

EXHIBIT A

1 Mark D. Samson, No. 011076
2 KELLER ROHRBACK, P.L.C.
3 3101 North Central Avenue, Suite 1400
4 Phoenix, Arizona 85012-2643
5 (602) 248-0088
6 Attorneys for Plaintiffs

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR MARICOPA COUNTY

9 BALAR EQUIPMENT CORPORATION, an
10 Arizona corporation,
11
12 Plaintiff,
13
14 vs.
15 VT LEEBOY, INC., a North Carolina corporation,
16 fka B. R. LEE INDUSTRIES, INC., a North
17 Carolina corporation, JOHN DOES and JANE
18 DOES I - X, inclusive; BLACK AND WHITE
19 CORPORATIONS I - X, inclusive; XYZ
20 PARTNERSHIPS I - X, inclusive,
21
22 Defendants.

CV2007-000926
NO. _____

SUMMONS

IF YOU WANT THE ADVICE OF A
LAWYER, YOU MAY WISH TO CONTACT
THE LAWYER REFERRAL SERVICE AT
602-257-4434 OR ON-LINE AT
WWW.LAWYERFINDERS.ORG. LRS IS
SPONSORED BY THE MARICOPA
COUNTY BAR ASSOCIATION

STATE OF ARIZONA TO THE DEFENDANTS:

VT LEEBOY, INC.

YOU ARE HEREBY SUMMONED and required to appear and defend, within
the time applicable, in this action in this Court. If served within Arizona, you shall
appear and defend within 20 days after the service of the Summons and Complaint
upon you, exclusive of the day of service. If served outside Arizona, you shall appear
and defend within 30 days after service of the Summons and Complaint upon you,
exclusive of the day of service. Service upon the Arizona Motor Vehicle

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1 Superintendent or the Assistant Director for the Motor Vehicle Division is complete 30
2 days after filing defendant's return receipt and plaintiff's affidavit of compliance or 30
3 days after filing the officer's return of personal service. Where process is served upon
4 the Arizona Director of Insurance as an insurer's attorney, the insurer shall not be
5 required to appear, answer or plead until expiration of 40 days after date of such
6 service upon the Director. Service by registered or certified mail outside the State of
7 Arizona shall be deemed complete on the date of receipt. Service by publication is
8 complete 30 days after the date of first publication. Direct service is complete when
9 made. ARCP 4, 4.1, 4.2, and 12(a); A.R.S. §§20-222, 28-502, and 28-503.
10

11 **YOU ARE HEREBY NOTIFIED** that in case of your failure to appear and
12 defend within the time applicable, judgment by default will be rendered against you
13 for the relief demanded in the Complaint.
14

15 **YOU ARE CAUTIONED THAT** in order to appear and defend, you must file
16 an Answer or other proper response in writing with the Clerk of the Superior Court,
17 accompanied by the necessary filing fee, within the time required, and you are
18 required to serve a copy of the Answer or response upon the attorney for plaintiff.
19 ARCP 5 and 10(d); A.R.S. §12-311.
20

21 Requests for reasonable accommodation for persons with disabilities must be
22 made to the division assigned to the case by parties at least three working days in
23 advance of a scheduled court proceeding.
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The names, address, and phone number of the attorneys for plaintiffs are:

Mark D. Samson
KELLER ROHRBACK, P.L.C.
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012
602-248-0088

SIGNED AND SEALED this ____ day of January, 2007.

CLERK

COPY

JAN 16 2007

By: _____



RICHARD E. JAMES, CLERK
M. SIMPSON
DEPUTY CLERK

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JAN 16 2007



MICHAEL K. SAMSON, CLERK
M. SIMPSON
DEPUTY CLERK

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COMPLAINT

(Statutory Violation --
A.R.S. §44-6701 *et seq.*)

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19 For its Complaint against the Defendants, Plaintiff alleges as follows:

20 **Parties, Jurisdiction and Venue**

21 1. Plaintiff Balar Equipment Corporation ("Balar"), is an Arizona
22 corporation, duly authorized to do and doing business in Maricopa County, Arizona.
23 All of the acts and matters herein alleged took place in Maricopa County, Arizona.

24 2. Defendant VT LeeBoy, Inc., formerly known as B. R. Lee Industries,
25 Inc. (hereinafter collectively "Lee"), is a North Carolina corporation which caused an
26 event to occur in Maricopa County, Arizona, out of which this action arises.

