You are receiving this periodical based upon previous specific and general contacts with the Goldstein Law Group regarding franchise law issues. We look forward to keeping you updated on the current trends in franchise court decisions around the country in both state and federal courts.

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Franchisor Competency, Video 4

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"Not in My Territory"

Paul Davis Restoration of S.E. Wisconsin, Inc. v. Paul Davis Restoration of Northeast Wisconsin, 2012 WL 2094353 (Wis. App.).

This case involved two franchisees of Paul Davis Restoration. The Plaintiff ("Southeast"), filed a claim against the Defendant ("Northeast") alleging that Northeast violated their franchise agreement by performing work in Southeast's territory without providing Southeast with proper compensation or notification.

The two franchisees entered into binding arbitration and Southeast was awarded $101,693. When Southeast, however, moved to have the Circuit Court confirm the award one of the franchisees also moved to name an additional Defendant despite the Defendant not being named as part of the binding arbitration. The additional Defendant was the owner of the second franchisee parent-company of Northeast. Southeast sought to hold the additional Defendant, and thus the LLC he operated, personally liable for the money the Northeast franchisee owed.

The Circuit Court instead chose to enter judgment alone against doing the business as designee ("d/b/a"), which is Northeast. The Southeast franchisee then sought garnishment from Northeast and the Circuit Court subsequently ordered the bank holding the additional Defendant and LLC's funds to release said funds to satisfy the judgment. The Northeast franchisee appealed.

The Appeals Court held that if the judgment confirming the arbitration had

Franchise Law – Franchise Discrimination 1:2 - Jeff Goldstein: Franchise Lawyer

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Franchise Discrimination - Video 1 of 2

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Franchise Law: Fraud and Good Faith in Franchise Law

been ordered against the additional Defendant and the LLC rather than just the Northeast franchisee then any assets held under its d/b/a designation could have been garnished to satisfy the judgment. Because, however, the judgment confirming the arbitration award was entered only against the d/b/a designee, a legal non-entity, it was unenforceable. Therefore, the Circuit Court erred by not dismissing the motion.

"Specific Performance of Franchise Agreements"
Husain v. McDonald's Corp., 205 Cal. App. 4th 860, 140 Cal. Rptr. 3d 370 (2012)

The Plaintiff, a restaurant franchisee, who previously acquired a total of twelve restaurant franchises, brought this action against McDonald's seeking an injunction to prevent the franchisor from removing the franchisee from one of its restaurants when the franchise expired. The franchisor, however, had previously applied for a preliminary injunction.

In this case, the Plaintiff franchisee contracted with a third-party franchisor for a transfer of ownership of three McDonald's franchise restaurants. According to the franchise agreements McDonald's must consent to the transfer of ownership. Here, McDonald's consented to the transfer of ownership for two of the restaurants. The heart of the matter here, however, was whether McDonald's made an enforceable promise to the Plaintiff franchisee to extend or rewrite the franchise terms for the three restaurants.

The Plaintiff franchisee argued that the contractual language of the franchise agreement concerning assignment and transfers acts as an enforceable promise to rewrite the franchise agreements to extend the life of the franchise upon McDonald's consent to the transfer. McDonald's claimed that the language constituted only a promise to rewrite the contract for the restaurant location of which McDonald's previously refused to rewrite for the prior franchisee.

Unless McDonald's rewrote the agreements, the Plaintiff franchisee's agreements would run for considerably less time than the usual 20-year agreement and, in fact, were set to expire in only a couple of years. After refusing to rewrite the agreements McDonald's offered to aid the Plaintiff franchisee in the sale of his restaurants. The Plaintiff notified McDonald's of his intention to retain the restaurants and filed for an injunction. The trial court granted the injunction for the franchisee because the trial court found the contract to be ambiguous and further held that the balance of the harms resulting from an error in granting or denying interim injunctive relief weighed strongly in the Plaintiff franchisee's favor. McDonald's appealed.

