

How to Avoid a \$1.3 Million Judgment: Talk to Your Lawyer

In business it is often important to be consistent, fair and act in good faith when dealing with business partners. While this may seem to be axiomatic, failing to do so can have costly legal ramifications. Being fair and reasonable with business partners not only makes good business sense but in some cases may be legally required. A recent case from the Second Appellate District of the California Court of Appeal illustrates how saying one thing and then doing another can get you in trouble.

Powerhouse Motorsports Group v. Yamaha Motor Corporation case number B236705 (decision filed November 26, 2013) involved the failed attempt to sell a Yamaha franchise. <http://www.courts.ca.gov/opinions/documents/B236705.PDF>

Powerhouse was a motorcycle and sport vehicle dealership that became a Yamaha franchisee in 1998. After operating for many years and entering into a new franchise agreement with Yamaha in 2007, it had to close its doors on June 16, 2008 after business went south. To salvage some value out of the failed business, Powerhouse's owner, Timothy Pilg, negotiated a sale of the closed dealership to MDK, another Yamaha franchisee. Yamaha, through its division manager told Pilg that a sale was possible. On July 10, 2008, representatives from Powerhouse and MDK, along with Yamaha's district manager, attended a meeting where the sale and ways to expedite it were discussed. At that meeting, Yamaha's district manager represented that he would expedite Yamaha's review and approval of the sale and transfer of the franchise. On July 18, 2008, Powerhouse and MDK entered into a formal agreement in which MDK would purchase the Powerhouse dealership.

Concurrent with the negotiations and unbeknownst to Powerhouse or MDK, Yamaha instituted procedures for terminating its franchise agreement with Powerhouse under California Vehicle Code Section 3060, by sending Powerhouse a notice of termination of the franchise agreement. Two days after receiving the notice, Pilg called Yamaha's senior legal counsel regarding the notice. Yamaha's attorney communicated that he had no knowledge about the pending deal with MDK and confirmed that Yamaha intended to terminate its franchise agreement with Powerhouse.

Thereafter, Pilg filed a protest with the California New Motor Vehicle Board, the agency responsible for regulating relationships between vehicle manufacturers and distributors. Unfortunately, the protest was filed late and the Board granted Yamaha's motion to dismiss the protest as untimely. MDK cancelled its purchase of Powerhouse and Powerhouse was liquidated. In March 2009, Powerhouse and Pilg sued Yamaha alleging that Yamaha violated California Vehicle Code Section 11713.3 by unreasonably withholding consent for the sale, that Yamaha intentionally interfered with contractual relations, intentionally interfered with prospective business advantage, breached its contract with Powerhouse and breached the covenant of good faith.

The case went before a jury which awarded Powerhouse \$811,000 in compensatory damages and \$140,000 in punitive damages and Pilg \$325,080 in compensatory damages and \$60,000 in punitive damages. The jury also awarded Powerhouse attorney fees for the litigation but not the administrative proceeding. The parties appealed and the Second Appellate District affirmed the judgment.

Could Yamaha have avoided the \$1.3 million judgment? Yamaha may have had a business justification for not wanting the sale to MDK to go through. But it could have avoided a lawsuit, judgment and attorney fee award in favor of both Powerhouse and Pilg, had it not acted like and made representations that it was going to approve the sale. Yamaha seemed to be saying one thing but doing something completely different and consequently may not have looked all that good in front of a jury.

It also seems probable that Yamaha's legal department was not fully involved in the negotiations between Powerhouse and MDK, nor aware of MDK's intended acquisition. The opinion cites the fact that Yamaha's senior legal counsel was ignorant of the sale even though a formal agreement for the sale of the dealership to MDK had been executed and Yamaha representatives were advised of new developments, attended a key meeting and even seemed to assent to the sale. Perhaps better communications between the business and legal departments in addition to getting attorneys involved early on could have avoided the litigation altogether.

If you have any questions or comments, I would be delighted to hear from you.

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