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# Recent Developments: John Deere Constr. & Forestry Co. v. Reliable Tractor, Inc.: Open-Ended Contracts with Notice of Termination Requirements Periodically Renew, and Subsequently Enacted Legislation Applies Prospectively to These Contracts after Their Renewal

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## RECENT DEVELOPMENT

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**JOHN DEERE CONSTR. & FORESTRY CO. V. RELIABLE TRACTOR, INC.: OPEN-ENDED CONTRACTS WITH NOTICE OF TERMINATION REQUIREMENTS PERIODICALLY RENEW, AND SUBSEQUENTLY ENACTED LEGISLATION APPLIES PROSPECTIVELY TO THESE CONTRACTS AFTER THEIR RENEWAL.**

**By: Michael Beste**

The Court of Appeals of Maryland held that legislation enacted following the initial execution of open-ended dealer agreements may be prospectively applied to such contracts that require notice in advance of termination. *John Deere Constr. & Forestry Co. v. Reliable Tractor, Inc.*, 406 Md. 139, 957 A.2d 595 (2008). Specifically, the court held that the open-ended contracts, which required 120 days notice for no cause termination, effectively re-executed every 120 days; consequently, the statute prospectively applied to the contracts that were re-executed more than 120 days following enactment. *Id.* at 149-50, 957 A.2d at 601.

In 1984, John Deere Construction & Forestry Company (“John Deere”) entered into two dealer agreements with Reliable Tractor, Inc. (“Reliable”), which made Reliable an authorized dealer of certain John Deere products. These contracts were open-ended, meaning that they indefinitely continued until either party terminated them. The contracts provided that either party may terminate the contracts, without cause, by providing 120 days notice. In 1987, the Maryland legislature enacted the Equipment Dealer Contract Act (“the Act”), which was amended in 1998 to prohibit termination of dealer agreements without good cause (the “good cause provision”). On March 27, 2007, John Deere issued a 120-day notice of termination without cause to Reliable.

Reliable filed suit in the United States District Court for the Middle District of Georgia. Reliable sought a declaratory judgment that John Deere’s termination of the agreements violated the Act’s good cause provision. The district court certified to the Court of Appeals of Maryland the question of whether the good cause provision applied to

the contracts when the provision was enacted after the initial execution, but prior to termination, of the contracts.

The Court of Appeals of Maryland first noted that a contract is subject to the laws in existence at the time the contract was executed. *John Deere*, 406 Md. at 146, 957 A.2d at 599 (citing *Dennis v. Mayor of Rockville*, 286 Md. 184, 189, 406 A.2d 284, 287 (1979)). *John Deere* argued that since execution of the agreements predated enactment of the good cause provision, application of the law is retrospective. *John Deere*, 406 Md. at 145, 957 A.2d at 598. The court agreed with *John Deere's* argument that a statute may only be applied to a contract retrospectively when such application is pursuant to the legislature's clear intention and the statute does not violate vested rights or deny due process. *Id.* at 145-46, 957 A.2d at 598-99 (quoting *Allstate Ins. Co. v. Kim*, 376 Md. 276, 289, 829 A.2d 611, 618 (2003)). However, the court never reached this analysis because it held that the good cause provision applied prospectively to the contracts. *John Deere*, 406 Md. at 146, 957 A.2d at 599.

The court explained that retrospective application of a statute has not been defined in detail in Maryland. *Id.* at 147, 957 A.2d at 599. Therefore, the court relied on a United States Supreme Court decision, which held that application of a statute is not definitively retrospective when the conduct predates the statute. *Id.* (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994)). The court stated that "fair notice, reasonable reliance, and settled expectations" must be considered to determine whether a statute's application was retrospective. *John Deere*, 406 Md. at 147-48, 957 A.2d at 600 (quoting *Landgraf*, 511 U.S. at 270). The court noted that the mere enactment of a statute constitutes constructive notice of its existence to the parties. *John Deere*, 406 Md. at 148, 957 A.2d at 600. Therefore, when the parties continued to perform under the contracts after the statutory provision was enacted, the contracts effectively re-executed every 120 days. *Id.* Consequently, the court held that application of the Act's good cause provision was prospective. *Id.*

