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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

STEVES AND SONS, INC.,	:	Civil Action No.
	:	3:16CV545
vs.	:	
	:	
JELD-WEN, INC.	:	October 4, 2018
	:	

COMPLETE TRANSCRIPT OF THE CONFERENCE CALL
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Lewis F. Powell, III, Esquire
Maya M. Eckstein, Esquire
Hunton Andrews Kurth, LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

Glenn Pomerantz, Esquire
Munger Tolles & Olson, LLP
355 South Grand Avenue
35th Floor
Los Angeles, California 90071
Counsel for the plaintiff

Peppy Peterson, RPR
Official Court Reporter
United States District Court

1 APPEARANCES: (cont'g)

2 Margaret M. Zwisler, Esquire
3 Latham & Watkins, LLP
4 555 11th Street NW
Suite 1000
Washington, D.C. 20004

5 Michael W. Smith, Esquire
6 Christian & Barton
7 909 East Main Street
Suite 1200
8 Richmond, Virginia 23219
Counsel for the defendant

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1 recovery while at the same time preserving the right to recover
2 the monetary award if it is affirmed on appeal, if the
3 divestiture is not affirmed on appeal.

4 I have prepared an order which will also be entered
5 this afternoon or tomorrow that asks you to brief those
6 questions. Plaintiff, Steves, file opening brief on
7 October 16, defendant's response on October 30, plaintiff's
8 reply on November 7. I wanted to make sure that you can --
9 that there's nothing to preclude you from addressing that issue
10 on that schedule. I do not know what your commitments
11 otherwise are.

12 MR. POMERANTZ: Your Honor, from Steves' perspective,
13 we can meet the deadlines you just set forth.

14 MS. ZWISLER: Yes, Your Honor. This is Peggy Zwisler
15 for the defendant. We can meet the deadline as well.

16 THE COURT: All right. I have tried to do a good bit
17 of research on my own. In our back-and-forth discussion, we
18 have, off and on the record, I guess, at various times when it
19 has been discussed, we have mentioned this as, perhaps, a
20 question of election of remedies, and I'm not quite so sure
21 that it is an issue of election of remedies as much as it is
22 precluding double recovery and dealing with a rather unusual
23 situation in which an order -- you have two different orders
24 that need to be appealed.

25 One way to go forward, it seems to me, is to enter an

1 order that enters order on the jury's verdict as it's been
2 amended by the JMOL and that enters the -- orders divestiture
3 and entering an order that says that after the matter -- after
4 all appeals are exhausted or after the time for appeal is
5 exhausted and no appeal is filed, which is an eventuality I do
6 not think would happen, the -- Steves has to choose which
7 remedy it wants, but I don't want you or the Court to be in a
8 position of putting you somewhere that you can't -- A, you
9 couldn't appeal something that you want to appeal, or, B,
10 having the Court of Appeals say they don't have jurisdiction.
11 So I solicit your views on the matter, and we will go forward
12 from there. Thank you.

13 MR. POMERANTZ: Thank you, Your Honor, we appreciate
14 that.

15 MR. POWELL: Thank you, Your Honor.

16 THE COURT: Thank you for being available. These
17 orders will -- I am going to give you a copy of the actual
18 divestiture order that I envision entering, but I'm not
19 entering it because I want the answers to these questions
20 before I enter either the judgment on the jury's verdict or the
21 order of divestiture.

22 So while you will have a copy of it, it will have
23 draft on it, and I am not going to file it. I'm just going to
24 send it to you all so you'll be looking at it. At least I
25 don't think --

1 MR. POMERANTZ: That makes sense, Your Honor.

2 THE COURT: Any questions that anybody has?

3 MR. POWELL: Your Honor, Lewis Powell. Just to be
4 clear, so am I understanding your last comment to mean that you
5 won't be filing anything today or tomorrow insofar as the
6 public record is concerned?

7 THE COURT: I will file the memorandum opinion and
8 the order calling for this briefing, but I will not file, I
9 don't think, the actual order of divestiture. However, I
10 think -- I don't know. I may just say this is something to the
11 effect that the Court envisions entering this order, this
12 divestiture order and this judgment order, and if you'd like to
13 comment on those you can do that, too, but they will not be
14 actually entered, whereas I have entered in the trade secrets
15 case the judgments, the decisions on judgments as a matter of
16 law and entered judgment on the verdict for \$1,200,000 on
17 behalf of Jeld-Wen. That has been done. I didn't see any
18 reason to hold that back. I assume that at some point in time
19 they will all get married up on appeal.

20 The last matter that has to be decided -- well, there
21 are really two. One is the Steves issue -- request for
22 declaratory relief which is briefed in an extremely skimpy
23 manner. I'm looking at it. I think I can do what I need to do
24 without requiring more briefing. If I require more, I'll ask
25 for it.

1 Then I have asked you to have more briefing on
2 Jeld-Wen's prayer for an injunction in the trade secrets case,
3 and that is underway now. So I'm assuming you all will figure
4 out a way to marry everything up on appeal, but at least as to
5 these two questions, I really solicit your views on how to
6 proceed. So does that answer your question, Mr. Powell?

7 MR. POWELL: It does, Your Honor. Thank you very
8 much.

9 MS. ZWISLER: Your Honor, I just want to -- I just
10 have a question about the election-of-remedies issue, because
11 it's not clear to me. So what you are saying is that a final
12 judgment in this case would both require the judgment on the
13 jury's verdict and judgment of divestiture and not, at this
14 time, require the plaintiff to choose which of those is its
15 preferred remedy.

16 THE COURT: I'm not saying that. I said that is one
17 option.

18 MS. ZWISLER: Oh, good. Thank you.

19 THE COURT: The reason I'm asking for briefing is
20 because I want briefing, and I want to be informed of the law
21 on the matter more thoroughly than I have been so far. I said
22 one way to go about this, it seems to me, is to enter a
23 judgment on the verdict for the dollar amount of the antitrust
24 damages and the breach of contract damages and enter the
25 divestiture order but put a provision in there that says

1 because this matter is subject to appeal and further action
2 after appeal if the remedy of divestiture is affirmed as a
3 proper remedy, then the election doesn't -- the decision which
4 remedy to choose doesn't have to be made until after the
5 appellate process is over or after the time for appeal has
6 expired with no appeal having been filed.

7 But that's only one way to go about it, and it has
8 its -- it could, as I think one of you mentioned earlier in the
9 proceedings, have its own problems. So I'm soliciting your
10 advices is what I'm doing. I didn't mean to say that is what I
11 was going to do. If I came across that way, I apologize. Does
12 that answer your question, Ms. Zwisler?

13 MS. ZWISLER: Yes, it does. Thank you, Your Honor.

14 THE COURT: I look forward to hearing from you.
15 Thank you so much for being available.

16 MS. ZWISLER: Thank you, Your Honor.

17 MR. POWELL: Thank you.

18 THE COURT: Bye.

19
20 (End of proceedings.)

21
22 I certify that the foregoing is a correct transcript
23 from the record of proceedings in the above-entitled matter.

24
25 _____
/s/
P. E. Peterson, RPR

Date