The Minnesota Franchise Act Construed: The Minnesota Supreme Court Addresses the Bona Fide Wholesale Price Exception to the Definition of a Franchise and Clarifies the Act's Jurisdictional Reach

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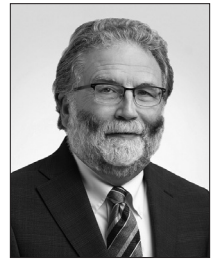
Introduction



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On September 11, 2024, the Minnesota Supreme Court issued its decision in *Cambria Company, LLC v. M&M Creative Laminants, Inc.*,[1,2] ending seven years of litigation arising out of the termination of a Cambria quartz dealer located in western Pennsylvania. The court addressed two significant issues without controlling precedent under the Minnesota Franchise Act (MFA): (1) application of the bona fide wholesale price exception to the statutory definition of franchise fee; and (2) whether the MFA's protections against unfair practices, including wrongful terminations, under section 80C.14 could apply to franchisees, such as M&M, operating businesses not located within Minnesota.

Although the Minnesota Supreme Court's decision in *Cambria* addressed these issues under the specific language of the MFA only, its holding on these two key issues may have further-reaching implications for numerous other state franchise laws enacted across the United States. This article provides background on these issues, discusses the Minnesota Supreme Court's holdings in *Cambria* in detail, and concludes by explaining the significance of the holding and how it might affect future disputes, both under the MFA and other states' franchise statutes.

1. Cambria Company, LLC v M&M Creative Laminants, Inc., 11 N.W.3d 318 (Minn. 2024).

2. The author represented the plaintiff at trial and in each of the appeals discussed in this article.

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I. Disputes over Existence of a Franchise Fee

The MFA, like many other statutes applicable to franchise relationships, defines a franchise as an express or implied contract that includes the following three elements: (1) "a franchisee is granted the right to engage in the business of offering or distributing goods or services using the franchisor's trade name, trademark, service mark, logotype, advertising or other commercial symbol or related characteristic"; (2) the franchisor and the franchisee have "a community of interest in the marketing of goods or services"; and (3) the franchisee "pays a franchise fee directly or indirectly to the franchisor."[3]

Because many distributor relationships satisfy the first two elements, the question of whether the MFA applies to a specific relationship often hinges on whether the dealer pays the supplier a direct or indirect franchise fee. One commentator notes that "nearly all" franchise statutes include this franchise-fee element, and therefore "the presence of the fee requirement dictates which business arrangements are deemed to be in need of legislative intervention and which are not."[4]

The MFA defines a franchise fee as:

> Any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, *any payment for goods or services*, or any training fees or training school fees or charges . . . .[5]

On its face, this broad definition includes "any payment for goods or services." This broad definition is tempered by a series of exceptions. Pertinent to this article, the MFA excludes "the purchase of goods or agreement to purchase goods at a bona fide wholesale price" from the definition.[6] In fact, most statutes exclude from the franchisee-fee definition any goods purchased by the distributer from the supplier at a bona fide wholesale price.[7] This limitation makes sense because distributors, by definition, purchase goods from

3. Minn. Stat. § 80C.01(4)(a)(1). These three elements are common to most state statute's definition of a franchise. *See* Fundamentals of Franchising 387 (Rupert M. Barkoff et al. eds., 2015).

4. Sandra Gibbs, *Hidden Franchise Fees; Seeking a Rational Paradigm*, 39 Franchise L.J. 493, 494 (2020).

5. Minn. Stat. § 80C.01(9) (emphasis added).

6. *Id.* § 80C.01(9)(a).

7. *See, e.g.*, 16 C.F.R. § 436.1(s); Cal. Bus. & Prof. Code § 20007(a); Cal. Corp. Code § 31011(a); Haw. Rev. Stat. § 482E-2;815 Ill. Comp. Stat. 705/3(14); Ind. Code § 23-2-2.5-1; Iowa Code § 537A.10(d); Md. Code, Bus. Reg. § 14-201(f)(3)(i); Mich. Comp. Laws § 445.1503(3)(1); Neb. Rev. Stat. § 87-402(5); N.Y. Gen. Bus. Law § 681(7)(a); N.D. Cent. Code § 51-19-02(6)(a); R.I. Gen. Laws § 19-28.1-3(9)(iii); S.D. Codified Laws § 37-5B-1(26); Va. Code § 13.1-559(A); Wash. Rev. Code § 19.100.010(8); Wis. Stat. § 553.03; *see also* Gibbs, *supra* note 4, at 508–13 (providing a thorough examination of the variations among these bona fide wholesale price exceptions and of common issues that arise).

