

High Court Ruling on *Constructive Termination* Seen as **VICTORY FOR FRANCHISORS**



A franchisee can't sue for "constructive termination" when it continues to operate the franchise.

In March, the U.S. Supreme Court issued a unanimous opinion in *Mac's Shell Service, Inc. v. Shell Oil Products, Inc.*, which held that, absent a factual showing of an end to the franchise relationship, there was no termination.

In *Mac's Shell*, 63 franchisees sued Shell Oil, claiming constructive termination because a rent subsidy had been eliminated.

Although a jury found in favor of the franchisees, Shell appealed, arguing no liability under the Petroleum Marketing Practices Act because none of the dealers abandoned their franchise and all had executed new franchise agreements.



The Supreme Court agreed, holding that a franchise relationship must end, be annulled, or be destroyed to sustain the theory of constructive termination. The court reasoned that a franchisee who continues occupying the same premises, receiving the same fuel and using the same trademark, has not had the franchise terminated in either the ordinary or technical sense of the word.

In fact, the Court used the analogy of "constructive discharge" in employment law, and "constructive eviction" in landlord-tenant law—both of which require the plaintiff to wholly terminate the relationship. "Constructive," said the Court, meant only that the termination occurred because the plaintiff, rather than the defendant, put an end to the legal relationship.

Going forward, that reasoning—based on strict interpretation of the statute and a plain-language analysis—may arguably be applied to claims of "constructive" termination, discharge, non-renewal, or cancellation in the context of any franchise relationship.

If you're confronted with a claim in this regard, we would welcome the opportunity to help.

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