

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CAPACITY OF TEXAS, INC.

v.

NEW MOTOR VEHICLE BOARD

**GUARANTEED FORKLIFT, INC., dba
GFL, INC.**

Case Number: 34-2014-80001848

RULING ON SUBMITTED MATTER

Date: May 1, 2015

Time: 9:00 a.m.

Dept.: 29

Judge: Timothy M. Frawley

Petitioner Capacity of Texas, Inc. challenges a decision of Respondent New Motor Vehicle Board granting an administrative protest of its notice to terminate the franchise of Real Party in Interest GFL, Inc. (GFL). Petitioner seeks a peremptory writ of mandate compelling Respondent to set aside its decision and issue a new decision, overruling the protest and allowing termination of the franchise agreement. The court shall GRANT the petition.

Introduction

Petitioner Capacity is a new motor vehicle manufacturer. Capacity manufactures terminal tractors (also sometimes referred to as "semi-tractors" or "yard trucks") under the trade name "Trailer Jockey." A terminal tractor is a specialty vehicle typically used to move semi-trailers over short distances, such as within a cargo/freight yard, shipping dock, warehouse facility, or distribution center. Although terminal tractors are not typically operated on public streets, two of the "Trailer Jockey" models manufactured by Capacity are available in a "DOT variation" that would allow the vehicles, if properly registered, to be legally operated on public streets in California.

Real Party in Interest GFL was an authorized Capacity dealer, authorized to sell and service the motor vehicles manufactured by Capacity, pursuant to the terms of a "franchise" agreement between Capacity and GFL referred to as the "Authorized Representative Agreement," dated July 17, 1995.

Respondent Board is an administrative agency of the State of California charged with (among other things) the responsibility to adjudicate certain franchise-related disputes between new motor vehicle manufacturers and their retail dealers.

By letter dated February 5, 2013, Capacity notified GFL and the Board of its intention to terminate GFL's franchise because GFL (1) misrepresented the employment status of a former employee who left GFL to work for Capacity's chief competitor, and (2) unlawfully allowed the former employee to continue accessing Capacity's confidential and proprietary "Online Parts Ordering System" while the former employee was working for the competitor.

The California Vehicle Code prohibits involuntary termination of a new motor vehicle franchise without "good cause." (Cal. Veh. Code § 3060.) If a franchisee contends that it has been terminated without good cause, the franchisee may file a protest with the Board. (*Ibid.*) When a protest is filed, the franchisor may not terminate the franchise unless and until the Board finds, after hearing, there is good cause for termination. (*Ibid.*) At the protest hearing, the franchisor has the burden of proof to establish good cause for termination. (Cal. Veh. Code § 3066.)

In determining whether the franchisor has established good cause, the Board is required to consider the "existing circumstances," including, but not limited to, the following seven factors:

- (1) Amount of business transacted by the franchisee, as compared to the business available to the franchisee.
- (2) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.
- (3) Permanency of the investment.
- (4) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.
- (5) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor

vehicles handled by the franchisee and has been and is rendering adequate services to the public.

- (6) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.
- (7) Extent of franchisee's failure to comply with the terms of the franchise. (Cal. Veh. Code § 3061.)

In this case, GFL filed a timely protest with the Board, and the Board set the matter for hearing in December 2013. However, prior to the hearing, Capacity filed a Motion to Dismiss, arguing that the Board lacked jurisdiction to decide GFL's protest. Capacity argued that under the California Vehicle Code, the Board only has jurisdiction over protests involving franchisees of new motor vehicles subject to registration under the Vehicle Code. Capacity argues that because the vehicles it manufactures are not typically used on public streets, they are not "subject to registration," and therefore the Board lacked jurisdiction to hear GFL's protest.

On August 14, 2013, Administrative Law Judge Anthony M. Skrocki denied Capacity's Motion to Dismiss. The ALJ found that the Board had jurisdiction to hear the protest both because Capacity sells vehicles "subject to registration," and because GFL was given the right to perform authorized warranty repairs and service.

After the ALJ denied the Motion to Dismiss, but before the hearing on the merits, the parties entered into two stipulations of fact, one dated October 11, 2013, and another dated December 2, 2013. Among other things, the parties agreed to stipulate to the following facts concerning the "good cause" factors set forth in Vehicle Code § 3061:

- GFL transacts an adequate amount of business, as compared to the business available to it.
- GFL has made investments and incurred obligations necessary to perform its parts of the franchise.
- GFL's investment in its franchise is permanent.
- GFL has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public.
- GFL does not fail to fulfill the warranty obligations of the franchisor to be performed by the franchisee.

