UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TRI-STATE BOBCAT, INC., a Minnesota corporation, **Plaintiff,** **v.** **FINN CORPORATION, an Ohio corporation,** **Defendant.**	**CASE NO.:_____** **COMPLAINT** **Jury Trial Demanded**

Plaintiff Tri-State Bobcat, Inc. ("Tri-State") is a dealer of multiple brands of equipment. As more fully discussed below, Defendant Finn Corporation ("Finn") has unlawfully terminated Tri-State as a dealer of the Finn-brand equipment and parts manufactured by Finn in violation of both contract and applicable statutes.

Tri-State, for its Complaint against Finn, more specifically states and alleges as follows:

INTRODUCTION

1. Tri-State was a dealer of the agricultural equipment manufactured by Finn until Finn recently terminated Tri-State as an authorized dealer.

2. Tri-State had made substantial investments to promote sales of Finn-brand products at Tri-State's three dealer points located in Burnsville, Minnesota; Little Canada, Minnesota; and Hudson, Wisconsin.

3. Tri-State had successfully increased sales of Finn-brand products in Tri-State's assigned geographic territory which includes substantial portions of Minnesota, western Wisconsin, and northwestern Iowa.

4. Indeed, Tri-State generated over $5 million in sales and service revenue in the year ending December 31, 2015.

5. Notwithstanding Tri-State's exemplary performance as a dealer of Finn-brand products, Finn has wrongfully terminated Tri-State's ongoing appointment as a dealer in violation of applicable statutes regulating the relationship between suppliers of, and dealers of, agricultural equipment, as well as the agreement between such parties.

6. Finn did not have good cause to terminate Tri-State's dealership rights.

7. Finn did not provide written notice of any bona fide deficiency in Tri-State's performance as a dealer (*i.e.*, a breach of an actual, material term of the dealer agreement).

8. Finn did not provide Tri-State with an opportunity to cure any bona fide performance deficiency in Tri-State's performance.

9. For these reasons, Tri-State is entitled to money damages suffered as a result of Finn's wrongful decision to terminate Tri-State as a dealer in the absence of good cause, written notice of any bona fide deficiency in performance, and/or an opportunity to cure any such deficiency in performance.

PARTIES

10. Tri-State is a corporation organized under Minnesota law with a principal place of business at 1200 Highway 13 East, Burnsville, Minnesota.

11. Finn is a corporation organized under Ohio law with a principal place of business at 9281 LeSaint Drive, Fairfield, Ohio.

JURISDICTION

12. This court has subject matter diversity pursuant to 28 U.S.C. § 1332.

13. The amount in dispute, for purposes of this action, exceeds $75,000.

14. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the dispute occurred in the State of Minnesota.

15. As a Minnesota-based dealer, Tri-State is entitled to pursue this action in Minnesota consistent with the anti-waiver protections established under the Minnesota Agricultural Equipment Dealers Act, Minn. Stat. §§ 325E.064-65.

BACKGROUND FACTS

16. Finn manufactures hydro-seeding equipment which is both designed for, and used in, the agricultural application of seeds to seed beds.

17. Finn's products are used for a broad range of agricultural purposes including, but not limited to, large and small-scale seeding projects, dust and mud control, erosion control, landscaping, and mulch and soil application.

18. Finn also manufactures straw blowers and bark blowers.

19. Tri-State was an authorized Finn dealer, with the right to purchase Finn products for resale in substantial portions of Minnesota and Wisconsin pursuant to a Dealer Sales Agreement dated January 1, 2014, as amended by the parties' course of dealing and course of performance (the "Agreement").

20. Finn also authorized Tri-State to make sales in Iowa.

21. In early 2016, Tri-State entered into an agreement with another manufacturer, Fecon, Inc. ("Fecon"), to sell Fecon-branded products.

22. Notably, Fecon does not manufacture hydroseeders.

23. Fecon manufactures heavy-duty tractors and equipment used for land clearing, forestry, and biomass harvesting.

24. Fecon does not manufacture products that are sold in Finn's industry.

25. Fecon is not a competitor of Finn.

26. The foregoing facts notwithstanding, Finn claims that Fecon is a competitor of Finn.

27. More specifically, Finn claims that Fecon is a competitor because the owner of Fecon is also a majority owner of *another completely-separate company*, Site Worx, LLC ("Site Worx").

