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BLOGS

Fraud/Misrepresentation

Wisconsin Court Rules That Exculpatory Clauses in Parties' Contract Do Not Bar Franchisee From Bringing Misrepresentation Claim

In *C&M Hardware v. True Value Co.*, 2013 Wisc. App. LEXIS 404 (Wisc. Ct. App. May 9, 2013), the appellate court declined to enforce two exculpatory clauses in the parties' Retail Member Agreement. C&M sued True Value for misrepresentations that were allegedly made to induce C&M to become a franchisee. The trial court granted True Value's motion for summary judgment based on the language in two different exculpatory provisions in the parties' contract. The court of appeals reversed the ruling on these misrepresentation claims after determining that the exculpatory language failed to clearly, unambiguously, and unmistakably explain to the franchisee the risks it was accepting, and the form of the exculpatory provisions did not alert the franchisee of the nature and significance of the document being signed.

One of the provisions at issue stated that True Value had made "NO REPRESENTATIONS OR WARRANTIES EITHER EXPRESS OR IMPLIED REGARDING THE PERFORMANCE OF [C&M's] BUSINESS," and the other was a standard integration clause that identified the written contract as the entire and complete agreement between the parties. Under Wisconsin law, an exculpatory clause in a contract must specifically identify the tort that is being disclaimed. The court of appeals concluded that the contract did not clearly indicate that True Value was requiring C&M to waive its right to any tort claims in general, let alone misrepresentation claims in particular. It noted that neither exculpatory provision was sufficiently conspicuous to provide C&M with adequate notice of its nature and significance, since the two disclaimers appeared on separate pages of the contract, but on neither the first nor the last page. The provisions did not have a heading or other feature that would draw attention to them, and were merely two sentences among 35 paragraphs of "often opaque legalese." Based on these deficiencies, the court concluded that the exculpatory clauses were void and unenforceable as against Wisconsin public policy, and it reversed the trial court's summary judgment with respect to C&M's misrepresentation claims.

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