The parties also stipulated that they will not present evidence regarding whether it would be injurious or beneficial to the public welfare for GFL's business to be disrupted. The only "good cause" factor to which the parties did not stipulate was the one forming

the basis for Capacity's termination: the "[e]xtent of [the] franchisee's failure to comply with the terms of the franchise," and specifically whether GFL breached the terms of its franchise agreement by allowing its former employee to access Capacity's confidential and proprietary "Online Parts Ordering System" (also known as "COPOS").

On December 11, 2013, a hearing on the merits of the protest was held before ALJ Kymberly Pipkin. In March of 2014, ALJ Pipkin issued a 15-page proposed decision, sustaining the protest and prohibiting termination of the GFL franchise. The ALJ found that GFL's principal, president, and sole shareholder, Denise Rosen-Kendrick, misrepresented the employment status of former employee, Stephen Mehrens, to Capacity, stating that Mr. Mehrens was on medical leave when he actually was no longer employed with GFL. The ALJ also found that Ms. Rosen-Kendrick provided Mr. Mehrens with the password to access COPOS after he was employed by a competitor of Capacity.

Nevertheless, the ALJ concluded that Capacity did not establish that GFL violated any provisions of the franchise agreement or that GFL failed to comply with the terms of the franchise. Thus, the ALJ concluded that Capacity did not meet its burden to establish good cause to terminate GFL's franchise.

The ALJ found that the agreement provisions described in Capacity's notice of termination were not violated because they were not actually contained within the agreement; they were provisions added to subsequent franchise agreements with other franchisees. The ALJ found that the sole clause in GFL's franchise agreement regarding Capacity's ability to terminate provides as follows:

For good cause shown, as defined by Texas statute, Capacity may terminate this Agreement without any liability by providing written notice of termination which shall be effective thirty (30) days after receipt by Authorized Representative [GFL]. Cause shall include but not be limited to the goals and objectives established by the parties hereto.

The ALJ found that this provision was not violated by GFL's conduct.

In April 2014, the Board met and considered the proposed decision. The Board adopted the proposed decision as its final Decision by a 2 to 1 vote. Board member Kathryn Doi wrote a four-page dissent.

By the present action, Capacity seeks a peremptory writ of administrative mandamus ordering the Board to set aside its decision and issue a new decision overruling the

protest. In its Memorandum of Points and Authorities, Capacity challenges the Board's Decision on two grounds. First, Capacity challenges the ALJ's order denying the Motion to Dismiss. Capacity argues that because terminal tractors are not typically "registered," the Board did not have jurisdiction over GFL's protest.

Second, Capacity argues the Board abused its discretion in finding GFL's conduct did not violate the terms of the franchise or otherwise provide "good cause" to terminate the franchise. Capacity argues that, based on the undisputed facts, Capacity had good cause to terminate GFL's franchise due to GFL's breach of the implied covenant of good faith and fair dealing and GFL's violations of state and federal laws prohibiting the unauthorized dissemination of trade secrets.

Standard of Review

The inquiry in a case under Civil Procedure Code section 1094.5 shall extend to questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. (Civ. Proc. Code § 1094.5(b).) Where it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the findings are not supported by substantial evidence. (*Automotive Management Group, Inc. v. New Motor Vehicle Board* (1993) 20 Cal.App.4th 1002, 1009.) However, if the facts are undisputed, the reviewing court may exercise its independent judgment and resolve the matter as a question of law. (See *Paratransit, Inc. v. Unemployment Ins. Appeals Bd.* (2014) 59 Cal.4th 551, 562.)

Motion to Augment the Administrative Record

The administrative record originally lodged with the court inadvertently omitted the parties' joint exhibits and the transcript of the hearing. At the hearing on the merits, Capacity moved to augment the record to include the omitted documents. GFL had no objection to augmenting the record to include the joint exhibits and transcript of administrative hearing. Thus, the court granted the motion to augment the record with such records.

Discussion

The Board did not abuse its discretion in denying Capacity's Motion to Dismiss. The court finds the ALJ's Order Denying Respondent's Motion to Dismiss and Strike Protest

to be well reasoned and well supported. The court adopts the findings and conclusions of that Order as its own.

However, the Board abused its discretion in concluding that Capacity lacked good cause to terminate GFL's franchise.

