

04-387 Gemtron Corporation v. Saint Gobain Corporation
EXHIBIT B

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2008-1068

SUNDANCE, INC. and MERLOT TARPAULIN AND
SIDEKIT MANUFACTURING CO., INC.,

Plaintiffs-Appellees,

v.

DEMONTE FABRICATING LTD.
and QUICK DRAW TARPAULIN SYSTEMS, INC.,

Defendants-Appellants.

ON MOTION

Before RADER, SCHALL, and PROST, Circuit Judges.

SCHALL, Circuit Judge.

ORDER

DeMonte Fabricating Ltd. et al. (DeMonte) moves for (1) a stay, pending appeal, of the October 19, 2007 permanent injunction of the United States District Court for the Eastern District of Michigan and (2) a stay of execution of the monetary judgment. Sundance, Inc. et al. (Sundance) oppose. DeMonte replies.

Sundance brought suit against DeMonte alleging willful infringement of Sundance's patent for a segmented cover system. After trial, the jury determined that DeMonte's Quick Draw Tarp System for flat-bed trucks infringed claim 1 of the patent-in-suit but that the patent was invalid on obviousness grounds.

However, on September 20, 2006 the district court granted Sundance's motion for a Judgment as a Matter of Law (JMOL), setting aside the jury's verdict on invalidity.

On October 19, 2007, the district court entered final judgment in favor of Sundance in the amount of \$1,310,814.71 and permanently enjoined DeMonte from making, using, or selling products found to infringe Sundance's patent. DeMonte appeals and seeks a stay, pending appeal, of the permanent injunction and execution of the monetary judgment.

In deciding whether to grant a stay or injunction, pending appeal, this court "assesses the movant's chances of success on the merits and weighs the equities as they affect the parties and the public." E.I. Dupont de Nemours & Co. v. Phillips Petroleum Co., 835 F.2d 277, 278 (Fed. Cir. 1987); see also Standard Havens Prods. V. Gencor Indus., 897 F.2d 511 (Fed. Cir. 1990). To prevail, a movant must establish a strong likelihood of success on the merits or, failing that, must demonstrate that it has a substantial case on the merits and that the "harms" factors militate in its favor. Hilton v. Braunskill, 481 U.S. 770, 778 (1987).

Without prejudicing the ultimate disposition of this case by a merits panel, we conclude that DeMonte has met its burden of demonstrating that a stay is warranted under these circumstances.

Accordingly,

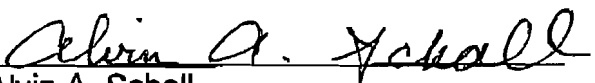
IT IS ORDERED THAT:

DeMonte's motion for a stay, pending appeal, is granted.

FOR THE COURT

NOV 30 2007

Date


Alvin A. Schall
Circuit Judge

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U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

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JAN HORBALY
CLERK

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Thomas E. Wettach, Esq.

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