UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

COUNTY MOTORS, INC.,
plaintiff

v. C.A. No. 00-108T

GENERAL MOTORS CORPORATION,

and

LANCE, INC.,
defendants

MEMORANDUM AND ORDER

ERNEST C. TORRES, Chief United States District Judge.

Introduction

General Motors Corp. ("GM") brings a motion to dismiss the amended complaint against it in its entirety. This Court has previously granted the motion of Lance, Inc. ("Lance") to dismiss or in the alternative for summary judgment on the one count in the amended complaint against them, for intentional interference with contractual relations. Lance, however remains a defendant in this matter because this Court has previously found that they are a necessary party to the litigation.

For the reasons discussed below, GM's motion to dismiss is granted as to Counts I and II, and denied as to Count III.

Background

Plaintiff County Motors, Inc. ("County") is an authorized GM dealer located in Pawtucket, RI. Lance is an authorized GM dealer located in Attleboro, MA, which wants to relocate its dealership operations to another location within Attleboro. Under Lance's dealership agreement with GM, Lance must obtain GM's approval of any relocation of the dealership. Accordingly, Lance asked for and, in June 1999, received GM's preliminary approval of the relocation. At this time, GM notified County of Lance's proposed move. Lance's proposed new location, although still within Attleboro, is closer to County's dealership than is Lance's current location.

County was unhappy with the proposed move of Lance since, in its view, Lance would more directly be competing for business with County since the new location was closer to County. Accordingly,

County filed a protest under R.I.G.L. § 31-5.1-4.2 with the Rhode Island Motor Vehicle Dealer's License and Hearing Board (the "Board") arguing that the proposed new Lance location was within County's relevant market area as that term is defined in R.I.G.L. § 31-5.1-1(b)(11). Article 5.1 of Title 31 of the Rhode Island General Laws regulates business practices among motor vehicle manufacturers, distributors and dealers. Section 4.2 of Article 5.1 provides that whenever a manufacturer seeks to establish a new dealer or relocate an existing dealer into another dealer's relevant market area, the manufacturer must notify the Board and each dealer in the same line of automobiles in the relevant market area of its intention to add or relocate the dealer. Any affected dealer then has 30 days in which it can file a protest to the addition or relocation with the Board. The Board then notifies the manufacturer and holds a hearing to determine whether there is good cause for not permitting the establishment or relocation. The

statute provides a list of factors to be considered by the Board in determining whether good cause has been established for not entering into or relocating an additional dealership of the same line.

In this case, the Board dismissed County's protest on the ground that it lacked jurisdiction over the relocation of an automobile dealership in Massachusetts. County did not appeal this decision.

County's next step was to file this suit against GM to try and prevent Lance from relocating. The original complaint contained three counts and named only GM as a defendant. Count I is an alleged violation of R.I.G.L. § 31-5.1-4(c)(9), another section of the Rhode Island motor vehicle business practices statute. Count II alleges that by approving Lance's request to relocate, GM has breached the terms of its dealership agreement with County, and Count III alleges that GM's approval of the relocation breached its

duty of good faith and fair dealing.

After this Court found that Lance was a necessary party and should be added to the litigation, plaintiff moved to amend its complaint to add Lance as a defendant and to add a Count IV against Lance for intentional interference with contractual relations. As mentioned previously, the Court granted Lance's motion to dismiss or for summary judgment on this Count IV, but Lance remains a party.

GM now moves to dismiss the three remaining claims, which are all against GM.

Discussion

Motion to Dismiss Standard

In deciding a motion to dismiss for failure to state a claim, the well-pleaded factual allegations of the complaint are accepted as true, all reasonable inferences therefrom are drawn in the plaintiff's favor, and the court must determine whether the complaint, so read, sets forth facts sufficient to justify recovery

on any cognizable theory. TAG/ICIB Services, Inc. v. Pan-American Grain Co., Inc., 215 F.3d 172, 175 (1st Cir. 2000).

COUNT I - Violation of R.I.G.L. § 31-5.1-4(c)(9).

In Count I, County alleges that GM's proposed relocation of a competing dealer to within 1.5 miles of County's premises is a direct violation of R.I.G.L. § 31-5.1-4(c)(9). A claim for violation of R.I.G.L. § 31-5.1-4(c)(9) is merit-less for several reasons.

