

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. )

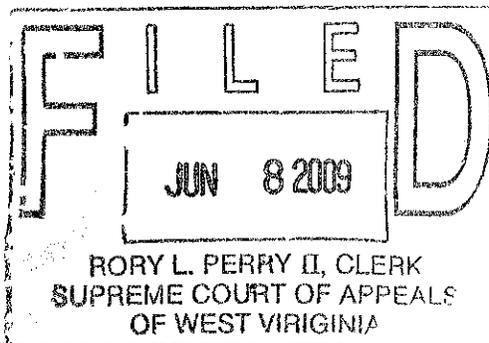
Civil Action No.: 1:08CV109  
(Judge Irene M. Keeley)

**REPLY BRIEF OF THE DEFENDANT SWENSON SPREADER LLC**

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## I. SUMMARY OF ARGUMENT

This case is before the Court on a question of law certified from the United States District Court for the Northern District of West Virginia. At issue is the proper interpretation of West Virginia's "Farm Equipment Dealer Contract Act" (the "Act"), W. Va. Code § 47-11F-1, et seq. (2008).

As detailed below, plaintiff's interpretation of the Act -- which argues for the Act's application not only to dealers of farm equipment, but to all dealers of "construction, industrial, and outdoor power equipment," generally -- is inconsistent with the West Virginia Constitution's mandate that the purpose of a statute be clearly expressed in its title and, if adopted, would render the statute unconstitutional. Further, plaintiff's proffered construction of the statute violates fundamental tenets of statutory construction and cannot rationally be justified or sustained. Moreover, the history of similar legislation in other jurisdictions refutes plaintiff's argument that the language of West Virginia's statute evidences an intent that the Act be applied broadly to all dealers of "construction, industrial or outdoor" equipment as a general matter.

Therefore, 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, as plaintiff argues, to all dealers and suppliers of construction, industrial, or outdoor power equipment.

## II. DISCUSSION OF LAW

### A. **The Notice Element of the "One Subject" Constitutional Analysis is Vital to the Determination of Whether the "Farm Equipment Dealer Contract Act" May Constitutionally Be Applied to a Broader Array of Equipment Dealers.**

The "one subject" rule embodied in Article VI, Section 30 of the West Virginia Constitution contains two separate restrictions: a "single subject" requirement and a title

requirement. See W. Va. Const. Art. VI, § 30 (2008). As a complement to the “single subject” requirement (designed to inhibit the passage of “omnibus” or “log-rolling” bills), the title requirement facilitates the legislative process in two important ways. First, the title requirement alerts citizens, especially affected groups and parties, to the subjects the legislature is considering. Second, it prevents the surprise that inevitably results where an act’s title does not fully inform legislators or the public of its contents. See City of Huntington v. C.&P. Tel. Co., 177 S.E.2d 591, 597 (W. Va. 1970) (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.”).

The title of the West Virginia Farm Equipment Dealer Contract Act puts the public on notice that the body of the Act contains matters related to farm equipment. See W. Va. Code § 47-11F-1 (“This article shall be known and may be cited as the “West Virginia Farm Equipment Dealer Contract Act.”). It is difficult to conceptualize why a person, upon reading the individual provisions of a statute specifically entitled the “Farm Equipment Dealer” Act, would interpret its provisions through anything other than the framework of this basic understanding of the Act’s fundamental purpose and scope, as explicitly delineated in its title.

Moreover, the Act’s title is neither vague nor ambiguous: it expressly and particularly states that it is an act governing contractual relationships concerning *farm equipment*. Consequently, there is nothing within the Act’s title which would fairly apprise any citizen that the Act might also apply to other types of equipment dealers. As such, the title of the Act would be actively misleading if it did, in fact, apply to dealers of equipment other than farm equipment; accordingly, the interpretation advocated by plaintiff should be rejected on this basis alone. 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”).

