: Salina, DeWitt, Geddes, Cicero, Manlius, Pompey, Lafayette, Onondaga, Marcellus, Camillus, Van Buren, Lysander and Clay; and

- (d) "Greater Utica Area" means the area within a radius of approximately 10 miles from the center of the City of Utica, including Utica and all or part of the following towns in the State of New York: Schuyler, Newport, Frankfort, Litchfield, Paris, New Hartford, Kirkland, Whitestown, Westmoreland, Floyd, Marcy, Trenton and Deerfield.

#### IV

##### TRADE AND COMMERCE

6. Operators of motion picture theatres compete for licenses to exhibit feature motion pictures. Such competition is most intense for pictures that are most popular with the consuming public and can be expected to return the most revenues to the exhibitor. Large motion picture theatre circuits, which can offer distributors extensive exhibition of their motion pictures in a regional market, have an advantage over smaller theatre circuits and individual theatre operators in competing for exhibition licenses, particularly licenses to exhibit the most popular and most profitable motion pictures in a particular locality. Where the difference between offers submitted by competing exhibitors is marginal, which is not uncommon, the distributor has a strong incentive to award the license to the largest circuit bidding.

7. There were 18 motion picture theatres in the Greater Syracuse Area in February 1974. Carrols, the

largest theatre operator with 10 theatres, accounted for approximately 55.7 percent, and Kallet, the second largest with 3 theatres, accounted for about 16.8 percent of all motion picture theatres in the Greater Syracuse Area at that time. Carrols and Kallet, respectively, had 59 percent and 27 percent of gross box office receipts in the Greater Syracuse Area.

8. In February 1974, Carrols acquired by lease the 3 theatres operated by Kallet in Syracuse. As a result, Carrols accounted for 72.5 percent of theatres and 86 percent of gross box office receipts.

9. Prior to the acquisition of the Kallet theatres by Carrols, the four largest theatre operators in the Greater Syracuse Area, including Carrols and Kallet, accounted for about 83.5 percent of all motion picture theatres in that area and 95 percent of the gross box office receipts. Subsequent to the acquisition, the four largest exhibitors in the Greater Syracuse Area operated approximately 89 percent of such theatres and 98 percent of the gross box office receipts.

10. There were 12 motion picture theatres in the Greater Utica Area in February 1974. Hallmark was the largest of four exhibitors with 6 theatres, which accounted for 50 percent of the theatres and 36 percent of the gross box office receipts. Kallet, the second largest with 4 theatres, accounted for approximately 33.3 percent of all motion picture theatres in the Greater Utica Area at that time, and 44 percent of the gross box office receipts.

11. At the time it acquired the Kallet theatres in February 1974, Carrols did not operate any motion picture theatres in the Greater Utica Area. However, prior to the

acquisition, Carrols had entered into an agreement for the construction of a multi-screen theatre in Utica and was, therefore, at that time the most likely entrant into the operation of motion picture theatres in the Greater Utica Area.

12. In February 1974, as part of the same transaction referred to in paragraph 8 above, Carrols acquired by lease the 4 Kallet theatres in the Greater Utica Area, thus making it the largest exhibitor in the Greater Utica Area in terms of gross box office receipts and the second largest in terms of number of theatres controlled.

13. In March of 1974, Carrols and TSR acquired by lease the 6 motion picture theatres of Hallmark. This transaction resulted in Carrols controlling 83.3 percent of all motion picture theatres in the Greater Utica Area and 80 percent of the gross box office receipts.

14. Motion picture film prints exhibited by Carrols, Kallet and Hallmark in the Greater Syracuse and Greater Utica Areas have been continuously distributed and shipped in interstate commerce to and from the offices and motion picture theatres of these firms. Payment of rentals and fees by motion picture exhibitors in the Greater Syracuse and Greater Utica Areas in connection with the exhibition of motion picture film prints have been continuously made in interstate commerce to distributors of such film prints.

#### V

#### VIOLATIONS ALLEGED

15. On or about February 13, 1974, Carrols acquired by lease substantially all of the assets of the Kallet theatres in the Greater Syracuse and Greater Utica Areas. The effect of the aforesaid acquisition may be to substantially lessen competition or tend to create a monopoly in violation

of Section 7 of the Clayton Act in the following ways, among others:

- (a) competition between Carrols and Kallet in the acquisition of exhibition licenses for feature motion pictures in the Greater Syracuse Area has been eliminated;
- (b) competition generally in the acquisition of exhibition licenses for feature motion pictures in the Greater Syracuse Area has been substantially lessened;
- (c) concentration in the acquisition of exhibition licenses for feature motion pictures in the Greater Syracuse Area has been substantially increased;
- (d) Carrols' bargaining power with motion picture distributors has been significantly enhanced to the detriment of individual theatres with which it competes for licenses to exhibit feature motion pictures in the Greater Syracuse Area;
- (e) barriers to entry into the operation of motion picture theatres in the Greater Syracuse Area have been substantially increased;
- (f) potential competition between Carrols and Kallet in the acquisition of exhibition licenses for feature motion pictures in the Greater Utica Area has been eliminated; and
- (g) competition generally in the acquisition of exhibition licenses for feature motion pictures in the Greater Utica Area has been substantially lessened.

16. On or about March 26, 1974, Carrols and TSR acquired by lease substantially all of the assets of the Hallmark theatres in Greater Utica Area. The effect of the aforesaid acquisition may be to substantially lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) competition between Carrols and Hallmark in the acquisition of exhibition licenses for feature motion pictures in the Greater Utica Area has been eliminated;
- (b) competition generally in the acquisition of exhibition licenses for feature motion pictures in the Greater Utica Area has been substantially lessened;
- (c) concentration in the acquisition of exhibition licenses for feature motion pictures in the Greater Utica Area has been substantially increased;
- (d) Carrols' bargaining power with motion picture distributors has been significantly enhanced to the detriment of individual theatres with which it competes for licenses to exhibit feature motion pictures in the Greater Utica Area; and
- (e) barriers to entry into the operation of motion picture theatres in the Greater Utica Area have been substantially increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid acquisition by Carrols of substantially all of the assets of the Kallet theatres in the Greater Syracuse and Greater Utica Areas be adjudged to be in violation of Section 7 of the Clayton Act.

2. That the aforesaid acquisition by Carrols and TSR of substantially all of the assets of the Hallmark theatres in the Greater Utica Area be adjudged to be in violation of Section 7 of the Clayton Act.

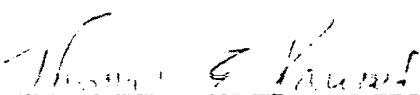
3. That Carrols be required to divest itself of all assets acquired from Kallet in the Greater Syracuse and Greater Utica Areas.

4. That Carrols and TSR be required to divest themselves of all assets acquired from Hallmark in the Greater Utica Area.

5. That, for a period of ten years, except with the prior approval of the plaintiff or the Court, Carrols, its successors and assigns, its officers, directors, agents and employees and all other persons acting or claiming to act on its behalf, be enjoined from acquiring the stock or assets of any person, company or corporation operating a motion picture theatre in the Greater Syracuse or Greater Utica Area.

6. That the plaintiff have such other and further relief as the Court may deem just and proper.

7. That the plaintiff recover the costs of this action.

  
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