

**BLOGS**

Fraud/Misrepresentation

## North Carolina Federal Court Dismisses Fraud and Other Claims Against Restaurant Franchisor

Meanwhile, a federal court in North Carolina granted motions for summary judgment filed by a franchisor and its owners on claims for fraud, misrepresentation, breach of the duty of good faith and fair dealing, breach of fiduciary duty, and a violation of North Carolina's Unfair and Deceptive Trade Practices Act. *Trident Atlanta, LLC v. Charlie Graingers Franchising, LLC*, 2020 WL 6889208 (E.D.N.C. Nov. 23, 2020). The lawsuit was filed by former franchisees and area representatives of the Charlie Graingers restaurant system based on allegedly misleading statements that the franchisor had made regarding the strength of the business and concept, including assertions that it had the "cleanest Restaurants in America," a "low cost-low overhead foolproof restaurant concept" that was "guaranteed to be successful," and that it provided "world-class" and "endless" support to franchisees. The court granted Charlie Graingers' motion for summary judgment, dismissing the franchisees and area representatives' claims that Charlie Graingers had engaged in wrongdoing.

In dismissing the claim that Charlie Graingers had breached its fiduciary duty to the plaintiffs, the court first held that there was no evidence of a relationship of trust and confidence between Charlie Graingers and the franchisees and area representatives from which a fiduciary duty would arise. After noting that North Carolina courts have found evidence of a fiduciary relationship when one party dominates the other, the court specifically found the plaintiffs were highly sophisticated executives who engaged in substantial independent investigation of the investment and were represented by counsel. Hence, there was no evidence that Charlie Graingers had the upper hand.

In analyzing the UDTPA claim and other claims of fraud and misrepresentation, the court noted that the plaintiffs must have actually and reasonably relied on Charlie Graingers' statements. To show actual reliance, plaintiffs must have affirmatively incorporated the alleged misrepresentation into their decisionmaking process. The court held that the plaintiffs did not actually rely on Charlie Graingers' statements, in part because the various plaintiffs' key decision makers testified that they had not received and read, or were not influenced by, the documents containing the Charlie Graingers statements. Moreover, under North Carolina law, reliance is unreasonable as a matter of law when a plaintiff relies upon a representation that directly contradicts the express terms of a written contract. The court found that Charlie Graingers' franchise agreements contained numerous express terms that dispelled any confusion that may have been caused

### Related People

**Maisa Frank**

Partner

Washington, D.C.

202.295.2209

[maisa.frank@lathropgpm.com](mailto:maisa.frank@lathropgpm.com)**Richard C. Landon**

Partner

Minneapolis

612.632.3429

[richard.landon@lathropgpm.com](mailto:richard.landon@lathropgpm.com)

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by the allegedly misleading statements, including provisions regarding the finite scope of assistance that Charlie Graingers was obligated to provide, and Charlie Graingers' inability to predict franchisees' financial performance. The court additionally noted the franchise agreements' strong merger clauses also made any reliance on extra-contractual statements unreasonable. Finally, after holding that many of the alleged misrepresentations could also be rightly dismissed as "mere puffery," the court concluded that the franchisees could not have reasonably relied on the allegedly misleading statements. Thus, the court granted the motions for summary judgment in favor of Charlie Graingers and its owners.