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## BLOGS

Choice of Forum/Venue

# California Court of Appeal Voids Florida Forum Selection Clause Under California Franchise Relations Act

Taking a broad view of the scope of the California Franchise Relations Act (CFRA), the California Court of Appeal in *T-Bird Nevada LLC, et. al. v. Outback Steakhouse, Inc., et al.*, 2010 Cal. App. Unpub. LEXIS 3610 (Cal. Ct. App. May 17, 2010), voided a Florida forum selection clause in a borrower agreement between Outback Steakhouse and a California developer. The parties had entered into an arrangement under which T-Bird signed off on a multi-million dollar loan to fund Outback's expansion into California. T-Bird's owner set up separate companies to act as franchisees for each location and the companies, not T-Bird, signed the franchise agreements. The parties then entered into a borrower agreement providing that Outback would guarantee the loan, but that any default of the loan obligations by T-Bird would also constitute a default under the franchise agreements. Outback later filed a collections action against T-Bird in Florida state court, and T-Bird then brought suit against Outback in California, contending that Outback, through false representations and promises, induced T-Bird's owner to enter into the agreement. Outback moved to dismiss the California action.

The court of appeal held that the forum selection clause in the borrower agreement did not apply to T-Bird's action because, under the CFRA, such clauses are void with respect to claims relating to a franchise agreement. The court rejected Outback's contention that the California case only involved the borrower agreement, finding that the majority of T-Bird's claims were "independent of the collections action and raised questions relating to the enforceability of the franchise agreements themselves." Furthermore, the appellate court found that even if the claims were viewed as arising solely out of the borrower agreement, the forum selection clause was still void under the CFRA. The court held that the term "franchise agreement" as used in the CFRA was not limited to a "single, formal document entitled 'franchise agreement' in which the elements of a franchise are addressed," but instead includes "additional contracts or agreements that bear directly on the relationship between franchisor and franchisee . . . ."