Additionally, as discussed below, there is nothing within the language of the statute itself that unequivocally contradicts the understanding that the Act applies only to farm equipment (as opposed to the expanded application encouraged by plaintiff). For all these reasons, an interpretation of West Virginia’s “Farm Equipment Dealer Contract Act” that extends the application of the Act beyond the domain of farm equipment violates Article VI, Section 30 of the West Virginia Constitution and cannot be upheld.

**B. Nothing in the Language of the “Farm Equipment Dealer Contract Act” Defeats the Understanding That the Act Applies Exclusively to Farm Equipment Dealers.**

First, it should be noted that West Virginia’s “Farm Equipment Dealer Contract Act” is not an anomaly. Rather, legislation specifically relating to farm equipment dealers is common in the United States. See, e.g., Robert W. Emerson, Franchising and the Collective Rights of Franchisees, 43 Vand. L. Rev. 1503, 1567 n.29 (Oct. 1990) (noting that, *inter alia*, “[f]arm equipment and alcoholic beverage sales have been... frequent topics for specialized franchise-dealership legislation by the states”); Doug Frazey, Case Note: When “Good Cause” Goes Bad: Minnesota Restricts Protection for Dealers Under HUEMDA – River Valley Truck Ctr., Inc. v. Interstate Cos., 33 Wm. Mitchell L. Rev. 711, 721 (2007) (“Similar to federal regulation, state statutes protecting certain industries are easier to get through state legislatures than statutes that protect franchises as a whole. Numerous state laws protect such industries as petroleum, alcoholic beverage distribution, farm equipment dealers, and motor vehicle dealers.”).

Plaintiff’s argument that the West Virginia Legislature has “clearly expressed” -- through the Farm Equipment Act’s definition of “dealer” -- an intent that the Act apply to other

categories of equipment in addition to farm equipment simply cannot be reconciled with the plain language of the statute when considered, as it must be, as a whole. See Syl. Pt. 4, State ex rel. Hechler v. Christian Action Network, 491 S.E.2d 618 (W. Va. 1997) (“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.”). Plaintiff’s reasoning is also flawed from a common sense perspective. Put simply, it is readily apparent that if a statute specifically entitled the “Farm Equipment Dealer Contract Act” is nevertheless interpreted to apply to *all* dealers of “construction, industrial or outdoor power equipment,” as a general matter, it perforce cannot be found to have *clearly, unambiguously, or plainly* expressed such legislative intent.

In other words, if plaintiff’s interpretation is correct, the terms codified at section 47-11F-1, which set forth the title of the Act, are at glaring odds with the Act’s definition of “dealer” in section 47-11F-2(3). On the other hand, a reading of the Act that *does* reconcile all of its provisions is one, as submitted by defendant, in which the definition of “dealer” is construed in the context of the legislature’s express limitation of the Act’s scope to “Farm Equipment Dealers,” see W. Va. Code § 47-11F-1, and is understood to include only dealers of “construction, industrial, or outdoor” *farm* equipment.

There can be no question that plaintiff’s interpretation of the Farm Equipment Dealer Act, in which the Act would apply not only to dealers of “farm equipment,” but to all dealers of “construction, industrial, or outdoor” equipment, generally, requires the Court to either overlook or completely ignore major provisions of the statute. Syl. Pt. 4, Whiteside v. Whiteside, 663 S.E.2d 631 (W. Va. 2008) (“A cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute.”). Accordingly, plaintiff’s argument that the definition of “dealer” in the Act “clearly expresses”

the legislature's intent that the Act apply to a broader array of equipment dealers than those encompassed in the Act's title is insupportable. Indeed, as shown below, the case law and legislative history concerning a similar act from a sister jurisdiction supports the conclusion that the Act's definition of "dealer" should not be interpreted more broadly than the legislature's express limitation of its scope to dealers of "farm equipment."

