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BLOGS

Terminations

Market Withdrawal Is Not “Good Cause” for Termination Under the Arkansas Franchise Practices Act

Conversely, in *Larry Hobbs Farm Equip., Inc. v. CNH America, LLC*, 2009 WL 153357 (Ark. Jan. 22, 2009), the Supreme Court of Arkansas answered much differently questions from a federal court regarding the interpretation of provisions in the Arkansas Franchise Practices Act (“AFPA”) and the Arkansas Farm Equipment Retailer Franchise Protection Act (“AFERFPA”). This case arose after CNH America informed Hobbs it would no longer be supplying “DMI” brand equipment to Hobbs because CNH was withdrawing that product from the market. CNH had been selling identical tillage and soil equipment to Hobbs’ competitor, Heartland, under a different brand name and different paint color.

The first question to the Arkansas high court was whether market withdrawal—that is, no longer supplying DMI equipment—constituted “good cause” to terminate the dealer agreement with Hobbs under the AFPA. In analyzing the AFPA, the court looked at the plain language of the statute, along with the canon of statutory construction that the express designation of one thing means the exclusion of another. Under that construct, since market withdrawal was not one of the eight specifically enumerated “good cause” circumstances in the AFPA, market withdrawal was not “good cause” to terminate under the statute, the court found.

Other certified questions in this case dealt with liability and remedies under the AFERFPA. On liability, the court found that a provision in the act specifically requiring an “*attempt or threat* to terminate” an agreement did not apply when there was *actual* termination (as was the case between CNH and Hobbs), and therefore did not create liability. As for the remedies issue, Hobbs argued that money damages, although not specifically mentioned in the act, were available beyond the repurchase of inventory and attorneys’ fees. The court disagreed. It found that there is no language in the statute authorizing money damages, therefore limiting Hobbs to non-monetary damages such as injunctive and declaratory relief.