

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Valley National Bank of Arizona, the Arizona Bank, and Arizona Bancorporation., U.S. District Court, D. Arizona, 1966 Trade Cases ¶71,901, (Nov. 23, 1966)

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United States v. The Valley National Bank of Arizona, the Arizona Bank, and Arizona Bancorporation.

1966 Trade Cases ¶71,901. U.S. District Court, D. Arizona. Civil No. 4550-PHX. Entered November 23, 1966. Case No. 1729 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Banks—Multiple Interests—Consent Judgment.—Under the terms of a consent judgment, an Arizona bank was prohibited from having officers, directors or employees in common with a holding company allegedly controlled by it or with another bank controlled by the holding company. Additionally, the holding company and controlled bank were prohibited from having officers or directors who hold stock in the controlling bank. If the holding company divests itself of the controlled bank's stock, the provisions barring mutual employees between the holding company and the controlling bank shall have no effect. After ten years, the government may seek further relief or divestiture (1) if the percentage of the holding company's or controlled bank's stock held by persons who are also shareholders of the controlling bank exceeds 25%, or (2) if any person owns or controls 3% or more of the controlling bank and 3% of either the holding company or the controlled bank.

Acquiring Competitors—Banks—Prohibited Acquisitions—Consent Judgment.—Under the terms of a consent judgment, the Valley National Bank in Arizona was prohibited from acquiring any other Arizona bank for a period of at least 15 years and Bancorporation and Arizona Bank, both of Arizona, were barred from such acquisitions for a period of at least five years.

For the plaintiff: D. F. Turner, Assistant Attorney General, Antitrust Division. Donald F. Melchior, W. D. Kilgore, Jr., John M. Toohey, Charles F. B. McAleer, and Gordon Spivack, Attorneys, Department of Justice.

For the defendants: Victor H. Kramer for The Valley National Bank of Arizona and Arizona Bancorporation. Devens Gust, for The Valley National Bank or Arizona. George Read Carlock and Wallace L. Kaapcke, for the Arizona Bank. Mark Wilmer for Arizona Bancorporation.

Final Judgment

WALTER EARLY CRAIG, D. J.: Plaintiff, United States of America, having filed its Complaint in this action, defendants, The Valley National Bank of Arizona, The Arizona Bank, and Arizona Bancorporation, by their attorneys, having appeared and filed their answers to the Complaint, denying the substantive allegations thereof, the Trustees of the Profit Sharing Plan for Employees of The Valley National Bank and those officers, directors, and stockholders related to such officers and directors of The Valley National Bank of Arizona, The Arizona Bank and of Arizona Bancorporation who are referred to in this Final Judgment having entered their appearances herein and having agreed to be bound by the provisions of this Final Judgment, and Plaintiff, and defendants The Valley National Bank of Arizona, The Arizona Bank and Arizona Bancorporation, by their respective attorneys, having consented to the entry of this Final Judgment herein;

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and without any admission by any party with respect to any such issue and upon the consent of the parties hereto, the Court being advised and having considered the matter, it is hereby

Ordered, adjudged and decreed as follows:

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto under Section 4 of the Act of Congress of July 2, 1890, entitled “An act to protect trade and commerce against unlawful restraints and monopolies,” commonly known as the Sherman Act, as amended, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled “An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes,” commonly known as the Clayton Act, as amended. The Complaint states claims upon which relief may be granted under [Section 1 of the Sherman Act](#) and [Section 7 of the Clayton Act](#).

II

[*Definitions*]

As used in this Final Judgment:

- (A) “Valley National Bank” shall mean The Valley National Bank of Arizona, a banking association organized under the laws of the United States;
- (B) “Arizona Bank” shall mean The Arizona Bank, a banking association organized under the laws of the State of Arizona;
- (C) “Bancorporation” shall mean Arizona Bancorporation, a corporation organized under the laws of the State of Delaware;
- (D) “Bank” shall mean a commercial bank;
- (E) “Bank in Arizona” shall mean any bank having an office in the State of Arizona;
- (F) “Person” shall mean any individual, partnership, firm, association, corporation or other legal or business entity;
- (G) “Eligible purchaser” shall mean Bancorporation, Arizona Bank, or any other person except (1) any other bank in Arizona or any officer or director of such a bank, or (2) any person who owns or controls 25 per cent or more of the voting capital stock of any other bank in Arizona or any officer or director of such a person;
- (H) “Officer” shall mean Chairman of the Board, Vice Chairman of the Board, President, Executive Vice President, Senior Vice President, Comptroller, Controller, Cashier, Auditor, or other officer who is a department head or member of any policymaking committee, or a Vice President as of the date of entry of this Final Judgment.

