STATE OF MICHIGAN

COURT OF APPEALS

FRED J. DRERY, as Bankruptcy Trustee for TODD FRUEHAUF and ANNETTE FRUEHAUF, Individuals, and FRUEHAUF MARATHON SERVICE, INC., a Michigan corporation,

Plaintiff-Appellee,

v

MARATHON OIL CORPORATION, an Ohio corporation, JAMES JEFFRIES, an individual, and MICHAEL SCHULTZ, an individual,

Defendants-Appellants.

UNPUBLISHED
September 25, 1998

No. 200674
Macomb Circuit Court
LC No. 96-3627 CK

Before: Cavanagh, P.J., and White and Young, Jr., JJ.

PER CURIAM.

Defendants appeal by leave granted the circuit court's order denying reconsideration of its order granting plaintiff partial summary disposition and denying summary disposition to defendants in this action alleging violations of the Motor Fuel Distribution Act (MFDA), MCL 445.1801 *et seq.*; MSA 12.1234(11) *et seq.*, the Michigan Franchise Investment Law (MFIL), MCL 445.1501 *et seq.*; MSA 19.854(1) *et seq.*, and intentional interference with advantageous business relations. We reverse the circuit court's grant of partial summary disposition to plaintiff on the MFDA claim. We reverse in part the circuit court's denial of defendants' motion for summary disposition.

I

In December 1984, Todd and Annette Fruehauf entered into an agreement with defendant Marathon Oil Corporation (Marathon) to lease and operate a service station in Mount Clemens, Michigan. The Fruehaufs operated the station under the name Fruehauf Marathon Service, Inc.

After about five years, the service station's business and profits began to decline. Around 1989, the Fruehaufs decided to sell their interest in the station and so informed Marathon. Over the next few years, the Fruehaufs negotiated with a number of potential transferees regarding the sale of

their interest in the service station. In connection with these negotiations, several of the potential transferees submitted various documents to Marathon directly, with the Fruehaufs' involvement and knowledge, and several submitted documents to Marathon through real estate agents the Fruehaufs had selected. None of the potential sales was consummated.

The Fruehaufs abandoned the service station business on November 13, 1992, and received $5,000 for the station's assets. They subsequently filed for bankruptcy, owing Marathon approximately $47,500 for costs related to the franchise.

Plaintiff Fred J. Drery, the trustee in bankruptcy for the Fruehaufs and Fruehauf Marathon Service, Inc., filed the instant suit in April 1996,[1] alleging that the Fruehaufs had negotiated with at least eight potential buyers, and had presented their qualifications to Marathon, and that Marathon rejected all eight potential buyers "on the basis that they all allegedly failed to meet Marathon's qualification for assignment to a transferee of an existing franchise." Count I of plaintiff's complaint alleged that the provision of the agreement that required Marathon's written consent to an assignment was void pursuant to the MFIL, MCL 445.1527(g); MSA 19.854(27), because Marathon could refuse to consent to a transfer without good cause. Count II alleged that defendants Jeffries and Schultz, marketing representatives for Marathon, materially aided Marathon in violating the MFIL. Count III alleged that defendants intentionally interfered with the Fruehaufs' advantageous business relations. Count IV alleged that defendants violated the MFDA, MCL 445.1804(1); MSA 12.1234(14), by unreasonably withholding consent to assignment of the franchise.

A

On July 29, 1996, about six weeks after defendants answered plaintiff's complaint, plaintiff filed a motion for partial summary disposition pursuant to MCR 2.116(C)(10), arguing that no genuine issue of fact existed regarding defendants' violation of the MFDA. Plaintiff argued that the Fruehaufs had forwarded information regarding proposed transferees to defendants, that under MCL 445.1804(4); MSA 12.1234(14) defendants were required to state any objections to the proposed transfers in writing within sixty days of receiving notice of intent to transfer, but failed to do so, and that under the MFDA, all such transfers or assignments should have been considered granted. Plaintiff argued regarding the MFDA's requirement of written notice of intent to sell that, when the Fruehaufs told Marathon they wanted to sell their interest in the service station, Marathon directed them to inform their Marathon marketing representatives of the prospective purchasers. Plaintiff additionally argued that defendants failed to comply with MCL 445.1804(1); MSA 12.1234(14), pursuant to which a proposed assignee must meet the standards normally required by the franchisor of a prospective franchisee, because defendants did not have any such established standards and thus arbitrarily denied assignments of the franchise. Lastly, plaintiff argued that defendants violated MCL 445.1804(1); MSA 12.1234(14) by unreasonably withholding their consent to the Fruehaufs' transfer of their interest.

