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Two Recent Federal Court Decisions Dismiss Dealers' Claims of PMPA Constructive Termination and Constructive Nonrenewal

District courts in the District of Columbia and Maryland recently applied the U.S. Supreme Court's decision in Mac's Shell Serv. v. Shell Oil Prods. Co., 130 S. Ct. 1251 (2010), to reject dealer claims of constructive termination in the context of an assignment of the dealer's franchise by a refiner to a distributor. One of the cases also rejected a claim of constructive nonrenewal, even though the term of the franchise agreement had expired and the relationship had not been renewed by the assignee/distributor.

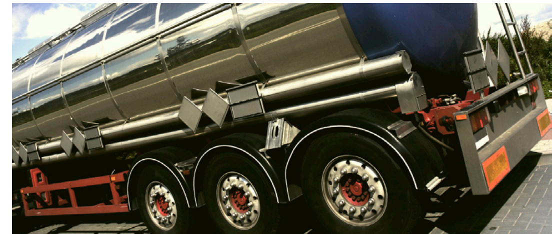
Metroil, Inc. v. ExxonMobil Oil Corp.

No. 09-1860 (RMU), 2010 U.S. Dist. LEXIS 72562 (D.D.C. July 20, 2010)

In Metroil, the District Court for the District of Columbia held that ExxonMobil's sale of a service station and assignment of the franchise agreement to another supplier did not constitute a termination or nonrenewal under the PMPA. The plaintiff service station operator leased its station property from ExxonMobil and operated it pursuant to a franchise agreement with ExxonMobil. Shortly before the term of the franchise agreement expired, ExxonMobil sold the station property and assigned the lease to co-defendant Anacostia Realty, a distributor which owned and supplied several retail gas station properties in the area. Plaintiff alleged, among other things, that the sale and assignment violated the PMPA, that defendants improperly failed to renew plaintiff's franchise relationship, and that Anacostia breached the franchise agreement when it raised fuel prices, required pre-payment for motor fuel, and withdrew allegedly excessive funds from plaintiff's bank accounts. The court disagreed, and dismissed plaintiff's PMPA claims for termination and nonrenewal, as well as its breach of contract claims.

First, the court determined that ExxonMobil's assignment to Anacostia did not constitute an unlawful termination under the PMPA. To state a claim for unlawful termination (constructive or actual), a plaintiff must allege that the franchisor's actions forced an end to: (1) use of the franchisor's trademark; (2) purchase of the franchisor's fuel; or (3) occupation of the franchisor's service station. 2010 U.S. Dist. LEXIS 72562, at *18 (citing Mac's Shell, 130 S. Ct. at 1257-58). Because the plaintiff did not allege even an interruption of any one of these three statutory components, the court concluded that it failed to state a claim for unlawful termination under the PMPA. To the extent the franchisor's conduct may have violated state law but did not interrupt any one of these components, the franchisee was restricted to state law remedies.[1]

As to the dealer's constructive nonrenewal claim, the court held that a plaintiff must allege "that the franchisor did not reinstate, continue, or renew the franchise relationship once a franchise agreement expired." 2010 U.S. Dist. LEXIS 72562, at *20 (citing Mac's Shell, 130 S. Ct. at 1262). "Even if a franchise agreement has expired and the franchisor has not signed or offered to sign a new agreement, a franchisee has no claim for non-renewal under the PMPA as long as it retains permission to use the franchisor's trademarks, receive branded gasoline and occupy the franchisor's station." 2010 U.S. Dist. LEXIS 72562, at *21 (citing Dersch Energies, Inc. v. Shell Oil Co., 314 F.3d 846, 860 (7th Cir. 2002) and Davis v. Gulf Oil Corp., 485 A.2d 160, 167 (D.C. 1984)).



Finally, the court in Metroil determined that ExxonMobil's sale and assignment to Anacostia did not breach the franchise agreement under applicable state law. The plaintiff claimed that the sale and assignment violated a state law permitting assignment "except where [it] would . . . increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance." 2010 U.S. Dist. LEXIS 72562, at *25. Specifically, the plaintiff claimed that Anacostia increased the burden imposed by the franchise agreement by raising the prices it charged for fuel, demanding payment in advance instead of cash on delivery, and withdrawing excessive funds from the plaintiff's bank account. The court found that each of these changes was permitted by, and therefore did not violate the franchise agreement. Accordingly, the plaintiff's breach of contract claims were dismissed. Id. at *26-27.

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1 In some places in its decision, the district court used a phrase such as "interruption of one of the three franchise components." The word "interruption" could be cited out of context and misused to suggest that something less than the complete ending of a franchise component is sufficient. The U.S. Supreme Court's decision was clear in Mac's Shell that it was necessary that "the complained-of conduct forced an end to the franchisee's use" of one of the three components. It will be important for franchisors in future cases to be equally insistent that an end of one of the components is required, and that a mere "interruption" is not sufficient.

