

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40146

FLOYD GIBSON, Individually and
FLOYD GIBSON ENTERPRISES, Floyd Gibson
Enterprises, Inc.,

Plaintiff-Appellant,

versus

HONDA MOTOR CO., LTD., ET AL,

Defendants,

INC. AMERICAN HONDA MOTOR, American
Honda Motor Co., Inc.,

Defendant-Appellee.

Appeal from the United States District Court for the
Eastern District of Texas
(2:91-CV-26)

(January 9, 1995)

Before Judges GOLDBERG, JOLLY, and WIENER, Circuit Judges.

PER CURIAM:*

In this diversity of citizenship case, Floyd Gibson Enterprises, Inc. ("Gibson"), a former franchisee of American Honda products, challenges the district court's grant of summary judgment

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

in favor of American Honda on Gibson's claims of (A) constructive termination of his motor vehicle franchise and (B) breach of a power equipment sales agreement. We affirm.

I

Gibson became a dealer of American Honda products in 1970. Around 1984, Gibson began to have financial difficulties caused by changes in Honda's market presence, world money values, and other factors. Those difficulties deepened until February 9, 1989, when Gibson terminated its agreement with American Honda. Two years later, on February 8, 1991, Gibson sued American Honda. As it stood on December 3, 1993, when the district court entered summary judgment, Gibson's suit claimed violations of the Deceptive Trade Practices Act, "common law constructive termination," and breach of contract relating to the power equipment sales agreement. After entering summary judgment, the district court denied Gibson's motion for a new trial, and this appeal followed.

II

Our review of a grant of summary judgment is plenary: we will affirm if, applying the same standards as the district court, we find no dispute as to a material fact and that American Honda is entitled to judgment as a matter of law. See Lavespere v. Niagara Mach. & Tool Works, 910 F.2d 167, 177-78 (5th Cir. 1990).

A

The district court granted summary judgment on Gibson's constructive or wrongful termination claim based on its

determination that the two-year statute of limitations accompanying the Texas Motor Vehicle Code applies. Tex. Bus. & Com. Code Ann § 17.565. Gibson argues that this was error, in that his termination claim is independent of the Motor Vehicle Commission Code and thus subject to Texas's residual four-year statute of limitations, Tex. Civ. Pract. & Rem. § 16.051.

We disagree. Gibson cites only one Texas case, Kawasaki Motors v. Motor Vehicle Comm'n, 855 S.W.2d 792 (Tex.Civ.App.--Austin, 1993, no writ.), to support his argument. Having examined that case, we find that, instead of aiding him, Kawasaki tends to confirm that "[w]rongful termination of a motor vehicle dealership franchise agreement is now governed by the Texas Motor Vehicle Commission Code. A person who has sustained damages as a result of a violation of these provisions may bring suit under the Texas Deceptive Trade Practices-Consumer Protection Act." Crim Truck & Tractor Co. v. Navistar Int'l Transp. Corp., 823 S.W.2d 591, 596 (Tex. 1992) (citation omitted). Gibson has failed, in short, to produce any evidence of Texas law that would support his claim. Because the Texas Deceptive Trade Practices Act is his sole means of recovery, Gibson's claim of constructive or wrongful termination is barred by the Act's accompanying two-year statute of limitations. Accordingly, summary judgment was proper.

B

The district court determined that summary judgment was appropriate on the claim that American Honda had breached its power

equipment sales agreement because Gibson had not produced evidence raising a material issue of fact as to whether an agreement existed between the parties. Gibson contends that was error, in that a letter from American Honda's attorney was sufficient to raise a dispute of material fact that would preclude summary judgment. That letter indicates, Gibson argues, that Gibson "was not terminated" and continued to be an authorized dealer of its power equipment.

Gibson's breach of contract claim is based on the power equipment sales agreement. Gibson does not argue any quasi-contract theory, but instead bases its claim on a breach of the agreement. At the same time, Gibson does not challenge the facts that the agreement had expired and that it had not been renewed or modified. In addition, the letter upon which Gibson relies states that all future dealings would be on a day-to-day basis. Like the district court, we find no dispute of material fact as to whether there was an agreement--there simply was none. Accordingly, summary judgment was proper on this claim as well.

III

Having determined that Gibson's wrongful termination claim is time-barred and that Gibson had failed to produce evidence that a power equipment sales agreement was in effect, we AFFIRM the judgment of the district court.

A F F I R M E D.