

Inc. ("SIE"), a North Carolina corporation with a principal place of business in Charlotte, North Carolina.

6. This Court has jurisdiction over this controversy and the parties pursuant to N.C. Gen. Stat. §1-75.4 and 28 U.S.C. §1332, and venue is appropriate in this judicial district pursuant to 28 U.S.C. §1391.

FACTUAL ALLEGATIONS

7. Clark and TMH manufacture and sell competing products, primarily forklift trucks and related parts, accessories and equipment throughout the United States. Both Clark and TMH distribute their products primarily through dealer networks. Clark has established dealer relationships with more than 75 independent dealerships with over 200 locations in the United States, while Toyota's dealer network exceeds 70 independent dealerships with over 220 locations in the United States. On information and belief, TMH and its affiliate The Raymond Corporation have the highest share of the market for forklifts, of at least 40%. Toyota owns The Raymond Corporation.

8. Forklift trucks are an essential component of the efficient movement of materials and goods throughout the economy of the United States and are vital to the world of commerce. Forklift trucks are part of the United States material handling industry of which Clark has been an important participant since 1917. Forklift customers are typically businesses, institutions and governmental entities. Forklift trucks are not usually distributed through consumer outlets.

9. Clark and, on information and belief, TMH depend on independent dealerships to promote and sell their products in specific geographic territories assigned by the manufacturer and accepted by the dealer. The territories assigned to dealers vary in size depending on a variety of factors, including population density; potential buyer population; suitability of equipment for

perceived uses; rural or urban environs; dealer financial strength; dealer history and industry expertise; and quality of dealer personnel. Dealer selection is a highly selective process which often requires considerable time and resources prior to actual appointment. As a result, Dealer relationships in the material handling industry are long term, often lasting for decades.

10. The sale of forklift trucks usually entails several steps, which may occur over days or which may take several months. A dealer must determine the customer's needs; determine the best equipment to address those needs; discuss product uses and benefits with the customer; discuss available optional equipment which meets customer needs; negotiate price and terms; arrange for financing for the purchase; determine availability of the desired product; complete the logistics necessary to implement the transaction; arrange and/or ensure proper delivery and installation of the product to the customer; follow-up with the customer after delivery; and provide service after the sale. This cycle is highly dependent on personal contact and a good relationship between dealer and customer.

11. Clark and TMH have conducted their competitive forklift businesses through dealer networks for several decades. Other competitors, including Mitsubishi Caterpillar Forklift America, Inc. ("MCFA") use similar methods to distribute their products.

12. On information and belief, for several years prior to 2012, SIE signed agreements with TMH, by which SIE was permitted to – and did – promote, sell and distribute Toyota-manufactured forklift trucks on a non-exclusive basis within North and South Carolina as well as portions of Georgia and Virginia. "Non-exclusive" as used in this Complaint means that the contracts between Toyota and SIE do not contractually prohibit the dealer SIE from selling other brands of forklift trucks or other equipment. Toyota has a similar distribution agreement with

Vesco ToyotaLift of Hickory, Inc. ("Vesco") a North Carolina corporation located in Hickory, North Carolina.

13. Since September 1, 2006, Clark products were distributed in North and South Carolina by G & W Equipment, Inc., a North Carolina corporation with a principal place of business in Charlotte, North Carolina, on a non-exclusive basis. The relationship ended in May 2012.

14. In January 2012, SIE through its President Cory Thorne contacted Clark to inquire about the possibility of SIE becoming a Clark dealer in North and South Carolina and submitted proposed territories to Clark on March 22, 2012. On March 21, 2012, Vesco through its President Ken Turnmyre contacted Clark with a similar request for consideration.

15. Following these contacts from SIE and Vesco, Clark through its Vice President of Business Development Scott Johnson engaged in discussions with both entities regarding a potential Clark dealership until April 20, 2012, when Vesco withdrew its name from consideration as a Clark dealer candidate.

16. On May 2, 2012, the President of TMH Jeff Rufener, and the Vice President of Product Planning, Marketing and Training of TMH, Martin Boyd, at their request, visited Clark's headquarters in Lexington Kentucky and met with senior officials at Clark, including its President, but the subject of the North Carolina and South Carolina Clark dealership was not discussed.

17. On information and belief, sometime between May 2, 2012 and May 17, 2012, Cory Thorne met and/or communicated with Rufener or other officials of TMH and informed TMH that SIE was considering a dealer relationship with Clark.

