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Know Your Limits: Contractual Waivers of Jury Trials and Extra-Contractual Damages

As litigators, we not only represent our clients in court, we counsel them on litigation risk mitigation. In that capacity, we are often asked to review proposed commercial contracts for potential pitfalls from a litigator's perspective. It can be difficult to convince clients of the importance of well-drafted provisions on liability, statutes of limitation, forums and trials when all parties are getting along and looking forward to a profitable future. A recent decision out of the Southern District of New York is a warning to parties wearing rose-colored glasses. So long as a judge is satisfied that a party entered into an agreement knowingly, voluntarily, and intentionally, the court will uphold litigation critical provisions such as waiving a jury trial and limiting liability.

The Case: Airport Mart Inc. v. Dunkin' Donuts Franchising LLC

In *Airport Mart Inc. v. Dunkin' Donuts Franchising LLC*, No. 18-CV-170, 2019 WL 4413052 (S.D.N.Y. Sept. 16, 2019), the plaintiff, Airport Mart Inc., sued the defendant, Dunkin' Donuts Franchising LLC, for breach of contract, fraud and other claims arising out of a failed franchising agreement at Westchester County Airport. The contract contained an express jury trial waiver and precluded Airport Mart from recovering punitive or lost profit damages. Based on the provisions, Dunkin' Donuts moved to strike the jury and damages demands pursuant to Federal Rule of Civil Procedure 39(a)(2).

The Court's Decision

Judge Kenneth M. Karas found that Airport Mart's agreement to those provisions was knowing, voluntary and intentional, and so granted the motion. The court emphasized that the waiver was set forth conspicuously in two places in the contract, Airport Mart was represented by counsel in the negotiation and review of the contract, and, although Airport Mart had less leverage than Dunkin' Donuts, it was a sophisticated business entity that had negotiated numerous prior commercial contracts. Claiming fraud in the inducement as to the contract generally could not save Airport Mart from the consequences of its agreement, because the Second Circuit only invalidates a jury waiver and limitation of liability if the provisions themselves were the product of fraud.

Takeaway

Always plan for the future when negotiating contracts, including a potentially litigious future. Have all contractual provisions, including the boilerplate, evaluated by an experienced litigator before signing. If you sign a contract, assume you are bound by the limitations it contains.