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## BLOGS

Choice of Forum/Venue

# Franchisor Prevails in Motion to Transfer Case to Texas

In *Luv2bfit, Inc. v. Curves International, Inc.*, 2008 WL 4443961 (S.D.N.Y. Sept. 29, 2008), a federal court in New York enforced the Texas choice of venue clause in the franchise contracts of a Texas-based franchisor. Several New York franchisees alleged claims related to the purchase of their franchises and the franchisor's compliance with its franchise agreements. They filed the case in New York, despite a Texas venue provision. The franchisor moved to dismiss for lack of venue or to transfer to Texas.

In granting the franchisor's motion to transfer, the court first addressed whether the Texas venue clause was enforceable. The court rejected the franchisees' argument that the New York Franchise Sales Act rendered the forum selection clause unenforceable. In so doing, the court found that the anti-waiver provision of the NYFSA in no way limited the right of a New York franchisee to contractually agree to litigate disputes in a forum other than New York. The court also noted that forum selection clauses are given great deference and do not violate New York public policy.

The court then determined whether considerations of convenience and fairness weighed in favor of transferring the case to Texas. The court noted that there were witnesses in both New York and Texas, meaning that choosing one venue over the other would merely shift the inconvenience to the other party. Moreover, there were operative facts pertaining to both New York and Texas. The court recognized that New York courts would be more familiar with the franchisees' NYFSA claims, but that this was less important with respect to the franchisees' straightforward breach of contract claims. Finally, with an eye toward preserving judicial resources, the court noted there were similar cases already pending against the franchisor in federal court in Texas. Holding that the franchisees failed to demonstrate sufficient facts as to why New York was the better forum, the court concluded that because the parties agreed to a Texas forum in an enforceable contract provision, the case should be transferred.