

**BLOGS**

Choice of Forum/Venue

## Colorado Federal Court Applies Forum Selection Clause to Non-Signatory Entities Controlled by Former Franchisees

A federal court in Colorado held that entities controlled by former franchisees were bound by the forum selection clauses in the franchisees' terminated franchise agreements. *Fitness Together Franchise, LLC v. EM Fitness, LLC*, 2020 WL 6119470 (D. Colo. Oct. 16, 2020). EM Fitness and related franchisee defendants operated several Fitness Together franchises in Ohio under franchise agreements that contained post-termination noncompetition and Colorado forum selection clauses. The franchisee defendants negotiated the early termination of their franchise agreements, but, at the same time, formed new entities through which they began operating competing businesses at the same locations previously occupied by the franchised businesses. Fitness Together sued its former franchisees and the newly formed entities in federal court seeking to enjoin them from breaching the post-termination noncompetition provisions of the franchisee-defendants' agreements. The new entities challenged the court's personal jurisdiction over them, arguing that they were not signatories to the franchise agreements and therefore should not be bound by their forum selection clauses.

The court held that the new entities were bound by the forum selection clauses in the terminated franchise agreements under the "closely related" doctrine, as well as under traditional doctrines of estoppel, successor liability, and principal-agent liability. The "closely related" doctrine provides that nonsignatories are subject to contractual restrictions if they are closely related to the contractual relationship. Here, it was undisputed that the new entities were controlled by the former franchisees and received customer lists and business information from the former franchisees. The court held that because the new entities knowingly undertook activities that the closely related franchisee-defendants had agreed would be subject to the forum selection clauses, the new entities effectively consented to the forum selection clauses themselves. The court also granted Fitness Together's motion for a preliminary injunction, enforcing the noncompetition provisions of the respective franchise agreements against both the franchisee-defendants and the new entities.

### Related People

#### **Maisa Frank**

Partner

Washington, D.C.

202.295.2209

[maisa.frank@lathropgpm.com](mailto:maisa.frank@lathropgpm.com)

#### **Richard C. Landon**

Partner

Minneapolis

612.632.3429

[richard.landon@lathropgpm.com](mailto:richard.landon@lathropgpm.com)

---

### Related Services

[Franchise & Distribution](#)