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BLOGS

Jurisdiction and Procedure

Kentucky District Court Concludes It Lacks Personal Jurisdiction Over Guarantors to Franchisees' Promissory Notes

In *KFC Corp. v. Wagstaff*, 2013 U.S. Dist. LEXIS 86758 (W.D. Ky. June 19, 2013), a district court in Kentucky held that neither the forum selection clauses in agreements underlying a personal guarantee nor Kentucky's long-arm statute conferred personal jurisdiction over the defendant guarantors. The defendants owned or operated KFC franchises. After KFC terminated the franchises for failing to pay fees due, the parties executed, among other things, a prenegotiation agreement under which KFC would forgo suit, promissory notes under which the franchisee corporations agreed to repay outstanding debts, and guarantees of the notes by Wagstaff. When KFC brought suit to enforce the guarantees, Wagstaff moved to dismiss for lack of jurisdiction or transfer.

KFC contended Wagstaff was bound by the forum selection clauses in the prenegotiation agreement and the promissory notes that identified Kentucky as a permissible forum. The court held that KFC's action to enforce the guarantees did not "arise under" the prenegotiation agreement because it was executed earlier in time and dealt with a different subject matter. The court also rejected KFC's argument that the promissory notes' forum selection clause bound Wagstaff even though the notes stated, "Guarantors and sureties hereby consent and voluntarily submit to personal jurisdiction in the Commonwealth of Kentucky . . . under this Note or any related Guaranty." The court pointed out that Wagstaff did not sign the notes, and the guarantees were limited to the notes' repayment obligations. KFC could have included a forum selection clause in the guarantees or broadened them to encompass "all of the agreements in the Notes," the court concluded. Lastly, the court found no jurisdiction under Kentucky's long-arm statute because an action on the guarantees did not "arise from" Wagstaff's business transactions in Kentucky. Simply entering into the guarantees with a Kentucky corporation, did not create jurisdiction, so the court transferred the case.

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