General Counsel Corner

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Some Recent Dealer-Supplier Cases

Many issues come up repeatedly in dealer-supplier litigation. Some recent cases illustrate recurring themes.

In *Dhillon v. Chevron U.S.A., Inc.*, 2004 WL 2191317 (Cal. App. 2004), a California state appellate court affirmed a judgment for a dealer that amounted to over $2,700,000 in damages and attorney's fees.

After offering to sell a station to its lessee dealer, and then holding out the carrot of a favorable loan program in order to induce the dealer to accept a long-term branded supply contract, Chevron frustrated the dealer's ability to close through its own dilatory tactics. Chevron then refused to extend the closing date, even though the dealer had located an alternative source of funds, and ultimately sold the station months later to another purchaser.

Awarding significant damages to the dealer, the jury found that Chevron's conduct offended the implied covenant of good faith and fair dealing, which the law reads into all contractual arrangements. It rejected Chevron’s argument that the parties’ agreement gave it the absolute, unqualified right to refuse to extend the closing date.

The appeals court was required to balance competing rules of contractual interpretation. In California as in most states, the implied covenant may not be enforced in a manner that would contradict express contract terms. But it may be used to foreclose one party to a transaction from acting in a manner intended to frustrate the consummation of the parties’ agreement. This, the court agreed, was what Chevron had done. The court said:

> Under all these circumstances, the jury could reasonably conclude that Chevron's conduct had been objectively unreasonable in denying Plaintiffs the fruits of the transaction, even though the jury believed the conduct had not been fraudulent or sufficient to support a claim for negligent misrepresentation.

On the other side of the ledger is a recent federal district court opinion, *Bhawa v. Sunoco, Inc.*, 320 F.Supp.2d 454 (E.D. Va. 2004). There, the parties’ franchise agreement contained an express provision regarding government condemnation of the leased station. Their agreement provided:

> Dealer shall have no claim to any portion of a condemnation award payable to Company arising from any such taking or from damages to Premises resulting therefrom. However, Dealer may be entitled to any separate award payable to Dealer for taking of Dealer’s leasehold interest, loss of business opportunity, or goodwill.

When the State indicated its desire to acquire the property through condemnation in order to widen its right-of-way for the Woodrow Wilson Bridge, Sunoco terminated the franchise agreement pursuant to section 2802 of the Petroleum Marketing Practices Act, sold the location to the State and pocketed the entire $1,700,000 in sales proceeds. The Dealer sued, contending that he should have received part of the proceeds as compensation for his loss of his leasehold interest.

Granting summary judgment to Sunoco on the dealer's PMPA and state law claims, the federal court emphasized the dealer's express renunciation of "any portion of a condemnation award payable to Company." Because the State's notice of its intention to condemn the property provided Sunoco with a basis for termination consistent with the requirements of the PMPA, the dealer had no leasehold interest when the property was subsequently sold to the State.

Nor was the dealer saved by §2802(d)(1) of the PMPA, which requires that the franchiser "fairly apportion" any condemnation proceeds to compensate the franchisee for "any loss of business opportunity or goodwill." According to the court, the State's payment was only for the land and improvements, and did not include any payment for loss of business opportunity or goodwill.

In both the *Dhillon* and *Bajwa* decisions, the courts balanced the express contract provision at issue against the overall equities existing between the parties. In *Dhillon*, the court did not feel constrained to adopt Chevron's literal contractual interpretation because it determined that Chevron had acted unfairly in its implementation. In *Bajwa*, on the other hand, the court either believed it had no alternative to literal enforcement of the contract provision or saw no need to ameliorate the one-sided effect of its enforcement. In any event, many decisions turn on just such balancing issues.

Two recent PMPA preliminary injunction cases also deal with familiar themes. In *Joy v. BP Products North America, Inc.*, 332 F.Supp.2d 1084 (N.D. Ill. 2004), BP sought to terminate a dealer whose employee regularly had sold marijuana to local high school students from the service station premises in the morning hours before the dealer arrived at the station.

Issuing a preliminary injunction to protect the dealer's continued operation of the station, the court emphasized the absence of any proof that the dealer knew of his employee's illegal conduct. This decision, like several before it, recognizes that the PMPA only specifies "fraud or criminal conduct by the *franchisee*" as a statutory base for termination. That restriction of the basis for termination to *personal* misconduct by the franchisee cannot normally be enlarged upon to embrace the conduct of other station employees, even if the franchise agreement contains more generalized language.

In the second preliminary injunction case, *N.I. Petroleum Ventures Corp. v. GLES, Inc.*, 333 F.Supp.2d 251 (D. Del. 2004), the dealer received notice of its supplier's intent not to renew premised upon the dealer's "continuous motor fuel product run outs" and "noncompliance with branded image standards."

In deciding whether or not to enjoin non-renewal pending a full trial on the merits, the court was called upon to decide -- as in all PMPA preliminary injunction cases -- (1) whether the dealer had raised a substantial issue as to whether non-renewal was legally impermissible, and (2) whether the "balance of hardships" favored the grant of injunctive relief.

Almost always, the crucial question is whether the dealer has presented a substantial issues as to the propriety of the termination or non-renewal, and not which way the balance of hardships points. This is because the balance of hardships almost *always* favors the dealer because the dealer alone is faced with the total loss of his or her business. Not so here.

With respect to the sufficiency of the dealer's legal challenge to non-renewal, the court, as courts usually do, strictly limited its analysis to the grounds for non-renewal stated by the supplier in the statutory notice required by the PMPA. Also in accordance with the PMPA, the court refused to consider any alleged ground for non-renewal that had occurred more than 120 days prior to the date of notice. The effect of applying those restrictions to the evidence presented by the supplier was to eviscerate its case for non-renewal.

The dealer, however, shot himself in the foot as to the second element. Despite promises made to the court during the course of informal conferences preceding the hearing on the preliminary injunction motion, the dealer violated the parties' stand-still agreement by not making prompt payment to his supplier for product received. Finding against the dealer on the balance of hardships element, the court emphasized that it "is a basic maxim that one who seeks equity must do equity."

In other words, when in court don't tick off the guy in the black robe. Of all the principles in law, that is numero uno.

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