their suppliers and, without such an exemption, the statutes would capture all distributor relationships. For this reason, one commentator notes that "[t]he bonafide wholesale price exception is the most widely applied exception to the franchise fee" definitions found in state franchise laws.[8]

Most cases addressing the bona fide wholesale exception, including prior Minnesota cases, focus on whether the required purchase contains a hidden franchise fee. In *OT Industries, Inc. v. OT-tehdas Oy Santasalo-Sohlberg Ab*, for example, the Minnesota Court of Appeals wrote that the purchase of goods could constitute a hidden franchise fee "if the sales were at prices exceeding bona fide wholesale prices" or if "the franchisee is required to purchase amounts or items than it otherwise would not."[9] In both instances, the supplier receives a premium either in the inflated price or by gaining non-required sales—both of which could hide additional payments for continuing the relationship and thus constitute a hidden franchise fee. Neither of these more common issues, however, existed in the *Cambria* case. Rather, the issue presented to the courts was whether the payments were made solely for the purchase of "goods" or if they included payments for services that the putative franchisee (M&M) argued took those payments outside the scope of the bona fide wholesale price exception.

II. Extraterritorial Application of State Franchise Laws

The protections under many state franchise laws simply do not apply to out-of-state franchisees.[10] The MFA and several other state franchise laws, how-

8. Michael Garner, Franchise and Distribution Law & Practice § 5.8 (2023).

9. OT Indus., Inc. v. OT-tehdas Oy Santasalo-Sohlberg Ab, 346 N.W.2d 162, 166 (Minn. Ct. App. 1984); *see also* Upper Midw. Sales Co. v. Ecolab, Inc., 577 N.W.2d 236, 242 (Minn. Ct. App. 1998) (same).

10. *See, e.g.*, Ark. Code § 4-72-203(a)(1) (act applicable if performance of franchise "contemplates or requires the franchisee to establish or maintain a place of business within the State of Arkansas"); Conn. Gen. Stat. § 42-133h (act applicable if franchise agreement "contemplates or requires the franchisee to establish or maintain a place of business in this state"); Del. Code Ann. tit. 6, § 2551(1)–(2) (act applicable to "franchise distributors," which is a person or entity "with a place of business within the State"); 815 Ill. Comp. Stat. 705/19(a) ("It shall be a violation of this Act for a franchisor to terminate a franchise of a franchised business located in this State . . . ."); Ind. Code § 23-2-2.7-2 (relationship provisions apply to "any franchise agreement with a franchisee who is either a resident of Indiana or a nonresident operating a franchise in Indiana"); Iowa Code § 537A.10 (act applies to a franchise "that is operated in this state," which means that "the premises from which the franchise is operated are physically located in this state"); Mo. Rev. Stat. § 407.400(1) ("[N]or shall the term 'franchise' apply to a commercial relationship that does not contemplate the establishment or maintenance of a place of business within the state of Missouri."); Neb. Rev. Stat. § 87-403 (act applies if the performance of the franchise "contemplates or requires the franchisee to establish or maintain a place of business within the State of Nebraska"); N.J. Stat. Ann. § 56:10-4 (act applies only "to a franchise (1) the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the State of New Jersey"); Va. Code § 13.1-559(B) (act applies if the performance of the franchise "contemplates or requires the franchisee to establish or maintain a place of business " within Virginia).

ever, approach this issue differently than most other state franchise acts.[11] The MFA explicitly addresses the jurisdictional scope of provisions concerning sales and offers to sell:

> The provisions of Sections 80C.01 to 80C.22 concerning sales and offers to sell shall apply when a sale or offer to sell is made in this state, when an offer to purchase is made and accepted in this state, or when the franchise is to be located in this state.[12]

Thus, the MFA makes it explicit that its registration and disclosure requirements, and other provisions concerning sales and offers to sell, are covered when offers to sell, offers to purchase, or sales are made in Minnesota regardless of whether the purported franchisee is located in Minnesota. The MFA, however, is silent on the jurisdictional scope of the sections that govern the terms of the relationship between the franchisor and the franchisee, which do not concern sales and offers to sell, such as those sections governing terminations or cancellations by the franchisor.[13]