28. Site Worx manufactures hydroseeding products under the brand-name "Apex".

29. Site Worx is a separate and distinct legal entity from Fecon as confirmed by filings made separately by Site Worx and Fecon with the State of Ohio.

30. Tri-State is not, and was not at the time of termination, a dealer of Site Worx' Apex-brand products.

31. Nonetheless, according to Finn, the Agreement contractually prohibits Tri-State from selling competitor's products and that Tri-State's agreement with Fecon was, somehow, a violation of the terms of the Agreement between Tri-State and Finn.

32. However, the Agreement Tri-State had with Finn contains neither a

prohibition on selling non-Finn products, nor a requirement that a dealer exclusively sell Finn equipment.

33. Instead, Paragraph 5 of the Agreement contained the following language:

> Third Party Products. Under this Agreement, Dealer is authorized to sell the FINN product line, along with attachments and repair parts, to the extent described in this Agreement. Dealer acknowledges that (a) *it is FINN's desire that Dealer sell only FINN supplied parts and attachments for use with FINN products*; and (b) any third party products must meet the quality standards, specifications, and operating requirements of FINN supplied products.

34. As evidenced by the plain language of Paragraph 5(a) of the Agreement, it was simply Finn's "*desire*" that Tri-State sell "only Finn supplied parts and attachments *for use with* Finn products."

35. Paragraph 5(a) in no way required Tri-State to sell only Finn products.

36. Paragraph 5(a) merely bars a dealer, like Tri-State, from selling other manufacturers' attachments for use on Finn-brand whole goods.

37. At no point has Tri-State sold non-Finn parts and attachments for use with Finn-branded whole goods.

38. In fact, Finn has never alleged that Tri-State sold non-Finn-supplied parts or attachments for use with Finn's whole goods.

39. Simply put, the Agreement does not prohibit the sale of third-party equipment.

40. Such facts notwithstanding, on October 18, 2016, Tri-State received a letter from Finn's Gregory Lee stating as follows:

> We cannot support a dealer partner that has made the business decision to partner with a competing manufacturer. While it may provide new opportunities for Tri-State Bobcat, it is not part of our strategic business plan as Finn Corporation looks to the future …

See **Exhibit A** hereto.

41. Thereafter, in a letter dated October 31, 2016, Finn's Gregory Lee terminated Tri-State's dealership :

> I am following up on my letter dated October 18, 2016 detailing our desire to end the business relationship between Tri-State Bobcat and Finn Corporation … Please note that effective November 11, 2016 we will terminate the dealer business relationship between Tri-State Bobcat and Finn Corporation. This includes all equipment, parts, and service sales to all customers in your designated territory.

See the "Notice of Termination" attached as **Exhibit B** hereto.

42. Subsequent to Tri-State's having been terminated as a Finn dealer on November 11, 2016, Finn locked Tri-State out of Finn's dealer portal thereby precluding any further Finn-brand purchases by Tri-State.

43. As more fully discussed below, Finn's conduct in terminating Tri-State violated not only applicable statutes, but also the notice provisions of the Agreement drafted by Finn.

44. Notably, Paragraph 9 of the Agreement sets forth the circumstances under which the Agreement can be terminated, including when the contract is immediately terminable without notice, immediately terminable with notice, and when 30 days' written notice must be given to Tri-State prior to any termination:

> Termination of Agreement. This Agreement shall continue in effect for the period specified in Section 1, unless terminated either by mutual consent of the parties hereto, or by either party giving written notice of termination to the other party, provided however, that when termination is to be effective on a written notice given by FINN or Dealer, such notice shall be given thirty (30) days prior to the effective date of termination.

45. Tri-State never received 30 days' written notice of termination by Finn.

46. Furthermore, Finn did not allege in the **Exhibit B** Notice of Termination that Tri-State had committed any of the acts prohibited under Paragraph 9(i)-(v) of the Agreement.

47. Finn has yet to identify any bona fide breach of contract (let alone provide notice of, or an opportunity to cure, any bona fide allegation of breach).

48. Finn's termination of the Agreement, as amended by the parties' course of dealing and course of performance, in the absence of good cause or contractual violation, makes such termination wrongful.

