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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED
FEB 9 2009
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

L.H. JONES EQUIPMENT COMPANY,

Plaintiff,

v.

// CIVIL ACTION NO. 1:08CV109
(Judge Keeley)

SWENSON SPREADER LLC,

Defendant.

ORDER OF CERTIFICATION TO THE
SUPREME COURT OF APPEALS OF WEST VIRGINIA

Pursuant to W. Va. Code § 51-1A-3, the United States District Court for the Northern District of West Virginia certifies the following question to the Supreme Court of Appeals of West Virginia.

I. THE QUESTION OF LAW TO BE ANSWERED

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

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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?

The Court acknowledges that, pursuant to W. Va. Code § 51-1A-4, the Supreme Court of Appeals of West Virginia may reformulate the question certified to it.

II. STATEMENT OF FACTS

This case is at a very early stage of litigation. No discovery has been undertaken, other than the required initial disclosures, because of the need to resolve the question of law raised in the certified question. Nevertheless, the following facts and allegations have been gleaned from the parties' pleadings and early briefing on this issue.

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Defendant Swenson Spreader LLC ("Swenson") designs and manufactures spreaders, liquid spray de-icing systems and other equipment and products. Plaintiff L.H. Jones Equipment Company ("L.H. Jones"), a retailer, sells snow plows, snow plow attachments, spreaders and related parts and equipment. From at least as early as 1982, until September 10, 2007, L.H. Jones was an authorized distributor of Swenson's products in West Virginia.

In its Complaint, L.H. Jones alleges, among other things, that since at least 1982, as an authorized dealer of Swenson equipment it had been awarded contracts with the State of West Virginia to supply it with Swenson brand ice removal equipment and replacement parts. L.H. Jones alleges that in 2005 and 2007, following a competitive bidding process, West Virginia awarded L.H. Jones two open purchase orders to supply it with two types of Swenson spreaders capable of spreading salt or other anti-skid material, which the State would use in highway and road maintenance.

L.H. Jones alleges that after being awarded these open purchase orders, on September 10, 2007, Swenson terminated it as an authorized distributor of Swenson products. As a result, L.H. Jones allegedly was unable to fulfil its orders from the State of West Virginia.

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Swenson does not dispute that it sold spreaders and other ice removal equipment and parts to L.H. Jones, or that it terminated its relationship with L.H. Jones on September 10, 2007. It does, however, dispute that the spreaders in question in this lawsuit are the type of equipment covered by the West Virginia Farm Equipment Dealer Contract Act, and thus argues that L.H. Jones's claim under this Act should be dismissed as a matter of law.

L.H. Jones's Complaint alleges breach of contract, violations of the West Virginia Uniform Commercial Code, tortious interference with a business relationship and violations of the West Virginia Farm Equipment Dealer Contract Act against Swenson. The question certified relates solely to whether, in this case, L.H. Jones can bring a cause of action under the West Virginia Farm Equipment Dealer Contract Act.

III. THE PARTIES AND THEIR COUNSEL

A. The plaintiff is:

L.H. Jones Equipment Company, a West Virginia corporation.

Counsel for the plaintiff are:

Christi R. Stover
Steptoe & Johnson, PLLC
PO Box 1616
Morgantown, WV 26507-1616, and

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Helen L. Gemmill and Kimberly M. Colonna (both admitted pro hac vice)
McNees, Wallace & Nurick, LLC
PO Box 1166
Harrisburg, PA 17108

B. The defendant is:

Swenson Spreader LLC, an Ohio Limited Liability Company with its principal place of business in Illinois.

Counsel for the defendant are:

Sandra K. Law
Schrader, Byrd & Companion, PLLC
The Maxwell Centre, Suite 500
32-20th Street
Wheeling, WV 26003, and

Elizabeth Shively Boatwright, Richard S. Gurbst (both admitted pro hac vice) and Wm. Michael Hanna
Squire, Sanders & Dempsey, LLP
127 Public Sq.
4900 Key Tower
Cleveland, OH 44114-1304

IV. ORDER

Pursuant to W. Va. Code § 51-1A-1, et seq., it is ORDERED:

- A. That the question stated in Part I above is certified to the Supreme Court of Appeals of West Virginia;
- B. That the Clerk of this Court forward to the Supreme Court of Appeals of West Virginia, under the official seal of this Court, a copy of this Certification Order together with the original or copies of the record before this Court to the extent requested by the Supreme Court of Appeals of West Virginia;

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- C. That any request for all or part of the record be fulfilled by the Clerk of this Court simply upon notification from the Clerk fo the Supreme Court of Appeals of West Virginia; and
- D. That the Clerk of this Court forward a copy of this Certification Order to counsel of record.

DATED: February 6, 2009.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE