Non-Signatory Parent Company and Executives Cannot be Compelled to Arbitrate Franchise Dispute Despite Unified Brand Promotion and Overlapping Leadership

Abstract

The United States District Court for the Eastern District of Wisconsin held in *Marcus Corp. v. MKD Investment Holdings, LLC* (July 14, 2026) that non-signatories to a franchise arbitration agreement cannot be compelled to arbitrate based on agency, direct benefits estoppel, or alter ego theories when they maintain corporate separateness and have not sought to enforce the franchise agreement. The court granted summary judgment to Marcus Corporation, Marcus Investments, LLC, and former Verlo Mattress executive Dirk Stallman after finding that franchisee MKD Investment Holdings failed to establish that ordinary principles of contract and agency law permitted compelling these non-signatories into arbitration. The decision may reinforce traditional contract boundaries in franchise disputes and may require franchisees seeking to expand arbitration obligations to non-parties to provide concrete evidence of corporate veil-piercing, direct contractual benefits, or undisclosed principal relationships rather than relying on promotional statements or overlapping corporate governance.

Case Identification and Parties

This case, *Marcus Corp. v. MKD Investment Holdings, LLC*, 2026 U.S. Dist. LEXIS 155293, was decided on July 14, 2026, by the United States District Court for the Eastern District of Wisconsin, with United States Magistrate Judge Stephen C. Dries presiding. The plaintiffs were The Marcus Corporation, a publicly traded company, Marcus Investments, LLC, the holding entity that owned Verlo Mattress, and Dirk Stallman, the former President of Verlo Mattress, all of whom sought a declaratory judgment that they could not be compelled to arbitrate with the defendant. The defendant and counterclaimant was MKD Investment Holdings, LLC, a franchisee that had entered three franchise agreements with Verlo Mattress in 2022 and subsequently filed a demand for arbitration against not only Verlo but also the three non-signatory plaintiffs. The court granted summary judgment to the plaintiffs, holding that MKD failed to establish agency, direct benefits estoppel, or alter ego theories necessary to compel these non-signatories to arbitrate under Wisconsin law and the Federal Arbitration Act.

Factual Background

MKD entered three franchise agreements with Verlo Mattress, a mattress franchisor, in 2022. Marcus Investments owned Verlo, having purchased the company in 2011. The Marcus family, which also controlled the publicly traded Marcus Corporation, maintained overlapping governance across these entities. Greg Marcus and David Marcus served as directors of Verlo since 2011, with David Marcus also serving as President of Marcus Investments since 2006 and Greg Marcus holding leadership positions at Marcus Corp. Stephen Marcus, another family member, served as a Verlo director and had been Chairman of Marcus Corp. since 1962. The franchise agreements each contained arbitration provisions requiring disputes to be resolved through arbitration rather than litigation.

During MKD's franchise recruitment process in 2022, Stallman, then-President of Verlo, made numerous promotional statements to prospective franchisees. At a "Discovery Day" event in Wisconsin for prospective franchisees in June 2022, Stallman stated that Verlo was "financially backed by the Marcus family and their businesses" and that Marcus Investments had purchased Verlo and planned to act as the primary investor. Stallman emphasized the Marcus family's "money and experience behind franchising" and their commitment to growing the Verlo brand nationally. Both Greg and David Marcus attended Discovery Day, introducing themselves as executives of Marcus Corp. and board members of Marcus Investments. Prospective franchisees viewed videos featuring the Marcus brothers discussing their franchise experience and received promotional materials describing the Marcus family's portfolio of upscale hotels and resorts.

The promotional materials MKD received included signs stating that "Verlo mattress is owned by Marcus Investments, a Marcus Family company" and that "the Marcus Family is also a controlling stakeholder in The Marcus Corporation (NYSE, MCS)." Verlo's website and Marcus Investments' website both emphasized the Marcus family's expertise in building businesses and referenced Marcus Investments' 2011 purchase of Verlo. YouTube videos promoted David Marcus and the Marcus family's business-building expertise. These representations created a unified brand image linking Verlo, Marcus Investments, and Marcus Corp. under the umbrella of Marcus family business operations.