18. On May 15, 2012, Cory Thorne of SIE hosted a meeting at SIE's headquarters in Charlotte, North Carolina and met with various people to discuss key programs and milestones to promote SIE's success in the sale of Clark products and aftermarket parts in North and South Carolina as well as Georgia. Scott Johnson of Clark and Bob Bond, President of Trilift NC, Inc. of Greensboro North Carolina, Clark's dealer in the Greensboro, NC area, participated in these meetings.

19. SIE and Clark executed a Clark Materials Handling Company Dealer Sales Agreement (the "Agreement" or the "DSA"), effective May 17, 2012. A copy of the executed DSA is attached to this Complaint as Exhibit 1 and is incorporated herein by this reference. The initial term of the DSA is one year, but the Agreement provides for automatic renewals thereafter.

20. Clark and SIE thereafter worked to accomplish all the tasks necessary to implement SIE's new dealer relationship with Clark. This included, for instance, determining and preparing contact logistics; establishing credit arrangements for SIE; providing SIE with Clark price pages (new equipment pricing, extended warranty pricing, freight policy, discount structure and other Clark commercial policies); arranging access to all of Clark's wholesale and retail financing programs; arranging training dates for SIE personnel; arranging a transfer of Clark inventory to SIE; installing Clark's technical documentation program for equipment ("PartsPro"); installing Clark's web-based on-line aftermarket parts ordering system; and installing Clark's new equipment quoting software. Clark personnel, including Scott Johnson, worked with SIE personnel, including Cory Thorne, Ron Davison and Chris Wood, to facilitate sales of Clark products to customers as well as the ordering of stock trucks for SIE's various

locations. Several quotes have occurred under the new arrangement, resulting in at least four new Clark forklift truck sales.

21. Between July 19 and 24, 2012, major industry publications, including Forkliftaction.com and the Material Handling Wholesaler e-newsletter, published the announcement of SIE's dealer relationship with Clark. In addition, press releases announcing SIE's appointment as a Clark dealer have been sent to various media outlets, other trade journals, as well as to all Clark North America dealers.

22. Upon information and belief, on or about July 19, 2012, after SIE's appointment as a Clark dealer had been publicly announced, Jeff Rufener TMH's President (or someone acting with his knowledge and/or direction) contacted Cory Thorne of SIE and pressured, coerced and intimidated SIE into ending its relationship with Clark. Means of coercion included threats by TMH to terminate SIE's Toyota dealership in Virginia and perhaps elsewhere, comments expressing Rufener's anger at Clark arising from a prior competitive situation while Rufener was employed by MCFA as its Vice President of Sales; and a demand that SIE issue a retraction or denial of any dealer relationship with Clark.

23. On July 20, 2012, Cory Thorne called Scott Johnson to inform him of the pressure TMH was exerting on SIE to drop the Clark dealership.

24. Cory Thorne and Scott Johnson spoke on July 23, 2012 and discussed ways in which SIE's new Clark dealership could be distanced from its TMH operations. Discussions included the establishment of a separate legal entity by SIE or its shareholders, and/or the establishment of a separate physical facility for the sale of Clark equipment. Clark consented to a separate entity and did not refuse a separate facility.

25. Cory Thorne and Scott Johnson spoke again on July 25, 2012. During the conversation, Thorne explained that THM was not accepting of any alternative arrangements for SIE's Clark dealership but continued to pressure SIE to drop Clark. Thorne expressed his concern that the stakes TMH had defined were too high, that SIE could not afford to lose its Toyota dealership in Virginia or place any of his other Toyota locations in jeopardy.

26. On July 27, 2012, Scott Johnson received a letter (dated July 25th) from Cory Thorne of SIE reflecting SIE's decision to give its 30-day notice of termination of the Clark DSA, citing "a perceived conflict of interest with our current vendor" and stating that "current and future opportunities will be lost if we [SIE] continue to represent Clark and that is a risk SIE cannot take." On information and belief, the references to current vendor and risks SIE cannot take refer to the TMH's threats to terminate at least SIE's dealership in Virginia unless SIE dropped the Clark dealership. A copy of SIE's letter of July 25th (received July 27th) is attached as Exhibit 2 to this Complaint.

27. SIE's decision was the direct result of coercion, pressure and intimidation by TMH on SIE to cease its relationship with its competitor, Clark. Absent such coercion, SIE would not have terminated the Clark DSA, and the distribution relationship between Clark and SIE would have continued for its stated term and beyond. Although Clark's written arrangements with its dealers provide for a one year duration, the average duration of a Clark dealer relationship exceeds twenty (20) years.

