



GENERAL COUNSEL CORNER

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An Important Issue Undecided

Rosedale Plaza Group, LLC v. BP West Coast Products, LLC brought an important issue before a California federal court.

Can a supplier insist, as a condition of renewal of a PMPA motor fuel franchise, that the franchisee accept an unwanted mini-market franchise agreement as well?

When the Rosedale Plaza Group became the dealer of a BP supplied station, it accepted assignment not only of the previous dealer's PMPA motor fuel franchise, but also the dealer's *am/pm* Franchise Mini-Market Agreement for the operation of the station's convenience store.

When renewal time came, the new dealer made known to BP that it no longer desired to operate its convenient store as an *am/pm* franchise mini-market.

BP insisted that the dealer accept renewal both of the *am/pm* franchise agreement and of the PMPA motor fuel franchise agreement on a take-it-or-leave-it basis. When the dealer refused to cave in to BP's demands, BP sent a notice of nonrenewal.

The dealer filed suit, asserting that the PMPA prohibited a franchisor from requiring a franchisee to enter into a "non-motor fuel, non-necessary, mini-market convenient store franchise agreement" as a condition of maintaining its PMPA motor fuel franchise.

After the court entered a preliminary injunction maintaining the dealer's status pending the outcome of the litigation, both parties moved for summary judgment, apparently believing the issue to be a clear matter of law for the court to decide.

The court disagreed. In a lengthy opinion that analyzed exhaustively the limited legal precedents relied upon by each party, the court denied both motions for summary judgment and held that it would be up to a jury to determine whether the continuation of the convenience store as an *am/pm* franchise was essential to the continuation of the motor fuel franchise. Expert testimony would be required, the court said, to resolve that issue.

In the few earlier decisions that have considered analogous issues, franchisees and franchisors have flip-flopped regarding whether a PMPA motor fuel franchise agreement and a secondary franchise agreement are interdependent, depending upon the nature of their dispute.

In *Smith v. Atlantic Richfield Co.*, 533 F. Supp. 264 (E.D. Pa. 1982), for example, ARCO – a predecessor of BP – desired to terminate its dealer's *am/pm* convenient store franchise because he refused to remove coin-operated video games from the store's premises.

Relying upon the close nexus between his gasoline and convenience store operations, the dealer sought to invoke PMPA protection to enjoin the termination of his convenience store franchise agreement. ARCO moved to dismiss the case for lack of jurisdiction, arguing that the PMPA was limited in scope to the termination or nonrenewal of motor fuel franchises.

The court agreed with ARCO. Rejecting the dealer's argument that the two agreements were "so intertwined and interdependent as to constitute one franchise," the court held "as a matter of law" that the convenience store agreement was not "a secondary arrangement essential to the operation of the motor fuel franchise."

In the *Rosedale Plaza Group* case, the dealer argued that if – as the *Smith* court held – continuation of a mini-market franchise is not essential to the continuation of dealer's core motor fuel franchise, then the supplier may not insist upon renewal of its mini-market franchise agreement as a condition to the renewal of its PMPA motor fuel agreement.

Although the court in the *Rosedale Plaza Group* case did not accept the dealer's black and white argument, its decision to let the jury determine the issue of interdependence probably left the dealer in a pretty good situation.

It may be difficult for BP to argue to a jury that continuation of the mini-market franchise agreement was either material or essential to continuation of the dealer's PMPA motor fuel agreement, where the dealer intended to continue full operation of the convenience store, but

simply not under the terms of a specific mini-market franchise agreement.

Given the importance of convenience store operations to the financial viability of so many service station operations, the ultimate determination in the *Rosedale Plaza Group* case is of considerable significance. It is an important issue yet to be decided.

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