

**BLOGS**

Terminations

Missouri Federal Court Dismisses Portions of Dealer's Franchise Act Claims Based on Notice, but Allows Other Claims to Proceed

The Eastern District of Missouri recently ruled on a number of issues in a dealer's claims for wrongful termination. In the first decision, the court granted the manufacturer's motion for summary judgment on a claim that it violated Missouri's Franchise Act by failing to provide 90 days' notice of its intent to terminate the dealership, but the court denied the supplier's motion as to the claim that it violated the Missouri Power Equipment Act by terminating the agreement without "good cause." *Lift Truck Lease & Serv., Inc., v. Nissan Forklift Corp.*, 2013 U.S. Dist. LEXIS 82313 (E.D. Mo. June 12, 2013). Pursuant to three agreements, Lift Truck was the exclusive Nissan forklift dealer in parts of Missouri and Illinois. One of the agreements had a February 1, 2012, termination date, and the other agreements had indefinite terms. On January 10, 2012, Nissan gave notice of its intent to terminate the relationship on April 15, 2012, because Lift Truck failed to meet its performance obligations.

The court held that a party satisfies the notice requirements of the Missouri Franchise Act and the Missouri Power Equipment Act if it maintains a relationship for 90 days after providing the notice, even if the parties' agreement expires by its own terms less than 90 days after the notice. In this case, even though notice was provided less than a month before the agreement was set to expire, the franchisor continued to allow the franchisee to advertise and accept orders for the franchisor's products for another 180 days after the notice. Accordingly, the court held that Nissan provided sufficient notice of the termination.

The Missouri Power Equipment Act, however, also provides that a manufacturer of industrial construction equipment cannot terminate a contract with a retailer without "good cause." Good cause includes the retailer's failure to substantially comply with the "essential and reasonable requirements imposed upon the retailer by the contract." The court held that whether the requirements on the franchisee were "essential and reasonable" presented genuine issues of material fact. Accordingly, the court denied the franchisor's motion for summary judgment on the franchisee's second claim.

In another decision the following week, the same court applied Missouri law to find that the dealer could not contract away certain rights to a larger manufacturer, distributor, or wholesaler under *Missouri law*. *Lift Truck Lease & Serv., Inc. v. Nissan Forklift Corp.*, 2013 U.S. Dist. LEXIS 85183 (E.D. Mo. June 18, 2013). In this decision, the court reviewed whether, under the Missouri Franchise

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Act, parties can contract to limit a party's future liability. Chapter 407 of the Missouri Franchise Act provides a cause of action when a wholesaler, distributor, or manufacturer terminates a retailer without "good cause."

Previously, the United States Court of Appeals for the Eighth Circuit, in which the Missouri federal courts sit, interpreted Chapter 407 to "regulate the marketplace to the advantage of those traditionally thought to have unequal bargaining power," and others "who may fall victim to unfair business practices." The appellate court had described the statute as "paternalistic" and said that the Missouri legislature would not want those parties Chapter 407 was designed to protect to be able to waive them. Applying the Eighth Circuit's logic, the Eastern District of Missouri found Nissan was a party in an unmatched position of strength over ADL, a small power equipment retailer, and it would be against public policy and intent of Chapter 407 to enforce the limitation of liability provision.

With the case headed for trial on at least some claims, the admissibility of an industry expert's testimony was the central focus of a third decision by the same court in *Lift Truck Lease & Serv., Inc. v. Nissan Forklift Corp.*, 2013 U.S. Dist. LEXIS 87391 (E.D. Mo. June 21, 2013). Nissan had filed a motion to exclude the testimony of Lift Truck's expert witness, who had 38 years of experience in the material handling business. In his report, the expert stated that (1) Lift Truck substantially achieved the sales goals set forth in the parties' dealership agreement, (2) Nissan treated Lift Truck differently than similarly situated dealers, and (3) Nissan's termination of Lift Truck did not conform to forklift industry custom and practice.

In deciding whether to admit the proffered expert testimony, the court applied the Eighth Circuit's requirements of evidence "based on scientific, technical, or other specialized knowledge [which] must be useful to the finder of fact in deciding the ultimate issue of fact"; that the proposed witness is qualified; and that the proposed evidence must be reliable or trustworthy. The trial court allowed the expert's first two opinions because he had specialized knowledge and experience in those areas, he relied on trustworthy reports from Nissan itself, and his opinion would help the jury understand the meaning of key statutory terms not defined elsewhere. The court excluded the third opinion, however, because the expert lacked experience with new dealers and did not have sufficient facts or knowledge that would assist the jury in understanding the evidence.