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BLOGS

Limitation of Actions

Georgia District Court Bars Certain Claims Arising From Franchisor's Failure to Disclose an Owner's Interest in Designated Supplier

A U.S. District Court in Georgia granted a franchisor's motion to dismiss certain claims because of a contractual limitations period, but allowed the plaintiffs' RICO claims to move forward. In *Massey, Inc., et. al., v. Moe's Southwest Grill, LLC., et. al.*, 2012 U.S. Dist. LEXIS 53676 (N.D. Ga. April 17, 2012), Plaintiffs claimed that the franchisor failed to properly disclose to plaintiffs that its owner held an interest in a designated supplier. Although the owner held an interest in the supplier as early as 2001, the franchisor failed to disclose that interest until its 2004 Uniform Franchise Offering Circular.

Defendant moved to dismiss certain claims by arguing that they were barred by the one-year limitations period contained in the franchise agreements. Defendant argued that the plaintiffs received notice of the ownership interest through the franchisor's UFOC more than one year before they brought this action. The court agreed and rejected the plaintiffs' argument that because they were under no legal duty to read the UFOC provided to them, they should not be assumed to have read the information in the UFOC.

Defendant also moved to dismiss plaintiffs' RICO counts, arguing that plaintiffs failed to prove that there was theft by deception. The court disagreed, finding that because the franchisor failed to disclose the ownership interest until 2004, it suggested that its owner did not have an interest in the supply chain and that plaintiffs may have been harmed due to the additional surcharges on their products.