No Minnesota state court had ever directly addressed this issue.[14] The most applicable prior guidance came from *Martin Investors, Inc. v. Vander Bie*, an early seminal case by the Minnesota Supreme Court interpreting the MFA.[15] There, the court explained that the purpose of the MFA was to protect franchisees within Minnesota: "Chapter 80C was adopted in 1973 as remedial legislation designed to protect potential franchisees within Minnesota from unfair contracts and other prevalent and previously unregulated abuses in a growing national franchise industry."[16] Many federal court cases subsequently read this language from *Martin Investors* as a basis for determining that the MFA's protections with respect to terminations did not apply to franchisees located outside of Minnesota.[17]

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11. Minn. Stat. § 80C.19(1); *see also* Cal. Corp. Code § 31013; Wash. Rev. Code § 19.100.020(2); N.Y. Gen. Bus. Law § 681(11)–(12).

12. Minn. Stat. § 80C.19(1).

13. State franchise laws regulate one or both of two areas of a franchise: (1) registration and disclosure requirements that govern the offer of and sale of the franchise (registration/disclosure laws); and (2) provisions that regulate aspects of the ongoing relationship of the franchisor and the franchisee, such as provisions regulating termination and nonrenewal of the franchise (relationship laws). *See* Gibbs, *supra* note 4, at 495. The MFA regulates both. *See* Garner, *supra* note 8, § 5:25 ("In addition to providing registration and disclosure requirements, the Minnesota Franchise Act regulates certain aspects of the franchise relationship including termination, renewal, and transfers.").

14. The Minnesota Court of Appeals previously had this issue before it in an interlocutory appeal brought by Cambria and, although it declined to address it at that time, wrote in an unpublished opinion, "[w]e recognize that the issue of whether the MFA applies to non-Minnesota franchisees appears to be a question without controlling precedent." Cambria Co. v. M&M Creative Laminants, Inc., No. A18-1978, 2019 WL 3543602, at *2 (Minn. Ct. App. Aug. 5, 2019).

15. Martin Investors, Inc. v. Vander Bie, 269 N.W.2d 868, 872 (Minn. 1978).

16. *Id.*

17. *See, e.g.*, *In re* Ne. Express, 228 B.R. 53, 59 (Bankr. D. Me. 1998) ("[T]he Debtors cannot claim the protections afforded under the MFA because they are not franchisees within Minnesota. . . . [T]here is no intent expressed by the legislature to apply the provision of the MFA extraterritorially."); Wave Form Sys., Inc. v. AMS Sales Corp., 73 F. Supp. 3d 1052, 1060 (D. Minn. 2014) ("The Minnesota Supreme Court has determined that the legislative intent behind the passage of the [MFA] was to protect *Minnesota franchisees located within Minnesota*.")

III. *Cambria Company, LLC v M&M Creative Laminants, Inc.*

The dispute in *Cambria* arose out of the termination in May 2017 of the dealer relationship between the manufacturer/supplier, Cambria, and the dealer/distributor, M&M. Cambria manufactures quartz slabs and sells quartz countertops across the country through several different distribution channels, depending upon geography.[18] M&M is a Pennsylvania corporation which had an established business selling and installing a variety of countertop and vanity products before contracting with Cambria.[19] In 2009, the parties entered into an agreement that granted M&M the right to order Cambria's finished quartz products.[20] M&M would solicit orders through its customers and provide the specific custom size specifications to Cambria, which would fabricate Cambria quartz slabs to those specifications.[21] M&M would purchase the finished quart countertops and vanities from Cambria and resell them to customers (and install them in the home).[22] Over the course of the relationship, M&M consistently was past due in paying invoices from Cambria, and in May 2017 Cambria terminated the relationship.[23]

Shortly after termination, Cambria sued M&M to recover past due amounts owed by M&M.[24] In one of its counterclaims, M&M alleged it was a franchisee under the MFA and that Cambria violated the MFA by terminating the parties' business-partner agreements without "good cause" and without providing ninety days' notice with sixty days' opportunity to cure as required under the MFA.[25] Cambria moved to dismiss M&M's MFA counterclaim on the grounds that the MFA did not apply.[26] The trial court denied Cambria's motion to dismiss, and Cambria brought an interlocutory appeal, arguing that the MFA's termination provisions did not apply because M&M was neither located in Minnesota nor did it operate a purported franchise in Minnesota.[27] After oral argument, the Minnesota Court of Appeals held that

