



Lessons Learned

A continuing column drawing lessons for franchise systems from franchise litigation and other sources.

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California Law Applied to Protect California Franchisees, In Spite of Florida Choice of Law Clause

In any dispute between a Franchisor and a Franchisee, the question of what state's laws apply can be critical; if the law of a state such as California (which has highly pro-Franchisee laws) controls, then the Franchisee may be in an advantageous position in any dispute.

For that reason, Franchise Agreements regularly specify the applicable law, often choosing the law of a state that may not have such pro-Franchisee legislation and court rulings. But will that clause in the Franchise Agreement actually control, if the Franchisees are residents of a state with pro-Franchisee laws?

A recent case decided by a Federal trial court sitting in California (Burgo v. Lady of America Franchise Corp.), not surprisingly, held that it did not and that California's fundamental public policies, as embodied in the California Franchise Investment Law, mandated that California law be applied, even though the franchise agreements at issue contained clauses selecting Florida law as controlling. What was critical in this case was that all of the plaintiff Franchisees were California residents and that each of the franchised businesses were located there.

It remains true that using a "choice-of-law" clause selecting the law of a state with less pro-Franchisee laws often makes sense. For example, a Franchisor located in a state with pro-Franchisee laws (such as California, Wisconsin or others) should almost never select those laws as applicable and should, if at all possible, select the laws of a state with more pro-Franchisor laws. Voluntary specification of California law as applying would automatically have the effect of giving non-California receive the benefits of pro-Franchisee laws.

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At the same time, the case is a reminder that even the best drafted Franchise Agreements may sometimes be trumped by the laws and policies of the states where Franchisees are located.

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