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Claim That Franchisor Fraudulently Concealed Defects Not Preempted by PMPA or Barred by One-Sided Contractual Limitations Period

Storto Enterprises, Inc. v. ExxonMobil Oil Corporation,
Civil No. WDQ-10-1630, 2011 U.S. Dist. LEXIS 6548 (D. Md. Jan. 24, 2011)

In Storto, an ExxonMobil franchisee alleged that, after a large amount of gasoline leaked from its station's underground storage tank, ExxonMobil promised to buy out the franchise in exchange for Storto's leaving the property, cooperating in clean-up efforts and maintaining the leak confidential. Storto claimed that it complied with all of these conditions but was never paid the promised buy-out compensation. It also alleged that ExxonMobil had fraudulently concealed defects in an electronic leak detector located at Storto's station.

Storto sued ExxonMobil for (1) fraudulent concealment, (2) fraud, (3) negligent misrepresentation, (4) breach of contract and (5) detrimental reliance. The District Court for the District of Maryland held that Counts (2)-(5) were preempted by the PMPA because they were "premised on Exxon's representation that it would buy-out Storto's franchise" and therefore related to termination. (The Court noted that the Fourth Circuit took a broader view of preemption than other Circuits because it considered preemption to apply to all state laws that "impact" franchise termination rather than state laws that "purport to regulate" the grounds, procedures and notification requirements for terminations.) The Court granted ExxonMobil's motion to dismiss these counts as barred by the PMPA's one-year statute of limitations.

The Court denied ExxonMobil's motion to dismiss the fraudulent concealment claim on preemption grounds or the one-year contractual limitations period contained in the parties' franchise agreement. It held that the claim was not preempted because it was based on ExxonMobil's alleged failure to disclose defects in the electronic leak detector and was unrelated to the termination of the franchise. Most interestingly, the Court also refused to dismiss the claim based on the contractual limitations period because that provision applied only to the franchisee. It noted that Maryland recognizes a "strong public policy in favor of freedom to contract" but concluded that a one-sided limitations period would be enforceable under Maryland law only if supported by "valid justification." Because the Court found that neither the Complaint nor the associated franchise agreements provided a justification for the lack of mutuality, it refused to dismiss the fraudulent misrepresentation claim based on the pleadings. It also held that the fraudulent concealment claim was not barred by Maryland's general three-year statute of limitations because Storto did not have sufficient knowledge of his potential claim until less than three years before it filed suit.

Our Comment: Contractual limitations periods that are shorter than the statutory period can be a good idea, but to maximize the likelihood of their enforceability, franchisors should either make them mutual and/or include a brief business justification for them in the agreement.