Duncan Services, Inc. v. ExxonMobil Oil Corp.

No. AW-09-2486, 2010 U.S. Dist. LEXIS 69372 (D. Md. July 12, 2010)

In Duncan Services, a group of plaintiffs whose service station franchises had been assigned by ExxonMobil to distributor White Oak Petroleum claimed that the assignment violated the PMPA as well as their franchise agreements with ExxonMobil. The dealers argued that the assignment materially changed the benefits and burdens of their franchise in that the assignee was a distributor who could (and did) operate its own stations, something ExxonMobil could not do under Maryland's divorcement statute. The dealers also alleged that White Oak was likely to charge a higher price for gasoline than ExxonMobil had and that White Oak's subsequent sale and leaseback of the properties to Getty constituted a material change in the relationship. The court dismissed all of the dealers' claims, citing Mac's Shell.

Of particular note, the decision addressed directly the question of whether Barnes v. Gulf Oil Corp., 795 F.2d 358, 360 (4th Cir. 1986), is still good law for the proposition that a PMPA constructive termination can exist where the assignment might violate state law but there has been no termination of any of the three elements of a PMPA franchise. The Maryland district court stated Barnes was "inconsistent" with Mac's Shell.

The court found that "claims under the PMPA are thus limited to those instances that result in a breach of [one of the three] statutory component[s] of the franchise." 2010 U.S. Dist. LEXIS 69372, at *10. "Conduct that does not force an end to the franchise, in contrast, is not prohibited by the Act's plain terms." Id. (citing Mac's Shell, 130 S. Ct. at 1257). Because the plaintiffs still used ExxonMobil's trademark and fuel and continued to lease the same retail stations, the court concluded that ExxonMobil's assignment of the franchises to White Oak did not violate any statutory element of a franchise and did not amount to an actual or constructive termination. Id. at *11.

The plaintiffs in Duncan Services also argued that the assignments constituted constructive termination because they increased the plaintiff dealers' burdens and risks (particularly the risk of increased competition since White Oak was a distributor that was free to compete with the franchisees whereas ExxonMobil, as a refiner, was barred from doing so under Maryland's divorcement statute) and would likely cause plaintiffs to have to pay a higher price for gasoline than if they continued to be supplied directly by ExxonMobil. Id. at *11. However, the court found that "[t]he possibility of competition and increase in price of fuel are both insufficient to invoke the protections of the [PMPA] here, just as the loss of the subsidy in rent to the franchisee

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was insufficient to invoke the [PMPA] in Mac's Shell." Id. at *12 (citing Mac's Shell, 130 S. Ct. at 1261). The court also rejected the plaintiffs' argument that Exxon's sale of the station premises to White Oak, which then sold them to Getty who leased them back to White Oak, constituted a material change in the relationship. Because the plaintiffs still rented the same service station properties, the change in their status from lessees to sublessees was not a PMPA violation because it did not result in the loss of any of the three elements of a PMPA franchise. Id. at *14. In addition, the court considered the plaintiffs' contract claims relating to changes in fuel price, course of dealing, and lease status, and rejected them because it found that none of those changes were prohibited by the franchise agreements.

Notably, the plaintiffs relied heavily on Barnes v. Gulf Oil Corp., 795 F.2d 358, 360 (4th Cir. 1986) ("Barnes I"), in arguing that the changes at issue constituted a constructive termination. However, the district court noted that "the Fourth Circuit decided Barnes I long before the Supreme Court's decision . . . in Mac's Shell. To the extent the Barnes I Court remanded the case on the ground that the district court should have considered whether the assignment at issue could have constituted constructive termination if the assignment violated state law, that position is inconsistent with the Supreme Court's recent holding in Mac's Shell. Invalidity of the assignment would not give rise to a possibility of constructive termination in this case." 2010 U.S. Dist. LEXIS 69372, at *12-*13. This analysis is consistent with older cases such as Shukla v. BP Exploration & Oil, Inc., 115 F.3d 849 (11th Cir. 1997), where the Eleventh Circuit cited several other circuit courts for the proposition that an "assignment does not *automatically* constitute constructive termination of a franchise agreement, thereby implicating the PMPA; however, assignment *may* result in constructive termination, depending on the circumstances." Id. at 852 (emphasis in original). The Shukla court rejected the plaintiff's constructive termination claim, in particular because the assignment did not increase the plaintiff's contractual burdens: the original franchise agreement had an open price term, so the plaintiff could not argue that the assignment subjected him to improper fuel price increases; the loss of price supports or credit card payment systems did not constitute a material change to the franchise agreement since they were extra-contractual, informal arrangements; and plaintiff's gasoline supply was not interrupted. Id. at 853-54. See also Clark v. BP Oil Co., 137 F.3d 386, 392 (6th Cir. 1998) (rejecting dealer's termination claim because, "in short [the assignee] did nothing to [the dealer] that [the original franchisor] could not have done to him.").

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