

727 Fed.Appx. 360 (Mem)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.

United States Court of Appeals, Ninth Circuit.

JACK IN THE BOX, INC., a Delaware corporation, AKA Foodmaker, Inc., Plaintiff-Appellee,

v.

Deepak MEHTA, an individual; et al., Defendants-Appellants.

No. 17-15336

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Submitted June 12, 2018 * San Francisco, California

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Filed June 18, 2018

Appeal from the United States District Court for the Northern District of California, Edward J. Davila, District Judge, Presiding, D.C. No. 5:13-cv-04444-EJD

Attorneys and Law Firms

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Before: SILER, ** PAEZ, and IKUTA, Circuit Judges.

*361 MEMORANDUM ***

Kirin and Deepak Mehta appeal the district court's grant of summary judgment in favor of Jack in the Box on its breach of contract, trademark infringement, and unfair competition claims as well as on the Mehtas' counterclaims against Jack in the Box. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

Taking the facts in the light most favorable to the Mehtas, see *Frudden v. Pilling*, 877 F.3d 821, 828 (9th Cir. 2017), there is no genuine issue of material fact regarding whether the parties entered into an oral modification of their contract. No reasonable juror could conclude from Kirin Mehta's testimony or Stephen Brigandi's letter to Bank of America that Jack in the Box intended to modify the franchise and lease agreements, rather than merely communicate its expectations for repayment. See *Cal. Civ. Code § 1550*. Nor could any reasonable juror conclude that Jack in the Box waived the franchise agreement's express provision that the agreement could be modified "only in writing, signed by both parties." See *Biren v. Equal. Emergency Med. Grp., Inc.*, 102 Cal. App. 4th 125, 141, 125 Cal.Rptr.2d 325 (2002). Therefore, the district court did not err in granting summary judgment in favor of Jack in the Box on both its breach of contract claim and the Mehtas' breach of contract counterclaim.

The district court also did not err in granting summary judgment to Jack in the Box on the Mehtas' promissory estoppel counterclaim, given the Mehtas' failure to raise a triable issue regarding whether Jack in the Box had clearly and unambiguously promised to modify the franchise agreement. See *Garcia v. World Sav., FSB*, 183 Cal. App. 4th 1031, 1044, 107 Cal.Rptr.3d 683 (2010). Because the Mehtas base their trademark infringement and unfair competition claims on their theory that Jack in the Box had modified and extended the franchise agreement, we likewise affirm the grant of summary judgment to Jack in the Box on these claims.

We reject the Mehtas' claims regarding Jack in the Box's alleged accounting deficiencies. The record shows that Jack in the Box applied the Mehtas' \$180,000 payment to the balance due on the 2012 Note, as allowed by the franchise agreements. Likewise, the record shows that the Mehtas' debt to Jack in the Box under the franchise agreement increased each month due to the accrual of monthly rent, royalty fees, and marketing payments. Accordingly, Jack in the Box did not err in demanding a larger amount in September 2013 than in August 2013. Because the Mehtas' debt had increased pursuant to the terms of the franchise agreement, the district court did not err in rejecting the Mehtas' counterclaim for negligent interference with contract and economic advantage.

Because the Mehtas were represented by counsel when they signed the General Release in 2012 and have not presented any evidence that the negotiations regarding the release were marked by coercion or grossly manipulative behavior, *see Starr v. Starr*, 189 Cal. App. 4th 277, 284, 116 Cal.Rptr.3d 813 (2010), there is no genuine issue of material fact as to the release's enforceability.

*362 Finally, because Jack in the Box had no obligation to give the Mehtas invoices or more time to cure the default, the district court did not err in granting summary judgment to Jack in the Box on the Mehtas' counterclaim for breach of the implied covenant of good faith and fair dealing. *See Racine & Laramie, Ltd. v. Dep't of Parks & Recreation*, 11 Cal. App. 4th 1026, 1031, 14 Cal.Rptr.2d 335 (1992).

AFFIRMED.

All Citations

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Footnotes

- * The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.
- ** The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.
- *** This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).