UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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FILED (SI)
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U.S. DISTRICT COURT E.D.N.Y.

★ APR 09 2002 ★

LONG ISLAND OFFICE

SALVATORE MOCCIO, ROSE MOCCIO,
ROBERT GROSSMAN, NORMAN LEVINSOHN
and HOWARD WINSTON,

As Individuals and as Class Representatives,

Plaintiffs,

-against-

CABLEVISION SYSTEMS CORPORATION,
the YANKEENETS, INC., d/b/a NEW YORK YANKEES,
YANKEES ENTERTAINMENT AND
SPORTS NETWORK, LLC,
and MSG NETWORK, INC.;

Defendants.
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CLASS ACTION COMPLAINT AND JURY DEMAND

Index No. 02 Civ.

CV-02 2138

PLATT, J.

BOYLE, M.

Plaintiffs, by their attorneys, Leeds, Morelli & Brown, P.C., as and for their complaint, allege, upon knowledge as to their own actions, and upon information and belief as to all other matters:

JURISDICTION AND VENUE

1. This is a class action seeking injunctive relief and an award of damages pursuant to, *inter alia*, the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1962(c), *et seq.*, the Sherman Antitrust Act, 15 U.S.C. §1, *et seq.*, as well as pendent state law claims arising out of the actions of defendants in conspiring to defraud subscribers of Cablevision Systems Corp. ("Cablevision") into purchasing at inflated

value cable television services in order to receive exclusively broadcast games of the New York Yankees baseball team, and to artificially drive up the profit to defendants of cable subscriptions and sales, passing on costs to the consumer.

2. Plaintiffs further seek a temporary restraining order, preliminary and permanent injunctive relief mandating continued provision of the games to the plaintiff class.

3. The jurisdiction of this Court is invoked under 28 U.S.C. §1331, the doctrines of pendent and supplemental jurisdiction codified at 28 U.S.C. §1367, and the aforementioned statutory provisions.

4. Venue is proper pursuant to 28 U.S.C. §1391, as a substantial part of the events giving rise to this action occurred within this District.

PARTIES

5. Plaintiff Salvatore Moccio is a resident of Nassau County, and a subscriber to Cablevision services.

6. Plaintiff Rose Moccio is a resident of Nassau County and a subscriber to Cablevision services.

7. Plaintiff Robert Grossman is a resident of Nassau County and a subscriber to Cablevision services.

8. Plaintiff Norman Levinsohn is a resident of Nassau County and a subscriber to Cablevision services.

9. Plaintiff Howard Winston is a resident of Nassau County and a subscriber to Cablevision services.

10. All plaintiffs are longtime fans of the baseball team, The New York Yankees. Each of them subscribed to Cablevision cable television services because of the coverage of Yankee baseball games provided by Cablevision's premium package services.

11. Upon information and belief, defendant, Cablevision Systems Corporation ("Cablevision"), at all times hereinafter mentioned, was and still is a corporation organized under the laws of the State of New York, having its corporate headquarters and principal place of business at 111 Stewart Avenue, Bethpage, New York, 11714.

12. Upon information and belief, defendant Madison Square Garden Network, Inc. ("MSGN") is a corporation organized under the laws of the State of New York, with a principal place of business at 2 Pennsylvania Plaza, New York, New York 10021-0091. Upon information and belief, MSGN is owned and managed by Cablevision; when collectively referred to with Cablevision, these defendants are referred to herein as "The Cablevision Defendants."

13. Upon information and belief, at all times hereinafter mentioned, defendant Yankees Entertainment and Sports Network, LLC ("YES LLC") is a limited liability company organized under the laws of the state of New York, having its principal place of business at 405 Lexington Avenue, 36th Floor, New York, New York 10174-3699.

14. Upon information and belief, at all times hereinafter mentioned, defendant the New York Yankees (the "Yankees Organization") is a baseball team owned controlled by YankeeNets, Inc., a corporation organized under the under the laws of the state of New York, having its principal place of business at Yankee Stadium, 161st Street and River Avenue, Bronx, New York 10452. Upon information and belief, the Yankees

Organization owns a controlling interest in YES LLC, and maintain a secondary place of business at 405 Lexington Avenue, 36th Floor, New York, New York 10174-3699. When collectively referred to herein, the Yankees Organization and YES LLC are denoted by the name "The Yankees Defendants."

BACKGROUND FACTS

15. Major League Baseball has been known as the National Pastime since the 1920s, and the baseball team, the New York Yankees (the "Yankees Ball Club"), holds a unique and cherished spot in the hearts of their fans, standing as a unique symbol of the City and State of New York.

