

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

THE BON-TON STORES, INC.,

Plaintiff,

Civil Action No.
94-6454L

-vs-

THE MAY DEPARTMENT STORES COMPANY,
MCCURDY & COMPANY, INC. and
WILMORITE, INC.,

Defendants.

STATE OF NEW YORK BY
DENNIS C. VACCO,
ATTORNEY GENERAL,

Plaintiff,

Civil Action No.
94-6479L

-vs-

THE MAY DEPARTMENT STORES COMPANY,
MCCURDY & COMPANY, INC., and
WILMORITE, INC.,

Defendants.

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into effective as of March 6, 1995, by and among The Bon-Ton Stores, Inc. ("The Bon-Ton"), a Pennsylvania corporation with its principal place of business at 2801 East Market Street, York, Pennsylvania 17402-2495; the State of New York ("State"), by its Attorney General; The May Department Stores Company ("May"), a New York corporation with its principal place of business at 611 Olive Street, in St. Louis, Missouri

63101; McCurdy & Company, Inc. ("McCurdy's"), a New York corporation with its principal place of business at 285 East Main Street, Rochester, New York 14645; and Wilmorite, Inc. ("Wilmorite"), a New York corporation with its principal place of business at 1265 Scottsville Road, Rochester, New York 14624.

RECITALS

WHEREAS, on September 19, 1994, The Bon-Ton filed an action in the United States District Court for the Western District of New York ("The Bon-Ton action") and simultaneously moved for a temporary restraining order and a preliminary injunction in that action (Civil Action No. 94-6454L); and

WHEREAS, on September 19, 1994, the Court granted The Bon-Ton's motion for a temporary restraining order; and

WHEREAS, the parties to a September 20, 1994 agreement stipulated that certain assets would be maintained as divestible department store assets through November 1, 1994; and

WHEREAS, on September 27, 1994, as a result of an investigation begun on August 3, 1994, the State filed a civil action in the United States District Court for the Western District of New York ("State's action") and simultaneously moved for a preliminary injunction in that action (Civil Action No. 94-6479L); and

WHEREAS, May, McCurdy's, and Wilmorite (collectively referred to as "defendants") filed papers in opposition to such motions and moved to dismiss both actions, which motions to dismiss were opposed by The Bon-Ton and the State; and

WHEREAS, by Decision and Order filed October 31, 1994, the Court extended without date the parties' obligations under the September 20, 1994 stipulation and directed that a hearing be held with respect to the pending matters in The Bon-Ton's action and the State's action; and

WHEREAS, such hearing was held from November 14, 1994 through November 16, 1994; and

WHEREAS, by Decision and Order filed November 30, 1994, the Court granted the motions for preliminary relief by The Bon-Ton and the State and denied the motions to dismiss of the defendants; and

WHEREAS, The Bon-Ton and the defendants each filed motions to amend or modify the terms of the Decision and Order of November 30, 1994; and

WHEREAS, the State and The Bon-Ton opposed the defendants' motions to amend or modify the Decision and Order of November 30, 1994; and

WHEREAS, the Court continued to urge the parties to consider a settlement of the controversy and as a result thereof, formal settlement discussions began on January 3, 1995, with the assistance of the Court; and

WHEREAS, the parties have now reached a settlement, which they intend as a final and complete resolution of the claims asserted in The Bon-Ton's action and in the State's action.

NOW, THEREFORE, in consideration of the terms of this Settlement Agreement ("Agreement") and other good and valuable

consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Except as provided in paragraph "3", not later than November 11, 1995, May and Wilmorite shall cause the transfer, either individually or as a block of sites, of the properties formerly used by McCurdy's as department stores at Irondequoit Mall, Marketplace Mall, Eastview Mall and The Mall at Greece Ridge Center, to a person separate, distinct and independent from May and Wilmorite for use as traditional department stores in Rochester.

2. To satisfy the obligation set out in paragraph "1", May shall transfer to The Bon-Ton the properties formerly used by McCurdy's as department stores at Irondequoit Mall and Marketplace Mall and shall transfer to The Bon-Ton the property currently used by May as a department store at The Mall at Greece Ridge Center. To satisfy the obligation set out in paragraph "1", Wilmorite shall transfer to The Bon-Ton the property formerly used by McCurdy's as a department store at Eastview Mall. The transfers described in this paragraph shall be made pursuant to an agreement ("Real Estate Agreement") that is effective as of March 6, 1995, the same date that this Agreement is effective.

