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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FRANCHISE TRENDS

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MCDONALD'S FRANCHISEE WINS PRELIMINARY INJUNCTION PREVENTING TERMINATION

Syed Alihusain v. McDonald's Corporation, Court of Appeal of California, First Appellate District, Division One, April 30, 2012.

Defendants, a franchisor and related parties, appealed orders from the Superior Court of Marin County (California), which granted a preliminary injunction permitting plaintiff franchisees to continue operating three restaurants pending a trial on a contract dispute with the franchisor. The dispute arose out of assignment agreements in which the franchisor previously consented to the previous owners' assignment of their franchise agreements for several restaurants to the franchisees.

The franchise agreements contained language to the effect that the maintenance of a close personal working relationship with the franchisor was the essence of the franchise. The parties disputed whether the franchisor made an enforceable promise to the franchisees to extend the franchise terms for three of the restaurants. The Court held that the remedy of specific performance was available because the franchise agreements were not contracts for the personal services of the franchisees. Thus, the principle that an injunction could not be granted to prevent the breach of a personal services contract was inapplicable. A close personal working relationship does not automatically equate to personal services as defined by law. For a contract to be a personal service contract, there must be a special relationship between the parties or a special knowledge or skill possessed by the party performing, such that no other performance could meet the obligations of the contract. Based on this reasoning, the appeal court affirmed the trial court's ruling which granted a preliminary injunction permitting plaintiff franchisees to continue operating three restaurants pending a trial.

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Franchise Law: Fraud and Good Faith in Franchise Law

Franchise Law – Franchisees' Franchise Termination Damages

BONANZA FRANCHISOR

IT WAS NOT UNLAWFUL FOR JAGUAR TO TERMINATE INCENTIVE PAYMENTS TO FRANCHISEE/DEALER

Jaguar Land Rover North America, LLC, v. Manhattan Imported Cars, United States Court of Appeals for the Fourth Circuit, April 23, 2012.

In a franchise agreement dispute, the United States District Court for the District of Maryland entered summary judgment in favor of the plaintiff, an automobile distributor and franchisor, against the defendant, one of its franchisees. The district court determined that the automobile distributor plaintiff properly suspended certain incentive payments to defendant franchisee under the terms of the parties' agreements. The franchisee appealed.

In total, there were three relevant documents regarding the franchise dispute, including the letter of intent, the performance agreement, and the dealer agreement. Based on the content of the three agreements, and on defendant's conduct (the three agreements were submitted as a "package," and the parties treated the agreements as being part of a single transaction), the appeals court concluded that the integration clause in the dealer agreement did not cancel or supersede the letter of intent or the performance agreement. Accordingly, the court of appeals held that the district court did not err in concluding that the defendant's failure to comply with the Business Builder Program terms permitted the plaintiff to suspend the defendant's Manufacturer's Suggested Retail Price incentive payments.

The Court explained that it reached this conclusion because the parties intended that all three documents remain in effect and be construed and enforced together. Further, the Court ruled that the franchisee defendant's obligation to comply with duties that it freely assumed by the franchise agreement could not constitute a prohibited "requirement" or "coercion" within the meaning of Maryland Unfair Acts and Practices and related statutes merely by seeking to enforce the bargained-for terms of the letter of intent and the performance agreement.

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FRANCHISOR'S ATTEMPTS TO DERAIL FRANCHISEE IN BANKRUPTCY LITIGATION REJECTED BY COURT

In Re: Chicago Investments, LLC, DEBTORS, Chapter 11, United States Bankruptcy Court for the District of Massachusetts, Eastern Division, April 24, 2012.

The bankruptcy debtors, franchisees of fitness centers, proposed a plan of bankruptcy reorganization which provided for continuing operation of the franchise centers variously by the debtors or a designee of their major creditor under a settlement agreement between the debtors and the creditor, and the plan provided for payment of all creditors in full. The debtors' franchisor, however, objected to confirmation of the debtors' plan.

