

# PUBLICATION

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## Georgia Supreme Court to Franchisees: Read Your Contracts!

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A book came out several years ago entitled "Everything I Really Need to Know, I Learned in Kindergarten." There is a lot of truth in that statement. Keep your hands to yourself. Eat your vegetables. Respect your elders. Read your contracts before you sign them.

Okay, maybe that last one is a little beyond kindergarten, but it is no less axiomatic. That point was driven home by the Georgia Supreme Court in its opinion released April 20, 2015, in *Legacy Academy, Inc. v. Mamilove, LLC*, Case No. S14G1891.

In July 2001, sisters Michele and Lorraine Reymond approached the defendant, franchisor Legacy Academy, Inc., about the purchase of a daycare franchise to be located in suburban Atlanta. The sisters testified that Legacy provided them an earnings claim purporting to state the historical earnings of existing Legacy Academy franchises. This "earnings" claim reflected that in the first two years after purchasing a franchise, the franchisee could expect to receive net income of \$260,000 and \$440,000, respectively.

The Reymond sisters formed Mamilove, LLC to operate their franchise. A location was selected in consultation with the franchisor. In September 2001, the sisters were provided an offering circular and franchise agreement, which was signed the day it was presented. Neither sister read the offering circular or the agreement before signing on. Ten years later, the franchisee filed suit alleging that Legacy fraudulently induced the franchisee to sign the agreement by providing false information about historical earnings of Legacy franchises. The franchisee plaintiffs sought to rescind the agreement as well as recover money damages and statutory penalties.

The case was tried before a jury. At the close of the plaintiffs' proof, the franchisor defendant moved the trial court to direct a verdict in its favor. This motion was denied and the jury returned a verdict for the franchisee awarding in excess of \$1 million in damages.

Legacy appealed, asserting – among other issues – that the trial court was in error in denying the directed verdict. The Georgia Court of Appeals affirmed the trial court (328 Ga. App. 775, 761 S.E.2d 880 (2014)), and the Georgia Supreme Court accepted the appeal. The Georgia Supreme Court reversed the Court of Appeals and held in favor of the franchisor.

The Georgia Supreme Court noted that in order to seek rescission of a contract for fraudulent inducement, the franchisee had to prove that Legacy, through misrepresentations, induced the Reymond sisters to sign the franchise agreement and that the Reymond sisters justifiably relied upon the misrepresentation, being "reasonably diligent in the use of the facilities at their command." This "reasonable diligence" requirement proved fatal for the franchisee.

It was undisputed that neither sister read the offering circular or the franchise agreement before signing. The court noted that one sister had a master's degree in business administration and the other worked for WebMD. Had they bothered to read the franchise agreement, they would have seen disclaimers stating that Legacy was making no representations regarding potential volume, profit or success of the franchise. In the agreement, the franchisee disclaimed any reliance on any such representations. The court cited well-settled law that a party

who has the capacity and opportunity to read a written contract cannot later assert fraud in the procurement of his signature based upon extra contractual representations that differ from the terms of the written contract. The court held that because the representations allegedly relied upon were expressly disclaimed in the written agreement, the earlier earnings claims could not have been reasonably relied upon as a matter of law.

The Raymond sisters argued that they were not given a real opportunity to read the agreement. They asserted that Legacy required them to sign the agreement the day it was presented or Legacy would make their desired location available to another potential franchisee. The court found that proof legally insufficient to establish that the Raymonds were prevented from reading the agreement by fraud. The mere fact that Legacy was in a hurry does not prove that the franchisee was prevented from reading the contract.

The court also noted that the franchise agreement contained a provision that "this agreement constitutes the entire agreement between the parties," and that it supersedes and terminates any prior agreements between the parties. The court held that this provision, frequently called a "merger clause," prohibited any claims based upon pre-contractual representations.

In this case, the complaining franchisee representatives failed to read the contract by which they would be bound. Had the sisters done so, they would have learned that the earnings projections they found so enticing were expressly disclaimed by the franchisor. Such disclaimers are common in franchise agreements or ancillary documents signed at a franchise agreement closing. Thus, the sisters could not have reasonably relied on the earlier projections. The lesson for franchisees, particularly in Georgia, is clear: Read your agreements carefully before signing. That said, no franchisor should rely on this decision as the basis for assurance that violations of the disclosure timing and other requirements will have no consequences. Had the franchisee acted sooner, the appellate court may have been more sympathetic.