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BLOGS

Fraud/Misrepresentation

Court Denies Franchisee's Fraud Claims Against Franchisor

In *Qdoba Rest. Corp. v. Taylors, LLC*, 2010 U.S. Dist. LEXIS 27394 (D. Colo. Mar. 23, 2010), a Colorado federal court granted summary judgment to Qdoba on a multi-unit franchisee's allegations of fraud in the inducement. The fraud allegations were made in connection with affirmative defenses and counterclaims to Qdoba's breach of contract suit for the closure of several restaurants. The franchisee alleged that Qdoba committed fraud when: (a) an agent of Qdoba provided the franchisee with a map of projected sales, which showed potential sales ranges based on site characteristics and sales at existing restaurants, to assist the franchisee in site selection for new restaurants; and (b) Qdoba's CEO stated that certain existing restaurants the franchisee was purchasing had been poorly managed and underperforming.

Qdoba was granted summary judgment on the franchisee's counterclaims and on its own claims for breach of the franchise agreements. Under Florida law, sales projections are considered to be opinions. An opinion cannot be a fraudulent misrepresentation unless the party giving the opinion has superior knowledge and knows the opinion to be wrong at the time it was made. Because the franchisee offered evidence only that the high-end sales projections on the map did not match average existing store sales in the Qdoba system, it had not shown the projections were false or that Qdoba knew they were false. Neither was the fact that the franchisee was unable to improve his performance evidence that the CEO had been wrong or that he knew he was wrong.