

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
SEP 30 2010
[Signature]

THOMAS ANDREW WAGER

CIV. 09-3015

Plaintiff,

OPINION AND ORDER

-vs-

FREHNER CONSTRUCTION CO., INC.,
et al.

Defendants.

Defendant Frehner Construction Company filed motions to dismiss for lack of personal jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(2), Docs. 51 and 78. There is now also pending a motion to dismiss for failure to join indispensable parties and an alternative motion to transfer filed by defendant CMI Terex Corporation.

The motions to dismiss for lack of jurisdiction should be denied for the present without prejudice to reconsider. The United States Supreme Court has granted *certiorari* in two matters that may further clarify the extent of long-arm jurisdiction over a corporation who places a product in the stream of commerce through a distributor (or auction house) that targets a national market or when other entities distribute in the forum state products placed in the stream of commerce by the corporation. J. McIntyre Machinery v. Nicastro, Supreme Court Docket 09-1343 (cert. granted September 28, 2010), and Goodyear Luxembourg Tires v. Brown, Supreme Court Docket 10-76 (cert. granted September 28, 2010).

Now, therefore,

IT IS ORDERED that defendant's motions, Docs. 51 and 78, to dismiss for lack of personal jurisdiction are denied.

Dated this 30th day of September, 2010.

BY THE COURT:

Charles B. Kornmann
CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: *Sarah Tubersch*
DEPUTY

(SEAL)