

Appeal No. 34745

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

UPON A CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA

L.H. JONES EQUIPMENT COMPANY,)
)
Plaintiff,)
)
v.)
)
SWENSON SPREADER LLC,)
)
Defendant.)

Civil Action No.: 1:08CV109
(Judge Irene M. Keeley)

BRIEF OF THE DEFENDANT SWENSON SPREADER LLC

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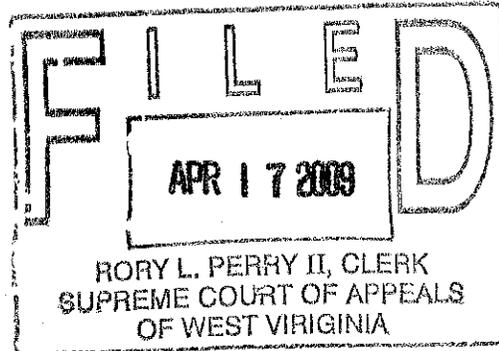


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May 21, 2007 e-mail message from Eric Larson at Swenson Spreader Exhibit B

May 23, 2007 e-mail message from J. Johnston at the West Virginia Department of
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October 18, 2007 letter from Swenson Spreader to the West Virginia Department of
Highways Exhibit D

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

I. INTRODUCTION

The certified question before the Court stems from a contract dispute between plaintiff L.H. Jones Equipment Company (“L.H. Jones”) and defendant Swenson Spreader LLC (“Swenson Spreader”) regarding the termination of a distributor agreement. Everyone agrees that Swenson Spreader -- a supplier of salt spreaders and other roadway de-icing equipment -- is not a dealer of “farm equipment,” and does not manufacture equipment associated with farming or agricultural uses. L.H. Jones has nevertheless asserted a claim against Swenson Spreader under the “West Virginia Farm Equipment Dealer Contract Act,” W. Va. Code § 47-11F-1, et seq. (the “Act”) and contends that, despite the specificity of the Act’s title, its provisions apply not only to dealers of farm equipment, but to dealers of all classes of construction, industrial, and outdoor equipment, generally. As shown below, however, the construction of the Act urged by plaintiff is not only contrary to both the plain language of the Act’s title and the West Virginia Legislature’s expressed intent in enacting the legislation, but also violates key provisions of the West Virginia Constitution which guard against the unjust application of laws. Accordingly, for the reasons that follow, Swenson Spreader respectfully requests that the Court enter an Order finding that the West Virginia Farm Equipment Dealer Contract Act applies only to dealers and suppliers of *farm* equipment, and not to all dealers and suppliers of construction, industrial, or outdoor power equipment as a general matter.

II. THE CERTIFIED QUESTION FROM THE DISTRICT COURT

On the 6th day of February, 2009, the United States District Court for the Northern District of West Virginia entered an Order certifying the following question to this Court:

Recognizing that Article 6, Section 30, of the West Virginia Constitution provides that “[n]o act hereafter passed, shall embrace more than one object, and that shall be expressed in the title,” and that an act shall be void as to any object in it which is not so expressed, and also acknowledging the long-standing precedent of the Supreme Court of Appeals of West Virginia that “[t]he title of an act should be construed most liberally and comprehensively in order to give validity to all parts of the act,” Syl. Pt. 2, Brewer v. City of Point Pleasant, 114 W. Va. 572 (1934), and that “[w]hen the principal object of an act is fairly expressed in its title, other incidental or auxiliary objects which are germane to the principal object may be included in the act without titular specification,” id. at Syl. Pt. 3, is the West Virginia Farm Equipment Dealer Contract Act, W. Va. Code § 47-11F-1, et seq. (“the Act”), limited in its scope and application to “dealers” and “suppliers” of “farm equipment,” as stated in the Act’s title, or do the protections of the Act extend to “dealers” and “suppliers” of “farm, construction, industrial or outdoor power equipment or any combination of the foregoing,” as provided in the definition of “dealer,” found in the Act at § 47-11F-2?