The court analyzed a federal case with similar facts, which held that an open-ended dealer agreement that required 30 days notice of termination effectively renewed every 30 days. *Id.* at 148-49, 957 A.2d at 600 (citing *Northshore Cycles, Inc. v. Yamaha Motor Corp.*, 919 F.2d 1041, 1043 (5th Cir. 1990)). Adopting the Fifth Circuit's rationale, the Court of Appeals of Maryland found that the open-ended agreements re-executed every 120 days if the parties failed to provide notice of termination, effectively creating a sequence of 120-day

contracts. *John Deere*, 406 Md. at 149-50, 957 A.2d at 601. The court concluded that because both parties continued to perform under the contracts after the good cause provision's enactment for a period longer than 120 days, the statutory provision prospectively applied to the most recently renewed contracts. *Id.* at 150, 957 A.2d at 601. The court explained, however, that if a party provided notice of termination within 120 days after enactment of the statutory provision, application would be retrospective. *Id.* at 149-50, 957 A.2d at 601.

*John Deere* relied on a Maryland case, where the application of a statute to a fixed-term lease executed prior to the statute's enactment was retrospective. *Id.* at 150, 957 A.2d at 601 (citing *Rigger v. Balt. Co.*, 269 Md. 306, 305 A.2d 128 (1973)). The court distinguished *Rigger*, explaining that fixed-term contracts do not automatically re-execute because the fixed-term binds parties for a definite period. *John Deere*, 406 Md. at 150-51, 957 A.2d at 601. The court further explained that, in *Rigger*, the court used the date of the initial execution of the contract to determine whether the statute was retrospectively applied. *Id.* at 150, 957 A.2d at 601 (citing *Rigger*, 269 Md. at 312, 305 A.2d at 132). Here, the agreements were open-ended contracts which effectively re-executed every 120 days; therefore, the court used the date of the most recently renewed contract to determine whether application was retrospective. *John Deere*, 406 Md. at 151, 957 A.2d at 602.

The court clarified that not all contracts with a notice of termination requirement automatically renew. *Id.* at 149, 957 A.2d at 601. The court evaluated persuasive authority where a contract was executed for a fixed term and required 90-days notice for termination. *Id.* at 149, 957 A.2d at 600-01 (citing *Cloverdale Equip. Co. v. Manitowoc Eng'g Co.*, 964 F. Supp. 1152 (E.D. Mich. 1997)). In *Cloverdale Equipment*, the contract did not renew every 90 days because it was a fixed term agreement without an automatic renewal provision. *John Deere*, 406 Md. at 149, 957 A.2d at 601. *John Deere*, on the other hand, concerned open-ended contracts; therefore, the court rejected the *Cloverdale Equipment* approach. *John Deere*, 406 Md. at 149, 957 A.2d at 601.

The court also relied on public policy to support its holding. *Id.* at 152, 957 A.2d at 603. The court explained that contracts may not conflict with public policy expressed in a statute and, where such a violation is found, conflicting contract provisions are invalid. *Id.* Therefore, the court considered the dealer agreements invalid to the

extent that they could be terminated without cause. *Id.* at 153, 957 A.2d at 603.

The dissent asserted that the majority improperly relied on dicta of prior case law. *Id.* at 159, 957 A.2d at 606 (Harrell, J., dissenting). The dissent argued that no court has held that open-ended contracts constitute a series of shorter contracts and that a “fresh decision” standard is more appropriate. *Id.* at 159, 165, 957 A.2d 607, 610. Under this standard a statute may be applied prospectively to a contract if the parties, following enactment of the law, either entered negotiations for a new agreement or renewed a contract that terminated on a specific date after the law became effective. *Id.* at 162, 957 A.2d at 608 (citing *Bitronics Sales Co. v. Microsemiconductor Corp.*, 610 F. Supp. 550 (D. Minn. 1985)).

The court’s holding necessitates that parties to open-ended agreements stay abreast of legislation modifying contract law. Otherwise, overlooked legislation may invalidate terms of noncompliant contracts. Lawyers must exercise care when drafting open-ended agreements that require little notice prior to termination. For instance, if a 30-day notice to terminate a contract is inconsistent with new legislation, the parties must modify or terminate the contract within the stated period. Longer notice provides more time to assess a piece of legislation’s effect following enactment. A better suggestion is to avoid using open-ended contracts. If attorneys use fixed-term agreements without an automatic renewal clause, parties can avoid the potential legal problems that arose in *John Deere* by ensuring that the agreements would be subject only to legislation enacted prior to the contract’s initial execution.