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1 3. Upon information and belief, Defendants John Does and Jane Does I -
2 X, inclusive, Black and White Corporations I - X, inclusive, and XYZ Partnerships I -
3 X, inclusive, are or were persons or entities acting in the State of Arizona and were the
4 employees, servants, agents, or employers, principals, or masters of the named
5 Defendants. Upon information and belief, the named Defendants are liable for all
6 relevant acts of the fictitious Defendants under the principles of actual or apparent
7 agency, and the fictitious Defendants are similarly liable for the acts of the named
8 Defendants. The named and fictitious Defendants are, therefore, concurrently, jointly
9 and severally liable for all of the acts, negligence and omissions alleged herein. The
10 true names of the fictitious Defendants are presently unknown to Plaintiff and Plaintiff
11 will seek leave of this Court to amend this Complaint when their names are
12 ascertained.

13 4. The damages at issue in this action exceed this Court's minimum
14 jurisdictional requirements and this Court has subject matter jurisdiction of this action.

15 5. The events out of which Plaintiff's claims arise occurred within
16 Maricopa County, Arizona, making venue proper in this County.

17 **COUNT ONE**

18 Statutory Violation of A.R.S. §44-6701 et seq.

19 6. Paragraphs 1 - 5 are hereby incorporated by reference as if fully set forth
20 herein.

21 7. Balar is an equipment dealer located in Phoenix Arizona. It sells
22 equipment, including asphalt laying and maintenance equipment for light industrial,
23 commercial, and utility uses. The business has existed for twenty-one years and
24 enjoys a very high reputation and the goodwill of its customers, many of whom are
25 asphalt paving contractors that perform the work of paving residential and business
26 driveways, golf cart and other recreational paths, commercial and multi-family

1 residential building parking lots, and some city streets.

2 8. A large majority of Balar's business always has and still does consist of
3 selling asphalt maintenance, paving and other equipment that is used in light
4 commercial and utility applications. Very little, if any, of the equipment Balar has
5 sold over the years is for earthmoving or heavy construction. The majority of it is not
6 used in any kind of construction, but is specifically designed for the maintenance of
7 roads and parking lots, a function that, by definition, can only take place long after
8 "construction."

9 9. Balar has sold LeeBoy products for roughly twenty years. On or about
10 December 31, 2005, Plaintiff and Lee entered into a contract known as "Leeboy
11 Dealership Agreement" (hereinafter "Agreement"). A copy of the Agreement is
12 attached as Exhibit "A". The Agreement appointed Balar as LeeBoy's exclusive
13 dealer in LeeBoy and Rosco Brands (the name of a different LeeBoy line) "products"
14 in a Territory that consisted of the State of Arizona. Exh. A, Schedule I.

15 10. Section 12 of the Agreement expressly grants Balar any and all rights
16 provided to it in connection with the Agreement under the laws of Arizona.

17 11. Arizona law provides equipment dealers like Balar with various
18 protections under the provisions of the Equipment Dealer Act, A.R.S. §44-6701 *et seq.*
19 (the "Act").

20 12. The LeeBoy and Rosco Brand equipment that is the subject of the
21 Agreement is "equipment" within the statutory definition of the Act, §44-6701(2) of
22 which includes equipment used for "light industrial and utility purposes," unless it is
23 "earthmoving and heavy construction equipment, mining equipment, or forestry
24 equipment." None of the LeeBoy equipment is for mining or forestry, and only its
25 road graders even possibly fit the definition of being "earthmoving and heavy
26 construction equipment."

1 13. Balar is an “equipment dealer” within the meaning of §44-6701(3) of the
2 Act, because it “is primarily engaged in the retail sale of equipment.” The vast
3 majority of LeeBoy equipment sold by Balar is not earthmoving, heavy construction
4 equipment, and the Agreement is a “dealer agreement” within the meaning of §44-
5 6701(1).

6 14. The Act forbids the termination, cancellation, non-renewal of a
7 dealership agreement except for cause. A.R.S. §44-6702(3); §44-6703(B).

8 15. The Act grants jurisdiction to any competent court to hear actions
9 brought for enforcement of violations of its provisions through damages or injunctive
10 relief. A.R.S. §44-6708. Foreign forum or venue selection clauses like those in the
11 Agreement are unenforceable with regard to actions brought to enforce the terms of
12 the Act. A.R.S. §44-6709(B).

13 16. On October 27, 2006, LeeBoy sent Balar a letter by which it purported to
14 cancel the dealership agreement as of December 31, 2006. None of the permissible
15 causes for termination under the Act in §44-6703(B) was identified. None of those
16 causes existed.

