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BLOGS

Encroachment

Colorado Federal Court Upholds Retroactive Application of Dealer Statute

On the other hand, a federal court in Colorado has concluded that amendments to an encroachment protection in the Colorado Dealer Act do apply to dealer agreements in existence before the amendments were enacted. *DC Auto., Inc. v. Kia Motors Am., Inc.*, 2019 WL 4192112 (D. Colo. Sept. 4, 2019). The parties' dealer agreements, which were entered into in 2003 and 2008, stated that Kia had the right to add new dealers, relocate dealers, or remove dealers from the geographic area, to the extent permitted by applicable law. At the time the parties executed the agreements, the Colorado Dealer Act provided dealers with a cause of action if a new dealership was allowed to open within five miles of a dealer's location. In 2017, the Act was amended to expand the protected area to within 10 miles of the dealer's location. In October 2018, Kia advised the plaintiffs that it was approving a new dealership that was more than five miles but less than 10 miles from their existing locations. The plaintiffs sued, and Kia moved for summary judgment.

Kia first argued that the plaintiffs' action should be dismissed because the retroactive application of the 2017 amendment to the Colorado Dealer Act to their agreements would violate the Contracts Clause of the U.S. Constitution and the Colorado Constitution. The court disagreed, noting that the passage of the 2017 amendment to the Colorado Dealer Act was part of the evolution of an existing regulatory scheme, and therefore was not a "substantial impairment" of the parties' contractual relationships. The court similarly found no violation of the Colorado Constitution, observing that the applicable regulatory scheme was within the state's traditional legislative power, and that Kia therefore had no vested right to establish the proposed dealership. The court did hold, however, that summary judgment should be granted regarding the plaintiffs' claim that the establishment of the new dealership breached the covenant of good faith and fair dealing. Because Kia had the express right under the dealer agreements to appoint new dealers, the covenant of good faith and fair dealing — which generally applies to a party's exercise of discretion — was inapplicable.

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