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BLOGS

Terminations

Cure Opportunity Did Not Waive Right to Terminate at Will

A federal district court in Kentucky recently held that a manufacturer's provision of three-and-a-half months prior notice of termination if its distributor failed to meet certain performance levels did not serve to extinguish the manufacturer's underlying right to terminate the relationship at will, as provide for in the parties' previous written agreement. Although the distribution agreement between the parties in *Link-Belt Construction Equipment Co. v. Road Machinery & Supplies Co.*, 2011 U.S. Dist. LEXIS 41404 (E.D. Ky. Apr. 15, 2011), had expired by its terms, the parties continued their dealings with each other for several years. The expired agreement had provided that any continued relationship between the parties after expiration was "terminable at will." On February 15, 2010, the manufacturer served a notice that it would terminate the relationship effective June 1, 2010, if the distributor failed to meet certain performance requirements, including achieving an increase in market share. The manufacturer later sought a declaratory judgment that it had the right to terminate.

On the manufacturer's motion for summary judgment, the court preliminarily enforced the agreement's Kentucky choice of law provision, and then found that the agreement explicitly gave the manufacturer the right to terminate at will in the holdover context. The distributor then argued that the manufacturer's notice of termination—particularly its statement that the relationship would not be terminated if the distributor met performance requirements—effectively extinguished the manufacturer's right to terminate at will and required the manufacturer to offer the cure opportunity. The court rejected this contention for several reasons. First, the underlying agreement (albeit expired) required that any modifications must be in a writing signed by both parties, while the notice of termination was signed only by the manufacturer. Moreover, the distributor had explicitly rejected the notice of termination and its offer of cure, and demanded that it be rescinded. Having rejected the concept of a cure period, the distributor would not be permitted to take advantage of such a period. Thus, the manufacturer was permitted to terminate at will.