The documentary evidence plaintiff attached in support of his motion for partial summary disposition pertained to four prospective purchasers: Mssrs. Saad and Mohamad, Dan Iafrate, Saadeddeine Baayoun, and Gary and Pamela Pizzimenti. Plaintiff attached evidence supporting his assertion that Marathon received from potential transferees, or from real estate agents acting for the

Fruehaufs, written and executed purchase agreements of Saad and Mohamad, and the Pizzimentis. Plaintiff also submitted documentary evidence indicating that Baayoun had completed an application sent to him by Marathon. Regarding Iafrate, plaintiff submitted numerous documents that summarized Iafrate's negotiations with Marathon and with the Fruehaufs. Plaintiff also attached documentary evidence supporting his assertion that Marathon told the Fruehaufs to simply inform their Marathon marketing representatives of prospective transferees.

B

On August 23, 1996, defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(7)[2], (8) and (10). Defendants argued that no genuine issue of fact remained regarding plaintiff's claims under the MFDA and MFIL.

Defendants argued that Marathon could not have violated the MFDA and were entitled to summary disposition because the Fruehaufs failed to meet the statute's requirements of giving Marathon written notice of intent to sell their interest in the service station and providing the information required by the statute regarding the prospective franchisees. Marathon argued that under these circumstances, it had no duty to consent or object to any of the potential transferees, and therefore plaintiff did not have a viable claim against Marathon for performing this duty incorrectly, i.e., for unreasonably withholding consent to transfer the property.

Defendants' reply to plaintiff's response to defendants' motion for summary disposition further argued that the Fruehaufs' conversations and discussions regarding possible assignment of their interest in the service station did not meet the MFDA's "written notice" requirements, MCL 445.1804; MSA 12.1234(14), that the purchase offers sent to Marathon did not fulfill the notice requirement because they did not come from the Fruehaufs themselves, and that the statute's written notice requirement is unambiguous and thus not subject to judicial interpretation. Defendants argued that the "real issue" was "whether the Fruehaufs themselves ever supplied written notice to the franchisor of an intention to transfer which included the name, address, statement of financial qualification and business experience during the previous five years" of the prospective franchisee, and that the Fruehaufs had not done so.

Following a hearing, the circuit court granted plaintiff's motion for partial summary disposition and denied defendants' motion for summary disposition, concluding that the Fruehaufs had substantially complied with the MFDA and that defendants had violated the MFDA. [3] The circuit court denied defendants' motion for reconsideration. This appeal ensued.

II

Defendants first argue that the circuit court erred as a matter of law in determining that the Fruehaufs had substantially complied with the MFDA.

The provision of the MFDA at issue, MCL 445.1804; MSA 12.1234(14), provides:

(1) A franchise agreement and any other lease or agreement in connection with the franchise agreement between a franchisor and a franchisee shall be transferable or assignable if the franchisor consents to the assignment. The franchisor's consent shall not be unreasonably withheld. A proposed assignee shall meet the standards normally required by the franchisor of a prospective franchisee.

(2) Prior to any transfer or assignment by the franchisee, the franchisee shall provide written notice to the franchisor of an intention to transfer or assign setting forth the prospective assignee's name, address, statement of financial qualification and business experience during the previous 5 years, and such further information as the franchisor shall reasonably request.

(3) The franchisor, within 60 days after receipt of the notice of intent and all requested information, shall advise the franchisee of its consent or objection to the transfer or assignment.

(4) If the franchisor objects to the transfer or assignment, it shall state its reasons in writing to the franchisee. If the franchisor does not reply within 60 days, approval of the transfer or assignment shall be considered granted.

(5) The transfer or assignment shall not be valid until the assignee agrees in writing to comply with all the requirements of the franchise and any other lease or agreement in connection with the franchise then in effect and assumes all obligations of the franchisee.

(6) A franchisee may not exercise the right of assignment or transfer after he or she has been notified of termination or nonrenewal of the franchise for a cause permitted in the petroleum marketing practices act . . . .

