

STATE OF MAINE

KENNEBEC, SS.

SUPERIOR COURT

Civil Action

Docket No. CV 79-207

STATE OF MAINE,
Plaintiff

v.

GERALD A. HOLT;
JERRY'S FURNITURE, INC.;
LESPERANCE SPAULDING d/b/a PINE TREE FURNITURE;
FRANCIS A. JONES, JR.;
NORTH COUNTRY DISTRIBUTORS, INC.;
E.J. BAROODY and
DUNN MANUFACTURING CO., INC.

Defendants

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COMPLAINT UNDER
THE UNFAIR TRADE
PRACTICES ACT

The State of Maine by and through the Department of the
Attorney General, upon information and belief, alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. The Attorney General commences this action under 5 M.R.S.A. § 206
et seq., commonly known as the Unfair Trade Practices Act, to protect
the public by preventing and restraining Defendants from practicing
unfair methods of competition.

2. Defendant Gerald A. Holt is President, Treasurer and Director
of Jerry's Furniture, Inc., Route 139, Fairfield Center, Maine.
Defendant Holt resides in Fairfield Center, Maine.

3. Jerry's Furniture, Inc. is a Maine corporation operating
a retail furniture and appliance business on Route 139, Fairfield
Center, Maine.

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APR 5 1979

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4. Lesperance Spaulding owns and operates a retail furniture business known as Pine Tree Furniture located at Winslow, Maine. Defendant Spaulding resides in Winslow, Maine.

5. Francis A. Jones, Jr., is President, Treasurer, Clerk and Director of North Country Distributors, Inc., Box 263, Tilton, New Hampshire. Defendant Jones resides in New Hampshire.

6. North Country Distributors, Inc. (hereinafter referred to as North Country) is a New Hampshire corporation operating a wholesale furniture business at Box 263, Tilton, New Hampshire. Defendant North Country transacts business in this State.

7. E.J. Baroody is the sales representative in this State for Dunn Manufacturing Co., Inc. Defendant Baroody resides in New Hampshire.

8. Dunn Manufacturing Co., Inc. is a New Hampshire corporation located at 733 Grove Street, Manchester, New Hampshire, which manufactures and distributes furniture. Dunn Manufacturing Co., Inc. transacts business in this State.

NATURE OF TRADE OR COMMERCE

9. Defendants Holt and Jerry's Furniture, Inc. and Defendant Spaulding operate retail furniture businesses in this State in the following manner:

- (a) Defendants purchase furniture from manufacturers and distributors in order to stock their retail stores;
- (b) Defendants purchase furniture primarily from distributors because distributors generally can ship furniture to

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Defendants more quickly than can manufactureres;

- (c) Defendants sell furniture to consumers in this State at their retail furniture stores;
- (d) Consumers either purchase furniture from Defendants' inventory or purchase furniture which Defendants subsequently order from distributors or manufacturers.

10. Defendants Jones and North Country operate a wholesale furniture business in the following manner:

- (a) Defendants' employ sales representatives who service retail furniture stores in Maine by traveling to those stores and accepting orders for furniture;
- (b) Defendants also offer the sale of furniture and accept orders for the purchase of furniture through telephone conversations between their New Hampshire offices and retail furniture businesses in Maine;
- (c) Defendants ship furniture from New Hampshire to retail businesses in this State and accept payment for such furniture from these businesses;
- (d) Defendants sell furniture to the following retail stores in the Waterville area:
 - (i) Jerry's Furniture, Inc.
 - (ii) Pine Tree Furniture
 - (iii) Hamelin Furniture Co.
 - (iv) Lacroix' New and Used

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- (v) State Furniture Co.
- (vi) Bob's New and Used
- (vii) Phil's New and Used
- (viii) Hustus Furniture and Gift Store

11. Defendant Dunn Manufacturing Co., Inc. operates a wholesale furniture business in the following manner:

- (a) Defendant employs a sales representative who services retail furniture stores in Maine by traveling to those stores and accepting orders for furniture;
- (b) Defendant ships furniture from New Hampshire to retail businesses in this State and accepts payment for such furniture from these businesses, and
- (c) Defendant sells furniture to the following retail stores in the Waterville area:
 - (i) Jerry's Furniture, Inc.
 - (ii) Northern Mattress
 - (iii) Mardens

12. Defendant Barody is a sales representative for Defendant Dunn Manufacturing Co., Inc. Defendant Barody services retail furniture stores in Maine by traveling to those stores and accepting orders for furniture.

