

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

REGAL CINEMAS, INC.,

and

CONSOLIDATED THEATRES HOLDINGS, GP

Defendants.

Civil Action No. 1:08CV00746

Judge: Richard J. Leon

Filed:

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION OF THE UNITED
STATES FOR APPOINTMENT OF TRUSTEE**

This Memorandum is filed in support of the Motion of the United States for Appointment of Holmes P. Harden as Trustee in the above-captioned case. This case arises from a civil antitrust Complaint and Proposed Final Judgment filed by the United States on April 29, 2008.

The success of the Final Judgment in remedying the competitive problems identified in the Complaint depends on the successful divestiture of the "Theatre Assets," as defined in Section II(E) of the Final Judgment. Defendant Regal Cinemas, Inc. ("Regal") has not been able to successfully divest all of the Theatre Assets in the time permitted under the Final Judgment. Accordingly, Court appointment of a Trustee, pursuant to Section V of the Final Judgment, is warranted. The United States has informed defendant Regal that it is filing this motion.

Pursuant to the terms of the Final Judgment, Regal may not oppose.

The United States has selected Holmes P. Harden, a partner at the law firm of Williams Mullen, as the candidate Trustee. Holmes P. Harden possesses the expertise, experience, and organization to accomplish the successful divestiture of the Theatre Assets.

I.

INTRODUCTION

The Complaint alleges that Regal's acquisition of certain theatre assets of Consolidated Theatres Holdings, GP ("Consolidated") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, because it would substantially lessen competition and tend to create a monopoly in the theatrical exhibition of commercial movie theatres in parts of the metropolitan areas of Charlotte, Raleigh, and Asheville, North Carolina. The Complaint sought adjudication that the acquisition by Regal of certain theatre assets from Consolidated would violate Section 7 of the Clayton Act and further sought permanent injunctive relief.

A. Final Judgment

The Final Judgment filed with the Complaint and entered by this Court on October 29, 2008, embodies the parties' agreement to settle the case through prompt divestiture of assets related to the Crown Point 12 located in Southern Charlotte, North Carolina, Raleigh Grand 16 and Town Square 10 located in Raleigh, North Carolina, and Hollywood 14 located in Asheville, North Carolina ("Theatre Assets"). This settlement resulted from negotiations among the United States, Regal, and Consolidated that occurred over a period of several weeks.

The essence of the settlement is the prompt and certain divestiture of the defined Theatre Assets by defendant Regal to assure that competition is not substantially lessened. To accomplish

this objective, Section IV(A) of the Final Judgment requires defendant Regal to “use its best efforts to divest the Theatre Assets as expeditiously as possible” to “an Acquirer or Acquirers acceptable to the United States in its sole discretion.”

B. Regal’s Failure to Divest All of the Theatre Assets

Section IV(A) of the Final Judgment gave Regal ninety (90) calendar days after the filing of the Complaint or five (5) days after notice of entry of the Final Judgment by the Court, whichever was later, to divest the Theatre Assets. Because more than 90 days elapsed after the filing of the Complaint and prior to the entry of the Final Judgment by this Court, Regal had until five days after notice of entry of the Final Judgment by the Court to divest the Theatre Assets. The Court entered the Final Judgment on October 29, 2008, and notice was provided the following day.

Three of the four theatres comprising the Theatre Assets, the Crown Point 12, the Raleigh Grand 16, and the Hollywood 14, were sold within the divestiture period to Carolina Cinemas LLC, a purchaser approved by the Antitrust Division. However, the remaining portion of the Theatre Assets, relating to the Town Square 10 (the “Town Square 10 Assets”), have not been sold. It is now appropriate, pursuant to Section V(A) of the Final Judgment, to appoint a Trustee selected by the United States to effect the required divestiture of the Town Square 10 Assets.

C. Purpose of the Trust and Appointment of the Trustee

The purpose of the trust under the Final Judgment is to divest the Town Square 10 Assets to a purchaser demonstrated to the United States’ satisfaction as having the intent and capability, including the necessary managerial, operational, and financial capability, of competing effectively in the theatrical exhibition of commercial, first-run movies in Raleigh, North Carolina. As

provided in Section V(B) of the Final Judgment, after the appointment of a Trustee becomes effective, only the Trustee shall have the right to sell the Town Square 10 Assets. The Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee. For example, the Trustee will have the power and authority to take whatever actions are required to remove impediments to successful divestiture of the Town Square 10 Assets. Further, to assist in the divestitures, the Trustee shall have the power and authority to hire, at the cost and expense of Regal, any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the Trustee.

II.

TRUSTEE PROPOSED BY THE UNITED STATES

The United States moves this Court to appoint Mr. Holmes P. Harden as Trustee. Mr. Harden, a partner at the law firm of Williams Mullen, has extensive experience in representing financial institutions, including all aspects of creditor representation in connection with commercial loans, workouts and contested bankruptcy matters. Mr. Harden has more than twenty years of experience in selling physical assets, some of which had similar attributes to the Town Square 10 Assets, and has served as a trustee in various matters. Mr. Harden is certified as a specialist in business and consumer bankruptcy law by the North Carolina State Bar Board of Legal Specialization. Since 1983, Mr. Harden has been a member of the Panel of Chapter 7 Bankruptcy Trustees, Eastern District of North Carolina. Williams Mullen specializes in banking and finance law and has offices in Raleigh, North Carolina.

Mr. Harden's previous experience and service as a bankruptcy attorney, along with his

firm's experience in banking and finance law and its locations in Raleigh make Mr. Harden well-suited to assume the responsibilities of Trustee under the Final Judgment.

III.

CONCLUSION

For all of the foregoing reasons, the United States respectfully requests this Court to appoint Mr. Holmes P. Harden as Trustee pursuant to Section V of the Final Judgment.

Dated: November 17, 2008

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2008, I caused a copy of the foregoing Plaintiff's Memorandum in Support of Motion of the United States for Appointment of Trustee to be served by electronic mail to counsel for defendants listed below:

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