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BLOGS

Noncompetes

Franchise Agreement's Post-Term Noncompete Withstands Franchisee's Motion to Dismiss in Colorado District Court

In another case involving a post-term covenant against competition, the United States District Court for the District of Colorado declined to dismiss a franchisor's complaint seeking to enforce a noncompete provision contained in the parties' franchise agreement, despite the "strong public policy" against enforcement of such restrictions under Colorado law. *Homewatch Int'l, Inc. v. Navin*, 2017 WL 4163358 (D. Colo. Sept. 20, 2017). After expiration of the parties' franchise agreement, the franchisee's owner immediately commenced operating a competing business in violation of the agreement's noncompete covenant. When the franchisor sought to enforce the noncompete, the owner moved to dismiss the franchisor's claims, raising several challenges to the enforceability of the provision.

As a preliminary matter, the court found no merit to the owner's claim that she had only signed the franchise agreement in her capacity as an officer of the franchisee entity and that the noncompete provision therefore did not apply to her personally. The court observed that the personal guaranty the owner had signed stated expressly that the noncompete provision would apply to her. The court also held that the noncompete covenant was not automatically void under Colorado law, which governed the franchise agreement. Under a Colorado statute, any noncompete covenant that "restricts the right of any person to receive compensation for the performance of skilled or unskilled labor" is unenforceable unless it falls under one of the law's narrow exceptions. Contracts "for the purchase and sale of a business or the assets of a business" constitute one such exception. Although Colorado courts had not yet addressed this exception in the context of a franchise dispute, the court found that the franchisor had sufficiently alleged its applicability because the goodwill associated with the business was one of the things the franchisor had licensed to the franchisee under their franchise agreement. On that basis, the court permitted the franchisor's breach of contract, unjust enrichment, and injunctive relief claims to proceed.

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