

MOONLIGHTING INTERNATIONAL PTY LTD V INTERNATIONAL LIGHTING PTY LTD & ORS [2000] FCA 41

Federal Court of Australia – 31 January 2000

FACTS

Moonlighting was the exclusive distributor for Australia of products manufactured by Kim Lighting, a company from California. Kim Lighting wished to appoint International Lighting as its exclusive distributor for Australia and on 8 November 1999 it sent a notice of termination of the distributorship to Moonlighting purporting to terminate the distributorship from 1 December 1999.

Moonlighting claimed that it should have been given six months' notice of termination and issued legal proceedings in the Federal Court.

Moonlighting sought interlocutory injunctions to restrain Kim Lighting from acting on its termination of the distributorship and to restrain Kim Lighting and International Lighting from claiming that International Lighting was the exclusive Australian distributor of Kim Lighting's products.

ISSUES

Did the law of Victoria or California apply to the distributorship contract?

Was there an arguable case that Kim Lighting had failed to give reasonable notice which would justify an interlocutory injunction to prevent Kim Lighting acting on its termination?

Should the Court grant an interlocutory injunction to prevent Kim Lighting and International Lighting claiming that International Lighting was the exclusive Australian distributor?

FINDING

Most of the parties' obligations under the distributorship contract were to be performed in California, and therefore the law of California governed the contract. However as there was no evidence before the Court about Californian law on this point the Court applied the law of the forum, namely Victoria.

There was an arguable case that Kim Lighting had failed to give reasonable notice of the termination and the balance of convenience favoured the granting of an interlocutory injunction to restrain Kim Lighting from acting on the termination until 30 April 2000.

If Kim Lighting and/or International Lighting represented that International Lighting was the exclusive Australian distributor then they would be engaging in misleading and deceptive conduct contrary to section 52 of the Trade Practices Act. Therefore, there was no need to grant the second interlocutory injunction.

QUOTE

Finkelstein J said:

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“I do not doubt that it will often be the case that before a distributorship agreement entered into for an indefinite period can be terminated the distributor should be offered a reasonable opportunity to recover his setting up expenses. It is reasonable to suppose that the parties enter into a distributorship agreement on the basis that it would continue for at least so long as was necessary for the distributor to recover his initial outlay.”

IMPACT

This case is a reminder of the need to give reasonable notice of termination of a commercial contract. It can be difficult to determine what reasonable notice would be in any given situation. This uncertainty can be avoided by having a properly drafted termination clause in a contract which gives one or both parties the right to terminate provided established conditions are satisfied and which specifies a fixed notice period for terminating the contract.

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