49. Finn is liable to Tri-State for the damages caused by its wrongful termination.

COUNT I
MINNESOTA AGRICULTURAL EQUIPMENT DEALERS ACT

Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

50. It is a violation of the Minnesota Agricultural Equipment Dealership Act ("MAEDA") for a manufacturer to terminate, or substantially change the competitive circumstances of a dealership agreement, without good cause. Minn. Stat. § 325E.062, subd. 1.

51. Minnesota Statute § 325E.064 expressly provides that any term in the Agreement, either express or implied, including a choice-of-law provision, that is inconsistent with MAEDA, or that purports to waive any of the Act's protections, is void and unenforceable.

52. The equipment manufactured by Finn and sold by Tri-State is farm equipment as defined under MAEDA:

> … equipment and parts for equipment including, but not limited to, tractors, trailers, combines, tillage implements, balers, skid steer loaders, attachments and repair parts for them, and other equipment, including attachments and repair parts, used in the planting, cultivating, irrigation, harvesting, and marketing of agricultural products, excluding self-propelled machines designed primarily for the transportation of persons or property on a street or highway.

Minn. Stat. § 325E.061, subd. 2.

53. Tri-State is a dealer, as defined by MAEDA, because it is a corporation engaged in acquiring equipment from a manufacturer and reselling the equipment at wholesale or retail. Minn. Stat. § 325E.061, subd. 4.

54. MAEDA applies to the relationship between Tri-State and Finn because two of Tri-State's dealership locations are in Minnesota.

55. Finn is a farm equipment manufacturer, as defined by MAEDA because it is a corporation engaged in the manufacturing, assembly, or wholesale distribution of equipment used for agricultural applications. Minn. Stat. § 325E.061, subd. 3.

56. The Dealer Sales Agreement is a dealership agreement, as defined by MAEDA, because it is an:

> … oral or written agreement of definite or indefinite duration between a farm equipment manufacturer and a farm equipment dealer which enables the dealer to purchase equipment from the manufacturer and provides for the rights and obligations of the parties with respect to the purchase or sale of farm equipment.

Minn. Stat. § 325E.061, subd. 5.

57. "Good cause" is defined by MAEDA to mean "failure by a farm equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, if the requirements are not different from those requirements imposed on other similarly situated dealers by their terms." Minn. Stat. § 325E.0062, subd. 1.

58. Tri-State has substantially complied with the essential and reasonable requirements imposed by the Agreement.

59. Under MAEDA, Tri-State is entitled to be terminated only upon good cause.

60. Finn terminated its relationship with Tri-State without good cause, in violation of Minnesota Statute § 325E.062.

61. Furthermore, MAEDA requires farm equipment manufacturers to provide equipment dealers at least 90 days' prior written notice of termination of the dealership agreement. The notice is required to state all reasons constituting good cause for the action and shall provide that the dealer has 60 days in which to cure any claimed deficiency. Minn. Stat. § 325E.061, subd. 2.

62. Finn has failed to provide Tri-State with 90 days' prior written notice of termination, has failed to identify any bona fide reasons constituting good cause for

termination, and has failed to provide any opportunity to cure any alleged deficiencies in Tri-State's performance.

63. Separate and apart from its wrongful actions in terminating the Dealer Sales Agreement, Finn also sought to substantially change the competitive circumstances of the Dealer Sales Agreement by seeking to coerce Tri-State to sign an updated dealer agreement that precluded Tri-State's sale of non-competing brands of equipment.

64. As a direct and proximate result of Finn's above-noted conduct, Tri-State requests damages in an amount to be determined at trial, but which are reasonably believed to be substantially in excess of $75,000.

65. Tri-State also seeks to recover its costs, disbursements, and reasonable attorneys' fees consistent with Minn. State. § 325E.065.

COUNT II
WISCONSIN FAIR DEALERSHIP LAW

Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

66. It is a violation of the Wisconsin Fair Dealership Law, Wis. Stat. § 135.01, *et seq.* ("WFDL"), for a manufacturer to terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause.

67. The WFDL expressly provides that "[t]he effect of [the WFDL] may not be varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only." Wis. Stat. § 135.025(3).