17 17. LeeBoy’s actions constituted a violation of the Act.

18 18. Prior to December 31, 2006, Balar notified LeeBoy that the Act forbade
19 its termination, but LeeBoy refused to acknowledge that the Act applied and
20 reaffirmed its attempted termination of the dealership agreement. As a direct and
21 proximate result of the violation of the Act, LeeBoy has refused to sell new equipment
22 through Balar, which has already cost it lost sales. The losses in sales and a reduction
23 in parts and repair revenue will continue now and in the future, reducing the profits of
24 Balar.

25 19. In addition to the lost sales and parts and repair revenues, Balar’s
26 commercial reputation has been and will continue to be injured as a direct and

1 proximate result of its being wrongfully terminated as a LeeBoy dealer in
2 contravention of the Act, further increasing the damages and loss of profits it has
3 suffered and will suffer in the future.

4 **COUNT TWO**

5 **Punitive Damages**

6 20. Paragraphs 1 - 19 are hereby incorporated by reference as if fully set
7 forth herein.

8 21. The Act exists to protect the interests of dealers like Balar from
9 termination and disruption of their business by suppliers like LeeBoy. Upon
10 information and belief, LeeBoy was aware of the statute and acted intentionally and
11 knowingly by deciding to terminate Balar without cause. That action was a conscious
12 decision made by LeeBoy to further its own interests while at the same time ignoring
13 the clear likelihood that significant harm would result to Balar. Under Arizona law,
14 that conduct warrants punitive damages to punish the current defendant and to deter
15 others from acting the similarly in the future.

16 **PRAYER FOR RELIEF**

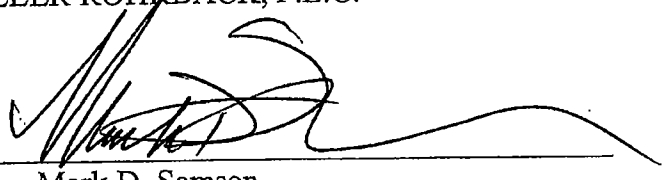
17 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 18 1. For compensatory damages in an amount determined by the jury to fully
19 and reasonably compensate Plaintiff for its lost income and profits up until the time of
20 trial and reasonably likely to be suffered in the future;
- 21 2. For punitive damages in an amount to be determined by the jury;
- 22 3. For Plaintiff's costs and reasonable attorneys' fees pursuant to A.R.S.
23 §44-6708(A);
- 24 4. For Plaintiff's costs incurred herein; and,
- 25 5. For such other relief as to the Court seems just and reasonable under the
26 circumstances.

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DATED this 16th day of January, 2007.

KELLER ROHRBACK, P.L.C.

By: 

Mark D. Samson
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012-2643
Attorneys for Plaintiff

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EXHIBIT B

COPY

JAN 16 2007



MICHAEL K. JAMES, CLERK
M. Samson
DEPUTY CLERK

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18 PARTNERSHIPS I - X, inclusive,

19 Defendants.

NOV 2007-000926

CERTIFICATE OF
ARBITRATION

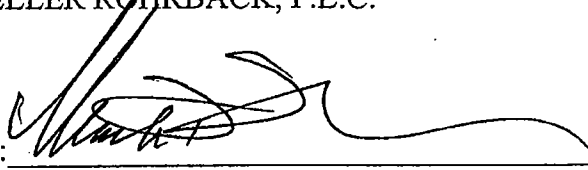
20 Pursuant to A.R.C.P. 72(e)(1), the undersigned certifies that he knows the dollar
21 limits and any other limitations set forth by the local rules of practice for the applicable
22 superior court and further certifies that this case IS NOT subject to compulsory
23 arbitration, as provided by Rules 72 through 76, A.R.C.P.
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DATED this 16th day of January, 2007.

KELLER ROHRBACK, P.L.C.