The Court of Appeal looked to the evidence presented at trial to determine if there was substantial support for the trial court's determination that the Plaintiff was entitled to injunctive relief. McDonald's argued that if it were

Franchise Law – Franchisees' Franchise Termination Damages

"Support, But At A Cost"

Colonial Chevrolet Co., Inc. v. The United States of America, 2012 WL 668503 (Fed. Cl. Feb. 27, 2012)

The Plaintiff franchisees in the case were former owners of Chrysler and GM automobile dealerships. The Plaintiffs sued the United States Government ("Government") for an uncompensated taking of their property rights stemming from the Government's application of the Troubled Asset Relief Program ("TARP").

According to the Plaintiff franchisees, the takings occurred when the Government required GM and Chrysler to terminate the Plaintiffs' franchise dealerships as a condition of obtaining financial assistance through TARP. The Government contended that the Plaintiffs lacked a property interest that could be taken because their franchise agreements were unsecured in the bankruptcy proceeding. Yet, the Court found that while an unsecured creditor cannot argue takings in a bankruptcy court, that rule has no application in the federal court in which the case was brought.

The Plaintiffs argued that the Government used TARP assistance to force its vision for GM and Chrysler upon the companies. The Court recognized the unusual takings argument offered by the Plaintiff franchisees, but noted that there is no set formula for recognizing a taking by the federal government; and for that reason, each case must be determined by the trial court on an ad hoc basis. The Court found that the former automobile franchisees sufficiently alleged a takings claim based on the Government requiring automobile manufacturers' termination of dealerships as a condition of obtaining financial assistance through TARP. Thus, the Court held that the franchisees should be allowed to attempt to prove a taking by the Government.

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forced to allow the Plaintiff franchisee to retain his restaurants that such relief would constitute impermissible specific performance relief under a contract for personal service. The Court of Appeal, however, found that the franchise agreement constitutes a standard form license agreement and that McDonald's did not provide personal services to the Plaintiff franchisee. Rather the Court of Appeal held that McDonald's provided services to customers in a manner strictly controlled by McDonald's.

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"But You Promised..."

AMTX Hotel Corp. v. Holiday Hospitality Franchising Inc., 2:12-CV-035-J, 2012 WL 2053359 (N.D. Tex. June 7, 2012).

In this case, the Plaintiff, AMTX Hotel Corporation ("AMTX"), entered into a 10-year licensing agreement with Defendant Holiday Hospitality Franchising Inc. ("HH"). AMTX claimed that despite meeting all of HH's demands that HH failed to live up to its promise to renew the franchise agreement. Further, AMTX claimed that HH wrongly approved the start of a new franchise in AMTX's territory.

The Court evaluated the licensing agreement, which expressly stated that the license was not renewable. Further, the Court noted that the licensing agreement stated that the license was non-exclusive and that the licensor's right to license the system at any other location was not limited. AMTX, however, did not allege any violation of the agreement. Instead the hotel franchisee argued that the Defendant franchisor breached the implied covenant of good faith and fair dealing. AMTX claimed HH breach the implied covenant by selling AMTX a hotel and then selling other franchises which HH knew would cause AMTX harm. Yet, because the agreement gave HH the express right to license to anyone at anytime there could be no breach of implied covenant of good faith and fair dealing.

Further, the promises that AMTX claimed HH made were clearly inconsistent with the express language of the agreement which stated that the license was not renewable, and thus the language of the contract must be followed.

According to the Court, "[t]he language of the 2002 agreement made it abundantly clear that the notice provisions of the 1992 agreement remained in full force as part of the 2002 agreement. Thus, even though the franchisee demonstrated irreparable harm by showing that unless an injunction issued, its present business would essentially cease to exist, the failure to establish a likelihood of success or serious question going to the merits with a balance of hardship tipping decidedly in its favor required denial of the injunction."

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Thanks for your interest in our Newsletter, and we look forward to answering any questions you might have either on the cases discussed in this issue of Franchise Trends, or on general trends in franchise law.

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