UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA;	**[filed 3/28/95]**
Plaintiff	Civil Action No.:
vs.	
NAT, L. C., and D.R. PARTNERS d/b/a/ DONREY MEDIA GROUP;	
Defendants	

BRIEF IN SUPPORT OF THE MOTION OF UNITED STATES FOR CONSOLIDATION PURSUANT TO RULE 42(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE

I
INTRODUCTION

The United States has moved this Court to have its action consolidated with *Community Publishers Inc., Shearin, Inc., d/b/a Shearin & Company Realtors v. Donrey Corp. d/b/a/ Donrey Media Group, NAT, L.C., Thomson Newspapers Inc., and the Northwest Arkansas Times*, No. 95-5026 (W.D. Ark. filed February 6, 1995). The United States' motion for consolidation requests consolidation for the purposes of pre-trial proceedings and trial only; it does not request a consolidation of judgments or rights to appeal.

Rule 42 (a) of the Federal Rules of Civil Procedure provides that:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Fed.R.Civ.P. 42(a). The purpose of Rule 42(a) "is to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties." Wright & A. Miller, Federal Practice and Procedure, § 2381 (1971).

II
THE ACTIONS INVOLVE COMMON QUESTIONS OF LAW AND FACT

Rule 42(a) permits a district court to consolidate separate actions when they involve "a common question of law or fact." Fed.R.Civ.P. 42(a). Even if there are some questions that are not common, consolidation is not precluded. Batazzi v. Petroleum Helicopters, Inc., 664 F.2d 49, 50 (5th Cir. 1981); See Central Motor Co. v. United States, 583 F.2d 470 (10th Cir. 1978).

Common questions of law and fact abound in these cases. First, both cases allege violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. Second, both causes of action arise from the same factual situation; namely, the circumstances surrounding the acquisition of the *Northwest Arkansas Times* by NAT, L.C. In addition, both cases identify the Donrey Media Group and NAT, L.C. as defendants. Both cases have alleged that the sale of local daily newspapers and the sale of daily local advertising

constitute relevant product markets.[1] Furthermore, both cases seek similar relief from this Court; specifically, that NAT, L.C., or any of its affiliates, be enjoined from maintaining ownership of the assets of the *Northwest Arkansas Times*. This case is therefore particularly appropriate for consolidation.

III
A COURT HAS BROAD DISCRETION IN ORDERING CONSOLIDATION

A court has broad discretion in determining whether consolidation is practical. Atlantic States Legal Foundation Inc. v. Koch Refining Co., 681 F. Supp 609, 615 (D. Minn. 1988). In exercising this discretion, a court should weigh the time and effort consolidation would save with any inconvenience or delay it would cause. Hendrix v. Raybestos-Manhattan, Inc., 776 F.2d 1492, 1495 (11th Cir. 1985); Huene v. United States, 743 F.2d 703, 704 (9th Cir. 1984). See also Kramer v. Boeing Co., 134 F.R.D. 256 (D. Minn. 1991).

Consolidation offers efficiency and convenience in this case. Consolidation will result in one trial which will bind all plaintiffs and defendants. This will save time and avoid unnecessary costs to the defendants, the plaintiffs in two actions,

[1] *The Plaintiffs, Community Publishers Inc. and Shearin, Inc., have amended their complaint and allege that advertising delivered in and by daily newspapers that publish the news of Washington and Benton counties is also a relevant product market. See Plaintiff's Second Amended Complaint ¶ 8.*

witnesses who would otherwise be required to testify in both cases, and this Court.

Consolidation will not delay the disposition of this case. In fact, it will minimize delays. The United States and the plaintiffs in the other case are at different stages of the discovery process, but this does not bar consolidation. United States v. City of Chicago, 385 F. Supp. 540, 543 (N.D. Ill. 1974). The United States will be prepared to present its case on April 3, 1995, the day that this Court has scheduled the trial in *Community Publishers Inc., Shearin, Inc., d/b/a Shearin & Company Realtors v. Donrey Corp. d/b/a/ Donrey Media Group, NAT, L.C., Thomson Newspapers Inc., and the Northwest Arkansas Times*, No. 95-5026 (W.D. Ark. filed February 6, 1995).

IV
CONCLUSION

The United States requests this Court to grant its motion to consolidate this action with the action brought by Community Publishers, Inc. and Shearin Inc., d/b/a Shearin & Company Realtors.

Respectfully submitted,

_____/s/_____
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