

## Court Denies Quizno's Motion to Dismiss Claim for Breach of Area Director Marketing Agreement

In *Casual Dining Dev., Inc v. QFA Royalties, LLC*, 2009 WL 2869335 (D. Colo. Sept. 3, 2009), an aggrieved Quizno's development agent brought suit against QFA Royalties (the successor in interest to the Quizno's corporation) for failure to renew its area director marketing agreement in alleged violation of the Wisconsin Fair Dealership Law ("WFDL"). The development agent alleged that QFA sent a notice of nonrenewal without good cause, as required by the WFDL. The development agent also alleged that it had "performed all conditions precedent to renewal that had not been waived or excused by defendant's action and that it stood ready and willing to renew." QFA moved to dismiss the complaint, arguing that the facts alleged in the complaint showed that the responsibility to renew the agreement lay with the development agent and that the agent, not QFA, had failed to renew the agreement. The Colorado federal court denied the motion to dismiss, finding that the ambiguity as to which party caused the non-renewal would require further factual development through discovery.

The complaint also alleged, in the alternative, that the conditions QFA sought to impose upon renewal would have "changed the competitive circumstances" of the area director marketing agreement without good cause in violation of the WFDL. Specifically, the development agent alleged that QFA had "effectively eliminated" its area director marketing program and had failed to develop a small market strategy for territories such as the development agent's. QFA argued that a claim for change in competitive circumstances requires proof that the franchisor was seeking to change the nature of the parties' relationship, rather than enforce preexisting terms of the parties' agreement. Since neither party attached a copy of the agreement to any of the pleadings, the court stated that it was unable to assess QFA's claim that the agreement allowed QFA to impose the renewal conditions, so the motion to dismiss was denied.