

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil No. 79-1257-MC.
)
 v.) Filed: 6/29/79
)
 WARREN FIVE CENTS SAVINGS BANK,)
)
 Defendant.)

COMPLAINT

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

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendant named herein under Section 4 of the Sherman Act (15 U.S.C. §4), in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 1 of said act (15 U.S.C. §1).

2. Defendant maintains its principal office, transacts business and is found within the District of Massachusetts.

II.

DEFENDANT

3. Warren Five Cents Savings Bank ("Warren") is made the defendant herein. It is a mutual banking association organized and existing under the laws of the State of Massachusetts, with its principal place of business in Peabody, Massachusetts.

III.

DEFINITION

4. The term "Northshore" means Northshore Shopping Center, a regional shopping center located in Peabody, Massachusetts. Peabody is located approximately 20 miles northeast of the city of Boston.

IV.

TRADE AND COMMERCE

5. Northshore contains approximately 82 stores and is the largest shopping center in New England. It is located on over 1.5 million square feet at the junction of two major highways, Routes 114 and 128, making it easily accessible to much of Massachusetts as well as to portions of other New England states. Its parking area accommodates 7,600 cars and public transportation links it to Boston and other nearby towns and cities. Northshore draws shoppers from an area primarily composed of 53 towns and cities in the Massachusetts counties of Essex, Middlesex and Suffolk with a total population of over 1.2 million according to the most recent census survey. Because of its unique facilities and location, Northshore is a particularly desirable site for an office of a financial institution.

6. Defendant Warren is a state-chartered mutual savings bank, having no capital stock, and is operated for the benefit of its depositors by a Board of Trustees. Its main business is receiving time and savings deposits on which it pays interest or dividends, and making loans and investments. A significant number of Warren's depositors are domiciled outside the State of Massachusetts and a significant number of its loans are made to persons residing in states other than Massachusetts or are secured by property located outside of Massachusetts.

7. The deposits a financial institution is able to attract have a direct effect upon its ability to make loans and investments. Consequently, any increase or decrease in a financial institution's deposits has a corresponding effect on its ability to make loans and investments in competition with other financial institutions.

8. Defendant receives deposits which are made by checks drawn on banks located outside the State of Massachusetts or drawn on the United States Treasury. Many of these checks, as well as others, are cleared directly or indirectly through the check clearing facilities of the Federal Reserve System. Defendant also receives checks through the direct deposit social security program of the United States Treasury and makes mortgage loans and construction loans which are FHA-insured or VA-guaranteed. In addition, defendant holds securities of the United States Government and of individual government agencies, and also holds state, county, and municipal obligations, corporate stock, and other bonds, notes and debentures, some of which are from political subdivisions and corporations located outside the State of Massachusetts. In the course of performing its services defendant regularly utilizes interstate communications, including the mails, telephone and telegraph.

V.

BACKGROUND OF VIOLATION ALLEGED

9. On March 19, 1957, defendant Warren entered into a lease agreement with the lessor of space in Northshore for the purpose of opening and operating a branch office in the shopping center. On the same date, another financial institution, Merchants-Warren National Bank of Salem ("Merchants"),

entered into a separate but similar agreement. Both leases contained provisions prohibiting the lessor from leasing space in Northshore to any other financial institution. Both leases are for a term of twenty years, which may be extended for two additional five-year terms at the option of the lessee. Both defendant Warren and Merchants have elected to extend the initial term of their leases and continue to maintain branch offices in Northshore.

10. In 1969, Essex County Bank and Trust Company ("Essex") proposed to open a branch office in a building to be constructed on a parcel of land adjacent to Northshore. Defendant Warren and Merchants filed suit in Essex County Superior Court against Essex and the owner of Northshore challenging the rights of the parties to use or permit the use of the parcel of land for any banking purpose. The suit was settled on December 24, 1969. Pursuant to the settlement, Essex was permitted to operate a branch office on the parcel of land which it continues to do. In addition, the settlement provided that the owner of Northshore would not permit any other financial institution to establish offices on certain land adjacent to Northshore during the time defendant Warren and Merchants occupy space at Northshore and Essex occupies space on the adjacent land.

11. In 1977, Salem Five Cents Savings Bank ("Salem") attempted to lease space in Northshore for the purpose of opening a branch office. Salem was advised that it could not lease space in Northshore because of the restrictions in the 1957 lease agreements. Subsequently, Merchants waived the restriction in its lease which prevented Northshore's owner from leasing space in the shopping center to other

financial institutions. Defendant Warren declined to waive the restriction in its lease. On August 3, 1978, it obtained a preliminary injunction from the Essex County Superior Court restraining the owner of Northshore from leasing space to Salem.

12. On October 12, 1978, after a public hearing, the Office of the Commissioner of Banks for the Commonwealth of Massachusetts granted Salem's petition for permission to establish a branch in Northshore.

13. The owner of Northshore stands ready and able to lease space in Northshore to Salem except for the outstanding restriction in Warren's lease.

VI.

VIOLATION ALLEGED

14. The contract between defendant Warren and the owner of Northshore and the 1969 settlement agreement are contracts in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act. Said contracts will remain in effect and said violation will continue unless the relief hereinafter prayed for is granted.

15. The aforesaid contract between defendant Warren and the owner of Northshore consists of a continuing lease agreement the terms of which, read together with the 1969 settlement agreement, among other things:

(a) grant Warren the right to operate a branch office in Northshore: and

(b) prohibit the owner of Northshore from leasing space in Northshore and certain adjacent property to any other financial institution.

VII.

EFFECTS

16. The aforesaid contracts have had the following effects among others:

(a) Salem and other financial institutions have been denied the opportunity to establish branch offices at Northshore and on land adjacent to it, thereby restricting their ability to compete with defendant;

(b) competition generally between defendant on the one hand, and Salem and other financial institutions on the other hand has been restrained, suppressed and eliminated in the area served by Northshore;

(c) the public has been denied the benefits of the establishment and operation of offices of additional financial institutions at Northshore; and

(d) the public has been denied access to and the benefit of banking services not presently available at Northshore.

PRAYER

Wherefore, the Plaintiff prays:

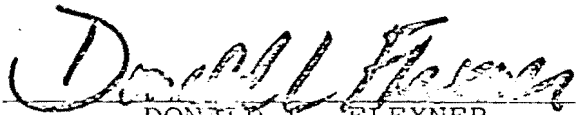
1. That the aforesaid contracts be adjudged and decreed to be unlawful and in violation of Section 1 of the Sherman Act.

2. That the defendant Warren be perpetually enjoined and restrained from enforcing the provisions of the agreement of December 24, 1969, and of its lease of March 19, 1957, which restrict the right of the owner of Northshore to lease space within or adjoining Northshore and that the defendant,

its officers, directors and all other persons acting or claiming to act on its behalf be enjoined and restrained from entering into or enforcing any similar contract, agreement or understanding.

3. That the plaintiff have such further and different relief as the case may require and the Court may deem just and proper.

4. That the plaintiff recover the cost of this suit.



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