The franchise agreements Stallman signed on behalf of Verlo contained specific language limiting personal liability. Section 2.E. provided that officers, directors, employees, and agents of Verlo "act only in a representative capacity, not in an individual capacity" and that all business dealings were "solely between Franchisee and the Company." Section 19.J. stated that "nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto." Neither Marcus Corp., Marcus Investments, nor Stallman individually signed any franchise agreement or arbitration agreement with MKD.

In December 2024, MKD filed a demand for arbitration not only against Verlo but also against Stallman, Marcus Investments, and Marcus Corp. In August 2025, these three non-signatory defendants filed suit in federal court seeking a declaratory judgment that they could not be compelled to arbitrate with MKD. MKD moved to dismiss, arguing an arbitrator should decide the arbitrability question. The court denied that motion in January 2026, and MKD subsequently filed counterclaims that were dismissed. Stallman, Marcus Investments, and Marcus Corp. then moved for summary judgment on their declaratory claim, asserting that no exception to the general rule against compelling non-signatories to arbitrate applied under Wisconsin law.

Procedural History and Current Posture

Prior to the current decision, the court denied MKD's October 2025 motion to dismiss in January 2026, rejecting MKD's argument that an arbitrator rather than the court should decide whether the non-signatories could be compelled to arbitrate. After that ruling, MKD filed counterclaims against the plaintiffs, which the court dismissed in separate orders in early 2026. On March 6, 2026, the plaintiffs moved for summary judgment with supporting briefs, proposed findings of fact, exhibits, and stipulated facts. MKD opposed the motion and separately moved under Federal Rule of Civil Procedure 56(d) to continue summary judgment briefing pending additional discovery into corporate relationships, financial flows, and decision-making authority between the plaintiffs and Verlo.

The court addressed MKD's continuance motion first, denying it based on lack of diligence. MKD had acknowledged in two Joint Rule 26(f) Reports and at a scheduling conference that plaintiffs would file an early summary judgment motion but never objected or raised discovery needs until after briefing commenced. The court found this failure to object waived MKD's discovery arguments, analogizing the situation to cases where parties cannot use

Rule 56(d) motions to challenge schedules they never contested. The court then proceeded to the merits of the summary judgment motion, granting it in full. The holding was that Stallman, Marcus Investments, and Marcus Corp. are not parties to the franchise agreements, are not subject to those agreements, and cannot be compelled to arbitrate with MKD because MKD failed to establish any recognized exception under Wisconsin law permitting non-signatory arbitration.

The Parties' Positions

MKD argued that all three plaintiffs could be compelled to arbitrate under three alternative theories: agency, direct benefits estoppel, and alter ego. Regarding agency, MKD contended that Stallman acted as an undisclosed or unidentified principal when signing the franchise agreements, that Marcus Investments acted through apparent or implied agency in promoting and operating Verlo, and that overlapping officers between Marcus Corp. and Verlo created agency relationships. MKD asserted that the Marcus family members' participation in franchise recruitment, their promotional statements about financial backing, and their shared branding efforts demonstrated agency authority sufficient to bind all plaintiffs to arbitration.

On direct benefits estoppel, MKD maintained that the plaintiffs knowingly exploited the benefits of the franchise agreements by promoting their ownership and experience to induce franchisees, tying their corporate identities and reputations to Verlo's success, and directly benefiting from Verlo's franchise system expansion. MKD characterized the relationship as one where Marcus Investments and Marcus Corp. sought the advantages of franchise growth while avoiding contractual obligations through formal corporate separation. MKD emphasized

Discovery Day presentations, website statements, and promotional materials as evidence that plaintiffs held themselves out as integral to the franchise opportunity MKD purchased.

