

**BLOGS**

Breach of Contract

Texas Appellate Court Holds Franchisor Did Not Waive Nonpayment Claims

An appellate court in Texas recently affirmed an award of damages to a franchisor on its claims to recover unpaid amounts under a franchise agreement and sublease. *Beach Street Foods, Inc. v. Grandy's, LLC*, 2022 WL 187988 (Tex. Ct. App. Jan. 20, 2022).

An appellate court in Texas recently affirmed an award of damages to a franchisor on its claims to recover unpaid amounts under a franchise agreement and sublease. *Beach Street Foods, Inc. v. Grandy's, LLC*, 2022 WL 187988 (Tex. Ct. App. Jan. 20, 2022). A franchisee in the Grandy's franchise system—a comfort food franchise concept—sold its franchised restaurant to a third party without first obtaining Grandy's written approval. Thereafter, Grandy's stopped receiving rent and fees under the agreements, and two years later, Grandy's sued the franchisee to recover unpaid amounts. The franchisee sued the third party to whom it had sold the franchised restaurant. After a bench trial, the trial court rendered judgment against the franchisee and the third party, awarding Grandy's damages and attorneys' fees.

The franchisee appealed arguing, among other things, that Grandy's waived its right to enforce the franchise agreement. The franchisee argued that the franchise agreement gave the parties only two years to sue for breach, and Grandy's knew or should have known the facts giving rise to its claim for more than two years. The court, however, disagreed, holding that the franchise agreement's two-year limitations provision excepted claims arising out of the franchisee's failure to pay what it owed Grandy's under the agreement. The court further held that the evidence at trial did not establish that Grandy's knew or should have known that the franchisee had assigned the agreements. The court reasoned that while emails showed Grandy's representatives understood that the third party was running the restaurant, they did not establish that he was doing so as an owner rather than as a manager, and there was no evidence that Grandy's had reason to know that the franchisee sold the restaurant or assigned the agreements to the third party.

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