

BLOGS

Choice of Forum/Venue

Franchisee Required to Litigate In Venue Specified by Franchise Agreement's Forum Selection Clause

In a franchise termination case, a federal district court recently enforced a Florida forum selection clause and denied the franchisee's motion to transfer the action to a California federal court where the franchisee had amended its complaint in a previously-filed action to add claims directly challenging the termination. The parties in *Benjamin Franklin Franchising, LLC v. On Time Plumbers, Inc.*, 2014 U.S. Dist. LEXIS 131800 (N.D. Fla. Sept. 19, 2014), had entered into a BFF plumbing services franchise agreement that contained a Florida forum selection clause. The franchise never opened. In the meantime, a dispute arose between the franchisee and BFF's parent company, Clockwork, related to two home services franchises he operated under a different brand name. When negotiations over the dispute broke down, the franchisee filed suit against Clockwork in a California federal court, raising claims solely related to the home services franchises. Shortly thereafter, BFF filed suit in Florida federal court, seeking termination of the plumbing services franchise because the franchisee failed to open the business. In response, the franchisee moved to dismiss the Florida case on the ground that the franchise agreement (and its forum selection clause) was no longer enforceable because it had been superseded by a letter of intent signed by Clockwork during discussions about the home services franchises. In the alternative, the franchisee sought to transfer and consolidate the Florida action with the California case because the latter was the first-filed action and the forum would be more convenient.

The Florida court rejected each of these arguments. It found that the franchise agreement and its forum selection clause were still in effect because neither BFF nor the franchisee was a party to the letter of intent signed by Clockwork. Moreover, the court noted that the franchise agreement required all modifications to its terms to be in writing—"specifically identified as an amendment"—but that there was no document purporting to amend the franchise agreement or its forum selection provision. The court also rejected the franchisee's argument that the first-filed rule required the action be transferred to California and joined with related litigation. It noted that while the parties to the Florida action were now parties to the California action, they were not parties to the California action when it was originally filed, so the first-filed rule did not warrant a transfer. Finally, the court denied the motion to transfer, finding that the parties were subject to a mandatory forum selection clause and that none of the "unusual" or "extraordinary" factors supporting a transfer were present in this case.

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com