2021 WL 3557744
Only the Westlaw citation is currently available.
United States District Court, C.D. California.

PINNACLE FOODS OF CALIFORNIA, LLC
v.
POPEYES LOUISIANA KITCHEN, INC.

Case No. 2:21-cv-02050-SVW-SK
|
Filed 04/21/2021

Attorneys and Law Firms

Allard C. Chu, Filemon Carrillo, James M. Mulcahy, Mulcahy LLP, Irvine, CA, Joseph J. Gigliotti, Gigliotti and Gigliotti, Lake Forest, CA, for Pinnacle Foods of California, LLC.

Gregg D. Zucker, Foundation Law Group LLP, Los Angeles, CA, Aaron Blynn, Pro Hac Vice, Michael D. Joblove, Pro Hac Vice, Genovese Joblove and Battista PA, Miami, FL, for Popeyes Louisiana Kitchen, Inc.

Proceedings: ORDER GRANTING MOTION TO TRANSFER [8]

STEPHEN V. WILSON, U.S. DISTRICT JUDGE

I. Introduction

***1** Before the Court is a motion to transfer to the U.S. District Court for the Southern District of Florida pursuant to a forum-selection clause. For the reasons stated below, the motion is GRANTED.

II. Factual and Procedural Background

Plaintiff Pinnacle Foods of California, LLC is a franchisee of Defendant Popeyes Louisiana Kitchen, Inc. Dkt. 1, Ex. 1 ("Compl.") ¶¶ 25-26. Plaintiff owned a successful Popeyes franchise in San Diego beginning in 2015. *Id.* ¶ 26. Defendant sent Plaintiff a proposal inviting Plaintiff to expand his franchise business into other areas in California. *Id.* ¶¶ 27-28.

Plaintiff acquired five restaurants near Fresno and Bakersfield and entered into a Development Agreement in February 2019 to develop new locations in the area. *Id.* ¶¶ 29, 32. The Development Agreement granted Plaintiff an exclusive right to develop ten additional locations around Fresno and Bakersfield over a four-year period. *Id.* ¶ 30. The Agreement provided that Plaintiff would submit proposals for the new sites and Defendant would approve the proposals "applying standards consistent with ... other comparable market areas." *Id.* ¶ 31.

Crucially, new franchises opened under the Development Agreement would be governed by their own Franchise Agreements rather than by the terms of the Development Agreement itself. *See* Declaration of Bryan Saul, Dkt. 8-1, Ex. 1 ("DA") § 1.03 ("Each Franchised Unit for which a development right is granted hereunder shall be established and operated pursuant to a Franchise Agreement to be entered into between Developer and Franchisor ....").

Plaintiff alleges that, after entering into the Development Agreement, Defendant's business calculus shifted, and for that reason Defendant sought to terminate the Development Agreement. *Id.* ¶¶ 36-40. Plaintiff refused to accept Defendant's offer to terminate, and Plaintiff instead began submitting site proposals consistent with the Agreement's timeline. *Id.* ¶¶ 41-43.

Plaintiff's submissions were rejected, but Plaintiff contends Defendant was not applying appropriate standards. *Id.* ¶ 65. Plaintiff also contends that Defendant pretextually found Plaintiff in default of the Development Agreement by inaccurately asserting that Plaintiff's existing franchise locations failed to meet performance standards. *Id.* ¶¶ 49-55.

Plaintiff brings claims for breach of contract, violations of the California Franchise Relations Act ("CFRA"), Cal. Bus. & Prof. Code, § 20000 et seq., and violations of the Unfair Competition Law ("UCL"), *id.* § 17200 et seq. Compl. ¶¶ 62-109.

The Development Agreement provides that "any action brought by Developer against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business." DA § 15.03. Defendant has its principal place of business in Miami, Florida. Compl. ¶ 16.

Invoking this provision, Defendant seeks to transfer this case to the U.S. District Court for the Southern District of Florida under 28 U.S.C. § 1404(a). Dkt. 8 ("Mot.").

III. Legal Standard

***2** Under 28 U.S.C. § 1404(a), "[f]or the convenience of parties, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented."

"When the parties have agreed to a valid forum-selection clause, a district court should ordinarily transfer the case to the forum specified in that clause." *Atlantic Marine Constr. Co., Inc. v. United States Dist. Ct.*, 571 U.S. 49, 62-63 (2013). "A valid forum-selection clause should be given controlling weight in all but the most exceptional cases." *Id.* at 63 (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 31 (1988) (Kennedy, J., concurring)).

"[T]he party seeking to avoid a forum selection clause bears a 'heavy burden' to establish a ground upon which [courts] will conclude the clause is unenforceable." *Doe 1 v. AOL LLC*, 552 F.3d 1077, 1083 (9th Cir. 2009) (citation omitted).

