

Fraud Claims Based on Information Provided by Franchisor in Connection With Dealers' Purchases of Franchises Allowed to Proceed to Trial

RWJ Management Co., Inc. v. BP Products North America, Inc.,
No. 09 C 6141, 2011 U.S. Dist. LEXIS 2928 (N.D. Ill. Jan. 12, 2011)

The plaintiff dealers purchased 17 BP franchises between 2006 and 2008 and claimed that BP “defrauded them into paying \$42 million for the privilege of taking money-losing stations off of its hands.” The dealers contended that they relied on allegedly false historical sales figures provided by BP and on BP’s “implicit endorsement” of their business plans by consenting to their purchasing the franchises. The District Court for the Northern District of Illinois rejected BP’s argument that the claim should be dismissed as “economically irrational” because BP could make money only if the dealers remained in business. The Court reasoned that “the fact BP benefits if its dealers are profitable does not require the conclusion that BP might prefer not to have a capital investment in a dealership that could fail.” The Court also rejected BP’s argument that any reliance by the dealers on data provided by BP was unreasonable because of the company’s disclaimers. It found that the disclaimers related only to BP’s projections of future earnings, not the historical sales data. The Court found a triable issue as to whether the plaintiffs relied on misrepresentations and omissions and whether such reliance was reasonable.

The Court also denied BP’s motion for summary judgment regarding the dealers’ claim that BP breached the parties’ Dealer Supply Agreement “by failing to set [gasoline] prices in good faith.” (The precise language of the DSA was not quoted in the opinion, so it is unclear whether the Court intended to apply a general “good faith” standard or whether the agreement incorporated the good faith standard of UCC § 2-305, the open price term provision.) The Court also denied BP’s motion for summary judgment with regard to the dealers’ claims that they did not receive certain disclosures required by the Illinois Franchise Disclosure Act.

Our Comment: This decision highlights the importance of how the franchisor handles the sale of its franchises. While a franchisor may be inclined to play a relatively active role, even simply being helpful can expose the franchisor to claims such as the ones in this case of inaccurate data and “implicit endorsement” of the purchasers’ business plans, even when the franchisor has made express disclaimers. The safest course is to put as much of the responsibility for information gathering on the buyer as possible, carefully review any information you do provide, and make it clear that any reviews or evaluations (such as of business plans or prospective buyers) are solely for the franchisor’s benefit, do not reflect any endorsement of the transaction, and should not be relied on by either the current franchisee or the prospective buyer in deciding whether to complete the transaction.