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## BLOGS

Choice of Law

# Texas Court Requires More Facts Before Deciding Whether State Franchise Act Claims are Barred by Choice of Law Provision

A federal court in Texas has upheld a franchise agreement's choice of Tennessee law but declined to dismiss counterclaims based on other states' franchise laws. *Gigi's Cupcakes, LLC v. 4 Box LLC*, 2018 WL 6068817 (N.D. Tex. Nov. 19, 2018). Gigi's Cupcakes filed suit against various franchisees for enforcement and declaratory relief related to their franchise agreements. In response, the franchisees counterclaimed for breach of contract, fraud, and other claims under the franchise laws of their respective states. In denying the franchisees' original motion to dismiss, the court applied Tennessee law pursuant to the franchise agreement's choice of law provision. The franchisees moved the court to reconsider the choice of law issue, arguing that the application of Tennessee law would be contrary to the public policy of Minnesota, North Dakota, Indiana, and Ohio, where the franchisees were located.

Applying the Restatement (Second) of Conflicts of Laws, the court concluded that the enforceability of the choice of law provision would depend on where the contract was negotiated and performed, the subject matter of the contract, where the parties were located, and where representations about the contract were made, received, and relied upon. Because neither party provided sufficient evidence for the court to make a full inquiry, the court concluded that the franchisees failed to meet their burden of showing that Tennessee law should not apply to the contract and common law claims. The court reserved its ruling on Gigi's motion to dismiss the counterclaims that relied on the various state franchise laws, however, noting that the parties should develop the record before the court determined whether those claims were barred by Tennessee law, or whether the application of Tennessee law would constitute an improper waiver of the benefits and protections of the other states' franchise statutes.

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