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BLOGS

Insurance

Indemnification Provision in Franchise Agreement Not Unenforceable Due to Lack of Consideration

A federal court in Michigan dismissed all of a franchisee's counterclaims and defenses that were based on the franchisee's claim that the franchise agreements between the parties were unenforceable due to indemnification provisions that lacked mutuality. *L.A. Ins. Agency Franchising, LLC. v. Montes*, 2016 WL 4415238 (E.D. Mich. Aug. 19, 2016). Claudia Montes entered into several franchise agreements with L.A. Insurance Agency Franchising, LLC. LA Insurance subsequently sued Montes for breach of the franchise agreements. In turn, Montes asserted several counterclaims and affirmative defenses including lack of consideration. Montes also argued lack of mutuality due to an indemnification provision in the franchise agreements that required her to indemnify LA Insurance for contractual or tort liabilities arising out of Montes' operation of the franchised businesses.

Montes claimed that she could not sue LA Insurance for breach of the franchise agreements because of the existence of the indemnification provision. The court rejected Montes' argument finding that the indemnity provision was narrow and did not exempt LA Insurance from liability if it breached its own contractual obligations to Montes. In so holding, the court distinguished a case cited by Montes which held that a franchise agreement was unenforceable because it included a provision stating that the franchisor was not liable for damages of any kind on account of any event or cause whatsoever.

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