By: 

Mark D. Samson
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012-2643
Attorneys for Plaintiff

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EXHIBIT C

Law Offices of
LAIRD & ASSOCIATES, P.C.
Mitchell C. Laird, Attorney At Law
Jon Althouse, Attorney At Law

National Bank Plaza
3101 North Central Avenue, Suite 1560
Phoenix, Arizona 85012
Telephone: (602) 277-5751
Facsimile: (602) 277-4881

December 18, 2006

VIA OVERNIGHT MAIL

David Carey
VT Leeboy, Inc.
500 Lincoln County Parkway Ext.
Lincolnton, NC 28092

Re: LeeBoy® Dealership Agreement dated 12/31/05 between Balar Equipment Corporation and B.R. Lee Industries, Inc., now known as VT LeeBoy, Inc. (the "Dealership Agreement")

**CONFIDENTIAL – FOR SETTLEMENT PURPOSES ONLY,
INADMISSIBLE FOR ANY PURPOSE**

Dear Mr. Carey:

This firm represents Balar Equipment Corporation ("Balar") in the above-referenced matter. We are in receipt of your October 27, 2006 letter on behalf of VT LeeBoy, Inc. ("LeeBoy") to Mark Spaulding in which you purport to terminate the Dealership Agreement. That termination is ineffective under Arizona law and a breach of the Dealership Agreement. If it is not immediately withdrawn, Balar will be entitled to significant damages.

We say that with confidence, because what LeeBoy says it is going to do clearly violates Arizona law. In 1993, the Arizona legislature passed the Arizona Equipment Dealer Protection Act (see A.R.S. §44-6701, et seq., the "Act") for the express purpose of protecting equipment dealers like Balar from unfair treatment from their suppliers. The Act provides special protections to equipment dealers in their relations with suppliers.¹ Perhaps the most important protection provided to equipment dealers is its bar against arbitrary cancellation or non-renewal of the dealership relationship:

"A supplier, either directly or through an agent, shall not terminate, cancel, *fail to renew* or substantially change the competitive circumstances of a dealership agreement without cause." A.R.S. §44-6703(B).

Because of the Act's inclusive reach, it is immaterial whether the attempt to cancel the Dealership Agreement is called a "termination" (as your letter indicates) or a

¹ LeeBoy incorporated the specific protections of the Arizona Act into the dealership agreement in §12.

failure to renew the contract. Under the terms of the Act, the contract stays in force unless and until LeeBoy can show good cause for it to expire.

The enforcement of these kind of dealer protection acts is something that the courts take very seriously. In the Ninth Circuit (the controlling circuit for Arizona cases), the court has found that the supplier in LeeBoy's position had to establish good cause for non-renewal even though the dealership agreement in the case had been specifically designed to terminate unless both parties affirmatively agreed to extend it. *Gravquick A/S v. Trimble Navigation International Ltd.*, 323 F.3rd 1219, 1222 (9th Cir., 2003) (interpreting a California dealership protection act very similar to Arizona's).

The Arizona Act does not leave the decision of what is sufficient cause for termination or non-renewal up to later interpretation. The statute, A.R.S. §44-6703, lists fifteen specifically enumerated acts or omissions by the dealer as the only things that warrant termination (or non-renewal). None are present here. In fact, your October 27 letter identifies no cause for the attempted termination, a separate violation of the Act which would independently render your attempt to terminate ineffective. Under A.R.S. §44-6703, a ninety day notice-and-cure period is required before even a justified termination becomes effective.

More importantly, though, after discussions with our client, we are confident that there was (and is) no cause for termination and that we will be able to demonstrate that to the court, if necessary.² In fact, Balar's performance under the Dealership Agreement has been exemplary, particularly under the new management team led by Mark Spaulding and Peter Evans. In the 4 ½ years since Messrs. Spaulding and Evans became involved, they have increased LeeBoy sales dramatically. Sales of LeeBoy equipment in Arizona rose from \$1.1 million in 2001 to over \$3.3 million in 2006. Balar is solely responsible for the name-recognition and dominant market share that LeeBoy currently enjoys in Arizona. The fact that Balar is an outstanding dealer is not just self-congratulation. It is ranked in the top three dealerships nationally by Schwarze Industries, KEG and Wachs, and in the top ten dealerships nationally by Vac-Con.

As impressive as they are, the numbers are not the whole story. Balar has gone above and beyond the call of duty in many other ways. It sent six of its ten staff members to LeeBoy for training in the last three years, two of whom LeeBoy tried to hire away. Balar also showed initiative by developing an instructional video for LeeBoy curbers and a power point presentation to train users on LeeBoy distributor trucks. LeeBoy subsequently showed the curber video at its national dealer convention.

² We say court, because even though Balar's monetary damage claims may be arbitrable under the agreement, A.R.S. §§11.2 of the Dealership Agreement specifically reserves the right to seek injunctive relief from the local courts. Given the graphically clear violation of the Act (especially the complete absence of the required notice of purported "cause" for termination), an injunction is very likely to be issued, leaving LeeBoy with no distributor in the territory and Balar's damage claim mounting daily.