On March 12, 2009, this Court accepted the certified question for review and docketed the cause for hearing.

III. STATEMENT OF RELEVANT FACTS

Swenson Spreader is a manufacturer of salt spreaders, liquid spray de-icing systems, and other products used to control and counteract the buildup of ice on roads and highways. L.H. Jones is a retailer that sells snow plows, snow plow attachments, spreaders, and related parts and equipment. L.H. Jones was an authorized distributor of Swenson Spreader’s products in West Virginia from approximately 1982 through September 10, 2007, when Swenson Spreader ended the relationship as a result of L.H. Jones’ use of questionable practices in bidding a contract with the West Virginia Department of Highways. The specific products at issue in this dispute are

Swenson Spreader's five-cubic-yard and nine-cubic-yard "stainless steel demountable spreaders," which are mounted on heavy duty trucks and are used to spread salt on roadways during inclement weather. (See Illustration at Exhibit A.) L.H. Jones was the only distributor of Swenson Spreader's products (i.e., the only entity Swenson Spreader was "quoting to") in the West Virginia area. (See 5/21/07 e-mail message from Eric Larson at Swenson Spreader, attached as Exhibit B.) In 2005 and 2007, the State of West Virginia issued "Requests for Quotations" for five- and nine-yard spreaders. L.H. Jones entered bids for the contracts, at least one of which the State rejected after observing that the price being charged by L.H. Jones was "list price plus 40%. This seems higher than any parts bid I believe I've opened." (See 5/23/07 e-mail message from J. Johnston at the West Virginia Department of Administration, Purchasing Division, attached as Exhibit C.) After learning of L.H. Jones' "unwarranted and unacceptable" bidding practices, Swenson Spreader terminated its distributor agreement with L.H. Jones and bid the contract directly with the State of West Virginia at list price. (See 10/18/07 letter from Swenson Spreader to the West Virginia Department of Highways, attached as Exhibit D.) In March 2008, L.H. Jones filed a complaint alleging, among other things, that Swenson Spreader had terminated its distributor agreement in violation of the terms of West Virginia's "Farm Equipment Dealer Contract Act." (Compl. ¶¶ 57-69.)

The West Virginia Farm Equipment Dealer Contract Act, enacted in 1989, is codified at Section 47-11F-1, et seq. of the West Virginia Code. L.H. Jones argues that, notwithstanding the fact that the title of the Act explicitly limits its application to dealers of "farm equipment," because the definition of "dealer" in the Act includes a reference to dealers of "construction, industrial or outdoor power equipment" and, for the purposes of this litigation, L.H. Jones classifies itself as "a dealer of industrial or outdoor power equipment," (Compl. ¶ 58), the Act's

provisions should govern the terms of the distributor agreement between Swenson Spreader and L.H. Jones. Swenson Spreader disagrees and, for the reasons that follow, asks the Court to enter an Order finding that the Farm Equipment Dealer Contract Act applies only to dealers and suppliers of industrial and outdoor power *farm* equipment, and not to dealers of “equipment” *generally*.

IV. DISCUSSION OF LAW

A. **Standard of Review**

When addressing legal issues presented by a certified question from a federal district court, the West Virginia Supreme Court of Appeals applies a de novo standard of review. Syl. Pt. 1, Light v. Allstate Ins. Co., 506 S.E.2d 64 (W. Va. 1998).

B. **An Interpretation of the “Farm Equipment Dealer Contract Act” That Brings Dealers of Construction, Industrial, or Outdoor Equipment, Generally and Absolutely, Within Its Purview Violates Article VI, Section 30 of the West Virginia Constitution**

Article VI, Section 30 of the West Virginia Constitution provides, in relevant part:

No act hereafter passed, shall embrace more than one object, and that shall be expressed in the title. But if any object shall be embraced in an act which is not so expressed, the act shall be void only as to so much thereof, as shall not be so expressed.

