CASE ALERT: *Atlantic Marine Construction Company v. United States District Court* – The Beginning of the End of the California Franchise Relations Act?

For the first time in more than two decades, the United States Supreme Court addressed a seemingly simple question which is central to modern commerce—what is the proper standard under Federal law for enforcing a forum selection clause? In an unanimous decision, the Supreme Court reaffirmed that a forum selection clause may be enforced by a motion to transfer, and that contractual forum selection clauses should be enforced unless "extraordinary circumstances" disfavor a transfer. While this case did not address the California Franchise Relations Act directly, it may nevertheless have the effect of rendering impotent the Franchise Relations Act's treatment of forum selection clauses.

In *Atlantic Marine Construction Company v. United States District Court* (Case No. 12-929, 2013 BL 333527 (U.S. Dec. 03, 2013)), Atlantic Marine and J-Crew entered into a contract for construction on a military base in Texas. The contract contained a forum selection clause requiring that any litigation between the parties be venued in the Eastern District of Virginia. A dispute arose between the parties, and J-Crew (a Texas company) filed suit in the Western District of Texas. Atlantic Marine filed a motion to transfer, pursuant to 28 U.S.C. § 1404(a), but the Fifth Circuit refused, based on an analysis of the "convenience of the witnesses" to the litigation. In short, the Fifth Circuit reasoned that because the parties and the witnesses were all located in Texas, and because the contract involved work to be performed in Texas, it was improper to transfer the case to Virginia, notwithstanding the agreed upon forum selection clause.

The Supreme Court disagreed. The Supreme Court explained that in the absence of a contractual forum selection clause, the proper analysis is to look to the convenience of the respective parties and consider the private and public interests of litigating the case in a given venue. This is the analysis mandated by 28 U.S.C. § 1404(a), as well as the Supreme Court's earlier decision in *Stewart Organization, Inc. v. Ricoh Corp.* (1988) 487 U.S. 22. However, this "convenience" test does not apply when a contract contains a forum selection clause. In those situations, where the parties have contracted to establish the forum for any litigation, forum selection clauses should be enforced, barring the existence of "extraordinary circumstances unrelated to the convenience of the parties." No such "extraordinary circumstances" were present in the *Atlantic Marine* case.

The Supreme Court's decision in the *Atlantic Marine* case is vitally important for franchisors and franchisees doing business in California. Traditionally, California franchisees have relied upon California's Franchise Relations Act in order to protect them from franchisors invoking forum selection clauses requiring that disputes related to the franchisor-franchisee relationship be litigated outside of California. California Business & Professions Code § 20040.5 provides that forum selection clauses in franchise agreements which restrict venue to a forum outside of California are unenforceable. The Supreme Court in *Atlantic Marine* takes a contrary position, which, on its face, establishes that forum selection clauses, that provide for a forum outside of California, presumptively enforceable.

The effect of *Atlantic Marine* on California franchisees is potentially exacerbated by a recent case in the Eastern District of Pennsylvania, *Maaco Franchising, inv. V. Richard O. Tainter and Diane E. Tainter* (Case No. 12-5500, June 6, 2013). In

Maaco, the Court addressed California's Franchise Relations Act and its restriction on the enforceability of forum selection clauses.[1] In so doing, the *Maaco* Court held that California's acknowledged "strong public policy" against having its franchisees be subject to out-of-state forum selection clauses was irrelevant when the case was first filed outside of California. The proper question concerned the policy of the state in which the case was actually filed. In *Maaco*, Pennsylvania (the jurisdiction in which the case was filed) did not prohibit the enforcement of forum selection clauses, and the *Maaco* court concluded that California's prohibition therefore did not apply.

The combined effect of *Atlantic Marine* and *Maaco* on California franchisees and franchisors is that notwithstanding the California Franchise Relations Act, Federal Courts appear likely to enforce forum selection clauses against California parties which mandate an out-of-California forum for the litigation of any disputes arising between the parties to an agreement containing such a clause. The combination of *Atlantic Marine* and *Maaco* represents a significant victory for franchisors hesitant to litigate disputes with their franchisees in California courts and may mark the beginning of the end of the California Franchise Relations Act. These decisions will also require that California franchisees give careful consideration to the forum selection clauses, which had historically been largely disregarded and not considered a significant fact in the analysis of California franchise agreements.

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[1] See Buchman Provine Brothers Smith Case Alert on *Maaco Franchising, Inc. v. Painter* (http://www.bpbsllp.com/showAlert.aspx?show=518)