



NOTHING RIDES LIKE A SKI-DOO™

VANESSA UDY*
ROBIC, LLP
LAWYERS, PATENT AND TRADE-MARK AGENTS

On September 19, 2012, the Quebec Court of Appeal rendered a judgment quashing the lower court's ruling ordering Bombardier Recreational Products Inc. ("BRP") to pay damages to Christian Moto Sport Inc. ("CMS"), one of its dealers [[Bombardier Produits Récréatifs inc. (BRP) c. Christian Moto Sport inc., 2012 QCCA 1670].]. The main issue with which the Court was seized was whether a supplier under a dealership agreement which is automatically renewable for additional fixed terms may invoke a clause allowing it to avoid renewal at its discretion.

From 1995 to 2005, CMS operated a dealership specializing in the retail of Bombardier brand snowmobiles and all-terrain vehicles. In 2003, CMS opened a new dealership specializing in the sale of Yamaha snowmobiles, in spite of BRP's warning that such action would constitute a breach of the non-competition clause contained in the dealership agreement between the parties. In June 2004, following CMS's breach of its contractual obligations, BRP advised CMS in writing that it would not renew the contract, which was set to expire in 2005. The parties attempted to reach a mutually agreeable solution, without success. As a result of BRP's refusal to renew the agreement, CMS shut down its BRP dealership in mid-April 2005.

In this case, the dealership agreement had a fixed term. The parties had agreed that the contract would be automatically renewed at the end of each term unless BRP decided, in its sole discretion, not to renew.

It may be surprising but, according to case law, such a clause is not abusive and therefore cannot be struck down pursuant to Article 1437 of the C.C.Q. Though regrettable from the dealer's point of view, the rule under general contract law is that the parties are free to decide whether they wish to be bound by the agreement beyond the initial term. The clause contained in the agreement between BRP and CMS simply recognizes the parties' freedom to contract.

CMS alleged that BRP had exercised its right of non-renewal in an abusive manner, which is prohibited under Articles 7 and 1375 of the C.C.Q.

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*From ROBIC, LLP, a multidisciplinary firm of Lawyers, and Patent and Trade-mark Agents. Published in the Winter 2013 (Vol. 16, no. 4) Newsletter of the firm. Publication 068.162E.

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

According to the Court of Appeal, BRP's decision not to renew the dealership contract does not in of itself conflict with its duty to act fairly and in good faith in the exercise of its contractual rights. It befalls to the party adhering to the contract to submit convincing proof of the other's lack of good faith and the abusive nature of the exercise of its rights. The Court concluded that the evidence in this case demonstrated the opposite. Firstly, BRP had given nine months written notice, which the Court found sufficient, and then had extended a generous offer to CMS for the repurchase of leftover inventory, which it was not obliged to do under the agreement.

One can learn from this case that a supplier under a dealership agreement may avail itself of a non-renewal clause, so long as it exercises its rights in good faith. In particular, a notice of non-renewal should provide the dealer with a sufficient delay to permit it to mitigate its damages.



ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

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Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006