

A yellow triangle pointing downwards, located to the left of the 'BLOGS' and 'Contracts' text.

## BLOGS

### Contracts

# Court Enforces Contract Despite Inability to Produce Signed Copy

A Florida federal district court judge has enforced a forum selection clause set forth in a form franchise agreement attached to a Uniform Franchise Offering Circular even though neither party to the contract could produce a fully executed copy. *Alloy Wheels, Inc. v. Wheel Repair Solutions Int'l, Inc.*, 2012 U.S. Dist. LEXIS 118600 (S.D. Fla. Aug. 21, 2012). The plaintiff franchisee alleged that it negotiated with the defendant franchisor, headquartered in Georgia, for a wheel repair franchise that included a specific, exclusive territory in South Florida. After the franchisee had been in business for three years, the franchisor granted a portion of the territory to another franchisee. The franchisee asserted in its Florida complaint that it had been defrauded by the franchisor as to the territory, and that the franchise agreement itself was not an enforceable agreement. The franchisor moved to dismiss the lawsuit for improper venue based on a forum selection clause in its standard franchise agreement, which would require the franchisee's claims to be brought in Georgia. The copy of the agreement attached to the motion had been taken from the franchisor's UFOC. In its opposition to the motion, the franchisee asserted that the forum selection clause could not be enforced without a signed franchise agreement specifically between these parties.

The court determined, however, that the franchisor had submitted sufficient evidence of the existence of the franchise agreement, even though it did not produce a copy of the fully executed agreement. For example, the franchisor showed that it had provided the franchisee with a copy of the franchise agreement in an email sent during the contract negotiations, and submitted an affidavit from one its executive vice presidents stating that he had seen the signed copy of the agreement in the franchisee's file. The court noted that the franchisee failed to challenge this evidence with an affidavit of its own. Therefore, the court concluded that the franchisee did not meet its burden of raising a factual issue with respect to the existence of the fully executed agreement and dismissed its complaint on the basis of the forum selection clause.

## Related People

### Maisa Frank

Partner

Washington, D.C.

202.295.2209

[maisa.frank@lathropgpm.com](mailto:maisa.frank@lathropgpm.com)