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BLOGS

Contracts

Nebraska Supreme Court Upholds Contractual Provision Allowing Franchisee to Rebrand

The Supreme Court of Nebraska affirmed the decision of a state district court that a contract permitted a fuel retailer to rebrand several of its gas stations and sell competitor-branded fuel. *Ray Anderson, Inc. v. Buck's, Inc.*, 300 Neb. 434 (July 6, 2018). Ray Anderson, Inc., the operator of retail gas stations in Omaha, Nebraska, and Buck's, Inc., a distributor and "jobber" of BP-branded fuel, entered into a fuel supply contract, through which Anderson sold BP-branded fuel at its stations. A rider entitled the Electronic Dealer Delivery Plan (EDDP) was incorporated into the agreement. Several years later, Anderson negotiated with a BP competitor to sell Shell Oil-branded fuel at four of Anderson's gas stations. Buck's immediately directed Anderson to cease and desist from selling the Shell Oil-branded fuel, claiming it would constitute a breach of their agreement. Anderson filed a declaratory judgment action for a ruling that it was not prohibited from rebranding under the agreement. Buck's counterclaimed and also sought damages for anticipatory repudiation. Both parties moved for summary judgment. The district court denied Buck's summary judgment motion, concluding that nothing within either the agreement or the EDDP prohibited Anderson from selling the Shell-Oil branded fuel.

In affirming the lower court's decision, the Supreme Court of Nebraska rejected Buck's argument that the agreement required Anderson to sell BP-branded fuel purchased from Buck's and therefore indirectly prohibited rebranding of the four stations. The court observed that the EDDP clearly stated that Anderson was not precluded from selling competitive brand products. The EDDP also stated that to the extent any conflict arose between the terms of the agreement and the EDDP, the terms of the EDDP controlled. Noting that contracts made in reference to and as part of the same transaction must be construed together, the court concluded that the terms of the EDDP were controlling, and that Anderson could rebrand the four gas stations and sell the Shell-Oil branded fuel.

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