

Sixth Circuit: Reasonable Notice Required to Terminate a Successive Contract

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The Sixth Circuit recently held that even where a supplier has a right to terminate a contract without cause, the supplier still must give the buyer reasonable notice of termination.

In *Stackpole International Engineered Products, Ltd. v. Angstrom Automotive Group*, Case No. 21-1733 (6th Cir. Oct. 24, 2022), the buyer issued a letter of intent to the seller seeking to purchase a set quantity of “shaft pumps” at a specific price. The letter was signed by an officer of the seller’s principal. Thereafter, the buyer issued purchase orders which included supplemental terms, one of which provided that the buyer could terminate the agreement at any time with written notice but was silent as to the seller’s right to do the same. The seller neither objected to these terms nor indicated that performance would be under protest.

For two years, the parties performed under the agreement without incident. But in 2017, the seller was no longer able to produce the parts profitably under the agreement’s prices. The seller informed the buyer that it needed to increase prices or it would be forced to halt production. Citing its role in the supply chain, and the ensuing disruption if it failed to secure the shaft pumps, the buyer agreed to the seller’s price increases under duress and protest.

The buyer later sued the seller for breach of contract. The district court held that the seller was required to provide reasonable notice of termination, leaving for the jury the fact question of whether reasonable notice occurred. The jury determined that reasonable notice was not provided and awarded the buyer damages for the seller’s breach. The seller appealed, arguing it had a right to terminate the agreement.

Under the Michigan Uniform Commercial Code, a contract that “provides for successive performances but is indefinite in duration . . . may be terminated at any time.” MCL § 440.2309(2). Such contracts are presumptively terminable upon “reasonable notification,” but a contract can “dispens[e] with notification” unless doing so “would be unconscionable.” MCL § 440.2309(3). The Sixth Circuit affirmed the district court’s findings the contract was for successive performances for an indefinite term, and therefore, that the seller had a right to terminate. However, because the contract did not dispense with the need for reasonable notice of termination, seller was required to provide reasonable notice to the buyer.

The takeaway: When a contract calls for successive performances, a seller ordinarily cannot terminate the agreement without reasonable notice, absent an express contract provision to the contrary. Where a contract is silent on whether advance notice is necessary, the best practice is to provide written notice reasonably in advance of the termination date.

As always, please contact the authors or your Miller Canfield attorney if you have any questions about this decision or your company’s rights under a contract.