

## Court Denies Franchisor’s Motion to Compel Arbitration where Arbitration Clause was not Assumed in Writing as Part of Prior Transfer

In another appellate decision interpreting arbitration provisions, the United States Court of Appeals for the Tenth Circuit affirmed the denial of a franchisor’s motion to compel arbitration, finding that the parties had not entered into a “written” agreement to arbitrate the claims at issue as required by the Federal Arbitration Act. *Campbell Invs., LLC v. Dickey’s Barbecue Rests., Inc.*, 2019 WL 4235345 (10th Cir. Sept. 6, 2019). Campbell Investments initially signed a Dickey’s development agreement and franchise agreement for a restaurant in Ogden, Utah. Both agreements had arbitration provisions, but Campbell never opened the Ogden restaurant. Instead, Campbell purchased an existing franchised restaurant in South Jordan, which Campbell operated for two years in compliance with the terms of the prior franchisee’s agreement. Campbell never entered a written assumption of the prior franchise agreement, and did not enter a new agreement with Dickey’s for the South Jordan restaurant. When a dispute later arose between the parties, Campbell filed a lawsuit and Dickey’s sought to compel arbitration, arguing that the terms of the parties’ agreements required arbitration. The district court denied the motion reasoning that, even if Campbell impliedly assumed other terms of the South Jordan agreement by operating in compliance with those terms, Campbell had not agreed in writing to arbitrate claims relating to the South Jordan franchise.

The Tenth Circuit agreed with the district court’s analysis. It found that an integration clause in Campbell’s asset purchase agreement with the former franchisee — as well as Dickey’s failure to approve a transfer of the South Jordan franchise agreement to Campbell in writing — foreclosed the argument that Campbell had assumed the franchise agreement’s arbitration provision. The court also rejected Dickey’s argument that the lawsuit fell within the scope of the development agreement’s arbitration clause, since that agreement did not relate to the South Jordan franchise. Finally, the court found that Campbell’s knowledge of arbitration clauses in the South Jordan and other agreements was insufficient to create a “written” agreement by Campbell to arbitrate its claims arising out of the South Jordan franchise.

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