28. Since July 27, 2012, Clark has received several communications from industry participants inquiring about SIE's decision to end the Clark relationship so soon after it had begun.

29. Clark has been injured as a direct result of TMH's coercion, intimidation and interference, in that it incurred considerable expense and diverted substantial resources in connection with marketing the Clark dealer relationship to Vesco and to SIE; it incurred considerable expense and diverted substantial resources in connection with implementing the Clark-SIE DSA; it incurred considerable expense and diverted substantial resources in connection with promoting and announcing the Clark-SIE dealer relationship; Clark's goodwill with dealers, customers and industry participants has been injured; inventory commitments and sales arranged by SIE and Clark must be reviewed and rescheduled; Clark may be required to repurchase inventory at a premium; sales efforts and actual sales in process with SIE have been lost; Clark is without any means of distribution in the several geographic areas reserved to SIE and is not able to readily replace that distribution, resulting in lost sales opportunities for both forklift trucks and aftermarket parts; TMH's coercion chills the opportunity for materials handling dealers to take on a Clark dealership and thus limits the avenues of distribution reasonably available to Clark. The amount of these injuries remains to be calculated, but far exceeds the applicable jurisdictional value.

30. Despite Clark's efforts to replace distribution in the territory reserved to SIE in the DSA, the injuries set forth above are likely to continue. Injuries to goodwill and lost sales opportunities are not reasonably subject to adequate remedy by monetary damages.

FIRST CAUSE OF ACTION
(Unfair Competition)

31. The allegations of paragraphs 1 through 30 of this Complaint are restated and reiterated as fully as if set forth herein.

32. Virginia law, in particular Va Code §59.1-352.9, prohibits an equipment manufacturer such as TMH from “coerce[ing] a dealer into refusing to purchase equipment manufactured by another supplier.”

33. North Carolina law, in particular N.C. Gen. Stat. §66-187.1, likewise prohibits an equipment manufacturer such as TMH from “coerce[ing] a dealer into refusing to purchase equipment manufactured by another supplier.”

34. South Carolina law, in particular S.C. Code §39-5-20, prohibits unfair or oppressive actions such as those described above.

35. TMH’s acts of coercion and intimidation in order to prevent SIE from undertaking or continuing its dealer relationship with Clark violate Virginia, North Carolina and South Carolina statutes and constitute unfair competition.

36. Even if TMH’s acts of coercion did not violate statutes, such actions in and of themselves constitute unfair competition, in that they are unfair and oppressive. In addition, such actions reduce competition in the marketplace.

37. TMH’s improper acts of intimidation, coercion and unfair competition have damaged Clark, in the manner described in greater detail above. Clark is entitled to recover damages from TMH resulting from its injuries, in amounts to be determined.

SECOND CAUSE OF ACTION
(N.C. Gen. Stat. §75-1.1)

38. The allegations of paragraphs 1 through 37 of this Complaint are restated and reiterated as fully as if set forth herein.

39. TMH is engaged in interstate commerce, and its wrongful actions set forth herein occur in and affect commerce, in the manner described above.

40. TMH's conduct, as described above, was unfair and deceptive within the meaning of N.C. Gen. Stat. §75-1.1 in that it was unfair and oppressive and/or violated statutory standards in Virginia, North Carolina and South Carolina.

41. TMH's wrongful conduct proximately caused injury to Clark, as described in greater detail above; and caused injury to the public, in that TMH eliminated a source of competition and violated laws intended to protect dealers and distributors.

42. TMH's conduct constitutes a violation of N.C. Gen. Stat. §75-1.1.

43. Clark is entitled to recover such damages from TMH in amounts to be determined, said damages to be trebled pursuant to N.C. Gen. Stat. §75-16.

THIRD CAUSE OF ACTION
(S.C. Code §39-5-20)

44. The allegations of paragraphs 1 through 43 of this Complaint are restated and reiterated as fully as if set forth herein.

45. TMH is engaged in interstate commerce, and its wrongful actions set forth herein occurred in and affect commerce, in the manner described above.

46. TMH's conduct, as described above, was unfair within the meaning of S.C. Code §39-5-20, in that it was coercive and oppressive.

47. TMH's wrongful conduct proximately caused injury and damage to Clark, as described in greater detail above; and caused injury to the public, in that TMH eliminated a source of competition and violated laws intended to protect dealers and distributors.

48. TMH's conduct constitutes a violation of S.C. Code §39-5-20. Said violation was willful within the meaning of S.C. Code §39-5-140, in that TMH knew or should have known that its conduct violated the statute.

