

# Client Alert

FRANCHISE AND DISTRIBUTION PRACTICE GROUP | MAY 2012

WIGGIN AND DANA

## *Federal District Court Compels a Distributorship “Investor” to Arbitrate Claims*

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On April 23, 2012, a federal district court addressed the novel issue of whether a distributor’s wife, who claimed to be an investor in the distributorship at issue, was required to arbitrate her claims pursuant to the distributorship agreement’s arbitration clause even though she had not signed that agreement. By holding that the wife was equitably estopped from avoiding the agreement’s arbitration provision and must therefore arbitrate her claims, the district court closed off an avenue for franchisees and distributors to circumvent arbitration clauses by having a closely affiliated non-signatory file a lawsuit that seeks the same relief that the franchisee or distributor could only get through arbitration.

In *Mac Tools v. Diaz*, No. 2:11-cv-940, 2012 U.S. Dist. LEXIS 56197 (S.D. Ohio Apr. 23, 2012), Mac Tools, a manufacturer of professional grade tools and equipment sold through independent distributors, entered into a distributorship agreement in 2007 with Smart Angels LLC, a company solely owned by Andres Diaz. Elba Maria Ceballo, Mr. Diaz’ wife, invested personal funds in the distributorship and was part of the acquisition process, but did not sign the distributorship agreement. A year later, Smart Angels’ distributorship failed. After an unsuccessful mediation, Ms. Ceballo sued Mac Tools in New Jersey state court, alleging that she was an “investor” in Smart Angels, that Mac Tools fraudulently induced her and Mr. Diaz to buy the distributorship, and that Mac Tools had violated the New Jersey Consumer Fraud Act. Ms. Ceballo also claimed that Mac Tool’s fraudulent sale to her and Mr. Diaz “of an undisclosed franchised business” violated the Federal Trade Commission’s Franchise Disclosure Rule. After a failed attempt to remove the case to federal court, Mac Tools petitioned to compel arbitration pursuant to the Federal Arbitration Act.

Ms. Ceballo opposed the petition, claiming that, as a non-signatory to the distributorship agreement, the court could not compel her to arbitrate. Mac Tools argued that by seeking benefits of the agreement, Ms. Ceballo was estopped from avoiding the agreement’s requirement to arbitrate. The district court agreed with Mac Tools, noting that “Ms. Ceballo clearly sought and expected to benefit from her husband’s agreement with Mac Tools; were this not the case, she would not have invested her own funds into the business”; that “she treated the acquisition of the distributorship as a collective acquisition”; and that her claims “are inseparable” from her husband’s potential claims against Mac Tools. Based on these facts, the district court concluded that the doctrine of equitable estoppel required her to arbitrate because “it would be inequitable to permit Ms. Ceballo to litigate her claims in court when her husband, who is a signatory to the agreement and whose claims are substantively indistinguishable from those of Ms. Ceballo, is bound to arbitrate his claims against Mac Tools.”

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ABOUT THE FRANCHISE AND DISTRIBUTION PRACTICE GROUP

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