



JONES DAY
COMMENTARY

AUTOMOTIVE ALERT: FEDERAL COURT TOSSES AUTOMOBILE DEALER’S DAY IN COURT ACT CLAIM

The United States District Court for the Central District of California recently granted summary judgment on the plaintiffs’ Automobile Dealer’s Day in Court Act (“ADDCA”) claim related to an alleged constructive termination of a Hyundai dealership. See *Estes Automotive Group, Inc. v. Hyundai Motor Amer.*, Case No. 8:10-cv-00287, Order [Doc. No. 81] (March 25, 2011).

Two plaintiffs initially purchased a Hyundai dealership in Merced, California in 2002. In 2007, the dealership moved into a new facility that the plaintiffs financed through Hyundai Capital America (“HCA”) by way of a construction loan, and, at the same time, plaintiffs entered into a floor plan financing agreement. See *id.* at p. 2. According to the court, the dealership’s profits slipped in 2008 and 2009, and the plaintiffs sought financial assistance from the defendants. By January 2009, an owner of the dealership requested a six-month forbearance on the construction loan from HCA, which was followed by about a year of discussions about financial assistance that the defendants could provide to the plaintiffs. See *id.* On January

21, 2010, HCA served the plaintiffs with a Secondary Notice of Default and Acceleration of Debt on both the construction loan and the floor plan financing. The dealership closed a few days later. See *id.* at p. 3.

In analyzing the parties’ arguments at the summary judgment stage, the court indicated that under the ADDCA, a dealer may sue in federal court “for the failure of the automobile manufacturer to act in good faith in performing or complying with any of the terms o[r] provisions of the franchise, or in terminating, canceling, or not reviewing the dealer’s franchise.” *Id.* at p. 5 (quoting *Autohaus Brugger, Inc. v. Saab Motors, Inc.*, 567 F.2d 901, 910 (9th Cir. 1978)). As the court in *Estes* also explained:

[F]ailure to exercise good faith within the meaning of the [ADDCA] has a limited and restricted meaning. It is not to be construed liberally.... The existence or nonexistence of “good faith” must be determined in the context of actual or threatened coercion or intimidation. In order

to lack good faith the manufacturer's actions must be unfair and inequitable in addition to being for the purpose of coercion and intimidation. Coercion or intimidation must include a wrongful demand which will result in sanctions if not complied with, and it is necessary to consider not only whether the manufacturer brought pressure to bear on the dealer, but also his reason for doing so. When a termination or nonrenewal of a franchise is involved, there must be a "causal connection" between the dealer's resistance to the coercive conduct and the termination or nonrenewal for there to be a lack of good faith under the [ADDCA].

Id. at p. 6 (quoting *Autohaus Brugger*, 567 F.2d at 91)(ellipses and brackets in *Estes*).

The court found that "[t]he ADDCA permits a dealer to bring suit for damages when the automobile manufacturer fails to act in good faith in (1) performing or complying with any of the terms or provisions of the franchise agreement, or (2) terminating, canceling, or not renewing the dealer's franchise." *Id.* at p. 8. As to (1), the court found that the *Estes* plaintiffs failed to identify any provision of the dealer agreement that was violated.

The plaintiffs admitted that the defendants did not terminate, cancel, or fail to renew the dealership until "well after the events described in this action and indeed, approximately ten months after the filing of the action." *Id.* The plaintiffs nevertheless argued that the dealer agreement was constructively terminated in four ways. In analyzing the plaintiffs' arguments, the court assumed without deciding that constructive termination is actionable under the ADDCA, but nonetheless awarded summary judgment in the defendants' favor. See *id.* at p. 8-9.

First, the plaintiffs argued that the defendants diverted and withheld money owed to the dealership. The plaintiffs argued that when a customer purchased a vehicle and the dealership sent in the contract for funding, the proceeds would be diverted to HCA as a result of financing obligations. In addition, the plaintiffs claimed that Hyundai Motor America ("HMA") diverted money owed to the dealership for warranty repairs, factory rebates, dealer cash, and

incentives to HCA and that the plaintiffs were never provided with an accounting of these "diverted" funds. See *id.* at p. 9. The court rejected these assertions, finding the allegedly improper diversion assertions "inconsistent with the written, signed Assignment Agreement between [p]laintiffs and [d]efendants." *Id.* The court explained that "HMA's transfer of monies owed to [p]laintiffs did not 'bleed [p]laintiffs' assets and operating capital' but rather offset financial obligations [p]laintiffs owed to HCA." *Id.* at p. 10. In short, the court found that there was no indication that "HMA/HCA's conduct in complying with the Assignment Agreement was coercive or intimidating." *Id.*

Second, the plaintiffs argued that the dealer agreement was constructively terminated based on defendants' allegedly misrepresenting to plaintiffs that HMA and HCA would provide financial support. That argument, too, the court rejected, explaining that "oral representations or promises that are not part of the franchise agreement are not actionable under the ADDCA" and elsewhere elaborated that the United States Court of Appeals for the Seventh Circuit had previously explained that, in light of "the ADDCA's plain language, oral representations or promises that are not a part of the written franchise agreement or contract 'may not form the basis of a claim of bad faith, coercion or intimidation, under the Act.'" *Id.* at p. 10, 11 (quoting *Lawrence Chrysler Plymouth, Inc. v. Chrysler Corp.*, 461 F.2d 608, 610 (7th Cir. 1972).) In any event, even if the alleged oral misrepresentations were actionable, the court found that the plaintiffs failed to establish any link between the alleged misrepresentations regarding financing and the alleged termination. See *id.* at p. 11.

Third, the plaintiffs argued that the defendants violated the ADDCA by attempting to force the plaintiffs to sell the dealership to a certain candidate. The court found that argument was not supported by the evidence submitted, including an email that set forth the criteria that the manufacturer "could reasonably be expected to have for evaluating" potential candidates. See *id.* at p. 12.

The plaintiffs' final argument was that HMA and HCA refused to consider the plaintiffs' preferred buyer. The court found that argument "is similarly not supported by the evidence."

Id. In sum, the court found that plaintiffs “have failed to establish any coercion or intimidation by HMA or HCA such that [d]efendant could be liable under the ADDCA. There are no allegations or evidence of any demand, let alone a wrongful demand, nor any causal connection between HMA’s and HCA’s actions and the alleged constructive termination.” *Id.* at p. 13. The court declined to exercise supplemental jurisdiction over the plaintiffs’ state law claims, finding that it was in the interest of judicial economy, convenience, fairness, and comity for those claims to be handled in a pending state court action. See *id.*

Estes serves as an important reminder of some of the potential defenses available to dealers’ ADDCA claims. Among other things, the decision can be used to argue that the statute has limited applicability to oral misrepresentation claims and that dealer plaintiffs must establish a causal link between the alleged wrongdoing and cognizable harm under the statute.

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