In support of its objection to the continued operation of the franchisee's fitness centers, the franchisor contended that the bankruptcy reorganization plan improperly proposed that there would be an assumption of the franchise agreements, and, according to the franchisor, they could not be assumed. The franchisor also based its objection to the continued operation of the franchise centers on the premise that the financial projections of the debtors in the bankruptcy plan were unrealistic, and also that the plan encroached on the franchisor's rights under the franchise agreements.

The bankruptcy court held that confirmation of the debtors' (franchisees') plan was warranted. In so ruling the Court pointed out that the franchisor's right of first-refusal upon the debtors' transfers of interests in the fitness centers did not preclude an assumption of the franchise agreements since the right of first refusal was a restriction on the debtors' statutory right of assignment which was not binding on the debtors. Further, the Court ruled that the franchisees' settlement agreement between the debtor and the creditor was in the best interests of creditors in resolving several disputes and providing for the creditor's financing of the debtors' reorganization to allow full payment to other creditors.

In confirming the franchisee debtors' plan to affirm the franchise agreements, the Court also relied upon several expert opinions which established that the plan was feasible based on realistic projections of positive cash-flow which would increase over time, and that the

SNAGGED BY DAMAGES LIMITATION IN ITS OWN FRANCHISE AGREEMENT

Bonanza Restaurant Co. v. Wink, Superior Court Of Delaware, Sussex, April 2012.

Plaintiff franchisor and defendant franchisee filed cross motions for summary judgment on damages for breach of several franchise agreements. The franchisor sought damages consisting largely of lost future royalty fees on the breached franchise agreements. The franchisee in the franchise agreements agreed to pay the franchisor in the event of default; however, the damages were limited to one year from the date of the franchise agreements. The franchisee's restaurants closed, and the franchisor terminated all four franchise agreements then seeking payment and performance under the guaranties. The Court held that the purpose of the guaranties was to protect the franchisor in the event of default. The Court agreed with the franchisor that the closing of the restaurants constituted a default and that the closings were the triggering event which called the guaranties into play. In ruling on the damages issue, the Court first pointed out that it was both probable and inevitable that if the restaurants closed, royalty payments would cease. These losses are direct damages and not consequential damages. This is because the damages were due directly under the franchise agreement and did not stem from other non-franchise contracts or relationships. Thus, the waiver of consequential damages in the franchise agreements did not preclude recovery by the franchisor of the claimed damages. Notably, however, the Court found that the damages provisions did not establish payment of future royalty fees, but rather only such payments that by their nature end if a franchise closed. The franchisor was not entitled to those fees because the agreement did not provide for future royalty fees.

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debtors would have sufficient working capital upon emerging from bankruptcy to continue the operations of the franchise fitness centers.

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HARDEE'S NATIONAL SEXUAL AD MIGHT BE BAD TASTE, BUT NOT A VIOLATION OF THE FRANCHISE AGREEMENT

Hardee's Food Systems, Inc., v. Jeffrey T. Hallbeck, United States District Court, E.D. Missouri, February 28, 2012.

A United States District Court for the Eastern District of Missouri held that a fast food franchisor, Hardee's Food Systems, Inc., did not breach the implied covenant of good faith and fair dealing in its franchise agreement with one of its franchisees by broadcasting three sexually provocative television commercials. Under Missouri law, where, as here, a contract assigned a decision to the discretion of one party, the issue is not whether the party made an erroneous decision, but whether the decision is made in bad faith or is arbitrary or capricious so as to amount to an abuse of discretion.

The Hardee's franchisee acknowledged that it was not aware of any case law in which a franchisee survived a motion for summary judgment by its national franchisor on a claim that the franchisor breached the duty of good faith and fair dealing based on the contents of its advertisementss in a national campaign, where the franchisor maintained sole discretion under the contract to control the contents of the advertisementss. There was no evidence from which a jury could find that the challenged conduct of Hardee's was both arbitrary and capricious, opportunistic, or evaded the spirit of the franchise agreement.

Instead, the Court held that the evidence illustrated that Hardee's made a strategic marketing decision and approved the ads at issue in what it believed was in the best interests of the Hardee's brand, which is what the agreement contemplated that Hardee's would do.

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