

A solid yellow right-angled triangle pointing towards the top-left corner.

BLOGS

Duty of Good Faith and Fair Dealing

Potential Good Faith and Fair Dealing Claim Allowed to Proceed

In *Dos Beaches, LLC vs. Mail Boxes Etc., Inc.*, 2012 U.S. Dist. LEXIS 18619 (S.D. Cal. Feb. 15, 2012), a California federal court considered a second attempt by Mail Boxes Etc. ("MBE") for dismissal of a former franchisee's complaint alleging a litany of grievances and various claims that MBE violated certain state franchise laws. The first complaint was dismissed without prejudice with leave to amend. After amendment, the court again dismissed most of the former franchisee's complaint (without prejudice), noting that the claims are "simply inadequate," give "insufficient factual support," and, in some cases, are "completely vague and devoid of factual support."

The court did, however, find that the franchisee could in theory state a claim for breach of the implied covenant of good faith and fair dealing. MBE argued that many of the franchisee's claims related to duties for which she was specifically responsible and, therefore, that MBE could not have breached its duty of good faith. The court noted that while the covenant cannot be "read to prohibit a party from doing that which is expressly permitted by agreement," the converse is not necessarily true, as the covenant does not allow a party to take all actions not expressly prohibited in the agreement. While the franchisee's claims were not pled with sufficient specificity, and were dismissed without prejudice for that reason, the franchisee could theoretically state a claim that MBE breached its covenant by not following the spirit of the agreement or by undermining the franchisee's "ability to run a profitable business."