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BLOGS

Choice of Law

Franchisee's Wrongful Termination and Breach of Good Faith Claims Rejected Under Missouri Law

The United States District Court for the Northern District of New York recently rejected a franchisee's counterclaims that her franchisor wrongfully refused to renew her franchise agreement and breached its implied covenant of good faith and fair dealing when (as previously reported in [Issue 190](#) of *The GPMemorandum*) it thereafter obtained enforcement of the franchisee's post-termination covenant against competition. *H&R Block Tax Servs. LLC v. Strauss*, 2017 WL 395119 (N.D.N.Y. Jan. 27, 2017). Gray Plant Mooty represents H&R Block in this case.

The franchise agreement provided for an initial term of five years and for automatic renewal every five years thereafter unless the franchisee elected not to renew. But the agreement also contained a Missouri choice of law provision, and precedent under Missouri law required that such agreements be construed to allow either party to decline to renew. The franchisee argued that the laws of New York, where the franchisee operated and where the case was venued, rather than Missouri law should be applied. Although the court found that New York law differed from Missouri law on the renewal issue, the franchisee had not satisfied her heavy burden to show that the relevant Missouri law offended "a fundamental policy" of New York such that the agreement's choice-of-law provision should not be enforced.

Having found that H&R Block was entitled under Missouri law to not renew the agreement, the court still had to determine whether the franchise agreement's posttermination covenant against competition was triggered in those circumstances. The franchisee argued that her covenant against competition was triggered by termination for cause but not by expiration of the agreement. The court held that based on language in the agreement providing that the covenant applied upon the termination or "other disposition" of the franchise, H&R Block was entitled to enforce the covenant after electing not to renew the agreement.

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