68. Tri-State is a "dealer," as defined by the WFDL, because Finn granted Tri-State a dealership situated in Wisconsin. Wis. Stat. § 135.02(2).

69. Tri-State is situated in Wisconsin because, among other things, (a) Tri-State operates a dealership located within the geographical borders of the State of Wisconsin; (b) approximately 22% of the revenue Tri-State generates from selling Finn products and services is generated through its Hudson, Wisconsin store; (c) the parties have dealt with each other in the state of Wisconsin since 2011; (d) Finn imposed contractual requirements on Tri-State that are specific to the State of Wisconsin, including imposing obligations in 2014 and 2015 for Tri-State to increase its Finn sales and brand presence within the state; (e) at any given time, Tri-State maintained roughly $130,000 in Finn whole goods inventory and about $15,000 worth of Finn parts at its facility in Hudson, Wisconsin; (f) Tri-State's facility in Hudson, Wisconsin employs both a Finn service technician and a Finn sales specialist specifically for the service and sale of Finn products; (g) in 2016, Tri-State spent about $3,000 in advertising the Finn brand in Wisconsin; (h) Tri-State promotes Finn's registered trademarks in Wisconsin through exterior building and pylon signage at its facility in Hudson, Wisconsin, as well as through truck decals, magazine ads, rental brochures, trade show demonstrations, and its website and social media platforms; (i) Finn granted Tri-State exclusive and extensive territory in northwestern Wisconsin and specifically directed Tri-State to "target" its Wisconsin territory in 2015; and (j) Tri-State provides supplemental services for Finn repairs and rentals in the State of Wisconsin.

70. The Dealer Sales Agreement is a dealership, as defined by the WFDL, because it is a:

> … contract or agreement, either expressed or implied, whether oral or written, between 2 or more persons, by which a person is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol in which there is a community of interest in the business of offering, selling or distributing goods or services at wholesale, retail, by lease, agreement or otherwise.

Wis. Stat. § 135.02(3)(a).

71. The WFDL expressly states that no manufacturer, such as Finn, "may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause." Wis. Stat. § 135.03.

72. "Good cause" is defined by the WFDL to mean a "[f]ailure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor, or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly-situated dealers either by their terms or in the manner of their enforcement." Wis. Stat. § 135.02(4)(a).

73. The Wisconsin Act also requires a manufacturer, such as Finn, that has "good cause" to "provide a dealer at least 90 days' prior written notice of termination, cancellation, nonrenewal or substantial change in competitive circumstances." Wis. Stat. § 135.04.

74. The WFDL provides that "[t]he notice shall state all the reasons for termination, cancellation, nonrenewal or substantial change in competitive circumstances

and shall provide that the dealer has 60 days in which to rectify any claimed deficiency." Wis. Stat. § 135.04.

75. Tri-State has complied with the essential and reasonable requirements imposed by the Dealer Sales Agreement.

76. Finn terminated its relationship with Tri-State for stocking the equipment of a company (i.e., Fecon) that does not sell competing equipment, e.g., hydroseeders.

77. As such, Finn terminated its relationship with Tri-State without good cause, in violation of the WFDL.

78. Finn has further violated the WFDL by failing to provide Tri-State with any notice of, or any meaningful opportunity to cure, any alleged deficiencies in Tri-State's performance.

79. Separate and apart from its wrongful actions in terminating the Dealer Sales Agreement, Finn also sought to substantially change the competitive circumstances of the Dealer Sales Agreement by seeking to coerce Tri-State to sign an updated dealer agreement that precluded Tri-State's sale of even non-competing brands of equipment.

80. As a direct and proximate result of Finn's above-noted conduct Tri-State seeks damages in an amount to be determined at trial, but which are reasonably believed to be substantially in excess of $75,000.

81. Tri-State also seeks to recover its costs, disbursements, and reasonable attorneys' fees. Wis. State. § 136.06.

COUNT III
Iowa Agricultural Equipment Dealership Statute

82. The equipment and parts manufactured by Finn and distributed by Tri-State constitute "equipment" as defined by the Iowa Agriculture Equipment Dealership Statute ("IAEDS") § 322F.1, subd. 6, which consists of "agricultural equipment, construction equipment, industrial equipment, utility equipment, or outdoor power equipment."

