

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

## BLOGS

Choice of Forum/Venue

# Eleventh Circuit Enforces Floating Forum Selection Clause

The Eleventh Circuit Court of Appeals recently reversed a lower court's dismissal for lack of jurisdiction, upholding a floating forum selection clause in a franchise agreement. *AFC Franchising, LLC v. Purugganan*, 43 F.4th 1285 (11th Cir. 2022).

The Eleventh Circuit Court of Appeals recently reversed a lower court's dismissal for lack of jurisdiction, upholding a floating forum selection clause in a franchise agreement. *AFC Franchising, LLC v. Purugganan*, 43 F.4th 1285 (11th Cir. 2022). Danilo Purugganan, a New York resident, entered into a development agreement with Doctors Express Franchising, whose principal place of business was in Maryland. The agreement contained a "floating forum selection clause," which required that all disputes be commenced at the place of the franchisor's principal place of business at the time the action is commenced. Doctors Express later assigned the agreement to AFC Franchising, whose principal place of business is in Alabama. After the relationship with AFC soured, Purugganan threatened to sue in Connecticut or New York. AFC responded by seeking a declaratory judgment that the forum selection provision required disputes to be resolved in Alabama. Purugganan moved to dismiss the suit for lack of personal jurisdiction.

The district court granted Purugganan's motion, concluding that he lacked the requisite minimum contacts with Alabama and did not contractually waive his personal jurisdiction defense by agreeing to the forum selection provision. The Eleventh Circuit reversed, finding AFC to hold the same right as Doctors Express to litigate at the place of its principal place of business. The appellate court held that Purugganan failed to meet his heavy burden of demonstrating that enforcement of the provision would be unfair or unreasonable under the circumstances, and failed to identify any public policy that would be frustrated by enforcement. In a concurring opinion, the court of appeals clarified that this decision was limited to a finding of personal jurisdiction and would not directly impact parallel litigation between the parties involving the same forum selection clause, which has been pending in a Connecticut federal court for years and which has been previously summarized in *The Franchise Memorandum* [here](#) and [here](#).

## Related People

### Sandra (Sandy) Bodeau

Partner

Minneapolis

612.632.3211

[sandra.bodeau@lathropgpm.com](mailto:sandra.bodeau@lathropgpm.com)

---

## Related Services

[Franchise & Distribution](#)