

NEWS FROM AV&H

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AV&H Defeats Motions to Dismiss Antitrust Complaint against Film Distributors and Exhibitors **Reading Int'l, Inc. v. Oaktree Capital Mgt. LLC, No. 03 CV 1895 (GEL) (S.D.N.Y. Dec. 2, 2003)**

AV&H recently secured a victory for client Reading International, Inc., when Judge Gerard Lynch of the Southern District of New York denied motions to dismiss Reading's complaint from all 15 defendants in this antitrust matter.

The complaint alleges that two of the largest cinema exhibition chains in the United States, Regal Entertainment Group and Loews Cineplex Corporation, coerce major film distributors into denying Reading's Village East cinema in Manhattan access to top quality films. It further alleges that two major investment funds, Onex Corporation and Oaktree Capital Management, LLC, orchestrate this coercion through their significant interests in Regal and Loews, both of which have theatres in the area. Reading also challenges the reasonableness of certain "clearances" (a film industry term for the granting of an exclusive film "run" within a given geographic area) in lower Manhattan. The complaint alleges that Reading's inability to license top films threatens the viability of the Village East and harms consumers and competition. Reading seeks both monetary damages and injunctive relief as redress for violations of Sections 1 and 2 of the Sherman Act, Sections 7 and 8 of the Clayton Act, and various state and common laws.

In a 53 page opinion, Judge Lynch denied almost all of the defendants' motions to dismiss the complaint. Importantly, the Court refused to dismiss a single defendant from the case.

With respect to Section 1 of the Sherman Act, Judge Lynch noted the existence of several factual

questions that precluded dismissal on the pleadings, including the nature of the clearances' competitive impact in lower Manhattan and the degree to which Onex and Oaktree control the exhibitor defendants. Thus, he found that Reading sufficiently alleged both antitrust injury and the existence of a conspiracy.

The complaint asserts that a key component of that conspiracy is defendant Oaktree's placement of representatives on the boards of directors of both Regal and Loews. Reading alleges that such conduct violates Section 8 of the Clayton Act, although no court has reached that specific question yet. Judge Lynch stated that plaintiffs' theory "makes absolute sense" and refused to dismiss the claim.

The Court also sustained Reading's claim that defendant Oaktree attempted to monopolize the relevant film market by coordinating the conduct of Regal and Loews. The analysis again emphasized the factual questions concerning Oaktree's control of Regal and Loews.

The Court dismissed the claim that certain defendants violated Section 7 by acquiring theatres in markets in which they had no competitors in order to pressure distributors into cutting off independent exhibitors' film supply elsewhere. Judge Lynch found that Reading's injury was too remote to impart standing to challenge the mergers, in part because Reading also challenges the defendants' subsequent use of the power that resulted from those acquisitions.

Discovery is ongoing and trial is scheduled to take place in the spring of 2005.

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