16. Baseball in general, and the Yankees Ball Club in particular, evoke great loyalty and devotion in its fans, the commercial exploitation of which is the principal source of revenue of the Yankees Organization.

17. In addition to ticket sales, licensing, and memorabilia sales, a principal source of revenue to the Yankee Organization is the sale of rights to broadcast telecasts of Yankee games. Such sales generate income in the hundreds of millions of dollars to the Yankee Organization on an annual basis.

18. Prior to 1990, the principal venue in which Yankee games were publically disseminated was broadcast television. The rights to broadcast Yankee games were sold to various television stations throughout the United States, and such stations were sold the right to cover and broadcast games which were unavailable to other

stations in their areas.

19. While such broadcast rights generated income to the Yankee Organization, they did so without direct cost to the viewers.

20. In or about 1993, the rights to broadcast Yankee games in the New York tri-State area was sold to Cablevision and MSGN, which disseminates them through the cable television provider Cablevision.

Cablevision and MSGN Enterprise

21. Upon information and belief, Cablevision and MSGN together established an association in fact to exploit MSGN's monopoly of the desirable commodity of broadcast rights to Yankees games, and to use that monopoly to enhance the market share and dominance of other channels and networks whose content is disseminated by Cablevision.

22. Since 1992, Cablevision and MSGN have aggressively advertised for subscribers based on the appeal of seeing Yankee games which are otherwise unavailable to broadcast television.

23. In exploiting their monopoly of the dissemination rights of Yankee games, Cablevision and MSGN have conspired to charge premium rates to their customers and tied receipt of the MSG programming to "premium" packages of other channels which the customers may order only upon payment of an enhanced fee.

24. This "tying" of MSG programming to less desired channels and programming forces

subscribers to order stations they do not wish to, ranging from the Food Network to the Game Show Network, in order to receive MSG and thus the exclusively-broadcast Yankee games.

25. Thus, in order for a household subscriber receiving basic cable to obtain MSGN, that family pays $41.65 for the so-called "Family Cable" package, and has the "option" of paying an additional $12.95 to receive MSG, for a total monthly fee of $54.60. Alternatively, under the "Optimum Plan," the same household can receive MSG and additional channels the Disney Channel, the New Encore, the Food Network, the Independent Film Network, MuchMusic, Romance Classics, and Starz! for $49.55.

26. Upon information and belief, Cablevision and MSGN, acting in concert, have appreciable market power to appreciably restrain trade in the market and exert their market power in an unreasonable manner to compel sales of the tied-in products.

27. Upon information and belief, Cablevision and MSGN, acting in concert, have employed their market power in such a way as to appreciably restrain trade, and the tie-in effects a substantial amount of interstate commerce.

28. Alternatively, the tie-in is of a type so inimical to competition as to be per se illegal.

The Yankees Enterprise

29. In or about 2001, the Yankees Organization created YES LLC, and sought to re-negotiate its license of dissemination of Yankee games to a new channel to be operated by YES LLC, and broadcast through regional cable providers including Cablevision.

30. YES LLC presently enjoys the exclusive broadcast rights previously committed by contract to MSGN.

31. Upon information and belief, the Yankees Organization, YES LLC, and managing shareholder George Steinbrenner have formed an association in fact to exploit those rights and to obtain the maximum market dominance and share possible therefrom.

32. Since in or about October 2001, and continuing to date, Cablevision and YES LLC have been unable to agree as to terms and conditions for making the games available to Cablevision subscribers.

33. According to news accounts, Cablevision has agreed to allow YES LLC to be offered as a channel on its service, but it would require that it be done as a premium channel, at extra cost to the subscribers, with the cost to be set by YES LLC.

34. YES LLC insists that the channel be added to the basic cable subscription, at no premium cost to Cablevision subscribers, and with Cablevision paying $72 million, or approximately $24 per subscriber to carry the network and thus the games.

35. Cablevision has refused to do so, claiming that it should not have to pass its cost on to all its customers, but that only those customers who wish to watch Yankee baseball should bear the cost of acquiring the rights to the games. According to news accounts, Cablevision has asserted that it would need to raise its rates $2 per month per customer to accommodate placing the games on basic cable.

36. YES LLC has rejected Cablevision's offer of placing the games and YES LLC's other programming on a premium tier on the grounds that the offer falls short of YES Network's goal of having the channel included in all operators' basic package.

37. As a result of the stalemate, Cablevision subscribers who are Yankee Fans are only able to watch the 9 games broadcast on WNYW-TV, 3 on ESPN and the 20 broadcast on CBS-TV, a broadcast television network. The other regular season games–approximately 130 total regular season games–will not be seen by Cablevision subscribers unless this impasse is broken.

