

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Carrols Development Corp. and Triple Schuyler Rome Corp., U.S. District Court, N.D. New York, 1978-2 Trade Cases ¶62,213, (Jul. 5, 1978)

United States v. Carrols Development Corp. and Triple Schuyler Rome Corp.

1978-2 Trade Cases ¶62,213. U.S. District Court, N.D. New York, No. 76-CV-170, Entered July 5, 1978, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 39281, 58208).

Case No. 2513, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Motion Picture Theaters: Divestiture by Assignment or Sublease: Consent Decree.— A motion picture theater operator was required by a consent decree to divest by assignment or sublease (for the entire remaining present term of the master lease less one day) motion picture theaters it acquired from a competitor. A trustee would be appointed to complete divestiture, if not accomplished within two years. Acquisitions of theaters would be prohibited for 10 years without government approval.

Final Judgment

Munson, D. J.: Plaintiff, United States of America, having filed its complaint herein on April 23, 1976, and the defendants Carrols Development Corporation and Triple Schuyler Rome Corporation, having appeared and filed their answer to the complaint denying the material allegations thereof, and the plaintiff and the defendants, by their respective attorneys, having 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 any evidence or admission by any party with respect to any such issue;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue and upon the consent of the parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. §18), commonly known as the Clayton Act, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) "CDC" shall mean defendants Carrols Development Corporation and Triple Schuyler Rome Corporation, and each of their subsidiaries and affiliates.
- (B) "Eligible Purchaser" shall mean any person or persons, proposing to acquire any theatre for theatre purposes, to which the plaintiff, after notice, does not object, or if the plaintiff does object, of which the Court approves.
- (C) "Person" shall mean any individual, partnership, corporation or other business or legal entity other than CDC.

(D) "Greater Syracuse Area" shall mean the area within a radius of approximately 12 miles from the center of the City of Syracuse, including Syracuse and all or part of the following towns in the State of New York: Salina, DeWitt, Geddes, Cicero, Manlius, Pompey, Lafayette, Onondaga, Marcellus, Camillus, Van Buren, Lysander and Clay.

(E) "Greater Utica Area" shall mean the area within a radius of approximately 10 miles from the center of the City of Utica, including Utica and all or part of the following towns in the State of New York: Schuyler, Newport, Frankfort, Litchfield, Paris, New Hartford, Kirkland, Whitestown, Westmoreland, Floyd, Marcy, Trenton and Deerfield.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to CDC, its successors and assigns, to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Any Eligible Purchaser who acquires any assets by means of a divestiture pursuant to this Final Judgment shall not be considered a successor or assign of CDC.

IV

[*Divestiture*]

(A) CDC is ordered and directed to divest to Eligible Purchasers, within 24 months from the date of entry of this Final Judgment, each of the theatres listed in Appendix A to this Final Judgment.

(B) Divestiture of the theatres listed in Appendix A shall be accomplished by assignment or sublease.

(C) With respect to any theatre which is divested by sublease, such sublease shall be for the entire remaining present term of the master lease less one day (such period is hereinafter referred to as the "Sublease Term").

(D) CDC shall make known the availability of the theatres listed in Appendix A by customary and usual means, including appropriate advertising. CDC shall furnish, on an equal and nondiscriminatory basis, to all bona fide prospective purchasers who so request, all necessary information regarding said theatres and shall permit them to make such inspection of the facilities and operations of the theatres as is reasonably necessary for a prospective purchaser to advise itself properly.

(E) Ninety days after the date of entry of this Final Judgment and every 90 days thereafter until CDC has divested each of the theatres listed in Appendix A, CDC shall submit written reports to the plaintiff, describing the steps which have been taken to comply with this Section IV. Each report shall include the name and address of each person who, during the preceding 90 days, had made an offer, expressed a desire, or entered into negotiations to acquire any theatre, together with full details of same. Each report shall also include the name and address of each person who, during the preceding 90 days, CDC has sought to interest in the acquisition of any theatre, together with full details of same.

(F) At least 60 days before the consummation, pursuant to this Section IV, of a divestiture to a proposed Eligible Purchaser of any theatre listed in Appendix A, CDC shall furnish in writing to the plaintiff the name and address of the proposed Eligible Purchaser, together with the terms and conditions of the proposed divestiture. At the same time, CDC shall list the name and address of each person not previously reported who offered or expressed a desire to acquire such theatre, together with full details of same. Within 20 days of the receipt of this information, the plaintiff may request in writing additional information concerning the transaction and parties thereto. If no request is made for additional information, the plaintiff shall advise CDC in writing no later than 20 days prior to the scheduled consummation date whether it has any objections to the proposed divestiture. If a request for additional information is made, the plaintiff shall advise CDC in writing within 30 days after receipt of all such information or within 30 days after receipt of a statement in writing from CDC that it does not have

the requested information, whether it has any objections to the proposed divestiture. If the plaintiff does not object within the periods specified, then the divestiture may be consummated. If the plaintiff does so object, the proposed divestiture shall not be consummated unless CDC obtains approval from the Court or the plaintiff's objection is withdrawn.