(emphasis added); Novus Franchising, Inc. v. Superior Entrance Sys., Inc., No. 12-cv-204-WMC, 2012 WL 3542451, at *2 (W.D. Wis. Aug. 16, 2012) (concluding MFA inapplicable to non-Minnesota residents operating in territory entirely outside of Minnesota); Johnson Bros. Liquor Co. v. Bacardi U.S.A., Inc., 830 F. Supp. 2d 697, 703 (D. Minn. 2011) ("[T]he agreement is not within the purview of the MFA if the franchisee is not located in and does not operate in Minnesota."); Hockey Enters. Inc. v. Total Hockey Worldwide, LLC, 762 F. Supp. 2d 1138, 1146 (D. Minn. 2011) ("Plaintiffs have provided no relevant support for the notion that the statute is intended or has been held to extend to non-Minnesota franchisees that do not operate in Minnesota.").

18. Cambria Co., LLC v M&M Creative Laminants, Inc., 11 N.W.3d 318, 321 (Minn. 2024).
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. Cambria Company, LLC v M&M Creative Laminants, Inc., 995 N.W.2d 426, 432 (Minn. Ct. App. 2023).
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*

the interlocutory appeal had been improvidently granted and dismissed the appeal.[28] The court noted that the question of the jurisdictional scope of the termination provisions of the MFA to putative franchisees located outside of Minnesota appeared "to be without controlling precedent."[29]

Following discovery, the parties filed cross motions for summary judgment on M&M's MFA claim, among others.[30] Cambria argued that no cause of action existed under the MFA for two independent reasons. First, the relationship between Cambria and M&M was not a franchise because M&M had not been required to pay a franchise fee.[31] Second, even if the court determined that there was a triable issue of fact as to whether a franchise fee existed, the MFA's termination provision did not apply to franchisees located outside the state of Minnesota who did not operate a franchise in Minnesota.[32] The trial court granted Cambria's motion for summary judgment by finding that M&M did not pay Cambria any franchise fee.[33] The trial court did not reach the jurisdictional issue.

The trial court, however, determined that M&M had a claim for equitable recoupment, which had not been explicitly pleaded.[34] M&M's equitable recoupment claim[35] and its other non-MFA claims that survived summary judgment and Cambria's claims against M&M for monies due for products Cambria sold and delivered to M&M were tried to a jury during a two-and-one-half-week trial in August 2021.[36] The jury returned a verdict that resulted in a net recovery to Cambria, which exceeded $365,000 after an award of costs and attorneys' fees.[37]

M&M appealed and, in August 2023, the Minnesota Court of Appeals affirmed (1) all aspects of the jury verdict; and (2) the trial court's prior summary judgment rulings.[38] The appellate court affirmed the trial court's summary judgment decision that the fact that goods sold to the dealer that had to be fabricated to specifications provided by the dealer did not constitute payment of a service fee, which M&M had argued took those payments out

28. *Id.*

29. Cambria Co. v. M&M Creative Laminants, Inc., No. A18-1978, 2019 WL 3543602, at *3 (Minn. Ct. App. Aug. 5, 2019).

30. Cambria Co., LLC v M&M Creative Laminants, Inc., 995 N.W.2d 426, 433 (Minn. Ct. App. 2023).

31. *Id.*

32. Cambria Co., LLC v M&M Creative Laminants, Inc., 11 N.W.3d 318, 322 (Minn. 2024).

33. Order on Cross Motions for Summary Judgment at 10, Cambria Co. LLC vs. M&M Creative Laminants Inc., 40-CV-17-662 (1st Jud. Dist., Minn. Mar. 23, 2020) (hereinafter March 23, 2020 Order on SJ).

34. *Id.* at 13.

35. The August 2021 trial focused on M&M's equitable recoupment claim, which was the subject of a prior *Franchise Law Journal* article. James J. Long & Jevon C. Bindman, *Equitable Recoupment: A Limited Remedy for Dealer or Franchise Terminations When Statutory Protection Is Absent*, 41 Franchise L.J. 367 (2022).

