

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Homes Corporation., U.S. District Court, N.D. Indiana, 1962 Trade Cases ¶70,533, (Dec. 1, 1962)

United States v. National Homes Corporation.

1962 Trade Cases ¶70,533. U.S. District Court, N.D. Indiana, Hammond Division at Lafayette. Civil No. 114. Entered December 1, 1962. Case No. 1485 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisition of Competitors—Divestiture—Prefabricated Homes—Consent Judgment.—A producer of prefabricated homes was required by a consent judgment to divest itself of four manufacturers of such homes which it had acquired. The producer was required to make a bona fide effort to sell such manufacturers as going businesses, but if this could not be done by a specified date, the producer could dispose of the assets of the manufacturers on a piecemeal basis within a three-year period.

Acquiring Competitors—Future Acquisitions—Court Approval—Consent Judgment.—A producer of prefabricated homes was prohibited by a consent judgment, for a five-year period, from acquiring any concern engaged in the manufacture and sale of such homes; however, the producer could be granted permission to acquire a concern within the five-year period on proving that the acquisition would not substantially lessen competition or tend to create a monopoly.

Consent Judgment—Scope—Effect on Purchasers of Divested Property.—A consent judgment did not apply to any person who acquired from the defendant any property or assets required to be divested, if the acquisition was by a person approved by the court.

For the plaintiff: Lee Loevinger, W. D. Kilgore, Jr., Larry L. Williams, John W. Neville, Clement A. Parker and Robert J. Staal.

For the defendant: Stuart; Branigin, Ricks & Schilling, by George T. Schilling, and Bergson & Borkland, by Howard J. Adler, Jr.

Final Judgment

ESCHBACH, District Judge [*In full text*]:

Plaintiff, United States of America, having filed its complaint herein on November 20, 1959, and defendant having appeared and filed its answer to such complaint denying the substantive allegations thereof; and

Plaintiff and defendant having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by either party with respect to any such issue, and the Court having considered the matter and being duly advised,

Now, therefore, without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed, as follows:

I

[Clayton Act]

This Court has jurisdiction of the subject matter hereof and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraint and monopolies and for other purposes," commonly known as the Clayton Act. The complaint states a claim for relief under Section 7 of said Act.

II

[Definitions]

As used in this Final Judgment:

- (A) "National Homes" shall mean defendant National Homes Corporation, a corporation organized and existing under the laws of the State of Indiana, with its principal offices at Lafayette, Indiana;
- (B) "Fairhill" shall mean the Fairhill Homes Division of National Homes, and shall consist of the plant, assets and facilities acquired by National Homes from Fairhill, Inc.;
- (C) "American Houses" shall mean the American Houses Division of National Homes, and shall consist of the plants, assets and facilities acquired by National Homes from American Houses, Inc.;
- (D) "Thyer" shall mean the plants, assets and facilities owned by The Thyer Manufacturing Corporation, a subsidiary of National Homes;
- (E) "California" shall mean the plant, assets and facilities of National Homes Corporation of California (formerly Western Pacific Homes, Inc.), a wholly owned subsidiary of National Homes;
- (F) "Prefabricated house" shall mean a package of structural sections and components embodying the maximum amount of in-plant fabrication at a permanently located factory which, together with other materials and associated services, is sold to a builder-dealer for erection with a minimum of on-site labor of a single-family house of specified design;
- (G) "Person" shall mean any individual, partnership, corporation, association, or other legal entity.

III

[Applicability]

The provisions of this Final Judgment shall apply to defendant and to its subsidiaries, officers, directors, agents, servants and employees, and to those persons in active concert or participation with defendant who receive actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply to any person or persons who acquire from defendant any of the property or assets required to be divested hereby in whole or in part if the acquisition is by a person or persons approved by this Court.

