

**BLOGS**

Fraud/Misrepresentation

Court Allows Counterclaims for Fraudulent Inducement to Proceed Despite Franchise Agreement Protections for Franchisor

A federal magistrate judge in Michigan granted in part and denied in part a franchisee's motion for leave to amend her counterclaims against her franchisor in *L.A. Insurance Agency Franchising, LLC v. Montes*, 2016 WL 922948 (E.D. Mich. Mar. 11, 2016). L.A. Insurance sued the franchisee, Montes, after she unilaterally terminated one of her franchises and allegedly opened a competing insurance agency. After filing an initial answer and counterclaim, Montes sought leave to amend and supplement her counterclaims. In her proposed amended counterclaim, Montes argued that the franchise agreements were void because (1) L.A. Insurance fraudulently induced her to sign the agreements, (2) L.A. Insurance failed to provide her with the requisite 14-day notice period to review the franchise agreements prior to execution, and (3) the agreements were contracts of adhesion not supported by proper consideration. She further alleged that L.A. Insurance had engaged in deceptive trade practices, breached the covenant of good faith and fair dealing, and committed various other wrongs. L.A. Insurance objected to the proposed amendments on the ground that they were futile and barred by provisions in the franchise agreements, including an integration clause.

Following a hearing, the court held that several of L.A. Insurance's futility arguments that relied on specific provisions of the franchise agreements failed because they presupposed the validity of the franchise agreements and ignored Montes's claims that the agreements were unenforceable. Similarly, the court determined that it could not dismiss Montes's adhesion claim or her claim that L.A. Insurance failed to provide the required 14-day notice period given that Montes had alleged specific facts in support of those claims, which were accepted as true for purposes of her motion. The court also rejected L.A. Insurance's argument that Montes's fraud counterclaims were barred by the integration clauses in her franchise agreements, finding that Montes had alleged sufficient facts in support of her position that she would not have entered into the agreements but for L.A. Insurance's misrepresentations. The court did, however, deny Montes's motion as it related to her proposed claims for breach of the covenant of good faith and fair dealing and deceptive trade practices, finding those claims were either not actionable or had been abandoned.

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