

***Century 21 Real Estate LLC v. All Professional Realty, Inc., et al.***, United States District Court for the Eastern District of California, Consolidated Case No. 2:10-2751 WBS.

On August 8, 2012, Honorable William B. Shubb, judge for the U.S. District Court for the Eastern District of California, filed a 28-page decision granting franchisor Century 21 Real Estate LLC's ("Century 21") motion for summary judgment against its former franchisee. As a result of the summary judgment, all of the former franchisee's claims were dismissed, and Century 21's claims for breach of contract, breach of guarantee, and trademark infringement were granted.

The case involves a lengthy but typical fact pattern often encountered in franchise litigation. The parties entered into four franchise agreements for the operation of three franchised locations in the Sacramento, California area, and the fourth location in Honolulu, Hawaii. After several years of seamless operation, the franchisee closed one of its Sacramento locations as a result of financial struggles. The franchisee did not seek or obtain approval from Century 21 before closing the store. Several months later, Century 21 terminated the franchise agreement tied to the store on the grounds of abandonment.

The franchisee was also struggling financially in its three other locations. In May 2009, the franchisee stopped paying franchise fees for its other three stores. Despite extensive negotiations between the parties, the franchisee failed to make any further payments. On July 7, 2010, Century 21 terminated the three remaining franchise agreements.

In late August 2010, Century 21 learned that the now former franchisee continued to operate two of the Sacramento locations under the Century 21 trademarks – in violation of the post-termination obligations of the franchise agreements. Over Century 21's opposition, the franchisee continued to use the Century 21 trademarks until enjoined by the court in January 2011.

The former franchisee ultimately filed a lawsuit in California State Court against Century 21 for violation of the termination provision of the California Franchise Relations Act ("CFRA"), violation of California Unfair Competition Law, breach of contract, fraud and other various claims. These claims were premised upon allegations that Century 21 (1) disclosed the former franchisee's confidential financial information to other franchisees, allowing those franchisees to recruit the former franchisee's employees, (2) allowed other businesses to dilute its trademark causing customer confusion and the resulting loss of business to the former franchisee, and (3) terminated the franchise agreements in bad faith in order to move a different franchisee into the territory. The case was removed to the Eastern District of California by Century 21.

Shortly thereafter, Century 21 filed a separate lawsuit in the Eastern District of California asserting claims of trademark infringement, federal unfair competition, breach of contract, breach of guaranty and related claims. Century 21 also filed a lawsuit in New Jersey concerning the Hawaii franchise as a result of the New Jersey forum selection clause in the franchise agreement. All cases were ultimately transferred to the Eastern District of California and consolidated into a single action. Once consolidated,

Century 21 filed a motion for summary judgment on its claims for trademark infringement, breach of contract, and breach of guaranty, as well as all of the former franchisee's claims.

In its ruling, the court first addressed the New Jersey choice-of-law provision in the franchise agreements. The former franchisee argued unsuccessfully that the New Jersey choice-of-law conflicted with California franchise law which serves to protect California franchisees from abuse in connection with the nonrenewal and termination of their franchise agreements – while the similar New Jersey statute only protects franchisees in New Jersey and not franchisees operating in California. Rejecting the former franchisee's argument, the court creatively enforced the choice-of-law provision by finding that "the CFRA provision's good cause and opportunity to cure requirements are incorporated into [the former franchisee's] franchise agreements with Century 21." As a result, the application of New Jersey law would not diminish the former franchisee's rights under the CFRA because the same right "can be pursued as breach of contract claims under the franchise agreements." With respect to the former franchisee's other California law claim, the court relied upon a prior California District Court decision in finding that the application of a choice-of-law provision that bars a California Unfair Competition Law claim does not violate fundamental California public policy.

The court's application of New Jersey law instantaneously disposed of the former franchisee's claims for violation of the CFRA and California Unfair Competition Law. The court then mechanically dismissed each of the former franchisee's remaining claims for failure to establish any disputed material facts.

Because of the former franchisee's failure to establish any disputed material facts, the court also granted summary judgment as to Century 21's claims for trademark infringement, breach of contract, and breach of guaranty. Century 21 was awarded actual damages of \$195,454.90, future lost profits of \$575,001.57, and treble damages on its trademark infringement claim in the amount of \$86,022.00. The former franchisee was also permanently enjoined from using Century 21's trademarks.

Summary judgment in favor of a franchisor and disposing of all of the franchisee's claims is an atypical outcome for California courts. However, Century 21's successful application of New Jersey law, defeating the CFRA and California Unfair Competition Law claims, paved the way for the favorable summary judgment ruling.