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BLOGS
Arbitration

California Court of Appeals Affirms That There Was No Meeting of Minds in Drafting of Arbitration Clause Due to UFOC State Addenda

In *Ron Winter, et al. v. Window Fashions Professionals, Inc.*, 2008 WL 3845229 (Cal. App. 5 Dist., August 19, 2008), the California Court of Appeals affirmed the trial court's decision that there was no meeting of the minds on an arbitration clause in a franchise agreement due to a state addendum to the franchisor's Uniform Franchise Offering Circular ("UFOC").

Ron Winter and Window Fashions Professionals, Inc. ("WFP") entered into a franchise agreement that required the parties to submit claims to binding arbitration in Dallas County, Texas and provided that the franchise agreement would be governed by Texas law. The California Addendum to WFP's UFOC stated that these provisions "may not be enforceable under California law." The trial court held, and the court of appeals affirmed, that there was no meeting of the minds on the arbitration and choice of law provisions in the franchise agreement due to the disclaimer in the UFOC. In reaching its decision, the court relied on *Laxmi Investment, LLC v. Golf USA*, 193 F3d 1095 (9th Cir. 1999). Even though the *Laxmi* franchise agreement specified arbitration in Oklahoma, because the UFOC stated that this provision may not be enforceable under California law, the Ninth Circuit held that there was no clear agreement as to forum.

This new case, like *Laxmi*, is troubling for franchisors since a state examiner may require that franchisors use similar language in state addenda whenever the examiner believes that a provision in a franchise agreement may contradict state law. Under a technical reading of both *Winter* and *Laxmi*, the fact that the UFOC or FDD states that a provision "may not" be enforceable could be enough to negate the parties' meeting of the minds even if the examiner was wrong about the law.