BLOGS

Limitation of Actions

Contractual Limitations Limitations Clause Reduces Available Recovery but Does Not Bar Claims

A federal court in California recently denied a motion by former franchisees to dismiss a franchisor's claims for breach of contract and trademark infringement based on the contractual limitations period in the parties' franchise agreement. *Fantastic Sam's Salons, Corp. v. Moassesfar*, 2015 U.S. Dist. LEXIS 6934 (C.D. Cal. Jan. 21, 2015). Moassesfar had operated one Fantastic Sam's salon for three years and a second for over two years without paying franchise fees. In 2014, Fantastic Sam's sent Moassesfar a notice of default and provided an opportunity to cure the financial defaults, and then in August 2014 filed a complaint after the franchisees had failed to cure. The parties then entered into a stipulation agreeing to the termination of the franchise agreements and requiring Moassesfar to return Fantastic Sam's confidential information, leaving only breach of contract and trademark infringement claims. Moassesfar filed a motion to dismiss, contending the claims were contractually time-barred. The franchise agreement stated that any claim for rescission or damages had to be brought within the later of one year from the date of the act or failure to act or six months from the date when claimant knew or should have known of the act or failure to act.

Moassesfar argued that the agreement had terminated when two consecutive payments were missed, as provided in the termination clause, thus barring the claims entirely. The court rejected this theory, noting that the termination clause was contrary to California law, which provides that a franchise agreement cannot automatically terminate without notice to the franchisee and an opportunity to cure. However, the court did find that the limitations period applied to the acceleration clause, which stated that upon termination the franchisees must immediately pay all monies due through the later of the last date the trademarks were used or the expiration of the franchise agreement. The court found that termination was a condition precedent for the acceleration clause, and that termination was triggered when Moassesfar ceased making payments, meaning that the contractual limitations clause barred any claim for accelerated fees.

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