Law Office of Carroll Gilbert & Bachor

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CGB LawLetter

Important Information and Advice For Gasoline Retailers

Special Interest

- *Dealer's Plea To Renew Franchise Agreement "too little and too late."*
- *The PMPA does not state an amount of time that a dealer must be given to read over a lease and supply contract renewal.*
- *California law does require any franchisor to give the franchisee at least 10 days to review the franchise agreement*
- *Oil Company Not required to withdraw Nonrenewal Notice even if Dealer Offers to Sign During the 90 Day Notice Period*

No Relief for Negligent Failure to Sign Franchise Renewal

California

In a harsh ruling, the US District court in Massachusetts refused to reverse the nonrenewal of a Motiva dealer who misplaced her franchise renewal and forgot to sign it. *C.K. Smith & Co v. Motiva Enterprises* (2001 WL 1265437 (1st Cir. (Mass.)). An employee of Judith Smith misplaced the renewal package when Motiva delivered it to her station. Motiva sent a nonrenewal notice to Smith about a month later but offered to renew the franchise if Smith signed and returned the agreement before the end of his old lease. There was a dispute between the dealer and the company about some maintenance issues and a meeting was held but As of July 31, 1998, CKS had not signed the renewal lease and sales agreement. Motiva deemed the franchise relationship at an end, and John Molloy, a Motiva official, called Judith Smith on August 4 to inquire about her plans for vacating the premises. During that conversation, Smith expressed her desire to continue the franchise relationship and, for the first time, voiced a willingness to execute the documents given to her by Motiva on March 25. Smith reiterated these sentiments in a follow-up letter on the same date. Motiva rejected Smith's pleading as "too little and too late." The court held that "The PMPA does not provide any relief for a franchisee where she negligently fails to execute renewal documents in a timely fashion."

Recommendation: The PMPA does not state an amount of time that a dealer must be given to read over a lease and supply contract renewal. California law does require any franchisor to give the franchisee at least 10 days to review the franchise agreement. Any time over 10 days that any oil company gives you to review the renewal documents is not required by law. If you do not sign and return the signed agreement within the time stated by the oil company (at least 10 days) then the company can issue a 90-day notice of nonrenewal. While Motiva would have accepted the signed renewal from Ms. Smith had she agreed to it during the 90 day period after they sent the letter, it isn't necessarily required that the oil company agree to withdraw the nonrenewal notice.

1. When you get your renewal package, mark on your calendar the date that the company has stated that you must return it to them signed.
2. If the company states that you can mail it back, mail it by certified mail with a return receipt requested. If it says you must return it to your

- *Unlawful employment practice for employers to prohibit the use of any language in the workplace unless the restriction is justified*
- *Shell & Texaco replacement franchise agreements made in good faith and in normal course of business, and not for purpose of precipitating franchise terminations by Equilon*
- *"Trial franchise" clause in Equilon agreement was invalid as requiring franchisees to waive rights guaranteed by state law;*

rep., then don't mail it; get the rep to give you a receipt when he picks it up.

3. If you have questions or objections to the terms of the lease or supply contract, put those objections in writing as soon as possible after receiving your renewal package. If the company doesn't respond or answer your objections to your satisfaction before the deadline for returning the package, ask for a written extension to sign the renewal. Don't take your rep's oral agreement to give you more time, as good enough- it isn't.

4. If you can't get more time in writing, or the company refuses to make the changes or corrections that you requested, then consider signing "under protest" or filing a lawsuit challenging the parts of the agreement that you think are illegal. If you win, the court will probably give you another chance to sign the agreement, with the illegal parts removed (see Coast Village v Equilon below).

California Bans English-Only Rules in the Workplace

The California legislature has enacted legislation making it an unlawful employment practice for employers to adopt policies that limit or prohibit the use of any language in the workplace unless the restriction is justified by business necessity and the employer has clearly notified employees of the scope of the restriction and the consequences of violating the restriction. The bill defines "business necessity" in part as an overriding legitimate business purpose that cannot be accomplished by less discriminatory means. (A.B. 800) (to be codified at Cal. Gov't Code § 12951).