A forum-selection clause may be unenforceable in the following circumstances: (1) if the inclusion of the clause in the agreement was the product of fraud or overreaching; (2) if the party wishing to repudiate the clause would effectively be deprived of his day in court were the clause enforced; and (3) if enforcement would contravene a strong public policy of the forum in which suit is brought. *See Petersen v. Boeing Co.*, 715 F.3d 276, 280 (9th Cir. 2013) (citation omitted).

IV. Application

a. Enforceability of Forum-Selection Clause

Plaintiffs argue that the forum-selection clause is unenforceable under a strong public policy of California protecting franchisees. Although California public policy certainly protects franchisees from enforcement of forum-selection clauses in some agreements, as explained below, the Court concludes that this public policy does not clearly extend to the claims raised by Plaintiff in this case.

The enforceability of a forum-selection clause under 28 U.S.C. § 1404(a) is a question of federal law. *See Doe 1*, 552 F.3d at 1083 ("We apply federal law to determine the enforceability of [a] forum selection clause." (citation omitted)). While the public policy of a forum may preclude enforcement in limited cases, that public policy is considered within the context of governing federal law. *See Stewart Org., Inc.*, 487 U.S. at 31 (state law regarding forum-selection clauses cannot "exist side by side ... each controlling its own intended sphere of coverage without conflict" (citation omitted)). A state law precluding enforcement of a forum-selection clause runs up against a "strong federal policy in favor of enforcing forum-selection clauses." *Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081, 1090 (9th Cir. 2018); *see also Richards v. Lloyd's of London*, 135 F.3d 1289, 1293 (9th

Cir. 1998) (en banc) (noting that "the Supreme Court contemplated that a forum selection clause may conflict with relevant statutes." (citing *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972))).

Consequently, "the plaintiff must point to a statute or judicial decision that *clearly* states such a strong public policy." *Sun*, 901 F.3d at 1090 (citations omitted) (emphasis added). Although strength is a vague term, the key measure of the strength of a state policy appears to be its specificity. The Ninth Circuit has found forum-selection clauses unenforceable where state law would specifically preclude enforcement under the same circumstances. For example, in *Doe 1 v. AOL LLC*, the Ninth Circuit held that a forum-selection clause that would effectively waive the right of consumers to proceed in a class action was unenforceable in light of a California appellate decision specifically declining to enforce a forum-selection clause that would effect such a waiver. 552 F.3d at 1084. By contrast, the Ninth Circuit does enforce forum-selection clauses notwithstanding more general anti-waiver statutes that do not speak specifically to the enforceability of forum-selection clauses. *See, e.g., Sun*, 901 F.3d at 1090 (antiwaiver provision in state securities statute did not preclude enforcement of forum-selection clause); *Richard's v. Lloyd's of London*, 135 F.3d 1289, 1293-96 (9th Cir. 1998) (en banc) (antiwaiver provision in federal securities statutes did not preclude enforcement of forum-selection clause despite being "worded broadly enough to reach this case"); *see also Bremen*, 407 U.S. at 15-16 (strong public policy of forum did not preclude enforcement where considerations motivating policy were not applicable in the case before the court).

b. Forum-Selection Clauses under the California Franchise Relations Act

***3** Plaintiff argues that the forum-selection clause in the Development Agreement is unenforceable because it contravenes a strong public policy under California law protecting franchisees. Specifically, Plaintiff points to a provision of the California Franchise Relations Act ("CFRA") voiding forum-selection clauses in a limited class of cases. That provision states as follows: "[a] provision in a franchise agreement restricting venue to a forum outside this state is void with respect to any claim arising under or relating to a franchise agreement involving a franchise business operating within this state." Cal. Bus. & Prof. Code § 20040.5.

The Ninth Circuit previously addressed the effect of section 20040.5 on the enforceability of forum-selection clauses in *Jones v. GNC Franchising, Inc.*, 211 F.3d 495 (9th Cir. 2000). The Ninth Circuit recognized that section 20040.5 "expresses a strong public policy of the State of California to protect California franchisees from the expense, inconvenience, and possible prejudice of litigating in a non-California venue." *Id.* at 498. Accordingly, "[a] provision that requires a California franchisee to resolve claims related to the franchise agreement in a non-California court directly contravenes this strong public policy and is unenforceable." *Id.*

Jones did not hold that forum-selection clauses are unenforceable in any suit by a franchisee against a franchisor. *Jones* described the public policy it recognized as limited to "claims related to the franchise agreement." *Id.* The underlying dispute in *Jones* is consistent with that limited scope. Notably, *Jones* involved a dispute about an existing franchise agreement. *Id.* at 496 & n. 2.

