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BLOGS

System Standards/Change

Required Upgrade Near End of Term Not A Constructive Breach of Franchise Agreement

In *LaQuinta Corp. v. Heartland Properties, LLC*, 2010 U.S. App. LEXIS 8757 (6th Cir. Apr. 28, 2010), the Sixth Circuit affirmed a grant of summary judgment in favor of the franchisor in connection with the refusal by a franchisee of the Baymont Inns franchise system to implement a new reservation system. (Plaintiff La Quinta is the corporate parent of Baymont). Under the franchise agreement, the defendant franchisee was required to participate in, and bear the costs of, whatever reservation system Baymont established in "its sole discretion." Two years before the franchise agreement was due to expire, Baymont implemented a new computerized reservation system, at an approximate cost of \$35,000 to each franchisee. The franchisee refused to execute the agreements relating to the new system and did not complete installation, prompting Baymont to terminate the franchise agreement and sue for liquidated damages. The franchisee, in turn, argued that Baymont had constructively breached the franchise agreement by requiring an expensive system upgrade so close to the end of the agreement term.

Citing seminal system change cases *Trail Burger King* and *Economou v. Physicians Weight Loss Center of America*, among others, the Sixth Circuit reaffirmed a franchisor's broad right to implement changes in a franchise system. The court rejected the franchisee's contention that the system upgrade violated the franchisee's nonrenewal option—finding that the requirement to pay the unamortized cost of the upgrade (if the franchisee chose not to renew) was "fully contemplated and permitted by the unambiguous terms" of the franchise agreement. The court also reaffirmed the ability of a hotel franchisor to enforce liquidated damages, which in this case were calculated as an amount equal to the aggregate royalty fees that had accrued under the franchise agreement for the 36 months preceding termination.