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## BLOGS

### Damages

# Georgia Appellate Court Declines to Award Damages to Franchisee for Negligent Misrepresentation

The Court of Appeals of Georgia held that a franchisee was not entitled to damages for negligent misrepresentation because the franchisee failed to prove that it suffered actual economic damages as a result of the alleged misrepresentation. *Legacy Acad., Inc. v. Dole-Smith Enters., Inc.*, 2016 WL 3208751 (Ga. Ct. App. June 9, 2016). In so holding, the court overturned a jury verdict in the franchisee's favor. In 2006, Dole-Smith Enterprises spoke to several potential franchisors about purchasing a daycare franchise. During those discussions, Legacy Academy provided Dole-Smith with a UFOC which contained disclosures about Legacy Academy's litigation history and projections regarding potential profits. After reviewing the UFOC, Dole-Smith decided to purchase a daycare franchise from Legacy Academy, and the parties entered into a franchise agreement. Dole-Smith subsequently terminated its franchise agreement and filed suit, alleging that the UFOC contained false and misleading information.

Georgia has adopted the Restatement definition of the proper measure of damages in negligent misrepresentation cases, which allows for both an out-of-pocket measure of direct damages and additional consequential damages, if proven. Out-of-pocket damages are those necessary to compensate the plaintiff for the difference between the purchase price and the value of what was received in the transaction. Consequential damages, on the other hand, are additional expenses or losses incurred, not as a direct result of the transaction, but in reliance on the representations. Here, Dole-Smith did not present any evidence of out-of-pocket direct damages resulting from Legacy Academy's alleged misrepresentations. Instead, it sought to recover a portion of the purchase price for the daycare franchise as well as other costs inherent in the purchase. These costs, however, are not recoverable as consequential damages because they were incurred as a direct result of the transaction. Moreover, although Dole-Smith alleged other consequential damages, it failed to prove those damages with sufficient particularity. Therefore, the court determined Dole-Smith was not entitled to any damages for negligent misrepresentation.

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