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## BLOGS

### Damages

# Texas Appeals Court Holds Franchisor Not Entitled to Award of Fees in Enforcing Noncompete Agreement That Was Reformed

A franchisor that successfully enforced its franchisees' covenants against competition was recently prevented by the Texas Court of Appeals from recovering its legal costs of enforcement. *Franlink, Inc. v GJSM Unlimited, Inc.*, 2013 Tex. App. LEXIS 5118 (Tex. Ct. App. Apr. 25, 2013). Franlink, the franchisor, had sued its former franchisees for injunctive relief to prevent the breach of a noncompete provision in their franchise agreements. The trial court granted the injunction, but denied its request for attorneys' fees. The dispute on appeal centered on whether Franlink was entitled to recover fees even though the trial court had reformed Franlink's noncompete provision, by narrowing its geographic scope, before enforcing it against the former franchisees. Franlink argued that it was entitled to fees as the prevailing party under the Texas Civil Practice and Remedies Code, and that the legislative intent of removing barriers to the enforcement of noncompete clauses, combined with the plain language of the Texas Covenant Not to Compete Act, supported its entitlement to attorneys' fees.

The court of appeals disagreed, and held that the Covenant Not to Compete Act precluded an award of attorneys' fees where a court reforms a disputed noncompete covenant. The court based its decision on a close reading of the act, reasoning that it was clear that the legislature intended to permit the recovery of attorneys' fees only in the context of a personal-services agreement, where a promisor (such as the franchisees) satisfies certain evidentiary requirements defending against enforcement of an unreasonable noncompete covenant. The court also noted that a party seeking to enforce an unreasonable noncompete covenant that must be judicially reformed is exclusively limited to injunctive relief, and may not obtain attorneys' fees.

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