As Section 3061 recognizes, good cause is a "relative" term; its existence depends on the circumstances of each particular case. Broadly speaking, a right to terminate "for good cause" means upon reasonable grounds assigned in good faith. (See, e.g., *R. J. Cardinal Co. v. Ritchie* (1963) 218 Cal.App.2d 124, 146.) Where, as here, the facts are undisputed, the existence of good cause for termination is an issue of law, reviewed de novo.¹ (*Norman v. Unemployment Ins. Appeals Bd.* (1983) 34 Cal.3d 1, 6; *Moore v. May Dept. Stores Co.* (1990) 222 Cal.App.3d 836, 840.)

Here, the Board found that Ms. Rosen-Kendrick misrepresented the employment status of Mr. Mehrens to Capacity, stating that Mr. Mehrens was on medical leave when, in fact, he was working for a competitor. The Board also found that Ms. Rosen-Kendrick provided Mr. Mehrens with GFL's password to access COPOS after Mr. Mehrens was working for the competitor. Mr. Mehrens proceeded to access the COPOS system no less than thirty-nine times, on nine different days, researching eight different VINs and 13 different parts.

Only authorized dealers are supposed to have access to the COPOS system. By providing Mr. Mehrens with access to the COPOS system, GFL violated the terms and conditions of use of the COPOS system and gave Capacity's chief competitor access to proprietary and confidential trade secret information about Capacity's business. GFL also was dishonest to Capacity about Mr. Mehrens' employment status, which prevented Capacity from suspending his user ID before he could gain access.

These actions violated the terms of the franchise agreement, which requires GFL to "use all reasonable endeavors to achieve maximum sales of [Capacity's] products." By providing trade secret information to Capacity's chief competitor, GFL worked against Capacity and acted inconsistent with its obligations under the franchise agreement. This is "cause" for termination under the express terms of the agreement.

¹ Because the Board's findings of fact are not disputed, the court accepts them as true. (See *Black v. State Personnel Board* (1955) 136 Cal.App.2d 904, 909 [any finding not specifically attacked is to be accepted as true].) The Board's findings are incorporated herein by reference.

Further, under applicable Texas law,² there is a duty of good faith and fair dealing between the parties to a motor vehicle franchise agreement. (See Tex. Occ. Code Ann. § 2301.478³; *Buddy Gregg Motor Homes, Inc. v. Motor Vehicle Board* (Tex. App. 2005) 179 S.W.3d 589, 615; see also Tex. Bus. & Com. Code § 1.304.) GFL's actions breached this duty of good faith. Thus too supports the conclusion that GFL failed to comply with the terms of the franchise.

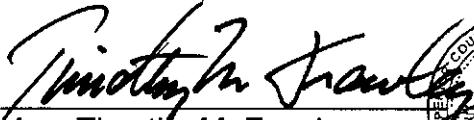
Moreover, a finding of good cause is not required to be based on a violation of franchise "terms." The statute merely requires a showing of "good cause," which can be based on any "existing circumstances." Here, GFL's dissemination of Capacity's valuable trade secrets, and GFL's violation of Capacity's trust and confidentiality, would amount to good cause for termination even if it did not violate the terms of the franchise agreement.

Disposition

The Board abused its discretion in concluding that Capacity failed to establish good cause to terminate the franchise agreement. Accordingly, the court shall grant the petition and issue a peremptory writ of mandate compelling Respondent to set aside its decision and issue a new decision, overruling the protest and allowing termination of the franchise agreement.

Counsel for Capacity is directed to prepare a formal judgment (incorporating this ruling as an exhibit) and writ; submit them to opposing counsel for approval as to form; and thereafter submit them to the court for signature and entry of judgment. Capacity shall be entitled to recover its costs upon appropriate application.

Dated: August 3, 2015


Hon. Timothy M. Frawley
California Superior Court Judge
County of Sacramento



² There also is an implied covenant of good faith and fair dealing in every contract under California law. (See *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658.)

³ Although the franchise agreement was executed before this statute took effect in 2003, the agreement had a one-year term, subject to annual renewal by mutual agreement of the parties. Thus, the agreement was "renewed" after the statute took effect. The duty of good faith imposed by the commercial code predates the franchise agreement. (See *Adolph Coors Co. v. Rodriguez* (Tex. App. 1989) 780 S.W.2d 477, 480-81.)

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DEPARTMENT: 29

CASE TITLE(S): Capacity of Texas vs. New Motor Vehicle Bd./Guaranteed Forklift, Inc.

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled RULING in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: August 3, 2015

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