

BLOGS
Damages

Franchisee's Misrepresentation Claims Barred by Economic Loss Doctrine

A Wisconsin federal court has dismissed common law misrepresentation claims against a franchisor because the franchisee's claims were barred by the economic loss doctrine. *Falk v. Wheeler*, 2020 WL 759180 (E.D. Wis. Feb. 13, 2020). This dispute arose from a franchise relationship between plaintiffs and Indoor War, LLC, a franchisor of laser tag facilities. After purchasing more than \$500,000 worth of equipment from Indoor War — much of which failed to arrive — the plaintiffs brought suit to recover the amount they invested in the Indoor War franchise. The plaintiffs alleged that Indoor War misrepresented the financial performance of certain Indoor War franchises and made other misrepresentations about the manuals, supplies, and extent of training that they would receive with their purchase. Indoor War moved to dismiss these claims, arguing that they were barred by Wisconsin's economic loss doctrine.

The court agreed. Under Wisconsin's economic loss doctrine, transacting parties may only pursue their contractual remedies when asserting a claim for "economic loss" — damages resulting from a product failing in its intended use or failing to live up to a contracting party's expectations. Here, the court found that the plaintiffs' alleged losses, i.e., the funds they invested in the Indoor War franchise, were purely economic because they arose from the franchise's failure to meet the plaintiffs' expectations. Because the plaintiffs had the ability to allocate risks arising from the franchise relationship in the contract, the court determined they could not recover any resulting damages under tort law.

The court declined, however, to dismiss the plaintiffs' claims under the Wisconsin Franchise Investment Law and Deceptive Trade Practices Act arising from the same purported misrepresentations. Indoor War argued that these claims were barred by applicable statutes of limitations because they were based on communications made prior to April 20, 2016 (three years before the plaintiffs filed the complaint). While both statutes have a three-year limitations period, the court determined that the Franchise Investment Law's limitations period is triggered by the sale of the franchise. Because the franchise sale occurred within the three-year period, any misleading communications that occurred before the sale could be used as the basis for the claim. However, because the limitations period for the Deceptive Trade Practices Act is the date of the alleged misrepresentation, the court limited those statutory claims to misrepresentations made on or after April 20, 2016.

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