First, § 31-5.1-4(c)(9) is inapplicable to this case. R.I.G.L. § 31-5.1-4(c) provides, in relevant part:

> It shall be deemed a violation of this chapter for a manufacturer, or officer, agent, or other representative thereof:
>
> (9) To compete with a new motor vehicle dealer operating under an agreement or franchise from the manufacturer in the relevant market area . . . provided, however, that a manufacturer shall not be deemed to be competing when operating a dealership either temporarily for a reasonable period in any case not to exceed one year or in a bona fide relationship in which an independent person had made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions.

This section prohibits an automobile manufacturer from owning or operating a franchise, subject to the exceptions in the statute, that competes with one of its authorized dealers. It is undisputed that GM does not have any ownership interest in Lance. Therefore, GM is not competing with County in a way that violates § 31-5.1-4(c)(9).

Although County argues that the statute does not explicitly limit the prohibited competition to direct ownership of a dealership, or the operation of a so-called "company store", there can be no question from the context in which it is used that "compete" here means an ownership interest of the manufacturer in the competing dealership. The two exceptions given both involve the manufacturer operating or owning the dealership for a temporary period of time. The implication is that any period of operation or ownership by the manufacturer greater than these two exceptions is prohibited.

There is another, equally compelling, reason for not reading § 31-5.1-4(c)(9) to cover the situation where a manufacturer approves the relocation of an independent dealer, as in the present matter. Another subsection of the same statute explicitly covers such a situation. R.I.G.L. § 31-5.1-4.2, as discussed above, establishes certain procedures that must be followed when a manufacturer seeks to relocate an existing dealership into the relevant market area of another dealer selling the same line of cars. This is the section under which County brought its protest before the Board. It is unreasonable to read the language in § 4(c)(9), which provides that the manufacturer may not "compete" with a dealer, as prohibiting the relocation of an independent dealership by a manufacturer, when § 4.2 uses very explicit language to regulate this very situation.

Furthermore, even if County had brought its claim under §31-5.1-4.2, it would be unsuccessful in that the entire statute is

inapplicable to the present case. The First Circuit has held, in Fireside Nissan, Inc. v. Fanning, 30 F.3d 206, 214 (1st. Cir. 1994) that a Massachusetts dealer does not have grounds to lodge a protest under the procedure established in R.I.G.L. § 31-5.1-4.2 against the relocation of a Rhode Island dealership within the Massachusetts dealer's relevant market area. The court reasoned that the Rhode Island motor vehicle dealer statute was enacted by the Rhode Island general assembly to protect Rhode Island automobile dealers. Id. at 212. The statute imposes several burdens on dealers and confers certain benefits. Since Fireside Nissan, as a Massachusetts dealership, did not have to comply with the burdens of the statute, it also was not entitled to the benefits of the statute. One of those benefits is the ability to protest when a new dealer or relocating existing dealer tries to establish itself close-by.

Likewise, the relocation of a Massachusetts dealership such as

Lance is not governed by the restrictions imposed by §31-5.1-4.2. We know from Fireside Nissan that Lance could not protest the relocation of County within Rhode Island, even if within Lance's relevant market area. To allow County to protest the relocation of Lance under this same statute would clearly be inequitable and contrary to the reasoning of Fireside Nissan.

Count I of County's amended complaint is therefore dismissed because the section alleged in the complaint to have been violated, R.I.G.L. §31-5.1-4(c)(9), is inapplicable to the present case in that this subsection merely prevents a manufacturer from owning or operating a dealership that competes with one of its authorized dealers. Since GM does not own or operate Lance in any way, this section cannot be violated here. Further, in light of the holding in Fireside Nissan, R.I.G.L. § 31-5.1 is inapplicable to the relocation of a Massachusetts dealership, and County would have no claim under any portion of § 31-5.1, including § 31-5.1-4.2.

Count II - Breach of Contract

In its second count, County alleges that "GM's proposed relocation of a competing [] dealer to within 1.5 miles of County's premises is a direct violation of its contract with County." GM argues that its dealership agreement is explicit, and gives GM sole authority to decide on relocating dealerships. Article 4.2 of the standard provisions of GM's Dealer Sales and Service Agreement establishes an Area of Primary Responsibility (APR) for which the dealer is responsible for "effectively selling, servicing and otherwise representing [GM's] [p]roducts." Article 4.3 establishes a procedure for the establishment of additional dealers within an existing dealer's APR. The section states, however, that "the relocation of an existing dealer will [not] be considered the establishment of an additional dealer for purposes of this Article 4.3. Such events are within the sole discretion of [GM], pursuant to its business judgment."

Additionally, Article 4.4.2 covers changes in the location of a dealer's premises either at the request of the dealer or GM. At the conclusion of the section, it provides, "Nothing herein is intended to require the consent or approval of any dealer to a proposed relocation of any other dealer."