**C. The History of Virginia's "Equipment Dealers Protection Act" Undermines Plaintiff's Argument That the Definition of "Dealer" in West Virginia's "Farm Equipment Dealer Contract Act" Establishes the Legislature's Intent to Apply the Act to Equipment Other Than Farm Equipment.**

Virginia's "Equipment Dealers Protection Act" utilizes a virtually identical definition of "dealer" as the West Virginia Farm Equipment Dealer Contract Act. Specifically, in the Virginia statute, "dealer" is defined as "a person engaged in the business of selling at retail farm, construction, utility or industrial equipment, implements, machinery, attachments, outdoor power equipment, or repair parts." Va. Code Ann. § 59.1-352.1 (2009) ("Definitions"). In turn, West Virginia's "Farm Equipment Dealer Contract Act" similarly defines "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).

In 2002, Virginia's prior statute "relating to dealers of farm implements and other types of equipment" was repealed and, as reenacted and amended, now contains, not only the definition of "dealer" stated above, but also a provision added to specifically clarify that the terms "utility" and "industrial" in the definition of "dealer" apply only to various forms of *farm* equipment. See Va. Code Ann. § 59.1-352.2 ("[t]he terms 'utility' and 'industrial,' when used to refer to equipment, implements, machinery, attachments, or repair parts, *shall have the meaning commonly used and understood among dealers and suppliers of farm equipment as a usage of trade....*") (emphasis added); see also HCI Technologies, Inc. v. Avaya, Inc. & Catalyst Telecom,

Inc., 446 F. Supp. 2d 518, 523 (E.D. Va. 2006) (plaintiff's claims pursuant to the "Virginia Equipment Dealers Protect Act" regarding the termination of a telecommunications equipment agreement held infirm because, despite the seemingly broad definition of "dealer," the Act's applicability was "restrict[ed]... to dealers and suppliers of farm equipment"), aff'd No. 06-1924, 2007 U.S. App. LEXIS 16686 (4th Cir. July 12, 2007) (unpublished opinion).

The history of the Virginia statute makes two propositions abundantly clear. First, because the Virginia Legislature has amended its statute to clarify that the Virginia "Equipment Dealers Protection Act" -- which uses a virtually identical definition of dealer as the West Virginia statute -- applies *only to dealers of farm equipment*, it would clearly be inappropriate to conclude, based solely on the definition of dealer in the West Virginia Act, that the West Virginia Legislature did not similarly intend for the statute it specifically entitled the "Farm Equipment Dealer Contract Act" to apply only to matters concerning farm equipment.

Second, the analysis of the term "dealer" in the Virginia statute, as compared to the similar definition of "dealer" in the West Virginia statute, and the legislative history concerning each act also shows why plaintiff's reliance on cases such as Lutz v. Foran is misplaced. In the Lutz case, a Georgia court applied certain provisions of Georgia's "Medical Malpractice Reform Act" to non-medical professionals. However, the court specifically noted that its decision was based, in part, on the fact that "time and time again, over the last five years, we, and the Court of Appeals, have applied the [Medical Malpractice Reform Act] to all aspects of professional negligence. Surely, if the members of the General Assembly were surprised by these holdings or disagreed with them, they would have cured the problem by clarifying the scope of the Act." 427 S.E.2d 248, 253 (Ga. 1993) (Hunt, J., concurring).

By contrast, there are no recorded instances in the twenty-year history of West Virginia's Farm Equipment Dealer Contract Act of it ever being applied to anyone other than farm equipment dealers. Further, the Act's title has survived numerous amendments and revisions to the West Virginia Code -- indicating, if anything, that the legislature has repeatedly ratified the scope of the Act as stated in its title. Additionally, as shown above, the Virginia statute, with its parallel definition of dealer, *has* been amended to specifically clarify that "[t]he terms 'utility' and 'industrial,' when used to refer to equipment, implements, machinery, attachments, or repair parts, shall have the meaning commonly used and understood among dealers and suppliers of *farm equipment* as a usage of trade...." Va. Code Ann. § 59.1-352.2 (emphasis added). (The West Virginia Legislature has had no occasion to make such an amendment given that the West Virginia statute has never been interpreted to apply to equipment other than farm equipment.) Accordingly, despite plaintiff's argument to the contrary, the West Virginia Farm Equipment Dealer Contract Act's definition of dealer does not establish the West Virginia Legislature's intent that the Act apply to all dealers of "construction, industrial and outdoor power equipment," generally.<sup>1</sup>

