

the use of the oil truck was a proximate cause of the accident.

We note that since Royal did not cross-appeal from the order, this court does not have jurisdiction to determine its contention that the arbitrator erred in finding it contingently liable to pay first-party benefits.



location of automobiles and threatening to dissuade customers from purchasing automobiles was more than sufficient to justify distributor's decision to terminate dealer's franchise pursuant to agreement between parties and in accordance with General Business Law in absence of evidence that dealer was acting in bad faith or for inconsequential, vindictive or coercive reasons.

Judgment reversed, complaint dismissed, agreement declared terminated, and counterclaim reinstated and remitted.

Titone, J. P., dissented and filed memorandum.

85 A.D.2d 624

TAPPAN MOTORS, INC., Respondent,

v.

**VOLVO OF AMERICA CORPORATION
et al., Appellants.**

Supreme Court, Appellate Division,
Second Department.

Dec. 14, 1981.

Dealer sought a permanent injunction to enjoin termination of its franchise and distributor filed a counterclaim for money damages. Order denied, motion for preliminary injunction, 102 Misc.2d 570, 423 N.Y.S.2d 819, was affirmed, 425 N.Y.S.2d 970, and case was remitted. On remand, the Supreme Court, Westchester County, Beish-eim, J., granted dealer relief and dismissed counterclaim, and distributor appealed. The Supreme Court, Appellate Division, held that conduct of dealer in subjecting customers to inconvenience and excessive waiting times for repairs, in failing or refusing to keep an adequate inventory of parts, in delaying installation of a computer system for control of its parts inventory, and in repeatedly complaining about its al-

1. Trade Regulation § 871.2

Provision of a General Business Law governing termination of contracts for sales of motor vehicles must be read as precluding a distributor from terminating a franchised dealer either in bad faith or in absence of good cause shown. General Business Law § 197-a.

2. Trade Regulation § 871.2

Any indication that distributor was acting in bad faith or for inconsequential, vindictive or coercive reasons in terminating dealer's franchise was fatal to distributor's defense in injunction proceeding that dealer was in default of various obligations under franchise agreement. General Business Law § 197-a.

3. Trade Regulation § 871.2

Conduct of dealer in subjecting customers to inconvenience and excessive waiting times for repairs, in failing or refusing to keep an adequate inventory of parts, in delaying installation of a computer system for control of its parts inventory, and in repeatedly complaining about its allocation of automobiles and threatening to dissuade customers from purchasing automobiles was more than sufficient to justify distributor's decision to terminate dealer's franchise pur-

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suant to agreement between parties and in accordance with General Business Law in absence of evidence that dealer was acting in bad faith or for inconsequential, vindictive or coercive reasons. General Business Law § 197-a.

Company Products in its Area of Responsibility.”; and
Paragraph IV, **CLAUSE 8—SERVICE PARTS**

“A. Dealer at all times will keep in Dealer's place of business an inventory of Service Parts of an assortment and in quantities that are necessary to meet the current and reasonably anticipated service requirements of Dealer's customers.”

William E. Bandon, P. C., White Plains (Frederick L. Whitmer, Bohdan E. Porytko, Sean R. Kelly, Gail H. Allyn, David F. Salvaggio and Pitney, Hardin & Kipp, Morristown, N. J., of counsel), for appellants.

* } O'Rourke & LoCascio, White Plains (Andrew P. O'Rourke and Barbara S. Frees, White Plains, of counsel), for respondent.

Before TITONE, J. P., and LAZER, GULOTTA and MARGETT, JJ.

MEMORANDUM BY THE COURT.

In an action, *inter alia*, for a permanent injunction, defendants appeal from a judgment of the Supreme Court, Westchester County, entered September 16, 1980, which, after a nonjury trial, *inter alia*, enjoined them from terminating plaintiff Tappan Motors, Inc. as a franchised Volvo dealer and dismissed the defendants' counterclaim for damages.

Judgment reversed, on the law and the facts, with costs, plaintiff's complaint is dismissed, the parties' "sales agreement" is declared terminated and defendants' counterclaim for money damages is reinstated and remitted to the Supreme Court, Westchester County, for trial.

Since November of 1960, Tappan Motors, Inc. (Tappan) has been a regularly franchised Volvo dealer. This franchise relationship was most recently reaffirmed in a contract, denominated a "sales agreement", dated May 8, 1973, which provided, *inter alia*, the following:

Paragraph I(G)

"Dealer will use its best efforts to promote and develop sales and service of

Insofar as is here pertinent, the agreement also provided for its termination at the behest of the distributor upon 30 days' written notice in the event that the dealer fails to correct any default in performance of its responsibilities under the foregoing provisions within 60 days after written notice of such default.

By letter dated July 18, 1979, defendant Volvo of America Corporation informed Tappan that it believes that the latter was in default of various obligations under the afore-mentioned sales agreement, and that it had 60 days within which to correct the named defaults. Subsequently, by letter dated September 25, 1979, Volvo informed Tappan of its belief that the dealer had not corrected the various defaults and that, pursuant to contract, their sales agreement would be terminated effective November 5, 1979. As a result of this letter Tappan commenced the instant action and, after a lengthy trial, Trial Term agreed with plaintiff that Volvo was not justified in terminating their agreement. We disagree.

The applicable statute is section 197 of the General Business Law, which provides:

"Termination of contracts for sales of motor vehicles.

"No manufacturer or distributor, or any agent of such manufacturer or distributor, shall terminate any contract, agreement, or understanding or renewal thereof for the sale of new motor vehicles to a distributor or dealer, as the case may be, *except for cause.*" (Emphasis supplied.)

As written, section 197 of the General Business Law is apparently intended to pro-