On its face then, the contract would seem to give GM the discretion to relocate existing dealers, using its business judgment, with no right on the part of any dealer to interfere or stop a relocation of another dealer. Under this reading, Count II of the amended complaint should be dismissed in that there is no way GM's approval could have breached a term of the contract between County and GM because County had no rights regarding the relocation of Lance.

County however, makes two arguments in support of its contention that GM's approval of Lance's relocation is a breach of the contract between County and GM. First, in its memorandum in

support of its objection to the motion to dismiss, County argues that these terms in the contract which give sole discretion to GM to decide on the relocation of existing dealers contradict the requirements of R.I.G.L. §§ 31-5.1-4(c)(9) and 31-5.1-4.2, and thus are void and unenforceable. County cites R.I.G.L. § 31-5.1-14, which provides that "[a]ny contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable." Thus, County argues, since the provisions giving GM sole discretion are void and unenforceable in that they are inconsistent with provisions of the statute, and § 31-5.1-8 of the statute provides that the provisions of that chapter shall apply to all written agreements between a manufacturer and dealer, the statute provides the substantive terms of the dealership agreement. The argument continues that since GM's approval of Lance's relocation violates the terms of the statute, it also amounts to a breach of the

contract.

County's attorney did not argue this point at the hearing on the motion to dismiss, and perhaps no longer relies on this argument. In any case, the argument has no merit and cannot save the breach of contract claim. County's relationship with GM is governed by the terms of the Rhode Island statute and any actions taken by either party must comport with the requirements of the statute. Thus, County must exercise its discretion under the contract in a way that does not violate the statute. However, it is very different to say on the one hand that one's actions taken pursuant to a contract must also comport with applicable law and on the other hand to say that conflicting terms of a contract which potentially conflict with statutory requirements are excised from the contract and the statutory requirements are inserted in the contract. County cites no authority for such a proposition. If a party has a claim for violation of a statute, it can bring it, but

it cannot bring a breach of contract claim by excising express terms of a contract and inserting the statute into the contract.

At the hearing on the motion to dismiss, counsel for County raised a new argument in support of the claim for breach of contract. County now argues that Articles 4.1 and 4.2 of the dealership agreement are the operative sections. As mentioned above, Article 4.2 establishes an Area of Primary Responsibility (APR) for the dealer which is a party to the contract. The APR is designated by GM in a Notice of Area of Primary Responsibility. Although GM "retains the right to revise Dealer's Area of Primary Responsibility at [GM's] sole discretion consistent with dealer network planning objectives," if GM "determines that marketing conditions warrant a change in Dealer's Area of Primary Responsibility, it will advise Dealer in writing of the proposed change, the reasons for it, and will consider any information the Dealer submits." The dealer has 30 days to submit such

information. If GM then decides a change is warranted, it issues a revised Notice of Area of Primary Responsibility.

County argues that GM's approval of the relocation of Lance to a new site within County's APR was a de facto change in County's APR. This change occurred without the required notice and opportunity for County to present information to GM prior to the change being made, and therefore is a breach of the terms of the contract according to County.

There are several problems with County's argument. First, there is nothing in the agreement that would suggest that relocating another dealer within County's APR is a change in County's APR. Nothing in the agreement even suggests that County will be the only dealer within all of its APR. In other words, nothing prohibits APRs of different dealers from overlapping. The contract provides a formal way for GM to change a dealer's APR and until that happens, if at all, the old APR is still the dealer's

APR and the dealer has the same rights and responsibilities within that area as it had before the other dealer relocated.

The second and more fundamental problem with this argument is that it was raised for the first time at the hearing on the motion to dismiss. The complaint states a breach of contract claim in very scant detail. It indicates that the alleged breach was GM's approval of Lance's relocation, but it does not identify what provision of the contract is allegedly breached by this action. The complaint is probably sufficient under our system of liberal notice pleading, provided that County clarifies the claim at a future date. The time for that clarification was when County filed its memorandum in opposition to the motion to dismiss. Rule 12(a)(2) of the Local Rules of this Court require that "[e]very party opposing a motion shall serve and file with his response a separate memorandum of law, containing the authorities and reasoning supporting his position, and any affidavits and other

papers or materials setting forth or evidencing facts on which he opposes the motion." This requirement that all arguments in support of a particular contested position be in the memorandum allows opposing parties and the Court an opportunity to adequately prepare for the hearing and/or disposition of the matter. **[Judge, I tried to find a case to cite for these propositions, but can't find one after a fairly thorough search]** Here, County's memorandum only contained the argument that the contract provisions giving discretion to GM to decide on relocations of existing dealerships conflicted with the Rhode Island motor vehicle dealer statute and so should be stricken and the statute's requirements inserted into the contract. It did not mention changing APR's in any way. County cannot now rely on this APR argument in opposition to the motion to dismiss Count II.