36. Cambria Co., LLC v M&M Creative Laminants, Inc., 995 N.W.2d 426, 434 (Minn. Ct. App. 2023).

37. *Id.*

38. *Id.* at 438.

of the "bona fide wholesale price" exception of the statutory definition of franchise fee.[39] Although the Court of Appeals addressed nine different issues raised by M&M, the Minnesota Supreme Court granted M&M's petition for review on the single issue of whether the appellate court erred in affirming the trial court's summary judgment decision to dismiss M&M's claim under the MFA.

IV. The Minnesota Supreme Court's Holding Regarding the Franchise Fee Element

The primary issue on appeal was whether M&M had paid Cambia a franchise fee, thus converting the distribution agreement to a franchise agreement covered by the MFA. The parties agreed that M&M was not required to pay an initial capital investment fee or any type of ongoing royalty.[40] M&M argued, however, that it had paid for "services," thus satisfying the franchise-fee element for "any payment for goods or services."[41] M&M argued that because the quartz surface products it purchased from Cambria were fabricated based upon specifications provided by M&M, and the invoices for those products itemized the cost of those fabrications, it was paying a "service fee."[42] This argument was based in part upon a subject matter expert affidavit who opined: "M&M was required to buy fabrication services from Cambria as a condition of doing business with Cambria . . . and M&M, through the purchase of fabrication services paid an indirect franchise fee for the privilege of being in business with Cambria."[43]

Cambria responded that M&M was buying a fabricated good, not separate services, and thus the bona fide wholesale goods exception to the franchise fee definition of "any payment for goods or services" applied.[44] Recall that this statutory exception applies to "the purchase of *goods* or agreement to purchase *goods* at a bona fide wholesale price."[45] M&M argued that there is no corresponding bona fide wholesale price exception to the payment of "services" and therefore "any payment for . . . services" constitutes a franchise fee as expressly defined by the MFA without exception. M&M quoted a footnote from *Martin Investors* stating that the wholesale goods exception applies to "purchases of goods, not services such as those marketed by" defendant in that case.[46]

39. *Id.* at 437.
40. *Id.* at 436.
41. *Id.*
42. Cambria Co., LLC v M&M Creative Laminants, Inc., 11 N.W.3d 318, 326 (Minn. 2024).
43. March 23, 2020 Order on SJ, *supra* note 33, at 9.
44. *Cambria*, 11 N.W.3d at 326.
45. Minn. Stat. § 80C.01(9)(a).
46. *Cambria*, 11 N.W.3d at 327 (quoting Martin Invs. v. Vander Bie, 269 N.W.2d 868, 875 n.8 (Minn. 1978)).

The trial court rejected M&M's argument. It first explained that "[w]hen reviewing the role of services for custom products, 'services are always required to convert raw materials into a useful product."[47] The necessary services associated with this conversion, the court continued, do "not transform a contract of sale into a contract for services"[48] The court further emphasized that "[d]efining any fee associated with customizing a product as a franchise fee would have far reaching consequences for how businesses interact throughout the country."[49] The court ultimately refused to "upend franchise law and the normal rules of commerce in that way."[50]

The Court of Appeals affirmed the trial court's decision. It began its analysis by observing that "no precedent squarely addresses M&M's argument about paying for fabrication services."[51] The court concluded that the "dominant characteristic" of the parties' agreements was for Cambria to sell M&M finished countertops.[52] Put another way, the agreements were "predominantly a contract for a specific type of finished goods and not a contract for services."[53] The Court of Appeals opinion, however, did not provide a test for determining the agreement's "dominant characteristic" nor did it address the extent to which a fee for services otherwise can constitute a franchise fee. It did explain that "the record established that M&M paid a bona fide wholesale price, which is not considered a franchise fee" and that M&M's brief "did not discuss or dispute" this fact.[54] The court concluded: "If this court were to recognize payments for fabricated or finished products as franchise fees, it would significantly diminish the effect of the unambiguous language in the MFA that provides the purchase of goods at a bona fide wholesale price 'shall not be considered the payment of a franchise fee.'"[55]

The Minnesota Supreme Court likewise found that the wholesale goods exception of the MFA applied and that M&M had not paid a franchise fee.[56] It, however, provided a more straightforward rejection of M&M's novel argument and avoided the "dominant characteristic" analysis of both the trial and appellate courts.[57] The Supreme Court focused instead on what M&M was purchasing from Cambria. M&M argued that certain fabrication services were listed as separate line items on the parties' invoices and that "any service fee that is part of a transaction for a finished good is not exempted."[58]