3. Notwithstanding the provisions of paragraph "1", if The Bon-Ton closes under the Real Estate Agreement with respect to the properties formerly used by McCurdy's as department stores at Irondequoit Mall, Marketplace Mall, and Eastview Mall, but the State concludes that the transaction under the Real Estate Agreement with respect to the property now used by May as a

department store at The Mall at Greece Ridge Center will not close and that the obligation under paragraph "1" shall not otherwise be satisfied, May shall divest such store, within one year of the closing date set forth in the Real Estate Agreement, as follows:

(i) to Wilmorite, which shall not thereafter sell or transfer such property to May, or (ii) to a person separate, distinct and independent from May, subject to the consent of the State, which consent shall not be unreasonably withheld, and subject to the Court's approval. If the store is not sold within one year of the closing date set forth in the Real Estate Agreement, a procedure to divest shall be set by the Court upon motion by the State.

4. The provisions of this Agreement shall apply only to the parties hereto and their successors and assigns, and nothing in this Agreement shall suggest that any portion thereof is, or has been created, for the benefit of any third party.

5. By entering into this Agreement, defendants do not admit any wrongdoing nor any liability either by themselves individually or as a group.

6. For five (5) years from the date of this Agreement, whenever May agrees to sell, acquire, or transfer shares or assets that concern one or more existing stores in the State of New York, May shall provide the Antitrust Bureau of the Attorney General's Office with written notice thereof no later than (3) days after execution of the agreement to sell, acquire, or transfer, and the State shall treat the written notice as confidential. This paragraph shall not apply to (i) any sale, acquisition or transfer

exclusively of shoe stores by or on behalf of May's wholly-owned subsidiary Payless ShoeSource, Inc. or (ii) any acquisition of one or more stores in an MSA where May does not operate a store (excluding any shoe store operated by Payless ShoeSource, Inc.) (a) in the MSA or (b) in the adjacent MSA if within 25 miles of the store to be acquired.

7. May shall pay to the State the sum of Seventy-Five Thousand Dollars 00/100 (\$75,000.00) for the State's costs and fees incurred in the investigation leading to, and the prosecution of, the State's action.

8. The Bon-Ton, May, McCurdy's and Wilmorite hereby withdraw their motions to amend or modify the Court's Decision and Order of November 30, 1994.

9. Within three (3) days from the date of this Agreement, The Bon-Ton and the defendants shall return all documents, as well as any copies thereof, produced by any party during the course of The Bon-Ton's action or the State's action, to the party producing such documents. Within three (3) days from the date of this Agreement, the State, at each party's option, shall either (i) make all documents, as well as any copies thereof, produced in the State's action or in the prefiling investigation relating to the State's action available for return to the appropriate party, or (ii) destroy all such documents and copies, and shall provide the appropriate party with an affidavit certifying such return or destruction.

10. To the extent that any information and documentation

provided by any party in discovery in the State's action or in The Bon-Ton's action is currently subject to a protective order or confidentiality agreement, such information and documentation shall continue to be subject to such protective order and/or confidentiality agreement notwithstanding the termination of the State's action and The Bon-Ton's action.

11. In consideration of the foregoing and except for any obligations contained herein, The Bon-Ton hereby releases the defendants from any and all claims that were asserted or that could have been asserted in The Bon-Ton's action including, but not limited to, any claims for damages, attorneys' fees and costs.

12. In consideration of the foregoing and except for any obligations contained herein, the State hereby releases the defendants from any and all claims that were asserted or that could have been asserted in the State's action including, but not limited to, any claims for damages, civil penalties, attorneys' fees and costs.

13. Except as is expressly provided herein, this Agreement shall not be construed to limit or restrict any right that otherwise might be available to the State in connection with transactions other than those related to the sale of the stores identified in paragraphs "1", "2", and "3" above.

14. Defendants shall inform their Chief Executive Officer, Chief Operating Officer, President, and General Counsel of the provisions of this Agreement and shall direct them to comply with all applicable provisions of this Agreement.

15. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

16. This Agreement is an integrated writing that constitutes the full and complete agreement of the parties, and it may not be modified, except in writing, signed by all the parties hereto.

