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BLOGS

Franchise Sales/Transactions

Disclaimer and Integration Clause Defeat Claims of Fraud and Performance Representation

In *JM Vidal Inc. v. Texdis USA, Inc.*, 2010 U.S. Dist. LEXIS 93564 (S.D.N.Y. Sept. 3, 2010), a franchisee sued under the Washington Franchise Investment Protection Act (WFIPA) after its “Mango” clothing store franchise did not meet performance expectations. It was undisputed that the franchisee had flown to Barcelona to meet with the franchisor regarding the possibility of purchasing a franchise before the franchisor had become registered in Washington or prepared an offering circular. In addition, the franchisee had prepared financial projections for the store, which it claimed the franchisor had “approved.” The franchisee alleged that the franchisor violated the WFIPA by: (1) engaging in sales activity without registration, (2) making an unregistered earnings claim, (3) making fraudulent misrepresentations, and (4) violating the covenant of good faith and fair dealing.

On summary judgment, the court held that the registration claim was time barred, noting that Washington’s two-year “catch-all” limitations period applies to the WFIPA and that more than two years had elapsed from the execution of the franchise agreement to the time of suit. The counts relating to fraud and unlawful earnings claims each required the franchisee to show that it justifiably relied on claims by the franchisor. In dismissing these claims, the court quoted heavily from the franchise agreement, which contained an extensive disclaimer of earnings representations and an integration clause. In addition, the record showed that the franchisee was an experienced retailer that aggressively pursued the franchisor (a European company) for a U.S. franchise. The franchisee had written to the franchisor that a Mango franchise in Seattle would be “very successful” and that obtaining a franchise quickly was an “emergency.” Reliance by the franchisee on alleged earnings claims outside of the franchise agreement under these circumstances was not justified.

However, the franchisee’s claim for breach of the good faith requirement of the WFIPA (as well as claims for breach of contract and breach of the implied covenant of good faith and fair dealing under New York law) survived summary judgment. The court found that the record included evidence from which a jury could determine that the franchisor made only “half-hearted” efforts to meet its advertising obligations under the franchise agreement.