

08-240 MAC'S SHELL SERVICE V. SHELL OIL PRODUCTS

DECISION BELOW:524 F3d 33

LOWER COURT CASE NUMBER: 05-2771

QUESTIONS PRESENTED:

The First Circuit held that in order to receive the protections of the Petroleum Marketing Practices Act ("PMPA" or "Act"), 15 U.S.C. § 2801 et seq., a franchisee faced with an unlawful lease must either sign the lease and forego any potential claim that the lease violates the Act or refuse to sign the lease and then challenge the lease following receipt of a notice of nonrenewal. The Ninth Circuit rejected an interpretation of the PMPA that would require the franchisee to discontinue its business in order to preserve its rights under the Act. A single question is thus presented:

Whether the PMPA encompasses a claim for "constructive" nonrenewal of the franchise relationship where:

- (i) the petitioner-franchisees filed suit prior to receiving new lease agreements that violated the Act;
- (ii) the lease agreements were presented on a take-it-or-leave-it basis;
- (iii) respondent-franchisor stated it would terminate the franchises unless petitioners signed the lease agreements; and
- (iv) the franchisees signed the lease agreements, under protest, and pursued their legal claims against the franchisor.

CERT. GRANTED 6/15/2009

CONSOLIDATED WITH 08-372 FOR ONE HOUR ORAL ARGUMENT