

"Not So Fast" – Maryland Gas Station Operator Obtains Injunction Stopping Franchise Termination

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On May 25, 2022, the U.S. District Court in Greenbelt, Maryland issued a preliminary injunction ordering PMIG 1025, LLC and Petroleum Marketing Group, Inc. ("PMG") to continue its franchise relationship with the operators of the "Airport Shell" retail gas station and convenience store near Baltimore Washington International Airport during the pendency of the operators' case that PMG did not have good cause to end their petroleum franchise relationship under the U.S. Petroleum Marketing Practice Act (the "PMPA"). The Court, through highly respected veteran jurist Paul W. Grimm, ruled that the operators had a reasonable chance of prevailing on the merits of their claims that PMG improperly terminated the Franchise Agreement for the operation of Airport Shell. The Court further found that the harm to the plaintiffs without an injunction issuing, namely losing control over their business, was greater than the potential harm to the defendants with such an injunction.

The PMPA, which begins in Title 15 of the U.S. Code at Section 2801, protects franchisees by limiting the circumstances under which a petroleum franchisor may terminate or "fail to renew" a motor fuel franchise. *Mac's Shell Serv., Inc. v. Shell Oil Prods. Co. LLC*, 559 U.S. 175, 177 (2010) (citing 15 U.S.C. §2802). The PMPA provides protections against termination or non-renewal to motor fuel dealers that are superior to the typical provisions of the franchise and lease agreements between petroleum sellers and operators, or indeed between typical business format franchisors and their franchisees.

The particular factual circumstances of the BWI Airport Shell case are quite complicated, as the site at issue is subject to a master lease with the Maryland Aviation Administration. However, the essence of the dispute is whether PMG acted in good faith (meaning "subjective good faith" based on an "honest evaluation of the franchisor's own business needs") and in the ordinary course of its business in demanding substantial rent increases and property improvements as a condition of continuing the franchise, or whether it imposed those conditions as pretext or "poison pill" to force out the operator and begin operating the location through employees. This is a scenario familiar to business format franchising, particularly where the franchisor also controls the real estate on which the franchised business operates.

The injunction issued is just for the operators' case, as it proceeds through the U.S. district court to trial before a federal jury (likely in the summer of 2023). However, it is notable that to demonstrate its legal right to end the franchise relationship, PMG will be required to prove that the increased rent and burdens it demanded as a condition of franchise renewal were "the result of determinations made by the franchisor in good faith and in the normal course of business, and . . . franchisor's insistence upon such changes or additions [were not] for the purpose of preventing the renewal of the franchise relationship." While the PMPA does not apply to non-petroleum business format franchises, veteran business format franchisees being confronted with commercially unreasonable demands to renew their franchise should consider whether decisions under that law, used by analogy, can help their cause.

The case decision described is *Fursyth Petroleum Foundation Inc., et al., Plaintiffs v. PMIG 1025, LLC, et al.*, U.S. District

Court, D. Maryland, Southern Division. Case No. PWG 21-cv-2433 (Dated May 25, 2022).