

Virginia Supreme Court to Clarify Business Conspiracy Statute in Case Brought by Franchisee

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[Virginia Lawyers Weekly](#) reports that the Fourth Circuit is asking the Virginia Supreme Court to answer two questions about the interpretation of Virginia's Business Conspiracy Statute.

The case, [Dunlap v. Cottman Transmissions Systems, LLC](#), was brought by the owner of a transmission shop who alleged that local competitors and others conspired to get the franchisor to force him out of business. The Eastern District of Virginia dismissed the lawsuit, and the shop owner appealed. Instead of addressing the issues on appeal, the Fourth Circuit decided that it would be best to ask the Virginia Supreme Court to answer the unresolved questions of state law pursuant to Rule 5:40 of the Rules of the Supreme Court of Virginia.

The first question is whether an allegation of tortious interference with contract or business expectancy can serve as the basis for a statutory conspiracy claim. The second question is whether a two-year or five-year limitations period applies to a tortious interference claim.

Interestingly, the Fourth Circuit panel that issued the ruling included former Supreme Court Justice Sandra Day O'Connor, who was sitting on the panel by designation. In this day and age, Supreme Court Judges are frequently accused of judicial activism by those who disagree with their rulings. Justice O'Connor's decision to certify a question to a state court instead of resolving it herself is perhaps the epitome of judicial restraint and moderation.

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