(7) A franchisee shall not sell, convey, or otherwise dispose of the franchisee's interest in a lease, any franchise relationship attendant to a lease, or the franchisee's business as related to a lease without first giving the franchisor an option to purchase or otherwise acquire the interest on the same terms and conditions as set forth in any contract entered into and fully executed by the franchisee in a bona fide transaction, except for a sale or transfer from the franchisee to the franchisee's spouse, adult child, stepchild, son-in-law, or daughter-in-law.

We conclude that the circuit court did not err by applying a substantial compliance analysis to the MFDA's notice requirements, MCL 445.1804(2); MSA 12.1234(14), given the MFDA's remedial purpose and the circumstances presented here. However, we agree with defendant that the court erred in ruling as matter of law that the Fruehaufs substantially complied with the MFDA's notice requirements.

A

Summary disposition may be granted when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). A summary disposition motion brought under MCR 2.116(C)(10) challenges whether there is factual support for the claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). In deciding this motion, a court must consider all the pleadings, affidavits, admissions and other documentary evidence available to it. *Id.*; MCR 2.116(G)(5). All reasonable doubts are decided in favor of the non-moving party. *Id.* However, the court is not permitted to assess credibility or determine factual issues. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). The party seeking summary disposition must identify the issues for which it claims there is no factual support. *Id.*, 160. The non-moving party must then respond with affidavits or other evidentiary materials that establish the existence of a factual issue for trial. *Id.* If the opposing party cannot present documentary evidence to establish that a material factual dispute exists, summary disposition is proper. *Id.*

Issues of statutory interpretation are questions of law and are thus reviewed de novo. *Oakland Co Bd of Road Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). A court's primary objective in interpreting a statute is to ascertain and give effect to the intent of the Legislature. *People v Stanaway*, 446 Mich 643, 658; 521 NW2d 557 (1995). Statutory language should be construed reasonably, according to the plain and ordinary meaning of the language, when it is clearly delineated. *Barr v Mount Brighton Inc*, 215 Mich App 512, 516; 546 NW2d 273 (1996); *Heinz v Chicago Rd Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996). However, where a literal construction of a statute produces an absurd or unjust result, inconsistent with the purposes and policies of the statute, the court may depart from a literal construction. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). Remedial statutes are to be liberally construed to achieve their intended goals. *Dudewicz v Norris-Schmid, Inc*, 443 Mich 68, 77; 503 NW2d 645 (1993).

B

The MFDA took effect on October 1, 1990, and, to date, there are no Michigan cases interpreting it or discussing the Legislature's intent in enacting it. However, the Michigan House of Representatives' legislative analysis of the MFDA indicates that the Act was intended to remedy franchisees' unequal bargaining power vis a vis franchisors:

> THE APPARENT PROBLEM:
>
> > Since the oil embargo of 1973 the motor fuel distribution industry has undergone radical restructuring. Oil companies ("franchisors") attempted to, and in many cases, did, extend their control over gas station service station dealers ("franchisees") in order to more carefully regulate volume of sales and reduce losses. The extension of control by the companies apparently has left many dealers with **little say in decision-making processes** concerning service stations. One of these decisions involves the **transfer of franchise ownership to a third party**. **Oil companies usually reserve the right within a written contract to grant or refuse transfer of ownership of a franchise to another party . . . While some transfers may be granted, service station**

> **owners apparently find the opposite is true in many instances; their position is further frustrated since oil companies do not have to even give reasons for refusing a transfer. Some people feel legislation is needed to give franchisees greater control over decisions regarding transfer of ownership, and, specifically, that an oil company should be prevented from 'unreasonably' withholding its consent to a transfer, assignment, or survivorship of a franchise.** [House Legislative Analysis, HB 4244, October 11, 1990. Emphasis added.]

The MFDA being remedial, we construe it liberally to achieve its intended goals. *Dudewicz, supra* at 77. Defendants have cited no authority to support that the circuit court's application of a substantial compliance analysis to the MFDA constituted error as a matter of law. Although there are no Michigan cases involving the MFDA, a substantial compliance analysis has been applied to Michigan's generic franchise law, the MFIL, MCL 445.1501; MSA 19.854(1), which is also remedial.[4] In *Two Men and a Truck Int'l, Inc v Two Men and a Truck Kalamazoo, Inc*, 949 F Supp 500, 506 (WD Mich, 1996), the federal district court applied a substantial compliance analysis to the MFIL, albeit in the franchisor's favor:

