

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

STATE OF NEW YORK,

Plaintiff,

94 Civ. 0544 (TCP)

-against-

SWANSTON EQUIPMENT CO., INC.,

Defendant.

-----X

CONSENT DECREE AND FINAL JUDGMENT

Plaintiff, the State of New York, through its Attorney General, G. Oliver Koppell, having filed its Complaint herein on February 7, 1994, and the defendant, Swanston Equipment Co, Inc. ("Swanston"), by their respective attorneys, having consented to the entry of this Consent Decree and Final Judgment without trial or adjudication of any issue of fact or law herein and without this Consent Decree and Final Judgment constituting any admission of liability or evidence against or an admission by any party with respect to any such issue, or any judgment or finding of a civil offense, or creating any civil liability for any wrongful act complained of herein;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, and the Court having determined, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

1. Jurisdictional Clause

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the Defendant Swanston under Section 1 of the Sherman Act (15 U.S.C. §1) and a pendant claim upon which relief may be granted under Section 340 of the Donnelly Act (NY General Business Law § 340).

2. Applicability Clause

This Consent Decree and Final Judgment applies to the Defendant Swanston and to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Consent Decree and Final Judgment by personal service or otherwise.

3. Damages

Defendant Swanston shall pay to the State of New York One

Hundred Thirty Five Thousand (\$135,000.00) for damages allegedly suffered by the State of New York. Defendant shall make five payments: an initial payment of \$27,000, which was to have been made prior to the entry of this Consent Decree and Final Judgment; and four additional payments of \$27,000 plus accrued interest, the second payment to be made on January 1, 1995, the third payment to be made on January 1, 1996, the fourth payment to be made on January 1, 1997 and the final payment to be made on January 1, 1998. Interest shall accrue at the federal statutory rate set for judgments entered in the United States District Court For The Eastern District Of New York.

4. Future Conduct

With respect to all bids submitted to the New York Department of Transportation, Defendant Swanston is enjoined from violating the provisions of the Sherman Act, 15 U.S.C. § 1, et. seq. and the Donnelly Act, NY General Business Law § 340, et. seq. In particular, Defendant Swanston is enjoined from:

(a) entering into or participating in any contract, combination, or conspiracy to rig bids or allocate territories for any New York State Department of Transportation contracts or projects;

(b) discussing the particulars of its prospective bids with competing bidders. The term "competing bidders" as used in this Consent Decree and Final Judgment shall not include any legitimate supplier, joint venture, partnership or subcontractor relationship

or wholly-owned subsidiary;

(c) soliciting or obtaining from actual or potential competing bidders intentionally high or complimentary bids which are set above an agreed figure or set by any other method in order that a particular entity will receive the award of any Department of Transportation contract or project in the State of New York.

Defendant Swanston agrees that any violation of the terms of this injunction shall be prima facie evidence of a violation of New York General Business Law § 340, et. seq. and 15 U.S.C. § 1 in any proceeding brought by the Attorney General to enforce this injunction.

5. Compliance Program

With respect to any bid submitted to the New York State Department of Transportation, Defendant Swanston shall institute procedures to prevent any potential violation of this injunction, including a policy that two people employed by Swanston must review highway line striping bids; a policy that the estimator does not attend the bid letting unless there are legitimate business reasons necessitating the estimator's attendance; adoption of an antitrust compliance policy which consists of both written materials and of periodic meetings with counsel to review antitrust laws; a requirement that all new employees with any responsibility for bidding or purchasing of materials be briefed on their legal obligations.

6. Visitorial Clause

For the purpose of determining or securing compliance with this Consent Decree and Final Judgment, and subject to any legally recognized privilege, from time to time:

(a) Duly authorized representatives of the Attorney General shall, upon written request of the Attorney General or of the Chief of the Antitrust Bureau of the New York State Attorney General's Office, and on reasonable notice to Defendant Swanston made to its principal office, be permitted:

(1) Access during office hours of Defendant Swanston to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Defendant, who may have counsel present, relating to any bids submitted to the New York State Department of Transportation and to matters contained in this Consent Decree and Final Judgment; and

(2) Subject to the reasonable convenience of such Defendant Swanston and without restraint or interference from it, to interview officers, employees and agents of Defendant, who may have counsel present, regarding any such matters.

(b) Upon the written request of the Attorney General or of the Chief of the Antitrust Bureau of the New York Attorney General's Office, made to Defendant Swanston's principal office, Defendant shall submit such written information, under oath if requested, with respect to any of the matters contained in this Consent Decree and Final Judgment as may be requested.

No information or documents obtained by the means provided herein shall be divulged by any representative of the State of New York, including the Attorney General or any representative of the New York State Department of Law, to any other person except as permitted by Section 343 of the New York General Business Law, or for the purpose of securing compliance with this Consent Decree and Final Judgment, or as otherwise required by law.

7.X. Expiration of Judgment

This Consent Decree and Final Judgment will expire on ~~the~~ ^{Feb. 17, 1999} ~~fifth anniversary of its date of entry.~~

8.X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree and Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Consent Decree and Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

Pursuant to Rule 54(b), this Court directs the entry of this
Consent Decree and Final Judgment forthwith.

G. OLIVER KOPPELL
Attorney General of the
State of New York

By: 

Robert F. Roach, Esq. (RR-7001)
Assistant Attorney General
Attorney for Plaintiff
Room 2601
120 Broadway
New York, New York 10271
(212) 416-8282

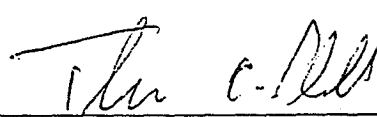
POPHAM, HAIK, SCHONBRICH & KAUFMAN, LTD.

By: 

Scott K. Goldsmith, Esq. (SG-5509)
Attorney for Swanston Equipment
Co., Inc.
Suite 3300
222 South Ninth Street
Minneapolis, MN 55402
(612) 333-4800

Dated: Uniondale, New York

January 4, 1995


Thomas C. Platt
Chief United States District Judge