

BLOGS

Choice of Forum/Venue

Kentucky Federal Court Enforces Forum-Selection Clause After Franchisor Moved Headquarters to California

A federal district court has granted summary judgment in favor of franchisor CK Franchising, Inc. (Comfort Keepers) enforcing the forum-selection clause in the parties' arbitration agreement. *CK Franchising, Inc. v. SAS Servs. Inc.*, 2019 WL 3006546 (E.D. Ky. July 10, 2019). SAS Services had been a Comfort Keepers franchisee in the Somerset, Kentucky area since 2007. In April 2017, SAS signed a renewal franchise agreement containing forum-selection clauses that closely resembled the ADR provisions in the parties' 2007 agreement. Specifically, the agreement required mediation and arbitration in the city where Comfort Keepers' principal place of business is located. Around the same time that SAS renewed, it expressed concerns to Comfort Keepers regarding the operation of another franchisee in SAS' territory. In December 2017, Comfort Keepers announced that it was relocating its headquarters from Dayton, Ohio to Irvine, California. Subsequently, SAS initiated the ADR process to address the territory encroachment issue, but because the parties could not agree on the required location for arbitration, Comfort Keepers filed suit in federal court to enforce the forum-selection clause and compel arbitration in California. SAS sought summary judgment declaring the forumselection clause unenforceable on the basis of unconscionability.

Applying Kentucky law, the court found the ADR provision neither substantively nor procedurally unconscionable. Procedural unconscionability relates to the form of the agreement and the process by which an agreement is reached. The court observed that SAS is a sophisticated entity owned by educated individuals with 10 years of experience operating the franchise prior to renewal. Further, SAS had the opportunity to consult with legal counsel and ask Comfort Keepers questions before signing the renewal agreement. Also, SAS was aware of the potential territorial dispute before signing the renewal agreement, and was therefore on notice of the potential importance of the dispute resolution provision. Finally, the provision itself was clearly marked and not buried in the renewal agreement. In its analysis of substantive unconscionability, the court considered whether the contract terms were unreasonably or grossly favorable to Comfort Keepers, including the inconvenience created by the selected forum and any disparity of bargaining power between the two parties. SAS argued that it would be unable to effectively present witnesses in California and that the process would be prohibitively expensive. The court was unmoved, finding that the applicable arbitration rules allowed sufficient flexibility to mitigate the

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procedural impact and cost of ADR in California. The court also found that even if the ADR process was more expensive for SAS in California than in Ohio or Kentucky, that was insufficient to justify a finding of substantive unconscionability. As a result, the court determined that the forum requirement was not unconscionable and granted Comfort Keepers' motion for summary judgment.