Deborah Coldwell, Sally Dahlstrom, Iris Gibson, Taylor Rex Robertson Author 'Franchise Law' Article in SMU Annual Texas Survey

By Deborah S. Coldwell | September 5, 2019

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In a “Franchise Law” article published in the *SMU Annual Texas Survey*, Haynes Boone Partner Deborah Coldwell, Counsel Iris Gibson, and Associates Sally Dahlstrom and Taylor Rex Robertson write about select cases and offer valuable insights into the state of franchise law in Texas.

Here is an excerpt:

I. Introduction

Texas courts continue to define the boundaries of franchise law with decisions regarding procedure, enforcement of contractual terms, intellectual property, common law and statutory claims, and remedies. Cases during this survey period address a range of pertinent topics from the field of franchise law, such as Texas courts’ willingness to enforce choice-of-law and arbitration provisions in franchise agreements, burdens of proof for parties seeking injunctive relief, hurdles facing claimants under the Texas Deceptive Trade Practices Act (DTPA), and many other important developments. This survey’s selected cases and analyses will provide practitioners with valuable insights into the current state of franchise law in Texas.

II. Procedure

A. Choice-of-Law

Courts in Texas continue to enforce choice-of-law provisions in franchise agreements. In *Gigi’s Cupcakes, LLC v. 4 Box LLC*, the U.S District Court for the Northern District of Texas applied the franchise agreements’ Tennessee choice-of-law provision despite certain franchisees’ arguments that the provision was invalidated by their respective states’ franchise relationship laws. In Gigi’s, franchisees from Minnesota, North Dakota, Indiana, and Ohio argued that the application of their franchise agreements’ Tennessee choice-of-law provision would violate the public policies of those states. Specifically, the franchisees argued that because those states had franchise relationship laws that afforded them greater protection than Tennessee law and because they were deprived of some of the benefits of the application of those franchise relationship laws, the choice-of-law provision must be invalidated.

The district court emphasized that in Texas, choice-of-law agreements are enforceable. In order to render the choice-of-law provision unenforceable, the franchisees had the burden to show that Tennessee law: (1) had no substantial relationship to the parties’ transaction or other reasonable basis for application; or (2) that the application of Tennessee law was: contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of [Restatement (Second) Conflict of Laws] § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.5

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The franchisees argued that the choice-of-law provision violated the public policies of their respective states. The district court then analyzed whether: (1) the franchisees' states had a more significant relationship

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