III

[*Applicability*]

- (A) It appearing to this Court, pursuant to [Section 5 of the Sherman Act](#), that the ends of justice require that certain individuals connected with or having an interest in the defendants be brought before this Court, the said individuals (as consenting individuals) hereby appear as additional parties waiving the necessity of being summoned and agree to be bound by the applicable provisions of this Final Judgment.
- (B) The provisions of this Final Judgment applicable to any defendant shall also apply to each of its officers, agents, servants, employees, attorneys, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Relief*]

After ninety (90) days from the date of the entry of this Final Judgment, Bancorporation and Arizona Bank shall not have as an officer, director or employee any person who at the same time is an officer, director or employee

of Valley National Bank nor shall they hereafter newly employ or elect any person as an officer or director who is a stockholder of Valley National Bank.

V

After ninety (90) days from the date of the entry of this Final Judgment, Valley National Bank shall not have as an officer, director or employee any person who at the same time is an officer, director or employee of Bancorporation or Arizona Bank nor shall it hereafter newly employ or elect any person as an officer or director who is a stockholder of either Bancorporation or Arizona Bank.

VI

The Trustees of the Profit Sharing Plan for Employees of Valley National Bank shall, within three (3) years from the date of the entry of this Final Judgment, sell to an eligible purchaser or purchasers, pursuant to a plan approved by the Plaintiff, all capital stock of Bancorporation and Arizona Bank owned or controlled by said Profit Sharing Plan. Said Trustees, when acting in such capacity, are further enjoined from hereafter:

- (A) Voting or attempting to vote any shares of the capital stock of Bancorporation or of Arizona Bank;
- (B) Acquiring any shares of the capital stock of any bank in Arizona other than Valley National Bank except if such stock is received as a stock dividend or other distribution based upon other such shares then owned by said Trustees;
- (C) Serving as a director or officer of (1) Bancorporation, or (2) any bank in Arizona other than Valley National Bank, or (3) any person who then owns or controls twenty-five (25) per cent or more of the capital stock of any bank in Arizona other than Valley National Bank.

VII

Defendants Bancorporation and Arizona Bank are each enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment

- (i) from acquiring or holding, directly or indirectly, any of the capital stock (except shares Arizona Bank may acquire or hold in a fiduciary capacity) of any bank in Arizona other than capital stock of Arizona Bank; or
- (ii) from acquiring any of the assets (other than real and personal property not including business and good will) of any bank in Arizona other than The Arizona Bank;

unless permission is first obtained from the Attorney General.

VIII

Defendant Valley National Bank is enjoined and restrained for a period of fifteen (15) years from the date of entry of this Final Judgment

- (i) from acquiring or holding, directly or indirectly, any of the capital stock (except shares Valley National Bank may acquire or hold in a fiduciary capacity) of any bank in Arizona other than capital stock of Valley National Bank; or
- (ii) from acquiring any of the assets (other than real or personal property not including business and good will) of any bank in Arizona.

IX

Each of the officers and directors of Valley National Bank, as of the date of this Final Judgment, and so long as he is such an officer, director, or stockholder in Valley National Bank, is enjoined and restrained from:

- (A) Voting or attempting to vote any shares of capital stock of Bancorporation or of Arizona Bank; or

(B) Hereafter acquiring additional shares of the capital stock of Bancorporation or The Arizona Bank, or either of them, except by inheritance or by stock dividend or other distribution based upon such other stock then owned by him; and

(C) After five (5) years from the date of entry of this Final Judgment, owning or controlling any of the capital stock of Bancorporation or Arizona Bank.

X

Each of the officers and directors of Bancorporation or Arizona Bank, as of the date of this Final Judgment, and so long as he is such an officer, director or stockholder in Bancorporation or Arizona Bank, is enjoined and restrained from:

(A) Voting or attempting to vote any shares of the capital stock of Valley National Bank; or

(B) Hereafter acquiring additional shares of the capital stock of Valley National Bank, except by inheritance (or reversion under existing trusts for members of the family of Lloyd A. Bimson) or by stock dividend or other distribution based upon such other stock then owned by him; provided, however, that Lloyd A. Bimson, his wife and children shall dispose of any such stock they may inherit within three (3) months from the date of inheritance; or

(C) After five (5) years from the date of the entry of this Final Judgment, from owning or controlling any of the capital stock of Valley National Bank provided, however, that this subsection X(c) shall not apply to Lloyd A. Bimson with respect to the shares of stock owned by him on the date of entry of this Final Judgment, or permitted to be acquired by him under subparagraph (B) above other than by inheritance.

XI

[*Inapplicability of Decree—Divestiture*]

If Bancorporation shall divest itself of all of its stock ownership in Arizona Bank, then, so long as it does not acquire any such stock and does not have any officer, director or employee in common with Arizona Bank, the injunctions in this Final Judgment prohibiting officers, directors or employees of Valley National Bank and Bancorporation from serving as such with the other, or from owning, controlling or voting capital stock of the other, and prohibiting the Trustees described in paragraph VI from owning or voting stock of, and serving as a director or officer of Bancorporation, shall no longer have any force or effect.