> . . . . Defendants also claim that plaintiff violated Section 8 of the MFIL by failing to provide an offering circular 10 days prior to the sale of the franchise to defendants. Plaintiff provided defendants with an offering circular on April 23, 1991, less than 10 business days prior to the signing of the Kalamazoo Franchise Agreement on May 1, 1991. Although plaintiff did not technically comply with Section 8, plaintiff did provide an offering circular to the defendants seven days prior to the signing, fulfilling the spirit of Michigan's disclosure requirement. *See Benson v. Sbarro Licensing, Inc.*, [1983-1985 Transfer Binder] Bus. Franchise Guide (CCH) p7967, at 13,597 (D.Minn. April 12, 1983) (although not technically satisfactory, franchisee did receive disclosure document from franchisor which fulfilled the spirit of Minnesota's franchise disclosure requirement).[5]

We conclude that given the MFDA's remedial purpose, and given that a substantial compliance analysis has been applied to the MFIL, which is also a remedial act governing franchisor-franchisee relationships, the circuit court did not err in applying a substantial compliance analysis.

C

While the court correctly determined that substantial compliance is sufficient, it erred in concluding that plaintiffs established substantial compliance as a matter of law. We agree that a substantial compliance analysis permits consideration of the information presented to Marathon's agents without regard to whether the information was directly provided by the Fruehaufs or the technical form of the information. The circuit court therefore properly considered all the documentation submitted by plaintiff. That documentation, however, failed to establish a genuine issue regarding compliance with respect to the Pizzimentis and Saad and Mohamad, as to whom there was no evidence that the statutorily required information was provided. And, regarding Baayoun, there were factual disputes precluding the grant of summary disposition to either party.

The circuit court did not err in ruling that there was substantial compliance as to Iafrate.[6] However, notwithstanding plaintiff's substantial compliance with the notice provision, it was error to grant summary disposition to plaintiff on the MFDA claim because other material factual disputes remained.

A reasonable fact-finder could conclude from the documentary evidence submitted below that Marathon adequately responded to the proposed sale to Iafrate, that it approved Iafrate's purchase, that it was Iafrate that backed out of the purchase, that Marathon thus had no obligation under MCL 445.1804(4); MSA 12.1234(14) to consent or object in writing to Iafrate's potential purchase, and that Marathon did not unreasonably withhold its consent to the purchase under MCL 445.1804(1); MSA 12.1234(14). A reasonable fact-finder could also conclude that if Marathon withheld its consent regarding Iafrate's purchase, Marathon's withholding of consent was not unreasonable, because the MFDA specifies that

> The transfer or assignment **shall not be valid until the assignee agrees in writing to comply with all the requirements of the franchise and any other lease or agreement in connection with the franchise then in effect** and assumes all obligations of the franchise. [MCL 445.1804(5); MSA 12.1234(14). Emphasis added.]

Conversely, a reasonable fact-finder could conclude that Marathon acted unreasonably by refusing to clarify or modify the standard lease's provision on indemnification as Iafrate requested, that Iafrate's purchase fell through because of Marathon's conduct, and that Marathon thus unreasonably withheld consent to the purchase. Thus, questions of fact remained, and the court erred in granting summary disposition to plaintiff.

As to the claim that defendants violated MCL 445.1804(1); MSA 12.1234(14) by failing to have established standards for franchisees, defendants correctly argued that nothing in the MFDA requires that a franchisor's "normally required" standards for prospective franchisees be in writing. The question whether Marathon had standards in compliance with the act was also one of fact for the jury.

We thus reverse the circuit court's grant of partial summary disposition to plaintiff, and affirm in part and reverse in part its denial of defendants' motion for summary disposition regarding plaintiff's MFDA claim.

III

Defendants also argue that the circuit court erred in denying defendants' motion for summary disposition regarding any claims prior to June 30, 1992, the effective date of a release the Fruehaufs signed. In light of the proceedings below, we must disagree.

Defendants did not raise the release as an affirmative defense in their answer to plaintiff's complaint; thus they waived the defense. *Garavaglia v Centra*, 211 Mich App 625, 628; 536 NW2d 805 (1995); MCR 2.111(F)(3).[7] Further, defendants did not assert release as a basis for summary

disposition in their motion for summary disposition,[8] and have never responded to the waiver argument. The release issue has not been properly preserved.