Here, by contrast, Plaintiff brings claims concerning a conditional right to develop future franchises to be governed by separate franchise agreements that have not been executed. *Jones* thus does not require denying Defendant's motion.

Recognizing the limited reach of *Jones* and section 20040.05, federal courts have not uniformly found forum-selection clauses unenforceable in cases brought by franchisees against franchisors. District courts have enforced forum-selection clauses where a Plaintiff's claims do not fall squarely within the language and policy concern underlying section 20040.5. *Compare Musavi v. Burger King Corp.*, 2013 WL 5798551, at *3 (C.D. Cal. 2013) (enforcing forum-selection clause where plaintiff's claims related to a settlement agreement granting a limited right to operate a franchise) *with Frango Grille USA, Inc. v. Pepe's Franchising Ltd.*, 2014 WL 7892164, at *2-*3 (C.D. Cal. 2014) (declining to enforce forum-selection clause where plaintiff's claims involved franchisor's allegedly wrongful rescission of franchise agreement).

c. Section 20040.5 Does Not Clearly Apply to Plaintiff's Claims

As explained in detail below, neither the language of section 20040.5 nor caselaw interpreting its scope indicate that it specifically applies to Plaintiff's claims. Consequently, Plaintiff has not met its heavy burden to "point to a statute or judicial decision that clearly states ... a strong public policy" precluding enforcement of the forum-selection clause. *Sun*, 901 F.3d at 1090 (citation omitted).

i. Language of Section 20040.5

Plaintiff's claims are not clearly encompassed by the plain language of section 20040.5. Plaintiff claims that Defendant breached the Development Agreement by preventing Plaintiff from opening new franchises that would be governed by separate franchise agreements never executed by the parties. Plaintiff is not claiming that Defendant interfered with Plaintiff's rights or breached its obligations under an existing franchise agreement. It is therefore not clear from the face of the statute that Plaintiff's claims "aris[e] under or relat[e] to a franchise agreement involving a franchise business operating within this state." Cal. Bus. & Prof. Code § 20040.5.

ii. Judicial Decisions

***4** Plaintiff also has not identified any judicial decision applying section 20040.5 that declined to enforce a forum-selection clause under similar circumstances. The most analogous decision plaintiff cites is *T-Bird Nevada LLC v. Outback Steakhouse, Inc.*, an unpublished decision of the California Court of Appeal. 2010 WL 1951145 (Cal. Ct. App. 2010). For two reasons, *T-Bird* does not clearly state that California's strong public policy protects a business in Plaintiff's position.

First, *T-Bird* is unpublished and therefore lacks precedential value. Cal. Rules of Court 8.1115.

Second, and more fundamentally, the agreement at issue in *T-Bird* was different from the Development Agreement in important ways, and it is unlikely that the court's reasoning would extend to Plaintiff's claims. In *T-Bird*, the franchisor facilitated and guaranteed a franchisee's bank loan. 2010 WL 1951145, at *1. A separate borrower agreement between the franchisor and franchisee provided that any default on the franchisee's bank loan would constitute a default under all of the franchisee's franchise agreements. *Id.* at *2. The franchisee alleged that the franchisor made fraudulent representations. *Id.* *3. The Court of Appeal held that a forum-selection clause in the borrower agreement was unenforceable under section 20040.5 because "the borrower agreement clearly amends key terms in the franchise agreements." *Id.* at *6.

By contrast, no provision of the Development Agreement modifies the terms of an existing franchise. Subject to Defendant's approval, the Agreement gives Plaintiff the exclusive right to develop franchise restaurants in a defined geographic area. The Development Agreement does specify that Plaintiff pay an annual fee for each franchise opened under the agreement. Declaration of Bryan Saul, Ex. 1 ("DA") § 2.01. However, unlike the borrower agreement in *T-Bird*, that provision does not modify terms of an existing franchise agreement but would instead affect the terms of future franchise agreements that have not been executed.

iii. Franchise Definition

Plaintiff has also failed to show that the definition of a franchise under the CFRA clearly encompasses the Development Agreement in this case.

"Franchise" is a defined term under the CFRA. A contract counts as a franchise if it meets the following three requirements:

(a) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and

(b) The operation of the franchisee's business pursuant to that plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(c) The franchisee is required to pay, directly or indirectly, a franchise fee.

Cal. Bus. & Prof. Code § 20001.

The Court has reviewed many decisions applying this three-part definition – including those cited by Plaintiff and others identified through its own research. The Court has not identified a case finding that this franchise definition applies to an agreement to develop future franchises.