W. Va. Const. Art. VI, § 30 (2008).

While there is “[n]o accurate mechanical rule... by which the sufficiency of an act in relation to its title may be determined” and “each case must be decided on its own peculiar facts,” when determining whether an act violates the “one-subject” rule, a key consideration is whether the public will be deceived by the title given to the act. Kincaid v. Mangum, 432 S.E.2d 74, 81 (W. Va. 1993). Thus, “[i]f the title of a statute states its general aim or purpose and gives notice to the legislators and the public of what in a general way is contained in the statute, and, if

the substance of the act is congruous and germane to the object expressed in the title, it will be held sufficient.” State ex rel. McMillion v. Stahl, 89 S.E.2d 693, 698 (W. Va. 1955). However, “[w]here an act embraces matters not stated in the title of the act nor germane to the subject matter, it violates Sec. 30, Art. VI of the Constitution of this State.” Id.

Accordingly, one test of the sufficiency of the title to a statute is whether it will impart to a person “interested in the actual subject matter enough information to provoke the reading of the act.” Syl. Pt. 2, Northwestern Disposal Co., Inc. v. The West Virginia Public Service Commission, 388 S.E.2d 297 (W. Va. 1989); General Elec. Co. v. A. Dandy Appliance Co., 103 S.E.2d 310, 317 (W. Va. 1958). For a law to be valid, “its subject or object must not be foreign to the title, but must be so expressed in its title as to give a reasonable or fair notice, suggestion, or indication thereof.” City of Huntington v. C. & P. Tel. Co., 177 S.E.2d 591, 597 (W. Va. 1970); see also Stewart v. Tennant, 44 S.E. 223, 228 (W. Va. 1903) (“the title must not work a concealment of the real object of the act”).

Further, “[t]he requirement of expressiveness contemplated by W. Va. Const. Art. VI, § 30 necessarily implies explicitness.” Syl. Pt. 2, Northwestern Disposal, 388 S.E.2d 297 (emphasis added). As such, “[a] title must, at a minimum, furnish a ‘pointer’ to the challenged provision in the act.” Id. This is necessary because, as this Court has recognized, “after the passage of an act, the sufficiency of its title is of primary importance, both as to those who might claim advantage of its provisions, and the persons against whom it will operate.” A. Dandy Appliance Co., 103 S.E.2d at 318. Thus, “[f]or these reasons, a title which does not furnish at least a ‘pointer’ to a challenged provision of the act is insufficient.” Id.

The short title of the statutory provision at issue in this action is the “West Virginia Farm Equipment Dealer Contract Act.” W. Va. Code § 47-11F-1 (“This article shall be known and

may be cited as the ‘West Virginia Farm Equipment Dealer Contract Act.’”). There is nothing within this title to alert an entity such as Swenson Spreader, a seller of snow removal and de-icing materials, that it should either read the Act or govern its conduct in accordance with its provisions. Moreover, even if a general “equipment” dealer were to read the Act, there would be no reason, given the Act’s title, for such a dealer to interpret the Act in the broad sense advocated by L.H. Jones, or otherwise suspect that the provisions of a “Farm Equipment Dealer Contract Act” should apply to them. “Whatever may be the scope of an act, it can embrace but one subject, and all its provisions must relate to that subject; they must be parts of it, incident to it or in some reasonable sense auxiliary to the object in view,” and “[t]hat subject **must be expressed in the title of the act.**” State ex rel. Plant v. Board of Commissioners of Ohio Cty., 92 S.E. 747, 748 (W. Va. 1917) (emphasis added). And, “in cases where the act itself flatly contradicts what its title imports it must be stricken down under the constitutional mandate [of Article VI, Section 30].” A. Dandy Appliance Co., 103 S.E.2d at 317.

