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BLOGS

Fraud/Misrepresentation

Court Denies Summary Judgment to Franchisor on Fraud Claim

In *Cousins Subs Systems Inc. v. Better Subs Development Inc. et al.*, 2011 U.S. Dist. LEXIS 112903 (E.D. Wis. Sept. 30, 2011), Cousins Subs brought multiple claims against a former franchisee/area developer for breach of contract and failure to pay a promissory note after its two restaurants failed and area development stalled. The franchisee, in turn, brought counterclaims for alleged representations made by a sales consultant (though the court noted the consultant's relationship with Cousins Subs was not entirely clear). The franchisee based its damages claim on what it likely would have earned in its proposed markets. The franchisee had signed two different franchise agreements and an area development agreement.

Cousins Subs moved for summary judgment, arguing that both franchise agreements and the area development agreement contained clear language stating that no representations had been made by Cousins Subs that were not contained in the agreements or the (pre-2007) franchise disclosure documents. Although the court found that a basic fraud claim could not survive this clear no-reliance language, the no-reliance language may not shield the franchisor from a claim of intentional fraud. The court found it an issue of fact whether the Cousins Subs' sales consultant actually made intentionally fraudulent representations regarding the gross revenue of nearby franchisees and the projections for this franchisee's business to induce the franchisee to sign. As for the timing of the fraud claims, Cousins Subs argued that the franchisee should have discovered (or at least disclosed) the fraud at the time the agreements were signed. The court found that "[i]n the absence of a convincing argument and supportive facts from [Cousins Subs] as to when the [franchisee] should have discovered the alleged fraud, the court finds that the fraud was discovered when the [first franchised] restaurant closed," and therefore did not grant summary judgment.