Regarding alter ego, MKD argued that Marcus Investments and Marcus Corp. exercised complete domination over Verlo through overlapping leadership, shared business strategies, unified marketing, and common operational control. MKD pointed to shared office space, coordinated franchise recruitment, family member involvement across all entities, and representations of unified ownership as demonstrating a virtual abandonment of corporate separateness. MKD contended these facts created genuine disputes of material fact requiring discovery and trial on whether the corporate veil should be pierced to compel arbitration.

The plaintiffs countered that none of these theories applied under Wisconsin law. They emphasized that the franchise agreements expressly disclaimed individual liability for agents and officers and prohibited conferring rights on non-parties. Stallman argued he signed solely in his representative capacity as Verlo's President for a disclosed principal, making him personally not liable under Wisconsin agency law. Marcus Investments and Marcus Corp. argued that parent-subsidiary relationships and overlapping officers do not create agency relationships absent additional evidence of control and authority that MKD could not provide. They stressed that promoting Verlo's backing and expertise did not constitute seeking benefits from the franchise agreements themselves, only indirect benefits from Verlo's general success. On alter ego, plaintiffs demonstrated through undisputed facts that the entities maintained separate financial statements, separate corporate formalities, and distinct legal identities, defeating any claim of complete domination or fraud.

Franchise Agreement Provisions in Dispute

The critical franchise agreement provisions determining this case were Sections 2.E. and 19.J., both of which addressed rights and liabilities of non-signatories. Section 2.E. stated in relevant part: "In all of their dealings with Franchisee, the officers, directors, employees, and agents of the Company act only in a representative capacity, not in an individual capacity, and that this Agreement and all business dealings between Franchisee and such individuals as a result of this Agreement are solely between Franchisee and the Company." This provision created an express disclaimer of individual capacity for anyone acting on Verlo's behalf. The language unambiguously communicated that officers like Stallman, directors like the Marcus family members, and employees of Verlo were shielded from personal contractual liability by clarifying that all franchise obligations ran only between MKD and Verlo as the contracting entity.

Section 19.J. provided an equally clear limitation on third-party beneficiaries and non-party rights: "[N]othing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto." This anti-third-party-beneficiary clause prevented anyone other than MKD and Verlo from claiming rights under the franchise agreements, whether to enforce obligations or to defend against them. The provision foreclosed arguments that Marcus Investments, Marcus Corp., or individual executives could somehow be drawn into the contractual relationship through implied rights or obligations. Together, these two provisions established clear contractual boundaries limiting the franchise agreements to the named signatories and protecting individuals and related entities from personal or derivative liability.

The arbitration provisions in the franchise agreements required disputes to be resolved through binding arbitration rather than litigation. While MKD sought to invoke these provisions against the non-signatory plaintiffs, the agreements contained no language suggesting that the arbitration clause extended beyond the contracting parties or that affiliates, parent companies, or officers could be compelled to arbitrate. The agreements did not incorporate any institutional arbitration rules that might delegate arbitrability questions to arbitrators. The express disclaimers in Sections 2.E. and 19.J. operated as contractual barriers to MKD's attempt to expand arbitration obligations beyond Verlo to related persons and entities who had not signed the agreements or manifested consent to arbitrate.

The Court's Analysis And Resolution Of Issues

The court began its legal analysis by establishing the governing framework under the Federal Arbitration Act and Wisconsin law. Under the FAA, arbitration may be compelled only when three elements are shown: a written agreement to arbitrate, a dispute within the scope of that agreement, and a refusal to arbitrate. Ordinarily, non-signatories cannot be bound to arbitration agreements. However, a non-party may invoke an arbitration clause if ordinary principles of state contract law permit it. Wisconsin recognizes several exceptions including agency, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary, waiver, and estoppel. The court examined each of MKD's three theories under Wisconsin law to determine whether any exception applied.

