

Franchising Constructive Termination: Quirk, Quagmire or a French Solution?

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Abstract

In *Mac's Shell Serv., Inc. v. Shell Oil Prods. Co.*, 559 U.S. 175 (2010), the Supreme Court held that a service station franchisee pursuing a claim of constructive termination against the franchisor must, under the Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801-2841 (1978), abandon the franchise. This decision has the effect of making the doctrine of constructive termination the functional equivalent of actual termination for these types of franchises. Actual termination usually involves catastrophic injuries to franchisees, which can destroy their economic and business livelihood. In a society so dependent upon the franchise system of business, this imposes secondary harms on the American economy.

Related fields of American law, and other nations' franchise law, specifically that of France, show that a more refined view of constructive termination - embracing the franchisees' possible continued operations under the franchise network's trademark - presents a fairer, more efficient standard. This paradigm reflects the particular parties' expectations and, more generally, the norms for most franchised enterprises.

Keywords: abandonment, constructive, non-performance, PMPA, termination