IV

Defendants last argue that the circuit court erred in denying their motion for summary disposition with regard to plaintiff's claim under the MFIL because the MFIL does not provide for a private cause of action. Plaintiff's appellate brief does not address this argument.[9]

Plaintiff's complaint alleged that provision 13.B. of the lease agreement, which required that the Fruehaufs obtain Marathon's written consent before assigning or transferring their interest in the service station, was void pursuant to MCL 445.1527(g); MSA 19.854(27) because it did not delineate good cause exceptions. Plaintiff's complaint also alleged that defendants violated the MFIL by arbitrarily and capriciously denying their consent to the transfer of the franchise to at least eight prospective purchasers, and by not identifying current reasonable qualifications or standards for the prospective purchasers to meet.

MCL 445.1527; MSA 19.854(27) provides in pertinent part:

> Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise:
>
> * * *
>
> (g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:
>
> (i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.
>
> (ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.
>
> (iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
>
> (iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

MCL 445.1534; MSA 19.854(34), provides:

> Except as explicitly provided in this act, civil liability in favor of any private party shall not arise against a person by implication from or as a result of the violation of a provision of this act or a rule or order hereunder. Nothing in this act shall limit a liability which may exist by virtue of any other statute or under common law if this act were not in effect.

In the only Michigan case addressing the issue of civil liability under the MFIL, *Franchise Mgmt v America's Chicken*, 221 Mich App 239, 252; 561 NW2d 690 (1997), lv grtd 577 NW2d 690 (April 1, 1998), this Court noted that the Legislature in MCL 445.1534; MSA 19.854(34), expressed its clear intent that the courts not imply a private right of action to remedy violations of the MFIL. The *Franchise Mgmt* Court noted that under the MFIL private rights of action[10] are available to persons purchasing a franchise, against the seller of a franchise who violates § 5 of the MFIL, MCL 445.1505; MSA 19.854(5).[11] This Court further noted that the plaintiffs were not the purchasers, but rather, were the sellers of the franchise, and thus did not have a viable private cause of action under the MFIL. *Id.* at 250-251.

The Fruehaufs, like the plaintiffs in *Franchise Mgmt*, *supra*, were the sellers and not the purchasers of the franchise. Thus, under *Franchise Mgmt* the Fruehaufs did not have a viable private cause of action under the MFIL.[12] Accordingly, the circuit court erred in denying defendants' motion for summary disposition on this basis.[13]

Affirmed in part, reversed in part.

/s/ Mark J. Cavanagh
/s/ Helene N. White
/s/ Robert P. Young, Jr.

[1] The Fruehaufs filed a civil action against Marathon in 1993 (1993 case). The record in the 1993 case is not before us, but the record in the instant case indicates that the 1993 case proceeded through discovery and mediation before the circuit court dismissed it on the basis that the Fruehaufs were not the real party in interest because they had filed for bankruptcy. This Court affirmed that decision. The Bankruptcy Court authorized appointment of counsel to pursue this matter in circuit court again. The same circuit court judge who presided over the 1993 case presided over the instant case.

[2] Defendants argued that three of plaintiff's claims were barred by applicable statutes of limitations. Defendants have not appealed the circuit court's denial of their motion on that ground.

[3] The circuit court's order states in pertinent part:

> . . . Defendants' Motion for Failure To State A Claim, [sic] upon which relief can be granted and no genuine issue of material fact concerning:

a. Count I of Plaintiff's Complaint, violations of the Michigan Franchise Investment Law is hereby DENIED.

b. Count IV of Plaintiff's Complaint, violation of the Motor Fuel Distribution Act is hereby DENIED.

IT IS FURTHER ORDERED that Plaintiffs substantially complied with the Motor Fuel Distribution Act and, therefore, Defendant violated the Motor Fuel Distribution Act and partial summary disposition is GRANTED in favor of the Plaintiff as to Count IV of Plaintiff's Complaint.

[4] The remedial nature of the MFIL was recognized in *Martino v Cottman Transmission Systems, Inc*, 218 Mich App 54, 61; 554 NW2d 17 (1996) (noting that the notice requirements of the MFIL are designed "to protect potential franchisees from the superior bargaining power of franchisors.") See also *Geib v Amoco Oil Co,* 29 F3d 1050, 1056 (CA 6, 1994) (applying Michigan law, the court noted that generic franchise relationship laws such as the MFIL "address a perceived inequality of bargaining power among the parties to the franchise agreement by providing franchisees with a variety of rights designed to prevent abuses.") See also n 5, *infra*.