The “Farm Equipment Dealer Contract Act” includes a provision defining the term “Dealer” as any person “engaged in the business of selling, at retail, farm, construction, industrial or outdoor power equipment or any combination of the foregoing.” W. Va. Code § 47-11F-2(3). The plaintiff L.H. Jones argues that this definition of dealer means that the Act applies not only to dealers of “farm” equipment, but to dealers of “construction,” “industrial,” or “outdoor power equipment” *generally*. However, because the purpose and scope of the Act is defined as the “Farm Equipment Dealer Contract Act,” the provisions of the Act “must necessarily be confined within that scope.” State ex rel. Plant, 92 S.E. at 748 (“unless said section is germane to the subject set out in the title, the section is unconstitutional”); Syl. Pt. 1, Bedford Corp. v. Price, 166 S.E. 380 (W. Va. 1932) (“If an act contain subject matter which does

not constitute a detail of the object stated in the title, or is not germane to the said object, such portion of the act will be deemed unconstitutional and void.”). Therefore, the only sustainable reading of the Act is a reading in which the term “Dealer” is modified by the term “Farm Equipment,” such that the Act’s provisions apply only to dealers of “construction, industrial, or outdoor” *farm* equipment. See, e.g., Stewart, 44 S.E. at 227 (“[A]nything incorporated into the act written under the title which is not included in the title cannot be upheld. Hence, if the title is not as broad as the act, only such parts of the act as fall within it can be sustained.”).

To give the term “dealer” a more expansive meaning, such that it includes all nominated classes of dealers and suppliers of equipment, generally, *in addition to* dealers of the delineated classes of farm equipment, “would be to make the particular section broader and more comprehensive than the title of the act and the section repugnant to the constitution.” State ex rel. Plant, 92 S.E. at 748; Bedford Corp., 166 S.E. at 381 (Article VI, Section 30 of the West Virginia Constitution requires the title to be “broad enough to give a fair and reasonable index to all the purposes of the act.”). Accordingly, while recognizing that when “the principal object of an act is fairly expressed in its title, other incidental or auxiliary objects which are germane to the principal object may be included in the act without titular specification,” Syl. Pt. 3, Brewer v. City of Point Pleasant, 172 S.E. 717 (W. Va. 1934), in this instance, the “other incidental or auxiliary objects” in the Farm Equipment Dealer Contract Act (*i.e.*, the Act’s reference to “construction, industrial or outdoor power equipment”) are only germane to the principal object expressed in the Act’s title to the extent those types of equipment are subsets in the universe of “farm equipment.”

Finally, the short title of the Act would be actively misleading if it did, in fact, apply not only to “dealers” of “farm” equipment, but to “equipment” dealers generally. See, e.g., C.C.

“Spike” Copley Garage, Inc. v. Public Service Commission of W. Va., 300 S.E.2d 485, 488 (W. Va. 1983) (“[w]hile we have consistently sustained Acts of the Legislature where the titles were vague, our research discloses no case where we have sustained an actively misleading title”). In short, there is no reason that a person reading the title of the “Farm Equipment Dealer Contract Act” should expect to find, upon reading the Act, that -- instead of provisions relating solely to dealers of farm equipment -- the Act’s provisions also apply across the board to various classes of equipment dealers in general. See, e.g., G.E. v. Wender, 151 F. Supp. 621, 628 (S.D.W.V. 1957) (“This is a perfect instance for the application of the well known maxim that ‘*expressio unius est exclusio alterius*.’”). Therefore, it is necessary to restrict the meaning of the word “dealer” to apply only to dealers of construction, industrial, or outdoor *farm* equipment “in order to avoid repugnancy with the intention described in the title of the act.” State ex rel. Plant, 92 S.E. at 747.

C. The Title Given to the Farm Equipment Dealer Contract Act Is Indicative of Legislative Intent

The short title to the Farm Equipment Dealer Contract Act has remained unchanged for nearly two decades, through numerous amendments and revisions to the West Virginia Code -- the most recent of which occurred in 2008. The West Virginia legislature knows well how to draft and enact legislation to govern the dealers and suppliers of goods. In this regard, the legislature has adopted the Uniform Commercial Code, which provisions apply to sales and contractual relations, generally. See W. Va. Code § 46-1-101, et seq. (2008). The legislature has also carved out certain exceptions, such as the Farm Equipment Dealer Contract Act, wherein it has promulgated specific regulations to govern certain types of contracts. Indeed, provisions of the West Virginia Code often internally reference this fact -- including, for example, the following language from the UCC-Sales portion of the Code, which states that the UCC does not

“impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.” W. Va. Code § 46-2-102 (emphasis added).