XII

[*Future Relief*]

Ten years after the date of entry of this Final Judgment, Plaintiff, after sixty (60) days written notice to the defendants, shall have the right thereafter to petition the Court for further relief including divestiture by Bancorporation of all its stock in Arizona Bank, and such relief as may be appropriate shall be granted upon proof of any of the following:

(A) If the percentage of any class of Bancorporation's or Arizona Bank's outstanding capital stock which is then owned or controlled by persons who are also shareholders of Valley National Bank is in excess of 25 per cent; or

(B) If any person owns or controls three per cent or more of any class of the outstanding capital stock of Valley National Bank and three per cent or more of any class of the outstanding capital stock of Bancorporation or Arizona Bank provided, however, that stock held in the name of a nominee shall for the purposes of this subparagraph be considered to be owned or controlled by the person for whose account such stock is held and the defendants shall have the burden of proof thereof if they raise the issue under this proviso; or

(C) If five or more persons each own or control one per cent or more of any class of the outstanding capital stock of Valley National Bank and one per cent or more of any class of the outstanding capital stock of Bancorporation or Arizona Bank provided, however, that stock held in the name of a nominee shall for the purposes of this

subparagraph be considered to be owned or controlled by the person for whose account such stock is held and the defendants shall have the burden of proof thereof if they raise the issue under this proviso.

The entry of this Final Judgment shall not be deemed a bar (a) to any relief that the Court may grant pursuant to Plaintiffs petition, or (b) to the receipt of any evidence (including any evidence pertaining to the period of time prior to entry of this Final Judgment and prior to the filing of the Complaint herein) that may be offered by any party at the hearing on such petition. The defendants, or any of them, shall have the unrestricted right to contest Plaintiff's petition upon any ground except on the ground that such relief is barred by this Judgment.

XIII

[*Inspection and Compliance*]

Without limitation to Section XV herein, Valley National Bank, Arizona Bank and Bancorporation shall submit to the Department of Justice in each of the next ten years after the date of entry of this Final Judgment, as of a date near their respective regular annual meetings of shareholders, a statement of the number and names of shareholders of Valley National Bank which at that time also own shares in Bancorporation and Arizona Bank and the total number of shares of each such defendant so held. Valley National Bank, Arizona Bank and Bancorporation shall also submit a list as of the same dates, showing the number of shares in Valley National Bank, Bancorporation and Arizona Bank then held by (a) each person who then owns one per cent or more of any class of the capital stock of Valley National Bank and one percent or more of any class of the capital stock of Bancorporation or Arizona Bank, and (b) each person to whom Sections VI, IX and X of this Final Judgment are applicable.

XIV

[*Election of Interests*]

(A) Each and every person who is an officer and/or director of both (1) Bancorporation and/or Arizona Bank and (2) Valley National Bank, shall within ninety (90) days from the date of entry hereof, make and file with the Clerk of the Court an irrevocable selection of one of the two banking groups, if any, in which he chooses to hold office and shall at the same time resign any and all offices he may hold in the other banking group. Upon such election, the provisions of Sections IX and X above shall not apply to any stock such person may own in the banking group so selected but they shall apply with full force and effect to any offices and stock such person may own or hold in the banking group not so selected by him.

(B) For so long as he may be an officer, director or employee of or be the owner of any shares capital in (1) Arizona Bank, (2) Bancorporation or (3) any bank in Arizona except Valley National Bank, Lloyd A. Bimson, his wife, children and persons acting on his or their behalf are enjoined and restrained from voting any shares of stock which they may own in Valley National Bank; provided that on any matter for the adoption of which the vote of more than a majority of the shares of Valley National Bank is legally required, the management of Valley National Bank shall be authorized to vote such shares, and provided, further, that such ownership of stock by such persons in Valley National Bank, Bancorporation and/or Arizona Bank shall be counted by this Court in any proceeding brought by the Plaintiff under Section XII of the Final Judgment.

(C) Nothing in Sections VII and VIII shall prevent either Valley National Bank or Arizona Bank from acquiring assets from any bank in the ordinary course of business, or from acquiring capital stock of any bank in the regular course of securing or collecting a debt previously contracted in good faith or under circumstances where the stock is* transferred to the bank acting in a fiduciary capacity (including agency accounts), but in no event shall either bank purchase capital stock in the other bank in any capacity, fiduciary or otherwise, except on instructions of another person when for a fiduciary account the bank is required to follow such instructions, but the bank shall not vote the stock so purchased.

XV

For the purpose of securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any of the defendants, made to its principal office, be permitted (1) reasonable access during office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendants relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendants, and without restraint or interference from them, to interview officers or employees of defendants, who may have counsel present, regarding any such matters; and, upon such request, defendants shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section XV shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Department or of the Executive Branch of Plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XVI

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, or for the enforcement of compliance therewith and the punishment of violations thereof.