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BLOGS
Contracts

English Language Proficiency Test as a Condition of Transfer Held Not Unreasonable

In *De Walsche v. Togo's Franchised Eateries LLC*, No. CV-07-2901 (C.D. Cal. July 21, 2008), a federal court in California granted a defense motion for summary judgment on the franchisee's claims that Togo's had breached the franchise agreement and the implied covenant of good faith and fair dealing in requiring an English Language Proficiency Assessment ("ELPA") as a condition for the transfer of his shop to two buyers. The franchisee also claimed that Togo's ELPA discriminated against the buyers in violation of California's Civil Rights Act. (Gray Plant Mooty represented the franchisor in this case.)

The franchisee presented the buyers to Togo's for its approval of the transfer of the shop. Togo's evaluated the buyers and gave them an ELPA test, which the buyers failed. After Togo's rejected the transfer, the franchisee closed the shop and thereafter sued, claiming, among other things, that the ELPA imposed terms and conditions of transfer that did not appear in the franchise agreement and that passing the ELPA was an unreasonable requirement for a transfer. In its motion for summary judgment, Togo's provided substantial evidence showing that it required the ELPA to ensure that its franchisees could communicate (both in writing and orally) with Togo's, suppliers, customers, and employees. Further, the franchisee had acknowledged that Togo's could require the ELPA under various provisions of the franchise agreement and a rider to the franchisee's and buyers' purchase agreement. Also, since the express terms of the franchise agreement gave Togo's absolute discretion to mandate the ELPA, the franchisee's claim of breach of the implied covenant of good faith and fair dealing failed as a matter of law. Finally, as to the statutory claim, the court found that the franchisee had no standing to assert such a claim since the buyers testified that Togo's had not discriminated against them.