

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RKJ ENTERPRISES, INC. : CIVIL ACTION
: :
v. : :
: :
SUN COMPANY, INC. (R & M) : NO. 98-2179

MEMORANDUM ORDER

Presently before the court is defendant's Motion to Dismiss for lack of subject matter jurisdiction, failure to state a claim and forum non conveniens.

Plaintiff has alleged the following pertinent facts.

Ranjit Bhinder, plaintiff RKJ's vice-president, negotiated with defendant Sun for the operation of a Sunoco service station and convenience store in Carmel, New York. Throughout the negotiations in the fall of 1994, Mr. Bhinder told Sun's representatives that RKJ intended to operate a convenience store at that location and that execution of a Dealer Franchise Agreement was contingent upon conversion of the location to a convenience store. On October 25, 1994, RKJ and Sun entered into a Dealer Franchise Agreement for the operation of a gas station with two gasoline pumps and a three-bay garage with a snack shop. The franchise commenced on October 27, 1994 and was to continue for three years. During the first year RKJ was to pay \$7,162 per month in rent to Sun, \$7,540 per month during the second year and \$7,948 per month during the third year.

On October 30, 1994, the parties executed an addendum to the franchise agreement which confirmed their intent to operate the location as a Sunoco A-Plus Mini Market and described the steps Sun would take to redevelop the location as a mini-market. Under the addendum, RKJ's monthly rental was reduced to \$1,500 per month for the period of November 1, 1994 through February 28, 1995. By the addendum Sun was required to secure the variances, permits and engineering drawings needed to redevelop the property, to construct the improvements necessary to operate the premises as a Sunoco A-Plus Mini Market and to keep RKJ informed of the progress of the redevelopment process. The addendum also required Sun to provide RKJ with a current five year Sunoco A-Plus Mini Market Franchise Agreement two months before the start of construction and timely to execute the Agreement.

Between October 1994 and 1997, gasoline sales at the station increased from 60,000 to 100,000 gallons per month and snack sales increased from \$200 to \$900 per day.

Throughout this period, Sun continually represented to Mr. Bhinder that Sun was taking steps to fulfil its obligation to redevelop the property as a mini market and that construction of the improvements was imminent. Sun submitted a preliminary proposal to the Carmel Zoning Board in 1995 for conversion of the property to a Sunoco A-Plus Mini Market, but refused to comply

when the Board suggested minor changes. Sun budgeted funds in 1996 to develop the location and scheduled construction for the fall of 1996. Sun, however, made no effort to secure the necessary variances, permits and engineering drawings. Sun also failed to provide and execute a copy of its then current Sunoco A-Plus Mini-Market Franchise Agreement. The property was never redeveloped as a Sunoco A-Plus Mini Market. RKJ operated the gasoline pumps and snack shop for three years, earning only half in gasoline sales and one-third in snack sales realized by full-fledged mini markets in the area.

Between 1995 and 1997, Sun repeatedly raised RKJ's monthly rent in an attempt to make it financially impossible for RKJ to continue to operate the facility. On September 19, 1997 Sun refused to renew the franchise relationship unless RKJ agreed to forego redevelopment. Under the renewal agreement, RKJ's rent was to be \$6,786 per month for the first year, \$7,011 per month for the second year and \$7,248 per month for the third year. These terms were unreasonable for a station without a mini market but with only two gasoline pumps and a small snack shop. They were imposed with the intent to force RKJ to give up the location. On October 25, 1997, RKJ signed a Dealer Franchise Renewal Agreement under protest and attached an addendum declaring that it was reserving its rights under the Petroleum

Marketing Practices Act. Six months later, RKJ filed this action asserting claims under the Act and for breach of contract.

Congress enacted the Petroleum Marketing Practices Act (PMPA), 15 U.S.C. § 2801 et seq., to limit the circumstances in which franchisors could terminate relationships with franchisees and to prevent coercive or unfair franchisor practices. See Simmons v. Mobil Oil Co., 29 F.3d 505, 509 (9th Cir. 1994); Baldauf v. Amoco Oil Co., 553 F. Supp. 408, 409-10 (W.D. Mich. 1981), aff'd, 700 F.2d 326 (6th Cir. 1983). Franchisors are prohibited from terminating or failing to renew franchises except for franchisee misconduct or legitimate franchisor business decisions. See Patel v. Sun Co., 141 F.3d 447, 451-52 (3d Cir. 1998).