47. March 23, 2020 Order on SJ, *supra* note 33, at 8 (citations omitted).
48. *Id.*
49. *Id.*
50. *Id.*
51. Cambria Co., LLC v M&M Creative Laminants, Inc., 995 N.W.2d 426, 437 (Minn. Ct. App. 2023).
52. *Id.* at 437.
53. *Id.*
54. *Id.*
55. *Id.* at 437–38 (citing Minn. Stat. § 80C.01(9)(a)).
56. Cambria Co., LLC v M&M Creative Laminants, Inc., 11 N.W.3d 318, 327 (Minn. 2024).
57. *Id.* at 326 ("We do not find it necessary to undertake that analysis, however, because the statutory language of the Act and the summary judgment record resolve this issue.").
58. *Id.* at 327.

The court, however, held that "the transaction here involved a purchase of finished *goods*."[59] It noted that "M&M did not purchase unfabricated quartz material from Cambria and then separately contract and pay Cambria for fabrication services."[60] It determined that "it is undisputed that M&M contracted with Cambria to purchase fabricated quartz products at a wholesale price, and that is what M&M received from Cambria."[61]

The Minnesota Supreme Court's opinion provides a bright-line rule for application of the payment for goods at a bona fide wholesale price exception under a certain set of facts: "Payments for manufacturing services *included* in the purchase of goods at a bona fide wholesale price are exempted from the definition of 'franchise fee' . . . [and] [t]o conclude otherwise would suggest that any charge for services included in the price of a manufactured good is a franchise fee."[62] Thus M&M's novel argument that payments for manufacturing charges required to produce a fabricated good are excluded from the wholesale goods exception was soundly rejected.

The Minnesota Supreme Court acknowledged that a franchise fee could be hidden in the purchase price of a wholesale good and cited with approval that "[a]s the court of appeals has recognized for decades, a purchase of goods at a wholesale price may include a 'hidden' franchise fee if the franchisee was required to purchase amounts or items that it would not have purchased otherwise, or if the price paid exceeded a wholesale price."[63] But the court concluded that "the record does not show that Cambria sold its finished quartz product at prices exceeding bona fide wholesale prices."[64]

The court's holding can be viewed as narrowly tailored to the facts in the case that was in front of it. The record was undisputed that the product that was the subject of the Cambria/M&M relations was quartz countertop or vanities manufactured to specific specifications provided by M&M and that the product M&M purchased was a finished fabricated product. Under these circumstances, it was clear that the wholesale goods exception applied—what was purchased was not a service, but a good. The court, therefore, did not need to address at least two questions that could arise under other fact patterns. First, if a raw material is purchased from a manufacturer by a distributor and then, in a separate transaction, the manufacturer fabricates the raw material into a finished product, does the wholesale goods exception apply? The court certainly noted that "M&M did not purchase unfabricated quartz material from Cambria and then separately contract and pay Cambria for fabrication services."[65] This distinction could be viewed in a subsequent case as dispositive, resulting in a finding that the wholesale goods exception did not apply. Conversely, the court might in such circumstances decide to

59. *Id.* (emphasis in original).
60. *Id.* at 326.
61. *Id.* at 327.
62. *Id.* at 326 (citation omitted).
63. *Id.* at 327. (citations omitted).
64. *Id.*
65. *Id.* at 326.

look back at the question of the "dominant characteristic" of the business arrangement upon which both courts below relied but which was an analysis the Minnesota Supreme Court did "not find it necessary to undertake" based upon the summary judgment record (the facts) before it.

Second, the court did not need to address the parameters of when a payment for "services" constitutes a franchise fee. Although the statutory definition of franchise fee includes "any payment for goods or services," very few Minnesota cases have addressed the service fee component over the more than fifty years that the MFA has been in effect. The court easily distinguished the primary precedent that addressed payment of a service fee by pointing out that "the franchisor sold computer *services*; there were no goods involved in its transactions with its franchises."[66] What remains entirely unclear, however, is how the court will interpret "any payment for services" in contexts outside of this case. There is a body of case law generally under the MFA that payments for "ordinary business expenses" do not qualify as "franchise fees."[67] Whether the Minnesota Supreme Court will adopt, limit, or reject this non-statutory exception to the franchise fee definition is unclear.

