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Davis v. Great American Cleaners, Inc. 1996 WL 1185042 (Mass. Super.)

Davis sued Great American Cleaners (GAC) and Terry Powell alleging that they committed unfair and deceptive acts or practices by misrepresenting material information in connection with the offer and sale of a dry-cleaning franchise to Davis. Davis contacted Powell in response to a marketing brochure that represented Powell as an expert at evaluating franchise opportunities. He convinced Davis to invest in the dry-cleaning business, but refused to allow her to contact GAC directly.

In operating the franchise, Davis lost over \$150,000. She alleges specifically that the defendants misrepresented the training she would receive, the site-selection, the working capital necessary to run such a business, and the financing terms to which the lender, who was required by GAC, subjected her. GAC motioned to dismiss the ground of improper venue.

The issue before the court was whether a Florida-favoring forum selection clause in the Franchise Agreement was enforceable, thereby requiring that the claims brought in Massachusetts by Davis against GAC to be dismissed. The Agreement provided that it shall be construed according to the laws of the State of Florida. Under Florida law, forum selection clauses are to be enforced unless enforcement would be unreasonable or unjust.



Florida law provides a three-prong test requiring that the following factors be satisfied prior to enforcing a forum selection clause: (1) that the forum chosen be not the result of unequal bargaining power by one of the parties to the agreement; (2) that the agreement's enforcement may not contravene strong public policy, either in the forum where the suit would be brought, or where the suit was excluded; or (3) that the purpose of the forum's selection is not to transfer an essentially local dispute in order to seriously inconvenience one or more parties to the agreement.

The Massachusetts court held that the clause violated Florida law. The court found that Powell and GAC had much greater bargaining power during the negotiation stage than did Davis and that enforcement of the clause would seriously inconvenience Davis because she and her witnesses resided in Massachusetts. Therefore, the court refused to enforce the forum selection clause and denied GAC's motion to dismiss.

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