Legitimate business decisions include a franchisor's decision to leave the geographic market area, see 15 U.S.C. § 2802(b)(2)(E); a franchisor's decision to use the property for something other than a gas station, see 15 U.S.C. § 2802(b)(3)(D)(I)(I); a decision based on the unprofitability of the franchise, see 15 U.S.C. § 2802(b)(3)(D)(I)(IV); and, an inability of the parties to agree in good faith and in the normal course of business on changes or additions to the franchise agreement, see 15 U.S.C. § 2803(b)(3)(A). A franchisor, however, cannot terminate the franchise relationship if the reason the parties cannot agree on new terms is "the result of the

franchisor's insistence upon such changes or additions for the purpose of preventing the renewal of the franchise relationship." Mobil Oil Co. v. Virginia Gasoline Marketers and Automotive Repair Ass'n., Inc., 34 F.3d 220, 225 (4th Cir. 1995), cert. denied, 513 U.S. 1148 (1995).

The court clearly has jurisdiction over the subject matter of RKJ's complaint. The court turns to Sun's assertion that RKJ has not stated a cognizable PMPA claim.

From plaintiff's allegations and the reasonable inferences therefrom, see Rocks v. Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989), it appears that after RKJ demonstrated that the location was more lucrative than had previously appeared, Sun imposed unreasonable rental terms in the absence of an A-Plus Mini Market in an effort to prevent a renewal of the franchise relationship. The court cannot conclude beyond doubt that plaintiff will be unable to prove any set of facts in support of its PMPA claim which would entitle it to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

Sun cites Chestnut Hill Gulf v. Cumberland Farms, Inc., 940 F.2d 744 (1st Cir. 1991); Sawhney v. Mobil Oil Corp., 970 F. Supp. 366 (D.N.J. 1997); Cedar Brook Service Station, Inc v. Chevron, U.S.A., Inc., 746 F. Supp. 278 (E.D.N.Y. 1990); aff'd, 930 F.2d 908 (2d Cir.), cert. denied, 502 U.S. 819 (1991); May-Som Gulf, Inc. v. Chevron U.S.A., Inc., 869 F.2d 917 (6th

Cir. 1989); and, Ackley v. Gulf Oil Corp., 726 F. Supp. 353 (D. Conn.), aff'd, 889 F.2d 1280 (2d Cir. 1989), cert. denied, 494 U.S. 1081 (1990) for the proposition that in the absence of a literal termination or non-renewal, a franchisee cannot state a claim under the PMPA. Those cases merely held that an assignment of a franchise by a franchisor does not constitute a termination or failure to renew within the meaning of the PMPA. Other Courts have squarely rejected Sun's argument, reasoning that Congress did not intend to force a franchisee to abandon the franchise relationship to invoke the protection of a law designed to protect a franchisee's interest in continuing that relationship. If a franchisor imposes renewal terms which violate the PMPA, the franchisee has a cause of action although he has accepted the terms under duress or protest. See Pro Sales v. Texaco, U.S.A., 792 F.2d 1394, 1399 (9th Cir. 1986); Sun Franchise Ass'n v. Sun Refining and Marketing Co., 1992 WL 97359, *4 (E.D. Pa. Apr. 29, 1992); Dean v. Kerr-McGee Refining Corp., 714 F. Supp. 1155, 1158 (W.D. Okla. 1988); Siecko v. Amerada Hess Corp., 569 F. Supp. 768, 771 n.2 (E.D. Pa. 1983); Meyer v. Amerada Hess Corp., 541 F. Supp. 321. 329 (D.N.J. 1982).

A dismissal for forum non conveniens is generally inappropriate when venue is proper in the court of filing but another federal district court would provide a more convenient forum. Ordinarily, one would move to transfer the action

pursuant to 28 U.S.C. § 1404(a). See 15 Charles A. Wright, Arthur R. Miller and Edward H. Cooper, Federal Practice and Procedure § 3828, at 278-80 (2d ed. 1986 & Supp. 1998). In any event, defendant has not remotely shown that the balance of relevant factors favors dismissal or transfer from defendant's home forum of this action for reasons of convenience or the interest of justice. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947); Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995).

ACCORDINGLY, this day of December, 1998, upon consideration of defendant's Motion to Dismiss (Doc. #4) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.