

PUBLICATION

Arkansas Loves Home Cookin'

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A federal judge in the Western District of Arkansas recently rejected a franchisor's attempt to invoke a forum selection clause, in *Rob & Bud's Pizza, LLC v. Papa Murphy's Int'l, Inc.*,¹ on public policy grounds rooted in a seemingly dormant statute, the Arkansas Procedural Fairness for Restaurant Franchisees Act (APFRFA), enacted in 1993.

The plaintiff in this case, Rob & Bud's Pizza (R&B) is a franchisee of Papa Murphy's Pizza. In 2014 R&B, along with numerous other Papa Murphy's franchisees, filed an action against Papa Murphy's in Washington state court claiming that Papa Murphy's had induced them to purchase franchises through various fraudulent and deceptive misrepresentations and omissions.

While the Washington litigation was ongoing, R&B initiated a second lawsuit in Arkansas state court, seeking injunctive relief while alleging that Papa Murphy's was unlawfully attempting to terminate R&B's franchise agreement in retaliation for failure to accede to settlement demands in the Washington litigation. Papa Murphy's then sought to transfer venue of the second case to Washington under the forum selection clause in R&B's franchise agreement.

In considering the motion to transfer, the court first noted that federal law would apply to the decision as a procedural issue, but also noted that "consideration of the public policy of the forum state must be part of the analysis." The court then found that the public policy of Arkansas "strongly weighs against enforcing the forum selection clause." The court cited the APFRFA, which states that "a party to a restaurant franchise may commence a civil action . . . in Arkansas if either party to the restaurant franchise is a resident of Arkansas," Ark. Code Ann. § 4-72-602, and states furthermore that "[n]either a franchisee nor a franchisor shall be deprived of the application and benefits of this subchapter by a provision of a franchise purporting to designate the law of another jurisdiction as governing or interpreting the franchise, or to designate a venue outside of Arkansas for the resolution of disputes." Ark.Code Ann. § 4-72-603(c).

Papa Murphy's made the common-sense argument that its franchise system does not fall within the definition of a "restaurant franchise" because its pizzas are specifically intended for customers to bake at home. The court found that argument unavailing because Papa Murphy's franchises also sell pre-made, ready-to-consume salads and soft drinks, neither of which require additional preparation at home. Therefore, under the court's rationale, any sale of pre-made, ready-to-eat food or drink in whatever setting, including gas stations, would place a franchise within the scope of the APFRFA.

This case is important for franchisors doing business in Arkansas for two primary reasons. First, the APFRFA is a seldom-invoked statute without a single other case citing it. The R&B case may give way to more Arkansas franchisees resisting enforcement of otherwise lawful forum selection clauses in franchise agreements with out of state franchisors. Second, the court's broad definition of what constitutes a "restaurant franchise" may serve as precedent for more types of franchise systems being called "restaurants" even if service is limited to soft drinks. Accordingly, a broad swath of franchise systems serving ready-to-consume food or drinks of any kind should consider the risk that the forum selection clauses in their franchise agreements may not be enforceable in Arkansas if other courts follow the R&B court's lead. Arkansas really loves home cookin'.

¹ No. 5:15-CV-5090, 2015 WL 3901611, at *2 (W.D. Ark. June 24, 2015),