Agency Theory

On the agency issue, the court applied Wisconsin's three-element agency test requiring manifestation by the principal that the agent shall act for him, the agent's acceptance, and understanding that the principal controls the undertaking. The critical distinction under Wisconsin law is between disclosed and undisclosed principals. An agent signing on behalf of a disclosed principal does not personally bind himself to the contract unless there is clear and explicit evidence of an intention to substitute or add his personal liability. By contrast, an agent signing for an undisclosed or unidentified principal does personally bind himself.

Regarding Stallman, the court found he clearly acted as an agent for a disclosed principal, Verlo. Section 2.E. of the franchise agreements expressly stated that officers act only in a representative capacity, not individually, and all dealings are solely between the franchisee and Verlo. Stallman signed as Verlo's President, and nothing suggested he acted for an undisclosed principal. The court rejected any claim that Stallman could be personally bound, holding that as an agent for a disclosed principal with express contractual protection, he was not subject to the arbitration agreement.

For Marcus Investments, the court found that even assuming it owned Verlo as a parent-subsidiary relationship, this did not create a principal-agent relationship, much less an undisclosed principal scenario. The court emphasized that a subsidiary is not automatically an agent of its parent company, and a mere parent-subsidiary relationship does not create agency or alter ego status between the two. MKD's argument that apparent or implied agency existed failed because statements by Verlo agents were insufficient to create apparent authority without tracing those statements to Marcus Investments' manifestations or control. Moreover, any reliance by MKD would be unreasonable given the express disclaimers in the franchise agreements. The court cited authority holding that anything short of requiring a full showing of accepted agency or contract theory imperils parent corporations and dilutes safeguards for non-signatories.

The court found the relationship between Marcus Corp. and Verlo even more attenuated, noting that overlapping officers and directors do not create an agency-principal relationship.

Mutual benefits from affiliation are insufficient to bind a non-signatory to an arbitration agreement signed by an affiliate. The court rejected apparent agency arguments for Marcus Corp. on the same grounds as for Marcus Investments: MKD could not trace authority to Marcus Corp.'s manifestations, and reliance would be unreasonable given contractual language limiting obligations to Verlo.

Direct Benefits Estoppel Theory

The court next analyzed direct benefits estoppel, which under Wisconsin law requires action or inaction by the party against whom estoppel is asserted, which induces reasonable reliance by the other party to their detriment. In the arbitration context, a non-signatory can be compelled to arbitrate if he knowingly seeks benefits of the contract containing the arbitration clause, but caselaw consistently requires a direct benefit under the contract itself, not merely from the contractual relationship. The court noted that the analysis differs depending on whether a signatory seeks to compel a non-signatory or vice versa.

Here, MKD (the signatory) sought to compel non-signatories who had not themselves sought to enforce the franchise agreements. The court distinguished this from the typical estoppel scenario where a non-signatory plaintiff sues based on a contract containing an arbitration clause and is then estopped from avoiding arbitration. The court applied the framework from a Seventh Circuit franchise case, noting that estoppel requires the non-signatory to obtain benefits from the contract itself, not merely from exploitation of the contractual relationship among the parties. In that precedent, a franchisee's wife who secretly acquired ownership without signing the franchise agreement was estopped from avoiding its non-compete because she obtained the direct benefit of owning and operating the franchise.

The court found MKD's facts fell short of this standard. First, none of the plaintiffs sought to enforce the franchise agreement against MKD. Second, MKD pointed to no actual direct benefit that plaintiffs received from the franchise agreements themselves. Verlo's expansion and any benefit from execution of MKD's franchise agreement could be characterized at most as indirect benefits from the contracting relationship rather than from the agreement itself. Third, equitable estoppel under Wisconsin law requires reasonable reliance, and MKD failed to explain how its reliance on promotional statements could be reasonable given the express contractual language disclaiming liability for non-signatories and limiting the agreements to MKD and Verlo.