38. Upon information and belief, the Yankee Defendants are seeking to exploit their monopoly of the air rights to the Yankee games in order to force Cablevision to make YES LLC's full program slate available to all of its 3 million subscribers.

39. In exploiting their monopoly of the dissemination rights of Yankee games, the Yankee Defendants have conspired to tie receipt of the games and access to coverage thereof to a full daily slate of programming that a much smaller percentage of the audience base desires to see; while many viewers want to see the games in question, far fewer are interested in replays of David Cone's and David Well's perfect games or the "Yankeeography" profile of Babe Ruth.

40. This "tying" of Yankee games to less desired programs is, upon information and belief, intended to force Cablevision subscribers to subsidize what purports to be a network, but is really a marketing ploy to charge an extortionate sum of monies for access to the games.

41. Upon information and belief, the Yankees Defendants, acting in concert, have appreciable market power to appreciably restrain trade in the market and exert their market power in an unreasonable manner to compel sales of the tied-in products.

42. Upon information and belief, the Yankees Defendants, acting in concert, have

employed their market power in such a way as to appreciably restrain trade, and the tie-in effects a substantial amount of interstate commerce.

43. Alternatively, the tie-in is of a type so inimical to competition as to be per se illegal.

The Cablevision/Yankees Enterprises

44. Upon information and belief, Cablevision and MSGN have created an association in fact with the Yankee Organization, YES LLC and Steinbrenner, in which each "side" seeks to coerce Cablevision subscribers to pay an enormously enhanced premium on the games.

45. The Yankee Defendants seek to compel all 3 million Cablevision subscribers to do pay such a premium, by requiring Cablevision to carry the YES Network created under the auspices of YES LLC, but in concert with the Yankees Organization and its affiliates.

46. The Cablevision Defendants seek to extort a lesser and unknown, but still substantial, body of Yankees fans who are Cablevision subscribers to pay for the costs of carrying the games and the unwanted associated programming, without themselves incurring the anger of the subscribers.

47. Upon information and belief, the Cablevision Defendants and the Yankee Defendants have, by agreement and in conspiracy with each other, created a public impasse in the hope that the mounting frustration of the fans who are deprived of the early season games will allow them to strike a deal that will pass the inflated costs of the games to Cablevision subscribers, and allow each party to the enterprise to seize profits for

itself.

48. In addition to increased fees and revenues that the YES Network can draw in addition to those which would be realized from mere sale of the broadcasting rights, the Yankee Defendants hope to generate a market for its other programming and to become a force in broadcasting.

49. The Cablevision Defendants have, even when it was clear that they and the Yankees Defendants were unlikely to reach an accord, nonetheless aggressively promoted subscriptions to packages including MSGN which would carry the games.

50. The subscribers were induced into selecting premium packages from Cablevision on the ground that such packages would include the telecast of the Yankee games, whether through MSGN or alternative channels.

51. Cablevision solicited subscriptions to such premium packages through the mails, the internet and through television.

52. According to *Dow Jones* News Reports, "Until recently, aggressive Cablevision advertising promoted those 32 games–which all the other providers have, too–to counter YES's campaign urging Cablevision subscribers to defect." (April 1, 2002). (A copy of the Dow Jones article is annexed as Exhibit "A" hereto).

53. Upon information and belief, these advertisements sought to mislead Cablevision subscribers into believing that Cablevision still had exclusive and substantial coverage of the Yankee games.

54. According to the *Daily News,* Cablevision has been cited by YES LLC for "running "downright fraudulent' ads to deter customers from switching to satellite television

to watch the Yanks." Greg Gitrich, "Cablevision Ad's A Fraud, YES Says," *New York Daily News*, April 4, 2002. A copy of the article is annexed as Exhibit "C" hereto, and is incorporated by reference as if fully set out herein.

55. Additionally, and in furtherance of the enterprises, both the Yankees Defendants and the Cablevision Defendants have made statements to the press seeking to persuade subscribers that their conduct was motivated solely by each Defendant's differing view of the best interests, to wit:

56. On or about March 29, 2002, YES LLC Chairman, Leo J. Hindery, Jr., in rejecting an offer by Cablevision to set aside a channel for YES LLC's programming and allow it to set the price claimed that the offer was "discriminatory" and not in the best interest of the subscribers;

- on or about April 5, 2002, Cablevision president, James L. Dolan, was quoted by the press as stating that he would not force customers to absorb a rate increase to as required by the YES LLC demand.
- On or about April 4, on information and belief, a Cablevision commercial sought to allay the concerns of subscribers by reporting that negotiations were scheduled to resolve the impasse. According to Hindery, as quoted in the New York Times, no talks had been scheduled.
- Each side has released numerous and various commercials seeking to depict the impasse as the result of the other party's bad faith and refusal to "step up to the plate."

