

## Texas High Court Axes Mercedes Dealer's \$115M Fraud Award

By **Michelle Casady**

*Law360 (February 22, 2019, 4:09 PM EST)* -- A franchisee that wanted a \$115 million award against Mercedes-Benz reinstated was dealt a blow Friday when the Texas Supreme Court held the written contract between them directly contradicts alleged oral agreements that were the basis of the franchisee's fraud claims.

Carduco Inc. had brought the lawsuit against Mercedes-Benz LLC USA and three employees, alleging it was tricked into purchasing a \$7 million dealership in Harlingen, Texas, with plans to relocate it to more affluent McAllen, Texas, while Mercedes was simultaneously and surreptitiously negotiating with another party to establish a dealership in McAllen.

But in an opinion issued Friday that rendered a take-nothing judgment against Carduco, the Texas Supreme Court said the dealership should have read the contract because the alleged oral agreements "are directly contrary to the unambiguous terms of the contract it signed." If Carduco relied on a promise that Mercedes-Benz wouldn't put another dealership in the area when it agreed to the deal, "then Carduco should have insisted on these terms" being in the contract "rather than agreeing in writing to the opposite."

"Because that agreement approved and identified only Harlingen as Carduco's dealership location, provided that Carduco could not move, relocate, or change any dealership facilities without Mercedes's prior written consent ... and stated that the agreement was not intended to limit Mercedes's right to add new dealers in the area, we conclude that the parties' written agreement directly contradicts Carduco's alleged belief and thereby negates its justifiable reliance as a matter of law," the court held.

Following a two-week trial in February 2013, a jury sided with Carduco in finding that Mercedes-Benz, a regional franchise manager and two representatives defrauded Carduco's owner Renato Cardenas Sr. Cardenas alleged the defendants knowingly had concealed a binding contract that gave the area to another dealership, according to court documents.

The jury slapped the luxury carmaker with \$21.3 million in damages for fraud counts and up to \$100 million in punitive damages, and the other three defendants were ordered to pay about \$15 million combined, according to court documents. The lower appellate court suggested that \$115 million in punitive damages be knocked down to \$600,000 and both parties appealed to the Texas Supreme Court.

The suit, which was filed in 2011, revolved around a 2009 purchase that had been initiated by an asset

purchase agreement the year before. Cardenas contended that he repeatedly made known his intention to move the dealership during 2008 negotiations, before the deal was finalized. Mercedes-Benz representatives allegedly went scouting for new locations in McAllen with Cardenas in May 2009.

But Mercedes-Benz had reached out to another dealer to open an exclusive dealership in that area, Carduco alleged, and its August 2009 official request to move after he acquired the Harlingen business was denied.

Douglas W. Alexander of Alexander Dubose Jefferson & Townsend LLP, who represents Carduco, told Law360 Friday he was disappointed in the outcome and does "harbor concerns" that the court's ruling could encourage the type of allegedly fraudulent conduct central to this case.

"The court's opinion overlooks testimony that supports the trial court's judgment," he said, saying the jury was entitled to consider that. He said he is evaluating appellate options.

Counsel for Mercedes-Benz declined to comment Friday. A representative of the company did not immediately respond to a request for comment.

Mercedes-Benz is represented by Joseph R. Knight of Ewell Brown Blanke & Knight LLP, Thomas R. Phillips of Baker Botts LLP, Dale Wainwright of Greenberg Traurig LLP and Matthew J. Kemner of Squire Patton Boggs LLP.

Carduco is represented by Douglas W. Alexander, Wallace B. Jefferson, LaDawn H. Nandras and Kirsten M. Castaneda of Alexander Dubose Jefferson & Townsend LLP, Peter D. Marketos and Leslie Chaggaris of Reese Marketos LLP and Don Cruse of Law Office of Don Cruse.

The case is Mercedes-Benz USA LLC et al. v. Carduco Inc. dba Cardenas Metroplex, case number 16-0644, in the Supreme Court of Texas.

--Editing by Connor Relyea.