

Franchisor Did Not Waive Arbitration by Moving to Dismiss for Improper Venue

The Seventh Circuit Court of Appeals recently upheld the dismissal of a franchise-related lawsuit in light of the existence of a binding arbitration provision. In *Faulkenberg v. CB Tax Franchise Systems, LP*, 2011 U.S. App. LEXIS 6391 (7th Cir. Mar. 29, 2011), a disgruntled franchisee brought suit against its tax preparation franchisor after closing its five franchised outlets. The franchisee-plaintiff alleged, among other things, that the franchisor violated the Illinois Franchise Disclosure Act by failing to register its offering circular in the state prior to the sale. The parties disputed whether the Illinois Act applied to their relationship. The franchise agreements at issue contained arbitration clauses which stated that all claims relating to “the franchise” would be subject to arbitration in Houston, Texas. Consequently, the franchisor removed plaintiff’s action from Illinois state court to the applicable federal district court, and then moved to dismiss the action for improper venue.

The franchisee, for its part, argued that the Illinois Franchise Disclosure Act voids any forum selection clause requiring a forum outside of Illinois. The court made quick work of this assertion, noting that the Act explicitly states that “a franchise agreement may provide for *arbitration* in a forum outside of” Illinois. The franchisee also argued that the franchisor had waived its right to enforce the arbitration clause when it appeared in Illinois court to challenge the franchisee-plaintiff’s choice of venue. The court also rejected this claim, noting that several Seventh Circuit cases had previously held that “a motion to dismiss based on a contractual arbitration clause is appropriately ‘conceptualized as an objection to venue, and hence properly raised’” as a motion to dismiss. Finally, the court rejected the plaintiff-franchisee’s argument that the agreement to arbitrate was obtained by fraud, noting that the franchisee admitted receiving a copy of the agreement and there was no legitimate dispute as to whether the franchisee had signed the agreement. The franchisee also acknowledged receiving (and signing a receipt for) the franchisor’s offering circular, which summarized the arbitration provision. The court affirmed dismissal of the plaintiff’s case, leaving the franchisee to pursue arbitration.