Alter Ego and Veil-Piercing Theory

Finally, the court addressed alter ego, which allows piercing the corporate veil to impose liability on parent corporations when conduct demonstrates virtual abandonment of separateness. Under Wisconsin law, veil-piercing requires three elements: complete domination of finances, policy, and business practice such that the entity had no separate mind, will, or existence regarding the transaction; use of that control to commit fraud, wrong, or violation of duty; and proximate causation of injury or unjust loss. Wisconsin courts often consolidate these into two requirements: unity of interest and ownership eliminating separate personalities, and inequitable result if acts are treated as those of the corporation alone.

The court found MKD's evidence insufficient to create a triable question on corporate separateness. On the control element, Wisconsin courts examine corporate formalities and intermingling of finances as significant factors, looking for patterns like using corporate accounts as personal accounts, failing to keep meeting minutes, or using company funds for personal obligations. MKD presented no facts suggesting Marcus Investments or Marcus Corp. failed to maintain corporate formalities or intermingled finances with Verlo. While the entities shared overlapping leadership, Wisconsin law establishes that 100% stock ownership and commonality of directors and officers are not alone sufficient to establish alter ego relationships.

On the fraud or wrong element, Wisconsin law requires some injustice resulting from control, stemming from the defendant's misuse of the corporate form itself. The court noted Wisconsin recognizes injustice in scenarios involving undercapitalization making the entity unable to meet reasonably expected debts, or misleading plaintiffs through corporate structure. MKD's evidence did not demonstrate that Marcus Corp. or Marcus Investments used the corporate form to perpetrate fraud or injustice. Nothing suggested Verlo was undercapitalized or unable to meet obligations. MKD's reliance on promotional statements about Marcus backing did not demonstrate misuse of corporate form, and the court noted these statements were not attributed to Marcus Investments or Marcus Corp. as corporate actors. The court emphasized MKD had not explained why its understanding would be reasonable in light of the corporate relationships and express contractual language limiting obligations to Verlo.

Why The Court Accepted Plaintiffs' Positions

The court sided with the plaintiffs on each theory because MKD failed to overcome fundamental principles of contract, agency, and corporate law that protect non-signatories from being bound to agreements they did not sign. On agency, the court accepted plaintiffs' position because Wisconsin law clearly provides that agents signing for disclosed principals are not personally liable absent explicit evidence of intent to assume personal liability, and the franchise agreements expressly disclaimed such liability. The court found MKD's apparent agency arguments unpersuasive because they could not meet the requirement of tracing authority to the principal's manifestations rather than the agent's statements, and because MKD's reliance could not be reasonable when the contracts explicitly limited liability to Verlo.

The court accepted plaintiffs' direct benefits estoppel arguments because MKD pointed to no direct benefits from the franchise agreements themselves as opposed to indirect benefits from Verlo's general success. The distinction between exploiting the agreement itself versus exploiting the contractual relationship proved dispositive. The court also found fatal MKD's failure to establish reasonable reliance given the express contractual disclaimers. Where promotional materials and Discovery Day presentations emphasized the Marcus family's role, the franchise agreements themselves clearly limited obligations and rights to the named parties.

On alter ego, the court sided with plaintiffs because MKD produced no evidence of the complete domination and fraud or injustice required under Wisconsin's demanding veil-piercing standard. The undisputed facts showed separate financial statements, separate legal entities, and maintenance of corporate formalities. MKD's evidence of overlapping leadership, shared branding, and promotional emphasis on family backing fell far short of the unity of interest and inequitable result Wisconsin law demands. The court emphasized that corporate families are permitted to leverage collective reputations and coordinate business strategies without thereby abandoning corporate separateness for veil-piercing purposes.

Throughout the analysis, the court repeatedly emphasized that MKD's purported reliance on promotional statements and unified branding could not be reasonable in light of the express contractual language limiting the franchise agreements to MKD and Verlo. This contractual clarity provided a complete answer to each of MKD's theories, foreclosing both apparent agency and estoppel claims premised on reasonable reliance. The court also stressed that MKD bore the burden of establishing exceptions to the general rule against compelling non-signatories, and mere speculation or hope for discovery was insufficient.

