Car manufacturers' liability for termination payments on non-renewal of car dealership agreements

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Disputes between car manufacturers and dealerships generate a fair amount of litigation. One case, involving Peugeot-Citroën and a former dealership in the state of Goiás, recently produced a noteworthy decision.

On August 14, 2023, the Superior Court of Justice (STJ – Superior Tribunal de Justiça, Brazil's highest court in non-constitutional matters) handed down judgment in Appeal REsp 2.055.135-SP, dismissing the dealer's appeal and granting Peugeot-Citroën's appeal in part.

The appeals originate in a lawsuit brought by Supreme Veículos Ltda., the dealer, against the manufacturer. The lawsuit revolved around obligations owed, by law, by car manufacturers to their dealers when the manufacturer notifies the dealer that it does not intend to renew the dealership agreement.

The parties did not dispute the application of article 23 of Law 6.729/1979 (the legislation governing the relationship between automakers and car dealerships in Brazil, commonly known as the "Ferrari Law"), which provides that on termination of a dealership for non-renewal, the manufacturer must purchase unsold stock and equipment, tools, machinery and "facilities" that the dealer was required to acquire under the terms of the dealership. However, they disagreed on the interpretation of the term "facilities".

The dealer argued that the manufacturer was liable to compensate it for expenses incurred in renovating the property where the dealership was located. According to the dealer, it had leased an undeveloped plot of land and constructed a building to house the dealership, including a yard for displaying vehicles, a workshop, and offices.

The STJ's Third Chamber ruled that land and buildings associated with the dealership are not "facilities" for which compensation is owed under article 23 of the Ferrari Law. The court reasoned that, on non-renewal of dealership agreements, the manufacturer is only liable to buy back, or pay compensation for, items essential to dealership. Furthermore, if land and buildings were subject to compensation, then the legislator would not have expressly excluded "the dealer's immovable property" from the compensation provisions under article 23. In the court's view, "the dealer's immovable property" refers to property serving the dealership, not necessarily property owned by the dealer.

The STJ also looked to the dictionary definition of "facilities" (instalações in Portuguese), as "a set of devices or parts that compose a certain utility", to uphold the Court of Appeal of São Paulo's decision, finding that facilities composed of immovable property can be used for other purposes unrelated to the dealership. In addition, the STJ observed that it would be unreasonable to burden the manufacturer with disproportionate liability for risks inherent to the dealer’s business.

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