“The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.” Syl. Pt. 3, State ex rel. Hechler v. Christian Action Network, 491 S.E.2d 618 (W. Va. 1997). While it is clear that the legislature intended to enact legislation governing the contractual relationships between farmers and farm equipment dealers, it cannot be said with any degree of certainty that the legislature intended the act it expressly entitled the “Farm Equipment Dealer Contract Act” to apply to all dealers of industrial and outdoor power equipment, generally. Notwithstanding the perhaps unclear definition of “Dealer” in the Act, the title the Act was given by the West Virginia Legislature has meaning and cannot be ignored. See, e.g., Syl. Pt. 4, Id. (“In ascertaining legislative intent, effect must be given to each part of the statute and to the statute as a whole so as to accomplish the general purpose of the legislation.”). Further, in the Act’s twenty-year history, there are no recorded instances of it ever being applied to dealers of construction or industrial equipment, generally, or of it being implicated in disputes concerning highway equipment.

The legislature did not err when it decided upon the short title of the Act. If it had wished to enact legislation applicable to all dealers of all types of industrial and outdoor power equipment as a general matter, it could have clearly done so. In this case, however, it would necessitate a foray into the realm of conjecture to conclude that, contrary to its title, the legislature actually intended the Farm Equipment Dealer Contract Act to apply to *all* classes of equipment dealers. And, without question, this type of speculation concerning the legislature’s “true” intent is impermissible. See, e.g., Morris v. Crown Equipment Corp., 633 S.E.2d 292, 307 (W. Va. 2006) (Albright, J., concurring) (“this Court cannot now, recognizing the limitations of

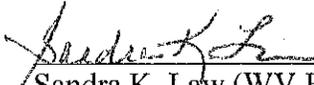
our Constitutional charge, speculate as to the Legislature's intentions"); State v. Gen. Daniel Morgan Post No. 548, 107 S.E.2d 353, 358 (W. Va. 1959) ("The courts may not speculate as to the probable intent of the legislature apart from the words employed.").

Accordingly, because the West Virginia Constitution mandates that the purpose of an act be clearly expressed in its title, else any provisions inconsistent with the title be rendered null and void, and given the fact that the West Virginia Legislature voted and, upon enactment, assigned the title the "West Virginia Farm Equipment Dealer Contract Act" to the regulation at issue (and such title has stood, without amendment, for nearly twenty years), Swenson Spreader respectfully submits that it would be improper to apply the provisions of the Farm Equipment Dealer Contract Act to dealers of construction, industrial, or outdoor power equipment generally.

V. CONCLUSION

For the foregoing reasons, Swenson Spreader respectfully requests that the Court, in answering the question certified to it by the United States District Court for the Northern District of West Virginia, enter an Order finding that the West Virginia Farm Equipment Dealer Contract Act, W. Va. Code § 47-11F-1, et seq., is limited in its scope and application to "dealers" and "suppliers" of "farm equipment," as stated in the Act's title.

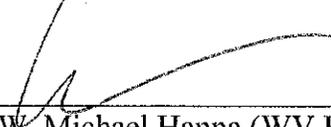
Respectfully submitted,



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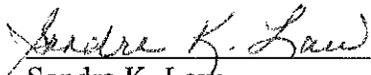
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2009, I served the foregoing **BRIEF OF THE DEFENDANT SWENSON SPREADER LLC** upon all opposing parties by depositing a true copy thereof in the United States mail, postage prepaid, in envelopes addressed as follows:

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EXHIBITS

ON

FILE IN THE

CLERK'S OFFICE