83. IAEDS expressly provides that any term in the agreement that is inconsistent with the Statute is void and unenforceable and does not waive any rights that are provided in by the Statute. I.C.A. § 322F.9.

84. The equipment and parts sold by Finn to Tri-State, and resold by Tri-State, qualifies as "agricultural equipment" because it is "a device, part of a device, or an attachment to a device designed to be principally used for an agricultural purpose," including "tilling, planting, and cultivating implements" I.C.A. § 322F.1, subd. 1.

85. Tri-State is a "dealer" as defined by IAEDS because Tri-State is "engaged in the retail sale of equipment." I.C.A. § 322F.1, subd. 4.

86. Finn is a "supplier" as defined by the IAEDS because Finn "manufacture[s] . . . equipment sold by a dealer" – *i.e.*, Tri-State. I.C.A. § 322F.1, subd. 11.

87. The parties are operating according to a "dealership agreement." I.C.A. § 322F.1, subd. 5.

88. IAEDS prohibits a supplier from terminating a dealership agreement, either by cancellation, nonrenewal, or substantially changing the competitive circumstances, absent "good cause" and upon at least ninety days' prior written notice. I.C.A. § 322F.2.

The Statute further provides that a "supplier shall terminate a dealership agreement for outdoor power equipment by cancellation or nonrenewal only upon "good cause" and upon at least ninety days' prior written notice delivered to the dealer." *Id.*

89. A written termination notice of a dealer must also "specify each deficiency constituting good cause for the action . . . and state that the dealer has sixty days to cure the deficiency." I.C.A. § 322F.2.

90. Tri-State is entitled to be terminated only upon "good cause." I.C.A. § 322F.2, subd. 1(a).

91. Because Tri-State has capably performed its obligations during its time as a dealer, and has not violated any of the terms of the parties' Agreement, Finn is without "good cause," as defined by IAEDS, to terminate (let alone issue any notice of performance deficiency). I.C.A. § 322F.1, subd. 7(a)–(o); I.C.A. § 322F.2.

92. Finn terminated its agreement with Tri-State without good cause, notice of deficiency or an opportunity to cure, in violation of I.C.A. § 322F.2.

93. Finn has failed to provide Tri-State with notice and a meaningful opportunity to cure any asserted deficiencies in its performance.

94. Separate and apart from its wrongful actions in terminating the Dealer Sales Agreement, Finn also sought to substantially change the competitive circumstances of the Dealer Sales Agreement by seeking to coerce Tri-State to sign an updated dealer agreement that precluded Tri-State's sale of non-competing brands of equipment.

95. As a direct and proximate result of Finn's above-noted conduct, Tri-State seeks damages in an amount to be determined at trial, but which are reasonably believed to be substantially in excess of $75,000.

96. Tri-State also seeks to recover its costs, disbursements, and reasonable attorneys' fees. I.C.A. § 322F.8(1)(a)(1).

COUNT IV
BREACH OF CONTRACT

Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

97. The Agreement between the parties constituted a valid and enforceable contract.

98. Tri-State performed all its obligations under the Agreement and was entitled to subsequent and continued performance by Finn.

99. Under the Agreement, Finn was obligated to provide Tri-State with a 30 days' written notice in the event of termination.

100. Finn terminated the Agreement without providing the requisite 30 days' written notice.

101. The Agreement also expressly identifies certain conditions in which the Agreement could be terminable immediately without notice.

102. However, Tri-State did not commit any of the acts delineated in the Agreement that make it immediately terminable without notice.

103. Finn, nevertheless, terminated the Agreement.

104. Finn breached the Agreement by terminating Tri-State's dealership without good cause and without prior notice.

105. As a direct and proximate result of Finn's above-noted conduct, Tri-State seeks damages in an amount to be determined at trial, but which are reasonably believed to be substantially in excess of $75,000.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all claims and counterclaims made in this matter.

WHEREFORE, Plaintiff prays for an order from the Court as follows:

1. Tri-State's compensatory damages;
2. Tri-State's costs, disbursements, and attorneys' fees expended in connection with responding to Finn's efforts to terminate; and
3. A judgment of such other and further relief in Tri-State's favor as this Court deems just and equitable.

DATED: December 2, 2016

DADY & GARDNER, P.A.

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