Accordingly, the Court agrees with Defendant that the Development Agreement does not satisfy the first and second prongs of the franchise definition. As to the first prong, because the Development Agreement contemplates that approved franchises will be governed by future franchise agreements, the Development Agreement does not grant Plaintiff the "right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system." Such a grant of rights would only come in a subsequent agreement. The Development Agreement specifically states this limitation: "Each Franchised Unit for which a development right is granted hereunder shall be established and operated pursuant to a Franchise Agreement to be entered into between Developer and Franchisor." DA § 1.03.

***5** As to the second prong, the Development Agreement expressly states that it "does not grant Developer any right to use Franchisor's Proprietary Marks or the Popeyes System, but merely sets forth the terms and conditions under which Developer will be entitled to obtain a Franchise Agreement." DA § 1.04. *See Gabana Gulf Distrib., Ltd. v. GAP Int'l Sales, Inc.*, 2008 WL 111223, at *5-*6 (N.D. Cal. 2008) (substantial association prong not met where agreement required alleged franchisor's prior approval for alleged franchisee to use trademark). Therefore, the Development Agreement also does not satisfy the second prong of the franchise definition. [1]

iv. Applicable Policy

Finally, the Court has considered the policy concerns underlying California's statutory protections for franchisees. As set forth below, those policy concerns are not clearly brought into play by a business in Plaintiff's position.

In *Jones*, the Ninth Circuit specifically relied on a legislative report explaining the motivation behind section 20040.5. 211 F.3d at 498 n.15. That report suggested that the statute's motivating concern was unfairness in standard franchise agreements. The report stated that the bill's purpose was "to ensure that California franchisees are not unfairly forced to litigate claims arising out of their franchise agreement in an out-of-state court...." *Id.* It went on to state that forum-selection clauses "are usually part of the standard contract which the franchisee is offered on a 'take-it or leave-it' basis." *Id.* [2]

The Development Agreement, however, is not a standard franchise agreement offered to all of Defendant's franchisees. Rather, it is a more sophisticated business transaction involving four-year plan to develop ten new restaurants in a broad geographical area. *See Estep v. Yung*, 2015 WL 1062995, at *1 (E.D. Cal. 2015) (enforcing forum-selection clause in "a contract between a small company and a sophisticated area representative who would oversee the solicitation of 30 franchisees"). Plaintiff states that the Development Agreement was presented on a "take it or leave it" basis, and that his proposed changes were rejected. Declaration of Imran Damani, Dkt. 14-1 ¶ 8. But Plaintiff acknowledges in his complaint that Defendant's development proposal

was based on a specifically identified market opportunity in the Fresno and Bakersfield area and the Agreement was crafted specifically for that market. Compl. ¶¶ 27-28. Additionally, the Development Agreement was just one piece of a broader business relationship that Defendant envisioned for Plaintiff, which would also involve Plaintiff's purchase of ten existing stores in the geographic area. *Id.* That relationship would culminate in Plaintiff operating around twenty restaurants. *Id.* Simply put, this kind of arrangement is not the standard franchise relationship that the California legislature appeared to have in mind.

Moreover, extending section 20040.5 to this case may reach beyond the specific financial stake of franchisees that the California legislature sought to protect. "[E]ven though it is clear that we are required to construe the [California Franchise Investment Law] and the CFRA broadly to carry out legislative intent, that intent ... is to protect franchise *investors*—i.e. those who 'pay for the right to enter into a business.' " *Thueson v. U-Haul Int'l, Inc.*, 144 Cal. App. 4th 664, 673 (2006). While Plaintiff states that he incurred expenses in identifying and proposing new franchise locations, these expenses are not the kind of investment – paid directly to the franchisor for the right to operate a business – with which California law appears concerned.

V. Conclusion

***6** For the reasons explained above, Plaintiff has not met its heavy burden to "point to a statute or judicial decision that clearly states ... a strong public policy" barring enforcement of the Development Agreement's forum-selection clause. *Sun*, 901 F.3d at 1090. Accordingly, the motion to transfer is GRANTED.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2021 WL 3557744

Footnotes

1 Plaintiff also argues that the use of terms such as "franchisee" and "franchise fees" in the Development Agreement, and Defendant's compliance with franchise disclosure requirements, indicate that the Development Agreement is a franchise. Dkt. 14, at 17-21. However, this kind of evidence is not dispositive, *see Macedonia Distrib., Inc. v. S-L Distrib. Co., LLC*, 2018 WL 6190592, at *4 (C.D. Cal. 2018) (collecting cases), and does not outweigh the Court's other considerations.

2 At least one district court has relied on this limited policy concern in enforcing a forum-selection clause. *See, e.g., Musavi*, 2013 WL 5798551, at *3.

End of Document