
ALERT – California’s Prohibition of Out-of-State Forum Selection Clauses in Franchise Agreements is Alive and Well

A California District Court ruling in *Frango Grille USA, Inc. v. Pepe’s Franchising Ltd.* provides a certain amount of comfort to California franchisees that any disputes with foreign franchisors will be venued in California. By doing so, the *Frango* Court managed to work around a recent United States Supreme Court ruling which held that contractual forum selection clauses would be enforced under Federal law in all but the most extraordinary circumstances. The *Frango* decision is a victory for California franchisees, and should serve as a warning to foreign franchisors that they will have to litigate disputes with California franchisees in California.

In January 2014, we issued an [Alert](#) advising that the United States Supreme Court in *Atlantic Marine Construction Company v. United States District Court* finally provided clarification as to the proper standard under Federal law for enforcing a forum selection clause. In *Atlantic Marine*, the Supreme Court held that a contractual forum selection clause will be enforced barring “extraordinary circumstances unrelated to the convenience of the parties.” The *Atlantic Marine* decision was of particular interest to franchisors and franchisees doing business in California, because it appeared to directly contradict California’s statutory prohibition of forum selection clauses in franchise agreements which restrict venue in a forum outside of California.

In *Frango*, *Frango Grille USA, Inc.*, a business operating in California, entered into a master franchise agreement (the “Agreement”) with Pepe’s Franchising Limited, an English company, to open franchises in California. The Agreement contained a forum selection clause which provided that any disputes would be governed by English law, and venued in England. The Agreement quickly fell

apart, and *Frango* sued Pepe’s in California District Court, alleging violations of the California Franchise Investment Law and fraud. Pepe’s filed a motion to dismiss and sought to move the matter to London. The *Frango* Court denied the motion, after analyzing *Atlantic Marine*, on the ground that the case did not apply because the forum selection clause was presumptively invalid pursuant to the California Franchise Relations Act.

In July, the apparent contradiction between the California Franchise Relations Act and *Atlantic Marine* was addressed in *Frango*. The *Frango* Court avoided the *Atlantic Marine* decision altogether by holding that it was inapplicable because a contractual forum selection clause is presumptively invalid in California, and therefore the *Atlantic Marine* analysis cannot apply. Of note, the *Frango* Court also held that the California Franchise Relations Act applies to “any claim arising under or relating to a franchise agreement involving a franchise business within [California],” regardless of whether a specific cause of action for violation of the California Franchise Relations Act is alleged.

The *Frango* decision, if upheld, represents a significant victory for California franchisees, as it increases substantially the chance that any dispute with a foreign franchisor will be venued in California. California’s home field advantage for California franchisees is alive and well. Franchisors should not be disheartened, however, as they may find some solace in *Frango*, for the simple reason that it provides a degree of certainty that disputes with California franchisees will be venued in California, barring the most exceptional of circumstances.

The *Frango* decision provides further reason for California franchisors and franchisees to obtain California counsel to review thoroughly their franchise agreements and determine whether or not an out-of-state forum selection clause is compliant with and enforceable under *Frango*, *Atlantic Marine* and California law.

For additional Alerts on franchisor/franchisee law, see:

[Alert - Musavi v. Burger King Corporation— Questioning the Enforceability of Out-Of-State Forum Selection Clauses in Franchise Agreements](#)

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