

## Franchisor Awarded Damages; Franchisee's Claims Based on Franchisor Duties Dismissed on Summary Judgment

The United States District Court for the Eastern District of California recently granted summary judgment to a franchisor on a franchisee's claim that it had breached the franchise agreement, thus relieving the franchisee of the obligation to pay fees. In *Century 21 Real Estate LLC v. All Professional Realty, Inc.*, 2012 U.S. Dist. LEXIS 111744 (E.D. Ca. August 7, 2012), All Professional Realty, Inc. owned and operated several Century 21 franchises in California and Hawaii. After several years of operation, All Professional closed one of its California locations and stopped paying franchise fees for its other locations. As a result, Century 21 terminated All Professional's franchise agreements.

All Professional filed a lawsuit in California state court against Century 21 for breach of contract, fraud, and various other claims. Century 21 filed suit against All Professional in California federal court and New Jersey state court (based on a forum selection clause in one of the franchise agreements), bringing claims for trademark infringement, federal unfair competition, breach of contract, breach of guaranty, and related claims. All cases were removed or transferred to the U.S. District Court for the Eastern District of California. Century 21 then filed a motion for summary judgment on its claims for trademark infringement, breach of contract, and breach of guaranty, as well as on All Professional's claims.

In granting Century 21's motion for summary judgment on all claims except a single minor contract claim, the court found that the claim that Century 21 had breached the franchise agreements was without merit. All Professional argued that Century 21 breached the franchise agreements when it failed to stop other franchisees from recruiting its agents. All Professional also alleged that Century 21 released confidential information regarding its finances that undermined its agents' confidence in the franchised business. All Professional further alleged that Century 21's failure to protect its name and trademarks from third party infringement violated the franchise agreements. The court concluded that Century 21 had no duty to (1) prevent other franchisees from recruiting All Professional's agents; (2) protect All Professional's financial information from disclosure; or (3) prosecute entities that infringed upon the Century 21 name and trademarks. Accordingly, those alleged inactions could not serve as an excuse for All Professional to stop paying its franchise fees. The court awarded Century 21 over \$195,000 in actual damages, over \$575,000 in lost future profits, and over \$86,000 as treble damages for willful trademark infringement. The court also enjoined All Professional and its owners from further use of Century 21's marks.