55. Such representations were, upon information and belief, false at the time they were

made, and were made knowing that they were false.

56. Despite the seeming impasse, and supporting plaintiffs' claim of collusive behavior, Hindery is quoted in *Newsday* as stating that he "loves Jim Dolan like a brother," and "Since the spring of '97 to the day I die I will love Jim Dolan." (Harry Berkowitz & Steve Zipay, "Cable No-Shows," April 8, 2002 *Newsday* at 2).

ALLEGATIONS CONCERNING THE CLASS

57. This action is brought pursuant to Rule 23(a) and 23(b) (1), (2) and (3) of the federal Rules of Civil Procedure. Plaintiffs seek certification of this action (1) as a class action on behalf of all Cablevision subscribers who subscribed to premium packages based upon the representations of the Cablevision Defendants, and have been deprived of the benefit of their bargain; (2) as a class action on behalf of all Cablevision subscribers who are threatened with increased rates and fees; and (3) as a class action on behalf of all Cablevision subscribers who have been harmed by the anticompetitive conduct above alleged.

58. This action is appropriate as a class action pursuant to Rule 23. Since plaintiffs seek injunctive relief and corresponding declaratory relief for the class as a whole, the prosecution of separate action by individual class members would create a risk of inconsistent adjudication with respect to individual class members. Further, adjudication with respect to individual class members would, as a practical matter, be dispositive of the interests of other class members who are not parties to the litigation,

and may impede or impair their ability to protect their interests.

59. Membership in the Classes is so numerous that separate joinder of each member is impracticable. The number of Class Members is unknown but can easily be determined from Cablevision's records. Plaintiffs believe, based upon newspaper reportage that approximately 3 million people are potential Class Members. Although plaintiffs do not know the names of all Class Members, their identities and addresses can be readily ascertained from Cablevision's records.

60. Plaintiffs are all members of the Classes of victims described herein. They were subject to a fraudulent scheme and course of conduct by defendants herein, have been harmed by the anti-competitive course of conduct alleged herein, and have suffered losses in like manner to other class members.

61. Plaintiffs' claims are typical of the claims of class members as a whole, and plaintiffs have no interests that are adverse to the interest of other Class Members.

62. The common questions of fact and law relating to the course of conduct asserted above control this litigation and predominate over individual issues.

63. Plaintiffs will fairly and adequately protect the rights and interests of the Class Members, and have retained counsel experienced and competent in the prosecution of class action and other complex litigation.

64. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, Class Members will continue to suffer damages, and Defendants' violations of law will proceed without remedy.

65. Most individual Class Members have little ability to prosecute an individual action

due to the complexity of the issues involved in this litigation, the significant costs attendant to litigation on this scale, and the relatively small, though not nominal, damages suffered by individual Class Members.

66. This action will result in an orderly and expeditious administration of class claims. Economies of time, effort and expense will be fostered and uniformity of decisions will be insured.

67. This action presents no difficulty that would impede its management by the Court as a class action, and a class action is superior to other available methods for the fair and efficient adjudication of Class claims.

68. Plaintiffs seek remedies on behalf of the entire class, on grounds generally applicable to the entire class.

CLAIMS FOR RELIEF

COUNT I

(RICO Claims Against All Defendants)

69. Plaintiffs re-allege and incorporate all of the foregoing facts and allegations as if set forth herein.

70. The Yankees Defendants and the Cablevision Defendants are each persons within the meaning of 18 U.S.C. §1961(3).

71. The Cablevision Enterprise is an association in fact consisting of the Cablevision Defendants.

72. The Yankees Enterprise is an association in fact consisting of the Yankees Defendants.

73. The Cablevision/Yankees Enterprise is an association in fact consisting of both the Yankees Defendants and the Cablevision Defendants.

74. The Cablevision Defendants and the Yankees Defendants each associated in a separate enterprise consisting of those defendants to engage in anti-competitive behavior, and to exploit the popularity of the Yankees baseball team.

75. The Cablevision Defendants associated with each other in an enterprise directed at coercing and defrauding subscribers to purchase premium cable television packages as described above.

76. The Yankees Defendants associated with each other in an enterprise directed at coercing Cablevision subscribers to purchase the programming of the YES Network, by selling the YES Network the exclusive rights to the Yankee Baseball Club's games, coercing Cablevision to purchase YES LLC's programming, and then passing the costs on to Cablevision's subscribers.

