

IN THE SUPREME COURT OF TEXAS

No. 99-0075

AMERICAN HONDA MOTOR CO., INC., PETITIONER

v.

DUPRIEST AUTOMOTIVE, INC., RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS

PER CURIAM

Dupriest Automotive, Inc. proposed to sell its Acura dealership. But after American Honda Motor Co. refused to allow the prospective purchaser to combine sales of Hondas and Acuras at the facility, the prospective purchaser canceled the buy-sell agreement. Without first filing a complaint with the Texas Motor Vehicle Commission (now the Texas Motor Vehicle Board)¹, Dupriest sued American Honda for monetary damages, alleging that American Honda's refusal to approve the sale of Acuras at the same location as Hondas violated section 5.02(b)(8) of the Texas Motor Vehicle Commission Code. Act of June 8, 1995, 74th Leg., R.S., ch. 357, § 18, sec. 5.02, 1995 Tex. Gen. Laws 2887, 2897.² American Honda filed a motion for summary judgment on the grounds, among others, that Dupriest had waived its claim by failing to file a protest with the Commission. The trial court granted the motion. Holding that the Commission had exclusive jurisdiction over Dupriest's

¹ See TEX. REV. CIV. STAT. ANN. art. 4413(36), § 2.01 (Vernon Supp. 1999).

² Although this statute was amended effective June 11, 1997, see TEX. REV. CIV. STAT. ANN. art. 4413(36), §§ 5.01B, 5.02(b)(8) (Vernon Supp. 1999), Dupriest's suit, filed in May 1997, is not controlled by the amendments.

complaint, the court of appeals reversed the trial court's judgment and dismissed the cause for want of subject matter jurisdiction. *See* 980 S.W.2d at 524-25. American Honda filed a petition for review in this Court. We deny the petition. In so doing, we neither approve nor disapprove the holding of the court of appeals regarding exclusive jurisdiction and note that neither Dupriest nor American Honda raised primary jurisdiction as an issue.

OPINION DELIVERED: December 16, 1999