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State Franchise and Dealer Laws

Community of Interest Fact Questions Under Wisconsin Fair Dealership Law Prevent Summary Judgment

A federal court in Wisconsin recently denied a dealer's motion for summary judgment under the Wisconsin Fair Dealership Law ("WFDL"), due to a genuine fact dispute regarding the existence of a community of interest between the parties. In *Wholesale Partners, LLC v. Masterbrand Cabinets, Inc.*, Bus. Franchise Guide ¶ 15,136 (CCH) (E.D. Wis. Oct. 4, 2013), a newly formed cabinetry retailer orally agreed to take over the dealership of an insolvent former dealer of manufacturer Masterbrand. At the same time, Wholesale Partners also agreed to take on the former dealer's debt to Masterbrand. Wholesale Partners then began buying inventory from Masterbrand and making payments on the former dealer's debt. A few months later, Masterbrand informed Wholesale Partners that it was immediately terminating it as a dealer. At the time of termination, sales of Masterbrand cabinetry constituted 43% of Wholesale Partners' gross revenues. No written notice or opportunity to cure was given, and Masterbrand did not articulate "good cause" for termination, as required under the WFDL.

In the suit that followed, Wholesale Partners moved for summary judgment on Masterbrand's liability for violating the WFDL. For the WFDL to apply, there must be a "community of interest" in the relationship between a grantor and a dealer, which requires either (1) a significant portion of the dealer's revenues to be derived from the sale of the grantor's products, or (2) the dealer to have made a sizable investment relating to the sale of the grantor's goods, or (3) some combination of the two. Although the parties had no written dealership agreement, Masterbrand admitted in its court documents that it had treated Wholesale Partners as a dealer on a "temporary basis." The court found that Masterbrand's statement was "equivocal, at best" and therefore did not constitute a judicial admission by Masterbrand that a dealership relationship existed for purposes of the WFDL. The court went on to note that the significant investment by Wholesale Partners in the Masterbrand line of products, its assumption of the former dealer's debt, and the fact that Masterbrand accounted for 43% of Wholesale Partners' revenues weighed in favor of a finding that a community of interest existed, while the short duration of the relationship weighed against such a finding. As a result, the court found that a genuine fact issue existed as to community of interest, and denied summary judgment.

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