13. Venue in this jurisdiction is provided by 5 M.R.S.A. § 209.

VIOLETIONS OF THE UNFAIR TRADE PRACTICES ACT

Count I

14. In early September 1978, Defendants Holt and Spaulding discussed the fact that two new furniture stores would be opening soon in Fairfield: The Furniture Farm owned by Bill Bois and Empire Furniture owned by Louis Paradis. Both Holt and Spaulding expressed concern that Bois was planning to purchase furniture from Defendant North Country. Spaulding further stated that he would talk to North Country about Bois.

15. During September 1978, Bill Bois placed two orders for furniture with Defendant North Country.

16. During September 1978, Louis Paradis ordered furniture from Defendant North Country.

17. On or about September 24, 1978, Defendant Holt told Defendant Jones that if Defendant North Country sold to Bois that Holt would not continue to buy from North Country.

18. In late September or early October 1978, Defendant Spaulding told Defendant Jones that he would not buy from North Country if North Country sold to Bois and Paradis.

19. On or about October 5, 1978, Defendant Jones told Bois that North Country would not fill his orders because retailers had cancelled or threatened to cancel orders if North Country sold to Bois.

20. Bois opened his furniture store in early November 1978. Bois has not been able to purchase furniture from North Country.

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APR 5 1979

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21. Louis Paradis opened his furniture store in October 1978. Paradis has not been able to purchase furniture from Defendant North Country.

22. During the period August through October 1978, Defendants Holt, Jerry's Furniture, Inc., Spaulding, Jones and North Country engaged in a concerted effort to withhold trade from retail furniture stores.

23. Defendants' actions tend to and do restrain trade for the following reasons: by limiting the number of retail stores selling identical products, Defendants (a) eliminate price competition between retail stores over those products, and (b) stabilize the market power of established retail stores.

24. Defendants' conduct as described in this Complaint constitutes an unfair method of competition in violation of 5 M.R.S.A. § 207.

Count II

25. Plaintiff incorporates paragraphs 15, 17, 19 and 20 in this Count to the same extent as if they had been repeated herein.

26. During the period August through October 1978, Defendants Holt, Jerry's Furniture, Inc., Jones and North Country engaged in a concerted effort to withhold trade from a retail furniture store.

27. Defendants' actions tend to and do restrain trade for the following reasons: by limiting the number of retail stores selling identical products, Defendants (a) eliminate price competition between retail stores over those products, and (b) stabilize the market power of established retail stores.

28. Defendants' conduct as described in this Complaint constitutes an unfair method of competition in violation of 5 M.R.S.A. § 207.

Count III

29. Plaintiff incorporates paragraphs 15, 16, 18, 19, 20 and 21 in this Count to the same extent as if they had been repeated herein.

30. During the period August through October 1978, Defendants Spaulding, Jones and North Country engaged in a concerted effort to withhold trade from retail furniture stores.

31. Defendants' actions tend to and do restrain trade for the following reasons: by limiting the number of retail stores selling identical products, Defendants (a) eliminate price competition between retail stores over those products, and (b) stabilize the market power of established retail stores.

32. Defendants' conduct as described in this Complaint constitutes an unfair method of competition in violation of 5 M.R.S.A. § 207.

Count IV

33. In early September 1978, Defendant Holt told Defendant Baroody that Baroody should not sell Dunn Manufacturing Co., Inc. products to Bois.

34. On or about September 11, 1978, Defendant Baroody told Bill Bois, that he could not sell Dunn Manufacturing Co., Inc. products to Bois at that time because of pressure he had received from Defendant Holt.

