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BLOGS

Duty of Good Faith and Fair Dealing

Ontario Court of Appeal Dismisses Class Action Lawsuit

The Ontario Court of Appeal has dismissed a class action suit brought by a group of former franchisees against Pet Valu Canada Inc., as the court drew a bright-line distinction between a franchise disclosure violation and a breach of the duty of good faith and fair dealing under the Arthur Wishart Act (AWA). *1250264 Ontario Inc. v. Pet Valu Canada Inc.*, 2016 ONCA 24 (Can. Ont. Jan. 14, 2016). The franchisees principally alleged that Pet Valu—a wholesaler and retailer of pet food, supplies, and services—had not shared with them volume rebates it received from suppliers. The lower court dismissed most of the franchisees’ claims but found that Pet Valu had breached its duty of good faith and fair dealing by failing to disclose its volume rebates.

Overturning the lower court’s decision, the Court of Appeal concluded that, even if the extent of Pet Valu’s volume rebates was not properly disclosed, that finding did not demonstrate a violation of the duty of good faith and fair dealing. The court clarified that the duty imposed on franchisors by the AWA arises in the “performance and enforcement” of the franchise agreement, whereas a franchisor’s disclosure obligation is implicated before the agreement is signed. The court emphasized that Pet Valu was under no contractual obligation to provide ongoing disclosure regarding the level of its volume discounts, and there was no indication that the alleged nondisclosure hurt the franchisees once they became franchisees. Thus, Pet Valu could not be said to have acted in bad faith in the “performance” of the agreements.

Related People

Maissa Frank

Partner

Washington, D.C.

202.295.2209

maissa.frank@lathropgpm.com