[5] The court in *Two Men and a Truck Int'l, supra*, noted:

> The MFIL prohibits fraudulent practices in connection with 'the offer, sale, and purchase of franchises.' . . . [T]he MFIL is a generic franchise relationship law, which applies to all Michigan franchise agreements without regard to subject matter. MICH.COMP.LAWS ANN. § 445.1504(1). Generic franchise relationship laws like the MFIL address a perceived inequality of bargaining power among the parties to the franchise agreement by providing franchisees with a variety of rights designed to prevent abuses. *See* Pitegoff, *Franchise Relationship Laws: A Minefield for Franchisors*, 45 BUS.LAW. 289, 314 (Nov. 1989).

[6] Marathon concedes in its appellate brief that, regarding Iafrate, it received all the information required under MCL 445.1804(2); MSA 12.1234(14), albeit not from the Fruehaufs personally.

[7] MCR 2.111(F) states in pertinent part:

> (2) A party against whom a cause of action has been asserted by complaint, cross-claim, counterclaim, or third-party claim must assert in a responsive pleading the defenses the party has against the claim. A defense not asserted in the responsive pleadings or by motion as provided by these rules is waived, except for the defenses of lack of jurisdiction over the subject matter of the action, and failure to state a claim on which relief can be granted.

(3) Affirmative defenses must be stated in a party's responsive pleadings, either as originally filed or as amended in accordance with MCR 2.118. Under a separate and distinct heading, a party must state the facts constituting:

(a) an affirmative defense, such as . . . release.

[8] Defendants raised the release issue for the first time in their reply to plaintiff's motion for partial summary disposition. At argument, plaintiff argued that the defense had never been asserted and had been waived. Defendant did not respond.

[9] At oral argument before this Court, plaintiff's counsel argued that defendants did not raise this issue below. However, defendants raised this issue in their brief in reply to plaintiff's response to defendants' motion for summary disposition and argued the issue at the hearing below.

[10] Under MCL 445.1508; MSA 19.854(8) of the MFIL, an aggrieved franchisee may rescind or bring an action for actual damages where a franchisor sells a franchise without registration or disclosure as set forth under the MFIL. That is not the situation in the instant case.

[11] Section 5 of the MFIL provides:

A person shall not, in connection with the filing, offer, sale, or purchase of any franchise, directly or indirectly:

(a) Employ any device scheme, or artifice to defraud.

(b) Make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, no misleading.

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. [MCL 445.1505; MSA 19.854(5).]

Section 31(1), MCL 445.1531(1); MSA 19.854(31)(1), provides a civil remedy for violations of § 5:

A person who offers or sells a franchise in violation of section 5 or 8 is liable to the person purchasing the franchise for damages or rescission, with interest at 6% per year from the date of purchase until June 20, 1984 and 12% per year thereafter and reasonable attorney fees and court costs.

[12] In light of our disposition, we need not address defendants' argument that the MFIL was inapplicable to the instant case because the Fruehaufs did not pay Marathon a franchise fee.

[13] We recognize that the our Supreme Court has granted leave to appeal in *Franchise Mgmt, supra* and that the MFIL has been interpreted as creating a private cause of action for violations of MCL

445.1527; MSA 19.854(27) See *General Aviation, Inc v Cessna Aircraft Co,* 915 F2d 1038, 1044 (CA 6, 1990) (allowing an action for damages to proceed under MCL 445.1527; MSA 19.854(27)). Subsequently, in *Geib v Amoco Oil Co,* 29 F3d 1050, 1060-1061 (CA 6, 1994), the United States Court of Appeals for the Sixth Circuit, again faced with the issue of the viability of private actions under MCL 445.1527 of the MFIL, discussed *Cessna, supra,* and noted that the district court in *Geib* had followed MCL 445.1534; MSA 19.854(34), quoted *supra.* The *Geib* court stated that "[t]he direct conflicts between these interpretations of Michigan law within the federal system, viewed in conjunction with the substantiality of the competing arguments," led it to certify the question to the Michigan Supreme Court. The Michigan Supreme Court declined to answer the question at that time. See *In re Certified Question (Geib v Amoco Oil Co),* 447 Mich 1216 (1994). It appears that the Court will soon address the matter in *Franchise Mgmt.*