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<sup>1</sup> The Denner Enterprises and Leon Manufacturing cases cited in plaintiff's brief pursuant to the premise that other states' "farm equipment" acts have been applied outside of the context of farm equipment do not support plaintiff's contention. First and foremost, it's not at all clear that the equipment at issue in those cases wasn't actually being used as "farm equipment." Specifically, there is nothing to indicate that the "SpoilVac systems" at issue in the Denner action (used to vacuum "slurry" -- defined per Merriam-Webster's online dictionary as "a watery mixture of insoluble matter," such as common, everyday mud) and the "dozer blades" at issue in the Leon Manufacturing action either were not or could not be utilized in a farming capacity (especially since "dozers," *i.e.* "bulldozers," are actually a very common piece of farming equipment and, when used in the farming industry, are commonly described simply as "farm tractors" or "farm dozers"). See Denner Enterprises, Inc. v. Barone, Inc., 87 P.3d 269 (Colo. Ct. App. 2004); Leon Mfg. Co., Inc. v. Wilson Kubota, LLC, 199 S.W.3d 759 (Ky. Ct. App. 2006).

Further, plaintiff's selective citations of those state's statutory provisions is misleading. For example, plaintiff argues that Kentucky's "Retail Sales of Farm Equipment" statute, Ky. Rev. Stat. Ann. § 365.800 (2009), *et. seq.*, applies generically to all "utility and industrial equipment and construction and excavating equipment." (See Pl.'s Br. p. 7.) Yet it is obvious when reviewing the entire provision that the terms become nonsensical (and entirely inconsistent with the stated purpose of the statute) when viewed in isolation as plaintiff proposes. The full definition of applicable "inventory" in the Kentucky statute states: "'Inventory' means farm implements, tractors, farm machinery, consumer products, utility and industrial equipment, construction and excavating equipment, and any attachments, repair parts, or superseded parts for the equipment." Ky. Rev. Stat. Ann. § 365.800(3) (emphasis

In sum, plaintiff's proffered interpretation of the Act cannot be reconciled with the plain language of the statute, considered as a whole, nor is there anything in the Act's history to suggest that the legislature intended the Act to apply to a broader array of equipment dealers than those specified in the Act's title. Moreover, as previously discussed, the interpretation of the Act urged by plaintiff would unconstitutionally broaden the scope of the Act to "embrace[] matters not stated in the title... nor germane to the subject matter" of the title. State ex rel. McMillion v. Stahl, 89 S.E.2d 693, 698 (W. Va. 1955) ("[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"). As such, plaintiff's proposed construction of the statute is legally, logically, and constitutionally deficient. Plaintiff's request that the provisions of the Farm Equipment Dealer Act be determined to apply, across the board, to all dealers of "construction, industrial, or outdoor" equipment as a general matter should, therefore, properly be denied.

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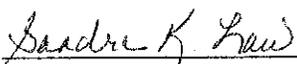
added). Pursuant to plaintiff's reasoning (in which the terms of this definition are not modified by the understanding that the statute applies only to these categories of *farm* implements), the statute should also be read to apply to any and all forms of "consumer products." Such a result is not only untenable, but obviously not what the Kentucky legislature intended, and serves to perfectly illustrate the fact that these provisions make sense only to the extent the enumerated items are understood to relate to "consumer *farm* products," "*farm* utility and industrial equipment," and "*farm* construction and excavating equipment."

Finally, the Denner and Leon Manufacturing cases do not address statutory construction issues, the question of legislative intent, or the issue of whether the statutes in question can constitutionally be applied where the equipment at issue clearly does not fall within the ambit of "farm equipment." These, of course, are the issues that are key to the resolution of the certified question of law presently before the Court.

### III. 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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**CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of June, 2009, I served the foregoing **REPLY 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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