Potential Significance for Franchisees and Franchisors

This decision may provide important guidance for both franchisees and franchisors regarding arbitration obligations in corporate family franchise systems. For franchisors, the ruling may suggest that parent companies, individual executives, and affiliated entities can participate in franchise marketing and brand promotion without automatically assuming arbitration obligations, provided franchise agreements contain clear limiting language and corporate formalities are maintained. The decision appears to validate the protective value of express contractual disclaimers like those in Sections 2.E. and 19.J., which shield officers from individual liability and prevent third parties from acquiring rights or obligations.

For franchisees, the decision seems to underscore the importance of identifying at the outset all parties the franchisee may wish to hold liable and ensuring those parties sign the franchise agreement or related guarantees. Franchisees who rely on promotional statements about parent company backing or individual expertise should recognize that those representations, standing alone, may not permit compelling non-signatories to arbitrate or otherwise assume franchise obligations. If a franchisee values the ability to pursue claims against affiliates or individuals, the franchise agreement should be structured to include those parties as signatories or the franchisee must obtain separate guarantees or indemnities.

The ruling also may highlight procedural implications for discovery disputes in arbitrability challenges. Franchisees seeking to compel non-signatories can potentially diligently pursue discovery regarding corporate relationships, financial flows, and control mechanisms from the outset rather than waiting until after summary judgment briefing commences. The court's denial of MKD's Rule 56(d) continuance motion based on lack of diligence may demonstrate that courts will not permit parties to sandbag discovery needs where scheduling expectations were clear.

More broadly, the decision may suggest that arbitration remains strictly a matter of consent under the FAA and Wisconsin law. The policy favoring arbitration may not override the fundamental requirement that parties must agree to arbitrate. Non-signatories enjoy presumptive protection from arbitration obligations, and parties seeking to overcome that presumption may need to satisfy rigorous agency, estoppel, or veil-piercing standards with concrete evidence rather than promotional materials or corporate affiliation.

Comparison with Other Jurisdictions

Wisconsin's approach to compelling non-signatories to arbitrate, as applied in this decision, seems to align with the mainstream position in most federal circuits and state courts but appears to differ in important respects from approaches in certain other jurisdictions. The requirement that an agent signing for a disclosed principal is not personally bound absent explicit evidence of personal liability assumption may reflect settled Wisconsin law and seems to correspond to the majority rule across American jurisdictions. Similarly, Wisconsin's demanding alter ego standard requiring complete domination plus fraud or wrong may mirror the corporate veil-piercing requirements in most states, though some jurisdictions employ more lenient standards.

The court's direct benefits estoppel analysis requiring actual benefits from the contract itself rather than the contractual relationship appears to follow Seventh Circuit precedent and may represent the majority approach. However, some jurisdictions have applied more expansive equitable estoppel doctrines. California courts, for example, have seemingly permitted compelling non-signatories to arbitrate when claims are intimately founded in and intertwined with the underlying contract, even when the non-signatory has not sought direct benefits from that contract. The Second Circuit may have similarly recognized equitable estoppel in circumstances where claims depend on the existence of the contract containing the arbitration clause, potentially permitting a broader application than Wisconsin allows.

Other circuits have developed the "direct benefits" test with varying degrees of rigor. The Fourth Circuit appears to apply a direct benefit test when a signatory seeks to compel a non-signatory, asking whether the non-signatory is seeking or receiving a direct benefit from the contract containing the arbitration clause. This formulation appears consistent with Wisconsin's approach as applied here. New York courts seem to distinguish between direct benefits (those traceable to the agreement itself) and indirect benefits (those exploiting the contractual relationship), with only the former supporting estoppel, potentially mirroring the distinction this court drew.

