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Choice of Forum/Venue

Virginia Federal Court Transfers Case Contrary to Forum Selection Clause

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A federal court in Virginia held void a franchise agreement's forum selection provision and granted a franchisee's motion to transfer the case to California. *JTH Tax, LLC v. Leggat*, 2022 WL 3970197 (E.D. Va. Aug. 31, 2022). Leggat chose not to renew its franchise agreement with Liberty Tax Service, but nevertheless continued operating as a Liberty Tax franchise. Liberty sued to enforce the post-term obligations of the franchise agreement. The franchise agreement contained Virginia choice-of-law and forum selection provisions, but its California state addendum stated that the provision "may not be enforceable under California law" and provided that the California Franchise Relations Act would control in the case of a conflict with the CFRA. Leggat filed a motion to dismiss and, four minutes later, a motion to transfer. Liberty moved to strike the motion to transfer, arguing that it should have been raised in Leggat's first response to the complaint, which was the motion to dismiss. The court denied Liberty's motion to strike and granted the motion to transfer.

Regarding the timing of Leggat's motions, the court found that they were essentially filed simultaneously, such that they could be considered together in spite of Liberty's "hyper-technical" objection. The court then held that the choice-of-law provision, as modified by the California state addendum, adopted the CFRA and its invalidation of out-of-state forum selection provisions. The court therefore applied the four-factor test appropriate to a motion to transfer pursuant to 28 U.S.C. § 1404(a). It accorded some weight to Liberty's choice of forum, and found that access to evidence and the convenience of witnesses and the parties were neutral. In light of California's strong public policy that California franchisees be able to litigate in California, however, the court ultimately granted the motion to transfer.

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