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## BLOGS

State Franchise Laws/Violations/Terminations

# Second Circuit Affirms Dismissal of New York Dealer Act Claims

12/12/2024 | 2 minute read

The Second Circuit recently affirmed the dismissal of claims under the New York Franchised Motor Vehicle Dealer Act and various contract claims. *Garrand Bros. LLC v. Am. Honda Motor Co.*, 2024 WL 4691004 (2d Cir. Nov. 6, 2024).

In 2015, Garrand Motorsports entered into four Dealer Agreements with Honda in which Garrand was allowed to sell Honda vehicles at one specific location in New York. The Dealer Agreements expressly prohibited Garrand from moving locations without Honda's prior written consent. In 2022, Garrand was evicted from the location at which it was permitted to sell Honda vehicles under the Dealer Agreements. It moved to a new site without Honda's consent, leading Honda to terminate the Dealer Agreements. Garrand initiated a lawsuit against Honda alleging violations of the New York Dealer Act and various contract claims. The district court found that (1) Honda had due cause to terminate the agreements because Garrand's unauthorized relocation constituted a material breach of the Dealer Agreements, and (2) Honda did not terminate without the legally required notice. The district court dismissed Garrand's claims and denied leave to amend.

Garrand appealed the dismissal, arguing that (1) termination was improper based on the defense of impossibility, (2) the Dealer Agreements were constructively terminated, and (3) the district court erred in denying leave to amend. The Second Circuit rejected any arguments related to impossibility, not only because it was raised for the first time on appeal, but also because the defense of impossibility merely excuses breach by the party asserting impossibility—the defense of impossibility cannot be used to force the non-breaching party to continue performing the contract despite the breach. Next, the Second Circuit noted that even though New York courts have not yet concluded whether constructive termination is a cognizable claim under the New York Dealer Act, Garrand nevertheless failed to properly plead a viable claim, such as Garrand's formal termination of the relationship or a de facto termination based on economic duress. Finally, the Second Circuit affirmed the denial of leave to amend. The court stated that although leave to amend should be freely given, there is no rule that every request to amend must be granted. Garrand failed to identify any allegations that would cure the identified defects and therefore any amendment would be futile.

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