Some jurisdictions have also grappled with whether incorporation of institutional arbitration rules creates clear and unmistakable evidence of delegation of arbitrability questions to arbitrators. The Ninth Circuit has held that incorporation of JAMS or AAA rules constitutes clear and unmistakable evidence of intent to arbitrate arbitrability. Other circuits have found that carve-outs or limitations in arbitration clauses create ambiguity defeating delegation even when institutional rules are incorporated. Wisconsin's approach in this case, where the franchise agreements did not incorporate institutional rules and the court decided arbitrability without extended analysis of delegation, seems to avoid this complexity but may leave open how Wisconsin courts would handle delegation questions in cases with rule incorporation.

The decision's potential emphasis on contractual language expressly disclaiming individual liability and third-party rights may find strong support across jurisdictions. Courts seem to uniformly enforce clear contractual limitations on who may be bound by agreements, and may express anti-assignment or anti-third-party-beneficiary clauses receive significant weight in arbitrability determinations. The court's analysis here may represent straightforward application of bedrock contract principles rather than any distinctively Wisconsin approach.

Law and Economics Perspective

From a law and economics perspective, this decision may promote efficient contracting and may reduce transaction costs in franchise relationships by enforcing clear contractual boundaries and respecting corporate separateness. The ruling may create incentives for parties to specify precisely who bears obligations and liabilities at the formation stage rather than litigating those questions later when disputes arise, reducing ex post uncertainty and litigation costs. By enforcing the franchise agreements' express disclaimers limiting liability to Verlo, the court appears to have validated parties' ability to allocate risks through contract design, enabling efficient risk pricing and reducing the need for costly over-insurance against remote contingencies.

The decision also seems to address information asymmetries and agency costs in corporate family franchise systems. Franchisees may face information disadvantages regarding the internal relationships and financial flows among affiliated entities when evaluating franchise opportunities. MKD's discovery requests seem to have sought precisely this internal information about corporate governance, compensation structures, and strategic control. By permitting franchisors to maintain corporate separateness through contractual disclaimers and formal organizational structures, the decision may reduce the costs franchisors would otherwise face in managing internal corporate relationships to avoid inadvertent liability exposure. This efficiency gain can benefit franchisees through lower franchise fees and reduced contractual complexity. However, the decision also may create potential costs for franchisees who relied on promotional representations about corporate backing and later discover those representations confer no enforceable rights against the promoting entities, potentially exacerbating information asymmetries.

The court's approach may incentivize optimal investment in contracting rather than in ex post litigation by making clear that promotional materials and brand marketing cannot override express contractual limitations. This can channel parties toward negotiating comprehensive agreements addressing liability and dispute resolution at formation, when information costs are lower and parties can efficiently allocate risks. The denial of MKD's discovery continuance motion under Rule 56(d) further may promote efficiency by preventing parties from imposing discovery costs without prior diligent investigation, reducing wasteful fishing expeditions. Overall, the decision seems to promote transactional certainty and may lower expected dispute resolution costs by making contractual boundaries clear and enforceable, though at the potential cost of leaving franchisees bearing risks from representations that exceed contractual commitments.

Final Disposition

The United States District Court for the Eastern District of Wisconsin granted summary judgment to plaintiffs The Marcus Corporation, Marcus Investments, LLC, and Dirk Stallman, holding that none of the three recognized exceptions MKD Investment Holdings invoked — agency, direct benefits estoppel, or alter ego — were sufficient under Wisconsin law to compel these non-signatories to arbitrate. The court held that Stallman signed the franchise agreements solely in his representative capacity as a disclosed principal's agent, that neither Marcus Investments nor Marcus Corp. received direct benefits from the franchise agreements themselves as opposed to indirect benefits from Verlo's general operations, and that MKD produced no evidence of the complete domination and fraud or injustice required to pierce the corporate veil under Wisconsin's veil-piercing standard. The court also denied MKD's motion to continue summary judgment briefing for additional discovery, finding that MKD had waived its discovery objections by failing to raise them despite prior notice that plaintiffs would file an early summary judgment motion.