49. Clark is entitled to recover damages from TMH, said damages to be trebled, pursuant S.C. Code §39-5-140.

FOURTH CAUSE OF ACTION
(Tortious Interference with Contract)

50. The allegations of paragraphs 1 through 49 of this Complaint are restated and reiterated as fully as if set forth herein.

51. The Dealer Sales Agreement between Clark and SIE was effective and valid as of May 17, 2012, and was in effect during the time of TMH's coercive and oppressive conduct, as described above.

52. TMH knew about the DSA between Clark and SIE.

53. The DSA would have continued in effect at least throughout its initial term, had TMH not intentionally and wrongfully induced SIE to prematurely terminate and discontinue present and future performance of the DSA between SIE and Clark.

54. TMH was not justified in its actions, among other reasons because laws of Virginia, North Carolina and South Carolina render its coercion of SIE illegal; and even absent such laws, coercive actions such as those described above are unfair and illegal.

55. TMH's wrongful actions proximately caused injury and damage to Clark, as described in greater detail above, in amounts to be determined.

56. The actions of TMH constitute tortious interference with the DSA between SIE and Clark.

57. Clark is entitled to recover its damages from TMH.

FIFTH CAUSE OF ACTION
(Tortious Interference with Prospective Economic Advantage)

58. The allegations of paragraphs 1 through 57 of this Complaint are restated and reiterated as fully as if set forth herein.

59. The Dealer Sales Agreement between Clark and SIE was effective and valid as of May 17, 2012, and was in effect during the time of TMH's coercive and oppressive conduct, as described above. The DSA would have continued in effect for its full initial term and beyond, had TMH not coercively and tortiously interfered with the dealer relationship between Clark and SIE.

60. TMH knew about the DSA between Clark and SIE.

61. TMH intentionally and wrongfully induced SIE to prematurely terminate and discontinue present and future performance of the DSA between it and Clark.

62. TMH was not justified in its actions, among other reasons because laws of Virginia, North Carolina and South Carolina render its coercion of SIE illegal; and even absent such laws, coercive actions such as those described above are unfair and illegal.

63. TMH's wrongful actions proximately caused injury and damage to Clark, as described in greater detail above, in amounts to be determined.

64. The actions of TMH constitute tortious interference with the prospective economic advantage afforded by the distribution relationship and DSA between SIE and Clark.

65. Clark is entitled to recover its damages from TMH.

SIXTH CAUSE OF ACTION
(Injunctive relief)

66. The allegations of paragraphs 1 through 65 of this Complaint are restated and reiterated as fully as if set forth herein.

67. The continuing injuries caused to Clark by TMH's coercion, unfair competition, violations of North Carolina and South Carolina statutes and tortious interference with contractual relations and prospective economic advantage are immediate and irreparable. These

immediate and irreparable injuries include damage to Clark's goodwill, the chilling effects of TMH's actions on other materials handling dealers, and lost opportunity costs.

68. These injuries are incapable of monetary calculation and/or are not possible to remedy monetarily.

69. TMH's improper acts and resulting irreparable damage to Clark will continue unless and until enjoined by this Court. Clark is entitled to equitable relief, including preliminary and permanent injunctive relief requiring TMH to refrain from its wrongful acts.

WHEREFORE, having fully pled, the Plaintiff, Clark Material Handling Company, requests judgment against Defendant Toyota Material Handling U.S.A., Inc. as follows:

1. Awarding the Plaintiff damages on its First, Fourth and Fifth Causes of Action in amounts in excess of \$75,000 to be proven at trial;
2. Awarding the plaintiff damages in excess of \$75,000, such amount to be trebled, plus its attorneys' fees, on its Second Cause of Action, pursuant to N. C. Gen. Stat. §75-16;
3. Awarding the plaintiff damages in excess of \$75,000, such amount to be trebled, plus its attorneys' fees, on its Third Cause of Action, pursuant to S.C. Code §39-5-140;
4. Granting preliminary and permanent injunctive relief on the Sixth Cause of Action enjoining the Defendant, Toyota Material Handling U.S.A., Inc., from demanding or coercing its dealers, including Southeast Industrial Equipment, Inc., into terminating distribution relationships with Clark or from refusing to continue or instigate dealer relationships with Clark;
5. Taxing the fees and costs of this action to Defendant; and
6. For such other and further relief as is just and proper.

Respectfully submitted this 14th day of August, 2012.

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