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BLOGS

Damages

Addendum Replacing Liquidated Damages Provision Precludes Summary Judgment on Franchisor's Breach of Contract Claims

A South Dakota federal court granted in part and denied in part a franchisor's motion for summary judgment arising out of nonpayment of fees in *Days Inns Worldwide, Inc. v. Miller*, 2017 WL 2829810 (D.S.D. June 29, 2017). After the franchisee failed to pay fees required by the parties' franchise agreement, the franchisor terminated the agreement and filed suit for breach of contract. The franchise agreement contained a liquidated damages provision, but an addendum to the agreement replaced that provision with a provision making the franchisee responsible for "any and all damages" arising out of the franchisee's breach of the agreement, as well as "amounts which would otherwise be payable for and during the remainder" of the agreement. The franchisor moved for summary judgment both on its affirmative claims and on the franchisee's counterclaims arising out of an alleged promise by the franchisor to provide guests through its reservation system.

The court granted summary judgment against the franchisee on its counterclaims, noting that the integration clause in the franchise agreement precluded claims based on an alleged oral promise, and that the franchisor had a contractual right to suspend the franchisee's access to the reservation system as a result of the franchisee's nonpayment of required fees. On the franchisor's breach of contract claims, however, the court found that an issue of fact remained as to the amount of the franchisor's damages. While it was clear that a breach had occurred, the court found that the language in the addendum created an ambiguity as to whether the franchise agreement allowed recovery of expectation damages, an issue the parties did not brief. Further, the court noted that the franchisor's damages calculation exceeded the amount it could have claimed under the superseded liquidated damages provision, raising questions of unconscionability, another issue not briefed by the parties. Lastly, the court found the precise amount of damages unclear, in part because of inconsistencies in the proof submitted by the franchisor. The court directed the franchisor to submit further evidence supporting past damages, but denied summary judgment in favor of future damages "at this time."

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