

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

CUMMINS-ALLISON CORP.,

Plaintiff/Counter-Defendant,

v.

Civil Action No. 9:07-cv-196-RHC
(consolidated)

SBM CO., LTD., et al.,

Defendants/Counter-Claimants.

Judge Ron Clark

DEFENDANT AMRO-ASIAN TRADE, INC.'S NOTICE OF APPEAL

Pursuant to Federal Rule of Appellate Procedure 3 and 28 U.S.C. § 1291, notice is hereby given that Defendant Amro-Asian Trade, Inc. ("Amro") appeals to the United States Court of Appeals for the Federal Circuit from the final judgment and permanent injunction entered by this Court on October 30, 2009 (Dkt. # 219) and all interlocutory orders that gave rise to the judgment, including but not limited to:

1. Order dated March 19, 2009, granting Plaintiff Cummins-Allison Corp.'s ("Plaintiff" or "Cummins") motion to limit Defendants' invalidity contentions and denying Amro's motion to amend invalidity contentions (Dkt. # 109);
2. Order dated April 14, 2009, denying Amro's Motion for Summary Judgment (Dkt. # 124);
3. Order dated September 21, 2009, denying (in part) Amro's Motions in *Limine*, granting Plaintiff's Motion in *Limine* and granting (in part) Plaintiff's Motion to Strike Testimony (Dkt. # 161-1);
4. Order dated October 1, 2009, granting (in part) Plaintiff's Motion to Strike (Dkt. # 177);
5. Order dated October 15, 2009, granting Plaintiff's Motion to Strike (Dkt. # 205);

6. Order dated October 23, 2009, granting (in part) Plaintiff's Post-Trial Motions (Dkt. # 214);

7. Order dated November 13, 2009, denying Amro's Motion and Renewed Motion for Judgment as a Matter of Law (Dkt. # 223);

8. Order dated November 13, 2009, finding willful infringement by post-verdict sales and awarding enhanced damages for post-verdict sales (Dkt. # 224); and

9. Order dated December 30, 2009, denying Amro's Motion for Partial New Trial (Dkt. # 254).

This Notice of Appeal is timely in light of the stay of this action as to Amro in view of two bankruptcy proceedings in the U.S. Bankruptcy Court for the District of Hawaii ("Hawaii Bankruptcy Court"). First, on March 20, 2010, Cummins filed a Chapter 7 Involuntary Petition against Amro with the Hawaii Bankruptcy Court.¹ While this Court ruled on several post-trial motions with respect to Defendant SBM Co., Ltd., this Court stayed these motions as to Defendant Amro in light of said bankruptcy proceeding.² The Hawaii Bankruptcy Court dismissed the case brought by Cummins on September 21, 2010.³

Second, on September 16, 2010, Amro filed a Chapter 11 Voluntary Petition with the Hawaii Bankruptcy Court.⁴ On September 29, 2010, Amro filed a Motion for Relief from Automatic Stay in order to file the instant Notice of Appeal.⁵ On October 8, 2010, Cummins

¹ See *Cummins-Allison Corp. v. Amro-Asian Trade, Inc.*, No. 10-00795, Chapter 7 Involuntary Pet. (Bankr. D. Haw. Mar. 20, 2010) (Dkt. # 1).

² See, e.g., Order Den. Pl.'s Mot. to Alter J. on Inventorship (E.D. Tex. Aug. 11, 2010) (Dkt. # 260), Order Den. Pl.'s Mot. for Recons. of Mot. for J.M.O.L. (E.D. Tex. Aug. 11, 2010) (Dkt. # 265).

³ See *Cummins-Allison Corp. v. Amro-Asian Trade, Inc.*, No. 10-00795, Order Granting Mot. Dismiss Case (Bankr. D. Haw. Sept. 21, 2010) (Dkt. # 34); see also Def.'s Notice of Bankruptcy Orders, Ex. A (Dkt. # 269-1).

⁴ See *In re Amro-Asian Trade, Inc.*, No. 10-02868, Chapter 11 Voluntary Pet. (Bankr. D. Haw. Sept. 16, 2010) (Dkt. # 1).

⁵ See *In re Amro-Asian Trade, Inc.*, No. 10-02868, Mot. for Relief from Stay (Bankr. D. Haw. Sept. 29, 2010) (Dkt. # 10).

opposed Amro's Motion for Relief from Automatic Stay, conceding that Amro's time to appeal this Court's final judgment had not yet begun to run, but arguing that the case should be dismissed altogether.⁶ On October 13, 2010, the Hawaii Bankruptcy Court granted Amro's Motion for Relief from Automatic Stay,⁷ and also granted Amro's Application to Employ Perkins Coie as Special Counsel pursuant to 11 U.S.C. § 327(e).⁸

Dated: October 19, 2010

Respectfully submitted,

/s/ Grant E. Kinsel

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⁶ See *In re Amro-Asian Trade, Inc.*, No. 10-02868, Opp'n Mot. for Relief from Stay (Bankr. D. Haw. Oct. 8, 2010) (Dkt. # 25) ("In other words, while all matters in the Texas trial court are finally decided as against SBM, and SBM's 30-day appeal clock is running, Amro has no current right to appeal in the SBM case, because Cummins' two post-trial motions remain pending against Amro. Accordingly, the 30-day appeal clock is not running as to Amro, its appeal rights are not in jeopardy, and it is not in need of, or entitled to, relief from the stay on an expedited basis.").

⁷ See *In re Amro-Asian Trade, Inc.*, No. 10-02868, Mins. of Hr'g on Mot. for Relief from Stay (Bankr. D. Haw. Oct. 13, 2010) (Dkt. # 32) (granting motion); see also Def.'s Notice of Bankruptcy Orders, Ex. B (Dkt. # 269-2).

⁸ See *In re Amro-Asian Trade, Inc.*, No. 10-02868, Order Re: Application to Employ Perkins Coie as Special Counsel for Debtor Pursuant to 11 U.S.C. § 327(e) (Bankr. D. Haw. Oct. 13, 2010) (Dkt. # 31) (granting application); see also Def.'s Notice of Bankruptcy Orders, Ex. B (Dkt. # 269-2).

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October 2010, this Notice of Appeal was served electronically on all counsel of record via the Court's CM/ECF system.

/s/ Grant E. Kinsel

Grant E. Kinsel