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**BLOGS**

Good Faith and Fair Dealing

## **Court Holds That Franchisees' Allegations of Indirect Termination Were Sufficient to State a Claim for Breach of the Duty of Good Faith and Fair Dealing Under Pennsylvania Law**

In *Cottman Transmission Systems, LLC v. Kershner*, 2008 WL 583894 (E.D. Pa. March 3, 2008), several former franchisees sued their franchisor alleging that it failed to make a good faith effort to establish a chain of successful franchise stores and, instead, engaged in a nefarious scheme to “churn” franchises and profit at the franchisees’ expense. Based upon the franchisor’s alleged conduct, the franchisees filed a lawsuit claiming, among things, that the franchisor violated the covenant of good faith and fair dealing.

In response to the lawsuit, the franchisor moved to dismiss the franchisees’ claim on the ground that Pennsylvania law imposes a duty of good faith and fair dealing on franchisors only in the context of a termination of a franchise agreement and not in the performance of such an agreement. In rejecting the franchisor’s argument, the court held that even if the franchisor is correct as to the limitations on a good faith claim, the franchisees had asserted that the franchisor had conducted itself in such a way that it was impossible for the franchisees to operate their stores, which put them in the position of having to sell their stores back to the franchisor at a severe loss. The court concluded that such allegations, if proved, constitute an indirect termination of the franchise agreement and are sufficient to state a claim for breaching the duty of good faith and fair dealing imposed on franchisors under Pennsylvania law. Accordingly, although the court dismissed several of the franchisees’ other claims, it denied the franchisor’s request to dismiss the good faith and fair dealing claim.