V

[Appointment of Trustee]

If CDC does not divest itself, in accordance with the provisions of this Final Judgment, of each of the theatres listed in Appendix A within 24 months from the date of entry of this Final Judgment, the Court shall on application of the plaintiff appoint a trustee for the purpose of divesting the remaining theatres in accordance with the provisions of this Final Judgment. The trustee shall have full power and authority to dispose of each of the remaining theatres by assignment or sublease at whatever price and terms are obtainable by him subject to prior approval of the Court after the parties have had an opportunity to be heard with respect to each such proposed divestiture and the price and terms thereof. Any such sublease shall be for the applicable Sublease Term. The trustee shall use his best efforts to dispose of each of the theatres within 12 months of his appointment. Each divestiture by the trustee shall be in accordance with the provisions of this Final Judgment. The trustee shall serve, at the cost and expense of CDC, on such terms and conditions as the Court sees fit and shall account for all revenues derived from the disposal of the theatres and all expenses so incurred. After approval by the Court of the trustee's account, including fees for his services, all remaining monies shall be paid to CDC, or if there are remaining unsatisfied claims CDC shall pay them, and the trust created hereunder shall be terminated.

VI

[Termination of Operations]

If any theatre listed in Appendix A is not divested in accordance with the provisions of this Final Judgment within 12 months of the appointment of a trustee pursuant to Section V herein, CDC shall, within 60 days thereafter, terminate its operation of such theatre unless it has obtained the written consent of the plaintiff to continue operating such theatre for the exhibition of feature motion pictures.

VII

[Subleased Theaters]

Any assignment or sublease to an Eligible Purchaser of a theatre listed in Appendix A shall require the Eligible Purchaser to file with this Court its representation that it proposes to operate the theatre for the exhibition of feature motion pictures.

VIII

[Continued Operations]

(A) Subject to the provisions of Section VI of this Final Judgment and subparagraph (2) of this Section VIII(C), CDC shall continue to operate each theatre listed in Appendix A for the exhibition of feature motion pictures until such theatre is divested in accordance with the provisions of this Final Judgment; provided, however, that nothing contained herein shall require CDC to continue the operation of the 258 Cinema City I, II and III prior to divestiture.

(B) CDC shall not participate in any way, directly or indirectly, in the management, operation or control of any theatre listed in Appendix A after it has been divested pursuant to this Final Judgment, nor shall CDC book or buy feature motion pictures for any such theatre after it has been divested. Where a theatre has been divested by sublease, these prohibitions shall be expressly set forth in the sublease.

(C) Notwithstanding the provisions of paragraph (B) of this Section VIII:

(1) CDC may enforce the terms and conditions of any sublease in accordance with its provisions or as provided by law, and may exercise the rights of a sublessor in the event of a default.

(2) In the event of reacquisition or repossession by CDC prior to the expiration of the Sublease Term of a subleased theatre divested hereunder, CDC shall promptly notify the plaintiff in writing and shall divest such theatre by assignment or sublease to an Eligible Purchaser within 12 months of reacquisition or repossession in accordance with the provisions of this Final Judgment. The minimum duration of any such subsequent sublease shall be the applicable Sublease Term less the period of time such theatre was operated by an Eligible Purchaser prior to reacquisition or repossession by CDC. If CDC is unable to divest any such theatre to an Eligible Purchaser within 12 months of reacquisition or repossession, CDC shall, within 60 days thereafter, terminate its operation of such theatre unless it has obtained the written consent of the plaintiff to continue operating such theatre for the exhibition of feature motion pictures.

IX

[Acquisitions]

CDC is enjoined and restrained for a period of 10 years from the date of entry of this Final Judgment from acquiring, without the prior written consent of the plaintiff, any part of the assets or stock of any operating motion picture theatre in the Greater Syracuse or Greater Utica Areas.

X

[Inspections]

(A) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative 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 CDC made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of CDC, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of CDC, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of CDC and without restraint or interference from it, to interview officers, directors, agents, partners or employees of CDC, any of whom may have counsel present, regarding any such matters.

(B) CDC, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment, as may from time to time be requested.

No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than 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, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by CDC to plaintiff pursuant to this Section and CDC represents that the material, or any portion thereof, in any such information or documents is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and CDC identifies such material in writing and marks each pertinent page thereof, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give CDC 10 days notice prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which CDC is not a party.

XI

[Retention of Jurisdiction]

Jurisdiction of this action is retained by this Court 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 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 punishment of violations thereof.

XII

[Public Interest]

Entry of this Final Judgment is in the public interest.

Appendix A

Genesee, 2100 W. Genesee St., Geddes, N. Y.
Shoppingtown I & II, Erie Blvd., East & Kinney Rd., DeWitt, N. Y.
Cinema, Commercial Dr., New Hartford, N. Y.
Marcy Drive-In, Rt. 49, Marcy, N. Y.
New Hartford Drive-In, Commercial Dr., New Hartford, N. Y.
Paris Cinema, 12 Genesee St., New Hartford, N. Y.
Skyler Drive-In I & II, Rt. 5, West Schuyler, N. Y.
258 Cinema City, I, II & III, 258 Genesee St., Utica, N. Y.