GENERAL COUNSEL CORNER

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Bad Decisions

Making bad decisions apparently is not the exclusive province of large, now defunct or nearly defunct financial institutions. Courts can do quite nicely too. Following are two recent examples where, in this writer's humble opinion, the court blew it, to the detriment of a service station claimant.

In *Lion Petroleum of Missouri, Inc. v. Millennium Super Stop, LLC,* 2008 WL1030789 (E.D.Mo. 2008), the distributor sued its former service station dealer customer for breaching the parties' long-term supply agreement. The dealer – who owned its two locations – charged in its counterclaim that the distributor had violated the Petroleum Marketing Practices Act by illegally terminating its franchise.

Even though, as the court noted, the supply agreement obligated the distributor to provide "trademark-branded fuel products for [the dealer] to resell to the public," the distributor contended that there was no franchise worthy of protection under the PMPA. That was so, claimed the distributor, because there was no landlord-tenant relationship between it and the dealer.

The court agreed with the distributor and dismissed the dealer's PMPA claim. Its ruling flies in the face of the express language of the PMPA.

Section 2801 (1)(A) of the Act defines a "franchise" protected by the PMPA as "***any*** contract" under which "a refiner or distributor … authorizes or permits a retailer … to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled … by a refiner which supplies motor fuel through the distributor which authorizes or permits such use."

Nowhere does that definition, which perfectly describes the relationship between the parties in the *Lion Petroleum* case, exclude from the all-inclusive term "any contract" contracts not involving a leasehold arrangement. "Any contract" simply means any contract.

True, §2801 (1)(B) of the definition states in a separate paragraph that the term "franchise" "includes" contracts under which retailers occupy "leased marketing premises." This separate statement that a "franchise" may include a leasehold arrangement simply does not mean, however, that ***all*** PMPA franchise relationships necessarily must include a leasehold element.

Even if the statutory definition could be deemed to be ambiguous – and it is not – the court could have turned to the legislative history of the PMPA, which is contained in detailed Senate and House reports.

The Senate Report clearly states that "[t]he term franchise is defined in terms of a motor fuel trademark license." It goes on to say that "[s]econdary arrangements, such as leases of real property ***or*** motor fuel supply agreements, are incorporated in the definition of a franchise."

Thus, not only does the legislative history make clear that a PMPA "franchise" arises from a trademark license arrangement, but also identifies as "secondary arrangements" that fall within the definition of a "franchise" ***both*** leasehold arrangements ***and*** supply agreements.

In sum, the court's decision appears to be inexplicable.

In *Akshayraj, Inc. v. Getty Petroleum Marketing, Inc.,* 2008 WL 4126341 (D.N.J. 2008), a lessee dealer whom Getty had rebranded from Mobil to Lukoil sued Getty for charging it unreasonably high and discriminatory prices in violation of the implicit covenant of good faith and fair dealing contained in all commercial contracts. The New Jersey Supreme Court previously had recognized such a duty in the context of a supplier's pricing to its dealers in *Wilson v. Amarada Hess Corp,* 773 A. 2d 1121 (N.J. 2001), which decision was binding on the *Akshayraj* court.

Declining even to consider the issue of whether or not Getty had acted in bad faith in its pricing to the dealer, the court granted Getty's motion for summary judgment dismissing the dealer's claim.

The court said that the dealer's claim was deficient because it feared that Getty would treat it unfairly even before it had entered into the rebranding agreement. The dealer had no reasonable expectation, therefore, that it would be treated fairly, and therefore had no remedy when Getty acted as the dealer feared that it would.

But what was the dealer supposed to do? It either had to agree to rebranding or turn in the station keys, sacrificing its investment and sweat equity.

In any event, how can one party's fear that its contracting party will abuse the parties' relationship give the other party license to act in bad faith and in contravention of the universally recognized duty of good faith of fair dealing? Is that justice?

I often tell my clients that the function of the judicial process is to provide an alternative to blood feuds as a method for resolving conflicts. The court's primary task is to resolve disputes without bloodshed; if it reaches a just conclusion that is nice, but not necessary.

These decisions appear to demonstrate the point.

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