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BLOGS

Duty of Good Faith and Fair Dealing

Settlement Agreement Does Not Give Rise to Heightened Duties of Loyalty and Good Faith

The Texas Court of Appeals recently held, in part, that a settlement agreement between a franchisor and franchisee containing “best efforts” and “reasonable assurances” clauses did not create heightened duties of candor, loyalty, and good faith in their subsequent dealings. *Whataburger, Inc. v. Whataburger of Alice, Ltd.*, 2017 WL 2664437 (Tex. App. June 21, 2017). The franchisor, Whataburger, and the franchisee, Whataburger of Alice (“WOA”), were parties to various franchise agreements. They later entered into a settlement agreement under which Whataburger purchased twenty-eight of WOA’s franchised restaurants, and WOA was granted the exclusive right to construct, operate, and develop Whataburger restaurants in three counties in Texas. When WOA sought to open a new Whataburger restaurant at a specific location in its exclusive territory, Whataburger conditioned approval for the location on WOA modifying the royalty structure in the settlement agreement and its existing franchise agreements. WOA sued, and the parties moved for summary judgment.

Relying on “best efforts” and “reasonable assurances” clauses in the settlement agreement, WOA argued and the lower court found that Whataburger owed WOA a duty of candor, loyalty, and good faith, and that Whataburger was in breach of that duty in conditioning approval of WOA’s new location on modifications to its existing agreements. Whataburger appealed, and the Texas Court of Appeals reversed. The appellate court reasoned that under Texas law the franchisor-franchisee relationship does not give rise to heightened duties, and the purpose of the “best efforts” and “reasonable assurances” clauses in the settlement agreement was to ensure that all obligations under the agreement were performed and the sale of assets was completed. Accordingly, Whataburger did not owe WOA heightened duties of candor, loyalty, and good faith.

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