77. Both the Cablevision Defendants and the Yankees Defendants have associated with each other in an enterprise directed at the manufacture of a demand for the telecast of Yankee games that is so extreme and so frustrated that the rate increase that will result will be accepted by a viewing public whose desire to see the Yankees play will have caused it top pay any price, and to submit to a rate hike that would otherwise cause subscriptions to drop precipitously, and engender great ill-will toward the Cablevision and YES LLC, but not toward the Yankees Organization and its owners, in fact the primary movers of the conspiracy.

78. All of the defendants named in this complaint directed a part of the respective affairs

of the three enterprises, as set out above.

79. The placing of advertisements and commercials via television, radio, and the promotion of premium packages via the United States mail constitutes a violation of the federal mail, wire, radio and television fraud statutes. 18 U.S.C. §§1341, 1343. Defendants utilized the United States mail and transmitted by wire, radio and television communications in interstate commerce in furtherance of a criminal conspiracy to defraud, and in violation of antitrust statutes.

80. In addition, the advertisements and promotions of the Cablevision Defendants concerning the content of its premium packages contained false statements upon which the plaintiffs reasonably relied.

81. Given the placement of advertisements, commercials and the use of the mails to further disseminate information, the Defendants have committed more than two predicate acts of racketeering activity, as defined by 18 U.S.C. §1961(1), and thereby constituting a pattern of racketeering activity as defined by 18 U.S.C. §1961(5).

COUNT II

Antitrust Claims Against All Defendants

82. Plaintiffs re-allege and incorporate all of the foregoing facts and allegations as if set forth herein.

83. Upon information and belief, Cablevision and MSGN, acting in concert, have appreciable market power to appreciably restrain trade in the market and have exerted their market power in an unreasonable manner to compel sales of the tied-in products, and the tie-in effects a substantial amount of interstate commerce.

84. Upon information and belief, the Yankee Defendants, acting in concert, have unreasonably employed their market power in such a way as to appreciably restrain trade, and the anti-competitive behavior alleged effects a substantial amount of interstate commerce.

85. Upon information and belief, the Cablevision Defendants and the Yankee Defendants have acted in concert in employing their market power in an unreasonable way and have in so doing appreciably restrained trade, effecting a substantial amount of interstate commerce.

86. Alternatively, the anti-competitive behavior complained of is of a type so inimical to competition as to be per se illegal.

COUNT III

Deceptive Practices Claims Against Cablevison Defendants

87. Plaintiffs re-allege and incorporate all of the foregoing facts and allegations as if set forth herein.

88. Defendant Cablevision's marketing and sale of subscription television services is a consumer-oriented act or practice which is governed by New York General Business Law §349.

89. The deceptive conduct of Defendants was materially misleading and/or likely to mislead and deceive plaintiffs in violation of New York General Business Law §349.

90. Plaintiffs were injured by this deceptive conduct.

COUNT IV

Breach of Contract Claim Against Cablevision Defendants

91. Plaintiffs re-allege and incorporate all of the foregoing facts and allegations as if set forth herein.

92. Plaintiffs entered into contractual relations that specified that Cablevision would provide programming that would include Yankee baseball games.

93. Cablevision received consideration for agreeing to provide such telecasts.

94. Cablevision has breached its agreements with plaintiffs, thereby depriving them of the benefit of their bargains.

COUNT V

Tortious Interference With Contract Claim Against Yankee Defendants

95. Plaintiffs re-allege and incorporate all of the foregoing facts and allegations as if set forth herein.

96. The Yankee Defendants, upon information and belief, have tortiously interfered with the contractual relationship between Cablevision and its subscribers, or have conspired with he Cablevision Defendants to breach this contractual relationship.

97. Plaintiffs have thereby been harmed.

WHEREFORE, plaintiffs demand judgment of the defendants enjoining them from the pattern and practice of anti-competitive and racketeering behavior herein alleged, to employ best efforts to resolve their contractual differences, and appointing a mediator or Special master to conduct negotiations, mandating that Cablevision carry and the Yankee Defendants provide, telecasts of the games pending resolution of this case, awarding compensatory damages in an amount to be determined at trial, along with attorneys fees and all further relief to which plaintiff is entitled and/or which the court deems just and proper. Plaintiffs demand a jury trial.

Dated: Carle Place, New York
April 9, 2002

Respectfully submitted,

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By: _____
LENARD LEEDS, ESQ.
(LL-2255)

SEE COURT FILES FOR

EXHIBIT(S)