17. The parties agree that the United States District Court for the Western District of New York may retain jurisdiction over The Bon-Ton's action and the State's action to the extent necessary to implement and enforce any of the terms of this Agreement. Any party to this Agreement may seek implementation or enforcement of any of its provisions.

18. The parties agree to file this Agreement with the Court and to request jointly that the Court enter an Order in connection therewith in the form attached hereto as Exhibit "A".

IN WITNESS WHEREOF, the parties have executed this Agreement as of March 6, 1995, the date first set forth above.

THE BON-TON STORES, INC.

By: H. Stephen Evans
H. Stephen Evans
Senior Vice President

THE STATE OF NEW YORK
DENNIS C. VACCO, ATTORNEY GENERAL
JOHN H. CARLEY, DEPUTY ATTORNEY
GENERAL, PUBLIC ADVOCACY

By: Robert L. Hubbard
Robert L. Hubbard
Assistant Attorney General

THE MAY DEPARTMENT STORES COMPANY

By: Louis J. Garr, Jr.
Louis J. Garr, Jr.
Executive Vice President

MCCURDY & COMPANY, INC.

By: Gilbert K. McCurdy
Gilbert K. McCurdy
Chairman and Chief
Executive Officer

WILMORITE, INC.

By: David M. Jacobstein
David M. Jacobstein
Vice Chairman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Bon-Ton Stores, Inc.

Plaintiff(s)

v.

6:94-cv-06454

May Department Store

Defendant(s)

PLEASE take notice of the entry of a JUDGMENT filed on
3/6/95, of which the within is a copy, and entered 3/7/95
upon the official docket in this case. (Document No. 141 .)

Dated: Rochester, New York
March 7, 1995

RODNEY C. EARLY, Clerk
U.S. District Court
Western District of New York
282 U.S. Courthouse
100 State Street
Rochester, New York 14614

Enclosure

TO:

Ray S. Bolze, Esq.
Yvette Benguerel, Esq.
Eberhard W. Pfaller Jr., Esq.
Marc G. Schildkraut, Esq.
James Metzler, Esq.
Anthony R. Palermo, Esq.
Ronald J. Dolan, Esq.
Gary P. Chura, Esq.
Fred G. Aten Jr., Esq.
Paul R. Braunsdorf, Esq.
William S. Brandt, Esq.
Joseph Opper, Esq.
Robert Hubbard, Esq.
Pamela Jones Harbour, Esq.

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

FILED
9-5 PM 1:41
COURT
WESTER

THE BON-TON STORES, INC.,

Plaintiff,

-vs-

THE MAY DEPARTMENT STORES COMPANY,
MCCURDY & COMPANY, INC. and
WILMORITE, INC.,

Defendants.

FILED
9-5 PM 1:41
COURT
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Civil Action No.
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ORDER AND JUDGMENT

STATE OF NEW YORK BY
DENNIS C. VACCO,
ATTORNEY GENERAL,

Plaintiff,

-vs-

THE MAY DEPARTMENT STORES COMPANY,
MCCURDY & COMPANY, INC., and
WILMORITE, INC.,

Defendants.

Civil Action No.
94-6479L

The parties have filed and presented to the Court a Settlement Agreement ("Agreement"), effective March 6, 1995. The Court has reviewed the Agreement, heard the parties with respect thereto, and given the matter due deliberation. Accordingly, it is


ORDERED, ADJUDGED AND DECREED, that these actions are dismissed, with prejudice, subject only to the terms and conditions of the Agreement and this Order and Judgment; and it is further

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ORDERED, ADJUDGED AND DECREED, that the defendants are relieved from the obligation to comply with this Court's Order filed September 20, 1994, and the decretal paragraphs on pages 42 and 43 of this Court's Decision and Order filed November 30, 1994, and the parties are hereby permitted to enter into the Agreement, including the Real Estate Agreement specified therein; and it is further

ORDERED, ADJUDGED AND DECREED, that jurisdiction is retained by this Court over these actions for the purpose of enabling any of the parties to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe the Agreement, to modify or terminate any of its provisions and/or to enforce compliance therewith.

Dated: Rochester, New York
March 6, 1995



David G. Larimer
United States District Judge

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RECEIVED
MAR 10 1995
ANTITRUST BUREAU

6:94-cv-06454

Robert Hubbard, Esq.
New York State Department of Law
Antitrust Bureau
120 Broadway
Suite 2601
New York, NY 10271

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