Equilon's "California Release" and "Trial Franchise" Clauses Voided

Several Equilon franchisees brought an action in the US District court in Los Angeles, alleging that Equilon's replacement franchise agreement violated Petroleum Marketing Practices Act. District Court Judge Collins, held that: (1) decision to promulgate new uniform dealer agreement was made in good faith and in normal course of business, and not for purpose of precipitating franchise terminations; (2) "trial franchise" clause in new agreement was invalid as requiring franchisees to waive rights guaranteed by state law; and (3) "transfer fee" clause in new agreement did not require franchisees to waive rights guaranteed by state law, and thus was valid. *Coast Village v Equilon* (2001 WL 1097034 (C.D.Cal.)). The court found that the Dealers had produced no credible evidence that the agreements were proposed with the specific intent on Equilon's part to drive out lessee-dealers and/or to convert lessee-operated stations to company operated or salary operated stations. Instead, the court found that the evidence at trial demonstrated that the new Shell and Texaco agreements were the result of a good faith deliberative process by Equilon, as part of its normal decision-making process, and that the terms therein (and their uniformity) were designed in service of legitimate business purposes. Judge Collins stated in his decision that "What Plaintiffs really seek is to have this Court replace the terms of the new agreement(s) with

• Court won't replace the terms of the new Shell & Texaco agreements with what would be economically reasonable terms.

• Even if the Court were inclined to do so, such a result is beyond the Court's authority as granted by the PMPA.

• Husbands and Wives in California are usually told by a broker or escrow agent that in order to avoid probate, they should hold their property in joint tenancy

• Under the new law, it will now be possible for a couple to hold property as community property with the right of survivorship. Holding property in this way will provide both for automatic passing of title and full stepped up basis.

what Plaintiffs (or this Court) would consider economically reasonable terms. Even if the Court were inclined to do so, such a result is beyond the Court's authority as granted by the PMPA." However, the "California Release," one year Statute of Limitations, Limitation of Liability, and Trial Franchise provisions were found to be illegal and Equilon was told to remove them from the franchise agreement. The first three of these provisions had already been taken out by Amendments sent out to all dealers by Equilon in June of 2001. Equilon was ordered to re-present to the Plaintiffs a version of the new agreements without the illegal provisions. The Plaintiffs have 30 days to decide whether to accept the modified agreements. If any Plaintiff has not communicated its acceptance to Equilon by the deadline, Equilon may then non-renew that Plaintiff-Dealer.

New Way To Take Title To Property-"Joint Community Property"

Husbands and Wives in California are usually told by a broker or escrow agent that in order to avoid probate, they should hold their property in joint tenancy. This is because property that is held in joint tenancy becomes the property of the survivor upon the death of one or the other, and is not part of that person's estate; and does not require administration in probate. While this is true, taking property in joint tenancy may not be the most desirable option for tax reasons.

In order to understand the tax disadvantage of holding property in joint tenancy, it is necessary to have a rudimentary understanding of the tax concept of "basis." Roughly speaking, basis is the cost of the property plus the cost of capital improvements. In order to compute capital gain, basis is subtracted from net sale price (i.e., sale price less costs of the sale).

If the couple has a rental property whose basis is $100,000, and their net sale price is $400,000, they have a gain of $300,000.

Whether the couple would be taxed on some or all of this gain would depend on a variety of circumstances that we can't go into here, but they might be.

Suppose that the couple hold that property with the $100,000 basis as joint tenants when the Husband passes on, and at the time of his death the value of the property is $400,000. Because of the joint tenancy, title to the property passes immediately to his Wife. Moreover, her basis in the property changes. The portion of interest in the property (50 percent) that had been the Husband's receives a "stepped up basis" equivalent to its value at the time of his death.

A one half interest in the property would have been worth $200,000. So now, the Wife has a $250,000 basis in the property ($50,000 representing her portion before her Husband's death, plus his "stepped up" $200,000). Were she to sell for $400,000, her gain would be $150,000…

However, if they had held title as community property, the Wife would have been in a better tax situation. In that case, on the Husband's passing, both his and her portion would receive a stepped up basis. Thus, the new basis would be $400,000.

Were she to sell it for that amount there would be no gain, and thus no taxable gain whatsoever.

So why doesn't every couple hold title as community property? Because that manner of ownership doesn't have the automatic passing of title

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The Husband's estate would have to be processed through probate in order for the Wife to receive his portion. That can be both time consuming and costly.

Under the new law, it will now be possible for a couple to hold property as community property with the right of survivorship. Holding property in this way will provide both for automatic passing of title and full stepped up basis. It combines the best of both.

The new law takes effect July 1 of 2001. Present owners who want to take advantage of its provisions should consider doing so on or after that date.

But don't even think of doing so without first consulting your knowledgeable attorney and/or tax adviser.

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