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**BLOGS**

Duty of Good Faith and Fair Dealing

## Seventh Circuit Affirms Finding That Constructive Termination Violated Duty of Good Faith and Fair Dealing

The United States Court of Appeals for the Seventh Circuit recently held there was sufficient evidence to support a jury's determination that a manufacturer breached the duty of good faith and fair dealing implied into a dealer agreement. In *Tilstra v. BouMatic LLC*, 2015 WL 3953403 (7th Cir. June 30, 2015), Tilstra was a dealer of BouMatic dairy equipment, with a particularly lucrative exclusive dealership territory. Under the dealer agreement between the parties, BouMatic had the right to modify the assigned dealership territory "at its sole discretion," but could not terminate the agreement without "good cause." In an effort to force Tilstra to sell its dealership to a neighboring BouMatic dealer, BouMatic allegedly threatened to modify and effectively eliminate Tilstra's exclusive territory, which, Tilstra claimed, would have put it out of business.

At trial, the jury found that although BouMatic did not purport to terminate the distribution agreement directly, its actions amounted to a constructive termination, which lacked the required "good cause." Under Wisconsin law, the implied covenant of good faith and fair dealing requires a party to exercise discretionary rights in a manner that does not deprive the other of the benefit of its bargain. As a result, BouMatic's constructive termination was found to be a violation of the covenant, even though BouMatic had the explicit right to modify Tilstra's exclusive territory. On appeal, the Seventh Circuit affirmed the decision, reasoning that the jury had sufficient grounds to find that BouMatic, by threatening Tilstra with a drastic reduction in territory if it did not sell to a competing dealer, constructively terminated the agreement and in so doing, violated the duty of good faith and fair dealing in the performance of its contractual obligations.

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