

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

## BLOGS

Fraud/Misrepresentation

# Second Circuit Affirms Ruling in Favor of Hilton on Franchisee Claims Arising Out of Sale of Red Lion Brand

The United States Court of Appeals for the Second Circuit late last month issued its decision on the appeal of a case brought by a franchisee who claimed to have been harmed by Hilton Hotels Corporation's sale of its Red Lion brand. *Century Pacific, Inc. v. Hilton Hotels Corp., et al.*, No 09-0545-cv (2d Cir. Nov. 25, 2009). As reported in Issue 100 of *The GPMemorandum*, a New York federal district court in 2007 had granted summary judgment to the franchisor on the grounds that the franchisee-plaintiff could not show fraudulent intent or reliance. The Second Circuit has now affirmed in a summary order that adopted nearly all of the district court's rationale.

The appellate court did elaborate on the reasons why reliance could not be shown by the plaintiff-appellant in this case. The franchisee, according to the Second Circuit, knew at the time it bought the franchise that the Red Lion brand might be sold. The franchisee went so far as to attempt to protect against that possibility by asking the defendants to forfeit their right to sell the brand in at least the near future, but no such agreement was obtained. Instead, the franchisee purported to have relied on oral representations that no sale was presently intended. Having been aware of the chance the brand could be sold, the plaintiff's failed attempt to obtain protective language rendered reliance on the alleged oral misrepresentation unreasonable as a matter of law. The Second Circuit held that the plaintiff was a "sophisticated party" and knew better than to rely on an oral representation, even if one had been made.