



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Motor Fuel Supply Agreement: Illinois Appellate Court Addresses Distributor's Request for Injunctive Relief Related to Alleged Retailer Breach

12/18/2019

The Appellate Court of Illinois (Third District) (“Court”) addressed in an October 29th Opinion issues related to an alleged breach by a retailer of a Motor Fuel Sale Petroleum Supply Agreement (“Agreement”). See *Gas Depot Oil Company v. Gamboa Enterprises, Inc., et al.*, 2019 IL App (3d) 180668-U.

The Appellant/Plaintiff, Gas Depot Oil Company (“Gas Depot”), challenged on appeal the denial of its request for preliminary injunction to enforce the Agreement to supply motor fuel.

Gas Depot is a motor fuel supply company that sells and distributes gasoline products to retail gas stations. Gamboa Enterprises and Robert Gamboa (collectively “Gamboa Defendants”) operate a gas station in Mokena, Illinois (“Illinois”).

The Gamboa Defendants agreed to:

. . . purchase all Petroleum Products to be sold from the Premises in connection with the retail Petroleum Business exclusively from Gas Depot Oil Company for a period of seven years.

They also agreed to:

- Brand the Mokena location as a CITGO station,
- Sell CITGO branded petroleum products

The Gamboa Defendants were provided a \$25,000 signing bonus. A handwritten provision at the bottom of the last page of the Agreement stated:

. . . Gas Depot will finance 4 new dispensers with 0% interest rate. Gas Depot will upgrade POS. Gas Depot will provide dealer with \$75,000 interest free loan.

A different fuel supply company (“Luke Oil”) asked Gamboa to leave Gas Depot. Gas Depot informed Luke Oil that the CITGO station was under contract until July 2023.

Gamboa subsequently informed Gas Depot that it intended to cease purchasing petroleum products from Gas Depot. Further, it would begin purchasing fuel from Luke Oil and “debrand” the station (i.e., remove the CITCO trademark).

Gas Depot filed a Complaint in Circuit Court against Gamboa Enterprises, Gamboa and Luke Oil. It sought injunctive and declaratory relief arguing that Gamboa Enterprises had breached the Agreement.

The Complaint alleged that if the station was debranded:

. . . it would cause irreparable harm to Gas Depot in that it “will lose the business at the [Mokena] location, will suffer damage to its good will associated with selling fuel to the location, [and] will suffer CITGO brand recognition.

The harm to Gas Depot was argued to outweigh any harm Gamboa Enterprises would suffer if required to purchase fuel under the terms of the Agreement.

A temporary restraining order (“TRO”) was requested (along with a preliminary injunction asking that Gamboa be prohibited from debranding the CITGO station). The TRO also requested that fuel continue to be purchased exclusively from Gas Depot.

In support of these requests an Officer of Gas Depot argued that CITGO was one of its largest branded suppliers and that years of good will would be irreparably harmed. The Circuit Court granted a TRO pending a hearing on preliminary injunctive relief.

At the hearing the Gamboa Defendants admitted executing the Agreement with the referenced terms. However, it argued that Gas Depot had failed to undertake terms provided in the handwritten portion of the Agreement related to the financing of four new pumps (and other equipment) and provision of a \$75,000 interest free loan. This was alleged to be a breach of the Agreement by Gas Depot.

Gamboa’s testimony noted that the referenced \$75,000 loan was needed to avoid environmental violations. He admitted \$85,000 was offered but testified “that was not what we agreed to.” Further, he admitted that the Plaintiff provided financial information that would help Gamboa obtain financing.

Gas Depot’s Chief Financial Officer is stated to have noted the offer of \$85,000 interest-free loan. However, it was characterized by Gamboa as “the maximum amount that Gas Depot will invest in your location for pumps and upgrades.” This was stated to have discouraged Gamboa because it ignored the request for new pumps and a \$75,000 interest-free loan. At this point Gamboa is stated to have begun searching for additional fuel supply companies that would provide fuel and install pumps. The pumps were stated to be needed to avoid an environmental violation.

The Circuit Court determined that the evidence did not show a likelihood of success on the merits and denied Gas Depot’s Motion for Preliminary Injunction (removing the TRO).

The Court on appeal cites the elements for a preliminary injunction and held Gas Depot failed to establish a fair question as to likelihood of prevailing on its breach of contract claim. Despite the fact that it was demonstrated that a contract existed, the Court held that it was a fair question as to success on the merits of a breach of contract claim.

The Court referenced Gamboa’s offering evidence that the cost of installing pumps was \$113,000 and that the total investment to which Gas Depot agreed was \$200,000. Because the maximum financial support Gas Depot was willing to provide was \$85,000 the Court stated there was a fair question as to whether Gas Depot performed its obligations under the Agreement. As a result, the Court held that the Circuit Court did not abuse its discretion in denying Gas Depot’s Motion for Preliminary Injunction.

A copy of the Opinion can be downloaded [here](#).