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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 v.)

14 KDI CORPORATION; KDI-AQUA
SYSTEMS, INC.; and JHO
15 DISSOLUTION CO.,)

16 Defendants.)
17

Civil Action No. 71-2363-AAH

Filed: Sept. 11, 1972

Entered: November 20, 1972

18 FINAL JUDGMENT

19 Plaintiff, United States of America, having filed its
20 complaint herein on October 1, 1971, and defendants KDI
21 Corporation and KDI-Aqua Systems, Inc. having filed their
22 answers thereto; plaintiff and defendants KDI Corporation
23 and KDI-Aqua Systems, Inc., by their attorneys, having con-
24 sented to the entry of this Final Judgment; and this Court
25 having determined pursuant to Rule 54(b) of the Federal Rules
26 of Civil Procedure that there is no just reason for delay in
27 entering a Final Judgment against KDI Corporation and KDI-
28 Aqua Systems, Inc. only;

29 NOW THEREFORE, before the taking of any testimony and
30 without trial or adjudication of any issue of fact or law
31 and without this Final Judgment constituting any evidence
32 or admission by any party with respect to any issue of fact

1 or law and upon consent of the parties, it is hereby

2 ORDERED, ADJUDGED AND DECREED as follows:

3
4 I

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

11 II

12 As used in this Final Judgment:

13 (a) "Person" shall mean an individual, part-
14 nership, corporation or any other business or legal
15 entity;

16 (b) "Subsidiary" shall mean a company which a
17 person controls or has power to control or in which
18 more than 50 per cent of the voting securities is
19 owned or controlled by that person directly or
20 indirectly;

21 (c) "KDI" shall mean defendant KDI Cor-
22 poration and any of its subsidiaries, including
23 defendant KDI-Aqua Systems, Inc.;

24 (d) "Blue Haven" shall mean Blue Haven
25 Pools, a subsidiary of defendant KDI Aqua-
26 Systems, Inc.;

27 (e) "Sunset" shall mean Sunset Pools,
28 Inc., a subsidiary of Blue Haven;

29 (f) "Royal" shall mean Royal Pools of
30 Orange County, Inc., a subsidiary of defendant
31 KDI Aqua-Systems, Inc.;

32 (g) "Southern California" shall mean the

1 portion of the State of California consisting of
2 the counties of Kern, Santa Barbara, San Bernardino,
3 Ventura, Los Angeles, Orange, Riverside, San Diego
4 and Imperial.

5
6 III

7 The provisions of this Final Judgment applicable to any
8 defendant shall also apply to its officers, directors,
9 employees, subsidiaries, successors and assigns, and to
10 any person in active concert or participation with any of
11 them who receives actual notice of this Final Judgment by
12 personal service or otherwise. Any person not a party
13 to this Final Judgment who acquires any securities or
14 assets by means of a divestiture made pursuant to this
15 Final Judgment shall not be considered to be a successor
16 or an assign of a defendant.

17 IV

18 (A) KDI is ordered and directed to divest within thirty
19 (30) months from the date of entry of this Final Judgment all
20 of its interest, direct or indirect, in the business located
21 in Southern California of (1) Royal, or (2) Blue Haven, or
22 (3) Sunset, at KDI's option; provided, however, the condi-
23 tions of subsection (B) hereof are met and except as limited
24 by subsection (C) hereof.

25 (B) As a condition of the divestiture, pursuant to sub-
26 section (A), of Blue Haven or Sunset, KDI shall submit details
27 as part of the plan of divestiture described in subsection
28 (F) hereof sufficient to show that, at the time of such plan,
29 the business of Blue Haven or Sunset is equivalent to the
30 business of Royal in terms of (1) viability; (2) net earn-
31 ings; and (3) total number and dollar value of pools built
32 in Southern California in the prior calendar year, including
pools built by franchisees, licensees and subsidiary corpora-
tions.

1 (C) If KDI divests Blue Haven pursuant to subsection
2 (A), such divestiture need not include any of the assets of
3 Blue Haven then constituting the assets (including physical
4 plant, inventory, bank accounts, accounts receivable, and
5 the like) of Marine Swimming Pool Equipment Company, a divi-
6 sion of Blue Haven, or the stock of Sunset.

7 (D) The divestiture directed by subsection (A) shall not
8 be made to any person who, within the five calendar years
9 prior to the effective date of such divestiture, shall have
10 installed or contracted to install more than five percent
11 (5%) of the swimming pools installed or contracted to be in-
12 stalled in Southern California as determined by reference to
13 customary industry reports.

14 (E) The divestiture required by this Final Judgment
15 shall be made subject to the following limitations:

16 (1) such divestiture shall be made in the form
17 of a single going and viable business capable
18 of engaging in substantially the same operations
19 as those previously conducted by such business;
20 provided, however, that plaintiff may consent
21 to divestiture in the form of more than a
22 single business, each such business to be
23 capable of engaging in substantially
24 the same operations as those previously
25 conducted by such business;

26 (2) in the event KDI receives as part of such
27 divestiture any securities from a person to
28 whom divestiture is made, such securities
29 (other than securities originally issued by
30 KDI) (a) shall not be voted, if of a voting
31 class; and (b) shall be disposed of not later
32 than two years after such securities are
received.