Balar has also been the consummate team player for LeeBoy. Balar has helped other LeeBoy dealers sell their inventory and has set aside its own contractual rights in order to help LeeBoy's relations with other dealers.

That record is why Balar is so confident that it will prevail in its claims against you if this termination attempt is pushed any further. There is no basis for termination, and any attempt to manufacture one at this point will simply dig the hole deeper for LeeBoy. That hole is deep enough already to cost LeeBoy a great deal of money if it persists. As outlined above, the sales figures show that Balar is an outstanding dealer. Those big production numbers are also the first step in determining how much this wrongful termination effort is going to cost LeeBoy. The termination attempt comes in the midst of a particularly good year for LeeBoy in Arizona. In Balar's damage suit, that exceptionally good year will become the baseline for its present and future damages. In addition to the direct losses of LeeBoy sales, there will be additional damages because the wrongful termination of the Dealership Agreement will cripple Balar, which receives over one-third of its revenue from sales of LeeBoy equipment.

If LeeBoy continues on this course, it will be looking at a compensatory damage claim in the neighborhood of \$4,290,000. We base that figure on the conservative estimate (based on past years' data) that shows that the "value" of the LeeBoy product line to Balar is roughly 5.5 times its earnings on the current year's LeeBoy sales. Balar's net earnings on the LeeBoy relationship this year are approximately \$780,000. If the wrongful termination causes Balar to fold, there will be significant additional consequential damages.

Based on the absolute lack of basis for the termination, Balar will also seek punitive damages. Arizona law will be very receptive to that claim in this setting. Under Arizona law, punitive damages are warranted when (even in the absence of spite or ill-will), a defendant "acts to serve its own interests, having reason to know and consciously disregarding a substantial risk that his conduct might significantly injure the rights of others." *Bradshaw v. State Farm Mut. Auto Ins.*, 157 Ariz. 411, 758 P.2d 1313 (App. 1988); Recommended Arizona Jury Instruction (Civil), Personal Injury Damages 4. When the conduct involved, as here, is the breach of a specific statute enacted to protect another's rights from the very kind of conduct complained of, punitive damages are not only appropriate, but almost certain.

From our research, it appears that LeeBoy has first-hand experience with how fact-finders evaluate the kind of conduct at issue here. In *Diesel Machinery, Inc. v. B. R. Lee Industries, Inc.*, 418 F.3rd 820 (8th Cir., 2005), LeeBoy was required to pay \$665,000 in actual damages and \$2,660,000 in punitive damages to a terminated South Dakota dealer. The sales performance in that case was nowhere near Balar's – it had sold only one or two pavers. Actual damages were based on a multiple of *projected* earnings in excess of ten times the next years' earnings. Of course, if Balar is forced to litigate the

Mr. David Carey
VT Leeboy, Inc.
December 18, 2006
Page 4 of 4

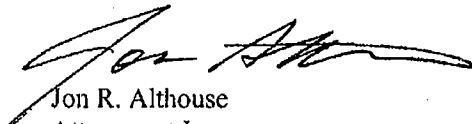
Confidential Settlement Communication

issues described herein, it will seek a more aggressive calculation of actual damages than proposed herein and will pursue any additional appropriate remedies.³

Because of the short time before the threatened termination is supposed to take effect, Balar will have to move quickly towards a final resolution of its claims. Rather than simply file the action for injunctive relief and damages, we wanted to give LeeBoy a chance to undo an action that would be disastrous. If you are interested in resolving these issues prior to a formal action, please contact this office immediately.

Sincerely,

LAIRD & ASSOCIATES, P.C.


Jon R. Althouse
Attorney at Law

xc Mark Spaulding
Mark Samson, Keller Rohrback, P.L.C.⁴
Kelly Majeski
Dave Reposa
VT LeeBoy, Inc. (via statutory agent)

³There are other grounds on which LeeBoy's termination of the Dealership Agreement was a breach of the Dealership Agreement and in violation of Arizona law including, but not limited to, a lack of adequate notice. Balar is not waiving, and does not intend to waive, any breaches or any other claims or causes of action which are not discussed herein, and reserves the right to assert any and all such claims in the future.

⁴ Due to the compressed time frame, I have involved Balar's litigation counsel. Of course, it is our hope that these matters can be resolved without the need for litigation.