IV

[Future Acquisitions]

Defendant is enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment, from acquiring, directly or indirectly, any shares of stock of any corporation, or any asset of (except for goods, machinery or equipment purchased or sold in the normal course of business) or interest in any person engaged in the United States in the manufacture and sale of prefabricated houses. If at any time defendant desires to make any acquisition prior to five (5) years from the date of entry of this Final Judgment which would otherwise be prohibited by this Final Judgment, it may apply to this Court, with notice to the plaintiff, for permission to make such acquisition, which shall be granted upon a showing by the defendant to the satisfaction of this Court that the acquisition would not substantially lessen competition or tend to create a monopoly.

V

[Divestiture]

- (A) Defendant shall, in any event within three years from March 1, 1963, and in the manner set forth below, divest itself of Fair-hill, American Houses, Thyer and California, including all assets and improvements which may have been added by the defendant.

(B)(I) Defendant is ordered and directed to make a bona fide effort to sell by March 1, 1963, Fairhill; American Houses, or each plant of American Houses; Thyer, or each plant of Thyer; and California; as going concerns and operating factors, or as intact manufacturing units (consisting of land, buildings and other assets used in the manufacturing process, exclusive of inventories, other current assets, and over-the-road rolling stock) capable of being reactivated as operating factors, in competition in the manufacture and sale of prefabricated houses;

(2) If, by March 1, 1963, the defendant has been unable to comply fully with (1) above, then the defendant is directed to accomplish the required divestiture within three years from March 1, 1963, by selling or otherwise disposing of the remaining assets on a piecemeal or other basis.

(C) Defendant shall make known the availability of the companies, plants, and assets ordered to be divested by ordinary and usual means for the sale of a business or plant. Defendant shall furnish to bona fide prospective purchasers such information regarding the companies and properties to be divested, and shall permit them to have such access to, and to make such inspection of, the properties as are reasonably necessary. No sale of any of the said companies or plants as going concerns or as intact manufacturing units shall be made unless approved by this Court after hearing plaintiff and defendant in regard thereto if requested by either party. Any such sale proposed by defendant shall be approved by this Court unless the Court shall find that the effect of such sale may be substantially to lessen competition or to tend to create a monopoly. Defendant is authorized, but shall not be required, to obtain the approval of this Court with respect to a sale of assets other than as a going concern or as an intact manufacturing unit. Defendant is not required to sell all or any part of the business, assets and property of the companies ordered to be divested except at a price that is reasonable under all the circumstances.

VI

[*Conditions of Sale*]

The divestiture ordered and directed by Section V of this Final Judgment shall be made in good faith and shall be absolute and unqualified. None of the properties so ordered to be disposed of shall be directly or indirectly sold or disposed of to any person who, at the time of disposition, is an officer, director, agent or employee of defendant, or is acting for or under the control of defendant, or in which defendant owns any stock or financial interest; provided, however, that if any property is not sold or disposed of entirely for cash, nothing herein contained shall be deemed to prohibit defendant from retaining, accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security on said property for the purpose of securing to defendant full payment of the price at which said property is disposed of or sold; and provided further that if, after bona fide disposal pursuant to Section V, defendant by enforcement or settlement of a bona fide lien, mortgage, deed of trust, or other form of security regains ownership or control of any of the property disposed of, defendant shall, subject to the provisions of this Final Judgment, dispose of any such property thus regained within eighteen (18) months from the time of reacquisition.

VII

[*Prior Orders*]

This Final Judgment, and the terms and conditions contained herein, shall supersede the Orders on Plaintiff's Motions for Preliminary Injunction, entered December 9, 1960, and August 25, 1961; the Stipulation filed by the parties to this action on April 8, 1960, and entered upon the record as of April 14, 1960; and the Order of this Court entered September 26, 1962.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other purposes, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant

Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant regarding the subject matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of the said defendant, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided for in this Section shall be divulged by any representative of the Department of Justice to any person except a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders or 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, and for the enforcement of compliance therewith and the punishment of violations thereof.