1 (F) The complete details of any contemplated plan of
2 divestiture intended to implement the provisions of sub-
3 section (A) of this Section IV shall be submitted to plaintiff
4 by KDI. Within thirty (30) days of the receipt of these
5 details, the plaintiff may request supplementary information
6 concerning the plan, which shall be furnished by KDI.
7 Following the receipt of any such supplementary information
8 submitted pursuant to plaintiff's last request for such
9 information, or after the receipt of the statement from KDI,
10 if applicable, that it does not have the requested supple-
11 mentary information, plaintiff shall have thirty (30) days
12 in which to object to such plan of divestiture by written
13 notice to KDI. If no request for supplementary information
14 is made, said notice of objection shall be given within
15 thirty (30) days of receipt of the originally submitted
16 details of the plan. If plaintiff does not so object to
17 the proposed plan, the plan may be consummated; but if ob-
18 jection is made, the proposed divestiture shall not be
19 consummated until KDI obtains judicial approval of the plan,
20 or until plaintiff withdraws its objection; provided, however,
21 in the case of a plan to which the plaintiff objects, the
22 time period set forth in subsection (A) of this Section IV
23 within which divestiture must be accomplished shall, unless
24 the Court orders otherwise on application of the plaintiff,
25 be tolled from the date of submission of such plan to the
26 plaintiff until the final determination following appeal,
27 if any, of any proceeding under this Final Judgment relating
28 to the approval of the proposed plan of divestiture.

29 (G) Following the entry of this Final Judgment, KDI
30 shall submit written reports every six (6) months to the
31 Assistant Attorney General in charge of the Antitrust Division
32 describing the efforts made by it to divest the business
required to be divested pursuant to subsection (A) of this
Section IV.

1 (H) KDI shall make known the availability for sale of
2 the business to be divested by the ordinary and usual means
3 for a sale of such a business, and shall furnish to all
4 bona fide prospective purchasers on an equal and non-
5 discriminatory basis all information, regarding the business
6 to be divested, which is reasonably necessary for the above
7 purpose.

8 (I) If the divestiture requirements of subsection (A)
9 of this Section IV have not been met within thirty (30)
10 months from the date of entry of this Final Judgment, KDI
11 shall place in control of a trustee promptly after his
12 appointment by this Court, upon application of plaintiff,
13 at the cost and expense of KDI, all of KDI's then undivested
14 interest in the Southern California business of Royal. Said
15 trustee shall within one year of his appointment dispose
16 of such interest, subject to the limitations of subsections
17 (D) and (E) of this Section IV and after obtaining the
18 plaintiff's approval, and pending such disposition shall
19 have full authority to manage such interest, subject to the
20 Court's supervision.

21 (J) Until the divestiture required by this Final
22 Judgment is accomplished, KDI shall take no action to impair
23 the viability of any of the businesses to be divested or
24 KDI's ability to accomplish such divestiture, and KDI shall
25 use its best efforts in operating and promoting the
26 businesses to be divested.

27 V

28 KDI is enjoined and restrained, without first obtaining
29 the consent of plaintiff or approval of this Court, upon
30 KDI's establishing by preponderance of the evidence that the
31 acquisition will not lessen competition or tend to create a
32 monopoly in any line of commerce, from acquiring directly or

1 indirectly for a period of ten (10) years after the date
2 of entry of this Final Judgment a controlling interest in the
3 assets, business, good will or stock of any person installing
4 (except as a franchisee of KDI), or licensing or franchising
5 others to install, swimming pools in Southern California.

6 VI

7 (A) For the purpose of determining or securing com-
8 pliance with this Final Judgment and for no other purpose,
9 defendant KDI shall permit duly authorized representatives
10 of the Department of Justice, on written request of the
11 Attorney General or the Assistant Attorney General in charge
12 of the Antitrust Division, and on reasonable notice to such
13 defendant's principal office, subject to any legally recog-
14 nized privilege:

15 (1) Access during the office hours of such
16 defendant, who may have counsel present, to those
17 books, ledgers, accounts, correspondence, memoranda,
18 and other records and documents in the possession or
19 under the control of such defendant which relate
20 to any matters contained in this Final Judgment;

21 (2) Subject to the reasonable convenience
22 of such defendant and without restraint or inter-
23 ference from it, to interview officers or employees
24 of such defendant, who may have counsel present,
25 regarding such matters.

26 (B) Upon written request of the Attorney General or the
27 Assistant Attorney General in charge of the Antitrust Division
28 such defendant shall submit such reports in writing, with
29 respect to the matters contained in this Final Judgment, as
30 may from time to time be requested.

31 (C) No information obtained by the means provided in
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1 this Section VI of this Final Judgment shall be divulged by
2 any representative of the Department of Justice to any person
3 other than a duly authorized representative of the
4 Executive Branch of the plaintiff, except in the course of
5 legal proceedings to which the United States is a party for
6 the purpose of securing compliance with this Final Judgment
7 or as otherwise required by law.

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9 VII

10 Jurisdiction is retained by this Court for the purpose
11 of enabling any of the parties to this Final Judgment to
12 apply to this Court at any time for such further orders and
13 directions as may be necessary or appropriate for the con-
14 struction or modification of any of the applicable provisions
15 thereof, for the enforcement of compliance therewith, and
16 for the punishment of violations thereof.

17 VIII

18 This Final Judgment shall remain in full force and
19 effect for ten (10) years, and no longer, from the date of
20 entry hereof, except as to any provision herein for which
21 a shorter term is specified therein.

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24 Dated: November 20, 1972

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26 /s/ ROBERT J. KELLEHER
27 United States District Judge
28 for Hon. Andrew Hauk
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