Therefore, County has provided no valid argument that it can prove a breach of the contract between County and GM. Count II of

the amended complaint should be dismissed.

COUNT III - Breach of the implied duty of good faith and fair dealing.

In Count III of its amended complaint, County alleges that "GM's proposed relocation of a competing Pontiac Dealer to within 1.5 miles of County's premises is a direct violation of its implied contractual duty of good faith and fair dealing with County." GM moves to dismiss this count on two basic grounds. First, GM argues that the contract contains a choice of law provision which establishes Michigan law as controlling, and Michigan does not recognize a claim for breach of the implied covenant of good faith and fair dealing. Second, GM argues that even if there is an implied covenant of good faith and fair dealing, that covenant cannot override specific contract provisions such that exercise of an express contract right can violate an implied covenant. GM

argues that the contract gives GM total, unfettered discretion to decide on the relocation of dealerships and the exercise of this discretion expressly given in the contract cannot give rise to a claim for breach of the implied covenant of good faith.

County argues in opposition that the choice of law provision in the contract is void and unenforceable because it violates Rhode Island public policy by not allowing a claim for breach of the implied covenant of good faith. Therefore, according to County, Rhode Island law controls and since Rhode Island allows a claim for breach of the implied covenant of good faith and fair dealing, the motion to dismiss this count should be denied.

This Court need not decide whether the choice of law provision is controlling or whether it should be stricken on the ground that it is against Rhode Island public policy and therefore should not be enforced. Article 17.12 of the standard provisions of GM's Dealer Sales and Service Agreement provides in relevant part:

"This agreement is governed by the laws of the State of Michigan." However, even assuming, as GM argues, that this provision is enforceable and the agreement is governed by Michigan law, that does not mean that the relationship between GM and County is not governed by the Rhode Island motor vehicle dealer statute. Quite the contrary. R.I.G.L. § 31-5.1-8 provides that "[t]he provisions of this chapter shall apply to all written or oral agreements between a manufacturer and a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, . . . and all other agreements in which the manufacturer, wholesaler, or distributor has any direct or indirect interest." If Michigan law applies to the agreement, that merely means that in interpreting a term of the contract, Michigan law controls. It does not mean that GM is not required to follow the requirements of Rhode Island law with respect to its actions regarding motor vehicle dealerships in Rhode Island.

R.I.G.L. § 31-5.1-4(a) provides that "[i]t shall be deemed a violation of this chapter for any manufacturer, or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties involved or to the public." Thus, GM's discretion to decide on the relocation of an existing franchise is not unfettered. Any exercise of discretion under the agreement must not be arbitrary, in bad faith, or unconscionable. Even the contract itself does not purport to give GM unfettered discretion, despite GM's claims to the contrary. The contract provides that GM does not need the consent or approval of any dealer to a proposed relocation of another dealer, and that the relocation of an existing dealer is "within the sole discretion of [GM], *pursuant to its business judgment*." (emphasis added) For example, if GM made the decision to approve the relocation of Lance not because it thought it would benefit GM's profitability, which would be an exercise of GM's

business judgment, but rather because GM had some sort of animus towards County and wanted to destroy or hurt County regardless of whether GM would be in a better or worse business position after the relocation, then the action would be in bad faith and a violation of § 31-5.1-4(a).

Although it would seem to be very difficult for County to prove such a claim at trial, it cannot be said in the context of a motion to dismiss that there exists no set of facts under which County could prove its claim for violation of the covenant of good faith and fair dealing embodied in R.I.G.L. § 31.5.1-4(a). The motion to dismiss Count III of the amended complaint is therefore denied.

Remaining Issues:

The only factual issues relating to liability remaining for trial concern the question of whether GM acted arbitrarily, in bad faith, or unconscionably in making its decision to approve the relocation of Lance. This Court need not decide whether that

decision was a good business decision or a bad business decision, but merely whether it was a business decision at all or instead was an arbitrary decision, an unconscionable decision, or a decision made in bad faith.

Conclusion

For all of the foregoing reasons, General Motors' motion to dismiss is granted as to Counts I and II of the amended complaint and denied as to Count III. Accordingly, Counts I and II of the amended complaint are hereby dismissed.

IT IS SO ORDERED,

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Ernest C. Torres
Chief United States District Judge

Date: , 2000