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TRADE REGULATION/ANTITRUST

Dreiling v. Peugeot Motors of America, Inc., 850 F.2d 1373

Plaintiff initially sued Peugeot for breach of contract and failure to act in good faith in terminating the former's dealership, in violation of the Automobile Dealers Day in Court Act (Act). Plaintiff then impleaded Chrysler alleging Chrysler tortiously induced Peugeot to breach plaintiff's contract and that Chrysler and Peugeot engaged in and conspired to engage in unfair competition in violation of federal antitrust laws. The district court granted summary judgment and awarded attorney's fees to Chrysler, all of which plaintiff appeals. Affirmed except as to the award of attorney fees, which was reversed.

On appeal, plaintiff argues the district court's grant of summary judgment was in error because discovery had been limited. Without deciding the adequacy of discovery, the Tenth Circuit held that Fed. R. Civ. P. 56(f) requires an affidavit be prepared by the nonmoving party explaining why facts cannot be presented in opposition to summary judgment and how additional time would aid rebuttal. If this is not done, as here, it was held that no abuse of discretion occurs by granting summary judgment.

Plaintiff failed to demonstrate defendant's actual knowledge of fraudulent warranty claims prior to the date this knowledge was imparted by plaintiff. Up to that time defendant Peugeot was rightfully able to terminate the dealership without breach of contract. Accordingly, no issue of fact remained. The Tenth Circuit then held that since summary judgment was appropriate as to breach of contract, plaintiff's argument on remaining issues of fact regarding tortious interference also failed.

Plaintiff next argues defendant Peugeot used the fraudulent warranty claims as a pretext for terminating the dealership in violation of the Act. This court held Peugeot's termination was not used to coerce or intimidate the plaintiff, thus, plaintiff's allegations state no claim for relief under the Act.

The court held plaintiff failed to meet the two-part *Matsushita* test, 475 U.S. 574 (1986). Summary judgment as to the section 1 antitrust claim was therefore held to be appropriate. Plaintiff's evidence that defendants attempted to monopolize the market failed to fulfill the four required elements set forth in *Olsen v. Progressive Music Supply*, 703 F.2d 432 (10th Cir. 1983), *cert. denied*, 464 U.S. 866 (1983).

Each party bears its own litigation expenses except in the instance of bad faith. Here, the court found a reasonable attorney facing these facts may have filed the suit and accordingly held the district court's award of attorney fees to Chrysler was in error. The district court was upheld on attorney fees as to Peugeot.

