

Wisconsin District Court Denies Motion to Dismiss Claim That Distributor Failed to Comply With Agreement’s Notice Requirement

A Wisconsin federal court recently denied a distributor’s motion to dismiss a breach of contract action brought by one of its dealers. *Traffic and Parking Control Co. v. Global Traffic Techs., LLC*, 2017 WL 1067774 (E.D. Wis. Mar. 21, 2017). TAPCO claimed, among other things, that GTT breached the dealership agreement between the parties by sending its termination notice in the form of an email. While the notice clause of the agreement did not explicitly identify email as a permissible form of written notice, both parties’ email addresses were listed in the contact information section of the clause. In moving to dismiss TAPCO’s claims, GTT first argued that its email to TAPCO complied with the notice clause because it was in writing and TAPCO’s email address was included in the agreement’s notice provision. GTT alternatively argued that its email amounted to “substantial compliance” with the notice provision, which was all that was required under Wisconsin law. GTT further argued that TAPCO failed to allege damages resulting from GTT’s alleged breach. TAPCO maintained that the plain language of the agreement did not list email among the permitted notice methods and that its request for declaratory and injunctive relief obviated the need to plead damages.

The district court denied GTT’s motion to dismiss, holding that TAPCO’s allegations stated a claim for breach of contract. Construing the agreement in TAPCO’s favor, the court found that the notice clause appeared to support TAPCO’s position that notice by email was insufficient. Any argument by GTT that the clause was ambiguous would require extrinsic evidence of the parties’ intent, to be developed in discovery, and thus was not appropriate support for a motion to dismiss. Finally, the court rejected GTT’s contention that TAPCO had to seek monetary damages in order to maintain its breach of contract action, reasoning that parties need not claim monetary damages when they pursue declaratory and injunctive relief.

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