35. During the period August through October 1978, Defendants Holt, Jerry's Furniture, Inc., Baroody and Dunn Manufacturing Co., Inc. engaged in a concerted effort to withhold trade from a retail furniture store.

36. Defendants' actions tend to and do restrain trade for the following reasons: by limiting the number of retail stores selling identical products, Defendants (a) eliminate price competition between retail stores over those products, and (b) stabilize the market power of established retail stores.

37. Defendants' conduct as described in this Complaint constitutes an unfair method of competition in violation of 5 M.R.S.A. § 207.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests this Court to:

1. Issue a permanent injunction enjoining Defendants from:
 - (a) engaging in any concerted effort to withhold trade from retail furniture businesses in this State,
 - (b) pressuring furniture distributors to refuse to sell furniture to retail furniture businesses in this State,
 - (c) refusing to sell furniture to retail furniture businesses in this State as a result of receiving pressure not to sell from other retail furniture businesses.
2. Enter an order requiring Defendants to pay the costs of this suit and of the investigation of the Defendants made by

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APR 5 1979

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KENNEBEC, SS.

Docket No. CV 79-207

v.

CONSENT DECREE

Plaintiff, State of Maine, has filed its Complaint in this matter. Plaintiff alleges in its Complaint that Defendants, who are distributors and retailers of furniture, engaged in a concerted effort to deny competing retail furniture businesses access to goods sold by Defendant distributors. Plaintiff further alleges that Defendants' conduct restrains trade for the following reasons: by limiting the number of retail stores selling identical products, Defendants (a) eliminate price competition between retail stores over those products, and (b) stabilize the market power of established retail stores. Both Plaintiff and Defendants consent to the entry of this Consent Decree without trial.

NOW THEREFORE, before the taking of any testimony and upon consent of the parties:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over both the subject matter and the parties consenting to this decree. This Complaint states claims upon which relief may be granted against Defendants under 5 M.R.S.A. § 206 et seq., commonly known as the Unfair Trade Practices Act.
2. Defendants acknowledge that they received written notice of the intention of the Attorney General to commence an action under 5 M.R.S.A. § 206, et seq., more than 10 days prior to the filing of the Complaint in this matter.
3. Defendants, their agents, employees, heirs, assigns or other persons acting for Defendants or under their control, are permanently enjoined and restrained from:
 - (a) engaging in any concerted effort to withhold trade from retail furniture businesses in this State;
 - (b) pressuring furniture distributors to refuse to sell furniture to retail furniture businesses in this State, and

(c) refusing to sell furniture to retail furniture businesses in this State as a result of receiving pressure from other retail furniture businesses.

4. Pursuant to 5 M.R.S.A. § 209, Defendants shall pay the Department of the Attorney General the sum of \$1450.00 which sum shall represent reimbursement of the costs of this suit and of the investigation of the Defendants made by the Attorney General. The \$1450.00 payment shall be apportioned among the Defendants as follows:

Gerald Holt and Jerry's Furniture, Inc.	\$362.50
Lesperance Spaulding d/b/a Pine Tree Furniture	\$362.50
Francis A. Jones, Jr., and North Country Distributors, Inc.	\$362.50
E.J. Baroody and Dunn Manufacturing Co. Inc.	\$362.50

5. Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Consent Decree to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions of this Decree, for the enforcement of compliance with such provisions and for the punishment of any violations of such provisions.

DATED:

April 5, 1979

James H. North
JUSTICE, Superior Court

The Undersigned, with knowledge of the terms of the
above Consent Decree, agree to those terms and to the entry
of the Decree.

DATED: April 5, 1979

FOR DEFENDANTS

Gerald A. Holt pres.
GERALD A. HOLT
JERRY'S FURNITURE, INC.

Le Baron Spaulding, Pres.
LESPERANCE SPAULDING d/b/a
Pine Tree Furniture

Francis A. Jones, Jr., atty. for
FRANCIS A. JONES, JR.
NORTH COUNTRY DISTRIBUTORS, INC.

Charles F. Dunn atty. for
E.J. BAROODY
DUNN MANUFACTURING CO., INC.

FOR PLAINTIFF
STATE OF MAINE

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