BREACH OF ORAL AGREEMENT RESULTS IN PUNITIVE DAMAGES

Prepared by:
Craig R. Tractenberg
Fox Rothschild LLP

LORMAN®

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The closing argument featured a slide-show presentation. The closing slide was a depiction of the Taiwanese manufacturer's chairman giving a speech at a wedding banquet. The wedding was that of the daughter of the U.S. distributor's owner. The speech compared the 30-year relationship of the manufacturer with the distributor with the bride and groom, and how those present would look back on the wedding day with fondness. Instead, the jury looked back at the wedding day, for the manufacturer concealed that they decided to terminate the oral distribution agreement. The jury awarded $6.2 million in compensatory damages and $6 million in punitive damages.

In *Mighty Enterprises v. She Hong Industrial*, (U.S.D.C. for the C.D. Cal Nov. 23, 2016), the distributor Mighty Enterprises, Inc. brought suit against its Taiwanese manufacturer of heavy equipment, She Hong Industrial. The "largest machining center in Taiwan," She Hong has 500 employees in Taiwan, and had more than 70 distributors in 60 countries, with 300 offices worldwide. Mighty in 2013 was the fifth largest distributor of She Hong equipment in the world. The relationship was an oral distribution contract, effectively a handshake across the Pacific Ocean. Mighty would purchase new equipment and parts from She Hong, and would service its customers in the United States. This was a 33-year relationship before it was terminated by She Hong.

As a large manufacturer, She Hong was looking for the largest distributor it could find. A distributor that could stock much more in inventory and would invest in finding more downstream dealers that would advance its business and build a bigger and better service department. She Hong had decided that Mighty was no longer the distributor of the future and began secretly to search for a replacement. In communications to prospective new distributors, She Hong touted its size and stated that Mighty was not performing as expected in the U.S. market. Nevertheless, during this search period, She Hong reaffirmed the exclusive U.S. distributor relationship with Mighty built on friendship. During this secret search period, She Hong encouraged Mighty to increase its inventory and expand.

In 2014, She Hong formally terminated the relationship, and Mighty sought to wind down its inventory. As it was an oral relationship that was silent as to procedure upon termination, Mighty sought to have its inventory of parts and equipment liquidated to its dealers, to its successor, or to She Hong itself. Instead, She Hong told the former Mighty dealers not to deal with Mighty and refused to address the inventory liquidation. Moreover, She Hong usurped the dealer network that Mighty developed over 33 years and tried to alienate the dealers. The evidence suggested that She Hong invited the dealers to visit Taiwan with Mighty in 2013 in anticipation that the network would be usurped, and copied the dealer list from Mighty in order to substitute itself for Mighty in the distribution chain. She Hong later directly solicited the Mighty's dealers to distribute directly for She Hong after termination of Mighty, and refused to offer Mighty's inventory and parts to the dealers. She Hong admitted at trial that it had deleted some of the emails to the dealer which could have been evidentiary.

The jury answered four special interrogatories. The first asked whether She Hong was liable for breach of oral contract, and the second asked whether She Hong was liable for breach of implied contract. The jury answered each in the affirmative. The contract breach addressed not whether the contract could be terminated, but rather, whether She Hong had acted properly in its termination and wind down of the relationship.

The third asked whether She Hong was liable to Mighty for interference with contractual business relations. The claim was based on the usurpation of Mighty's dealership network and the advice of She Hong that the dealers not buy from Mighty in the future. The fourth asked whether She Hong was liable to Mighty for fraud, based on She Hong encouraging the purchase of additional inventory and parts at the time when She Hong knew termination was imminent and She Hong refused to repurchase and interfered with resale to the dealers. The jury again found for Mighty on each interrogatory.

The damage claim was basically for the value of the inventory, parts and future lost profits totaling $18,648,000. The jury apparently gave great weight to the value of the recently purchased inventory and parts, awarding some lost profits as well, totaling in compensatory damages of $6.2 million. Because of the special interrogatory finding that the clear and convincing evidence showed that She Hong engaged in malice, oppression or fraud, the jury awarded $6 million in punitive damages, for a total verdict of $12.2 million.

What makes this case so interesting is that the impact of good faith and fair dealing on the jury deliberations. The jury was charged that the implied covenant of good faith and fair dealing cannot replace the explicit words of the contract. Here, the contract had not expressed terms beyond the establishment of a distributor relationship with service responsibilities, so all were implied by either conduct or the duty of good faith and fair dealing. Although the certain UCC provisions were raised as a defense in the case, the UCC also implies the duty of good faith and fair dealing in all UCC dealings, and has not helped She Hong with the jury. The jury was apparently offended by the way the relationship ended, and determined that She Hong did not have the right to terminate the agreement in the manner that it did.