Memorandum of Decision Granting Defendant Summary Judgment on Guarantee Issue.

In part because of the importance of gasoline supplies, in part for the perils of unequal bargaining power, gasoline station franchise arrangements are regulated by state and federal law.

The gas station operators suing here—the Petrox Gas Dealers of Connecticut—claim these laws grant them various rights in connection with Neighborhood Convenience Store's decision to transfer its franchises and the real estate they operate on. This opinion deals with only one claim. Neighborhood Convenience sold its rights as franchisor to a company called Briar Woods Fuels, which then sold them to a company called TMI. The Petrox Gas Dealers say that despite these transfers the laws at issue make Neighborhood Convenience for an indefinite period of time guarantor for the performance of Briar Woods and TMI under the agreements.

Unfortunately for the dealers, nothing in the law bears out this claim. The federal statute at issue is 15 U.S.C. § 2802—part of the Petroleum Marketing Practices Act. The state statute is General Statutes § 42-133mm—part of the Connecticut Petroleum Franchise Act. The parties agree that both statutes apply because Congress regulates this area but has not preempted the entire field, leaving in place state statutes not in conflict with federal law, particularly it seems concerning assignments. Both the federal and state laws enumerate protections for franchisees when rights are transferred. But

both of them assume transfers are permissible and neither requires the kind of guarantee the Petrox Gas Dealers would like.

General Statutes § 42-133l prohibits franchisors from terminating or failing to renew a franchise agreement without good cause. Federal law does the same thing in 15 U.S.C. § 2802. These sections limit a franchisor's discretion but don't prevent franchisors from transferring their rights under the contracts—and neither do the express terms of the contracts at issue here.

Instead, what limits here the ordinary right of a party to assign contract rights is spelled out in state statute. General Statutes § 42-133mm is quite specific. It says that if a franchisor sells its franchise rights, the purchaser may not change the terms of the franchise agreement during the term of the then existing agreement. The new franchisor must also renew the franchise for an additional term equal to the lesser of theprior term or five years. Any changes to the terms must be negotiated in good faith.

Franchisees have one additional right that can be found in the Uniform Commercial Code this state has adopted. General Statutes § 42a-2-210 (1) allows duties subject to the Code to be delegated, but makes clear that: "No delegation of performance relieves the party delegating of any duty to perform or any liability for breach." Thus, as long as Neighborhood Convenience is a "party" to the franchise agreement it may delegate but it may not abrogate its responsibilities.

To the Petrox Gas Dealers this means Neighborhood Convenience is a "party" as long as the franchise relationship—which can only be terminated by agreement or good cause— exists. But this would yield a strange result. After all, Neighborhood Convenience transferred its rights to Briar Woods and Briar Woods transferred them to TMI and later the term of the agreement expired. The Petrox Gas Dealers now have agreements only with TMI. Can Neighborhood Convenience be liable to guarantee TMI's performance even though it is no longer a "party" to the agreement? Or does the law ordain that Neighborhood Convenience is a party to the new agreement regardless of what that agreement says?

The Petrox Gas Dealers do have some rights about assignments and delegation, but they don't stretch that far. General Statutes § 42a-2-210 (6) says that an assignment and delegation may be good grounds "for insecurity" and the franchisees may invoke their right to "demand adequate assurance[s] of due performance" from the assignee under General Statutes § 42a-2-609—a section that requires a written demand for performance-related assurances under the act.

But that's it. There are no other rights granted by law, and the Petrox Gas Dealers don't claim they invoked their right to assurances. Instead, they seem to claim that the court should impose the continuing guarantee and an unwritten view of the franchise relationship that defines the relationship as one between the *original* franchisor and the *original* franchisee—apparently with any assignees added as parties too.

This is not only unsupported by the statutes; it's counter to the case law. As the Seventh Circuit Court of Appeals noted in 1997 in *Beachler v. Amoco Oil Co.,* franchisees have tried but failed several times to claim that under federal law assignments and delegations amount to illegal franchise terminations.[1]

The basic reasoning in those cases has a bearing here too. Nothing, the cases tell us, is disrupted in the franchise relationship as long as the franchisee continues to enjoy three things: use of the land, use of the brand, and product on demand. In other words, a gas station needs land to sit on, a brand of gasoline to sell, and enough gasoline to sell. While these are intact, so is the franchise relationship.

Indeed, a 1989 Connecticut federal decision laid out these factors precisely in a case called *Ackley v. Petrox Gas Oil, Corp.*— interestingly a lawsuit that was a dealer's challenge to Chevron's attempt to assign the franchises at issue here to Neighborhood Convenience.[2] The only difference now seems to be that Neighborhood Convenience has sold its franchise interests and the dealers are trying to keep Neighborhood Convenience on the hook, not by prohibiting the transfer, but by labelling them a guarantor as long as the franchise exists.

But this can't be possible because it runs counter to the case law. Under it, if the three elements of the franchise are undisturbed the franchisees have no legal rights they

[1] 112 F.3d 902, 906.
[2] 726 F.Supp. 353, 361, aff'd,889 F.2d 1280 (2d Cir. 1989), cert. denied, 494 U.S. 1081 (1990); *See also May-Som Petrox Gas, Inc. v. Chevron U.S.A., Inc.,* 869 F.2d 917, 923 (6th Cir. 1989).

can claim have been damaged by the assignment. Indeed, any contrary ruling would radically readjust the relationship among the parties' to petroleum franchise agreements. And because the statutes strike a delicate balance of power, in *Beachler*, the Seventh Circuit pointedly warned that the law "should not be interpreted to reach beyond its original language and purpose."[3]

That kind of overreach would involve finding something the statutes do not say: that unless good cause for termination or nonrenewal existed, the original franchisor could sell control over the franchise relationship but never give up liability for it. While the Petrox Gas Dealers here claim that the selling documents could extend the seller's control given the extended liability, doing so would change the thing being bought and sold and might even fatally undermine it. It indeed would throw into question whether there is anything of value to buy and sell—the buyer couldn't expect to get control and the seller couldn't afford to relinquish it. The statutes and case law all recognize the right to assign and delegate these franchise agreements. This court has no business eviscerating those rights.

Still, the Petrox Gas Dealers say they are worried about what they call the "homeless beggar hypothetical." To the Petrox Gas Dealers, having the original franchisor liable for someone else's breaches means more and perhaps deeper pockets to rifle if a future franchisor commits a breach—including costly things like spills and the

[3] 112 F.3d at 904.

like. What—the Dealer's worry—if the franchisor assigns the franchise to a homeless beggar? Where can the Dealers turn for relief from breaches then?

The answer is easy. They can turn to the place we already know exists. Under General Statutes § 42a-2-609, if they are worried about the financial wherewithal of an assignee and delegatee they can demand their right to adequate assurance that they will perform, and if they don't get it the law deems this failure "a repudiation of the contract" over which they can head speedily into court for relief.

Under the statutes and the common law, none of the other defendants is a guarantor of TMI's obligations under the Dealer's franchise agreements. Counts 1-4 of the Second Amended Complaint are premised on duties this court has now determined do not exist. Therefore, the court grants a summary judgment in favor of defendants on these claims.

BY THE COURT

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Moukawsher, J.