What is clear from the Minnesota Supreme Court's opinion, however, is that the purchase of a fabricated finished good at a bona fide wholesale price does not constitute a franchise fee under the MFA, even if the cost of certain fabricating services is itemized on the invoice. It was on this basis that the judgments of the trial and the Court of Appeals dismissing M&M's claims under the MFA were affirmed.

V. The Minnesota Supreme Court's Holding Regarding the Jurisdictional Reach of the MFA's Provisions Governing the Franchise Relationship

In a footnote, the Court of Appeals had alternatively held that the MFA's termination provisions did not apply to M&M because M&M was not located "within Minnesota."[68] First, the court noted that in *Martin Investors*, the Minnesota Supreme Court had held that "the MFA 'was adopted in 1973 as remedial legislation designed to protect potential franchisees *within* Minnesota from unfair contracts and other prevalent and previously unregulated abuses in a growing national franchise industry."[69] The Court of Appeals

66. *Id.* at 327 (emphasis in original).

67. *See, e.g.*, Day Distrib. Co. v. Nantucket Allserve, Inc., No. 07-CV-1132 PJS/RLE, 2008 WL 2945442, at *5 (D. Minn. July 25, 2008) ("Minnesota courts (and federal courts applying Minnesota law) have long held that ordinary business expenses . . . are not considered [a] franchise fee unless they are unreasonable and lack a valid business purpose."). This case law has not been considered by the Minnesota Supreme Court, nor has it been applied specifically to an argument that there was a payment for a "service fee."

68. Cambria Co., LLC v M&M Creative Laminants, Inc., 995 N.W.2d 426, 438 n.4 (Minn. Ct. App. 2023).

69. *Id.* (citing Martin Invs., Inc. v. Vander Bie, 269 N.W.2d 868, 872 (Minn. 1978) (Minn. Ct. App. 2023)) (emphasis in original).

then looked at the federal court decision in *Johnson Brothers Liquor Co. v. Bacardi U.S.A., Inc*, which it argued "reasoned persuasively that a contract 'is not within the purview of the MFA if the franchisee is not located in and does not operate in Minnesota.'"[70]

The Minnesota Supreme Court, however, rejected this analysis. The court began with the principle that when "interpreting statutes, our objective is to 'ascertain and effectuate the intention of the legislature.'. . . And when the statutory text is clear and unambiguous, we give effect to the plain language."[71] Applying these principles, the court determined that "[t]he plain language of section 80C.14 does not indicate that the Legislature intended" a limitation to franchisees within Minnesota and "the Act does not limit its definition of the term 'franchisee' to include only Minnesota companies."[72] The court also looked to "express territorial limitations in other provisions contained within the Act" and concluded that, "if the Legislature had intended section 80C.14 to apply only to Minnesota-based franchisees, it could have said so . . . ."[73] The court found that the language from *Martin Investors* (relied on by the Court of Appeals) did not control both because it considered the language was obiter dicta and because "stating that the Act is intended to protect Minnesota franchisees is not the same as stating that the Act is intended to protect *only* Minnesota franchisees."[74]

The court concluded that "the Act does not categorically preclude an out-of-state company from enforcing a claim for unfair practices under section 80C.14."[75] But, it went on to note, "We do not, however, suggest that section 80C.14 is enforceable by *every* out-of-state company. Of course, an out-of-state company must show that section 80C.14 is otherwise applicable, and companies without a connection to Minnesota may face jurisdiction or other hurdles."[76] The court found that such considerations did not apply in this case, citing that "M&M engaged in continuous business with Cambria—a Minnesota company—for eight years," that the "parties' business agreements were drafted in Minnesota, that M&M sent personnel to Minnesota for training and certifications," and that "the parties' contract, drafted by Cambria, includes a Minnesota choice-of-law provision."[77] Therefore, the

70. *Id.* (quoting Johnson Bros. Liquor Co. v. Bacardi U.S.A., Inc., 830 F. Supp. 2d 697 (D. Minn. 2011)).

71. Cambria Co., LLC v. M&M Creative Laminants, Inc., 11 N.W.3d 318, 323 (Minn. 2024) (citations omitted).

72. *Id.*

73. *Id.* at 324.

74. *Id*. (emphasis in original). The Minnesota Supreme Court conducted its analysis without citing to, or overtly addressing, any of the federal court cases that held the relationship provisions of the MFA inapplicable to out-of-state franchisees. This may indicate that, at least in a situation of de novo review, it does not deem such decisions of value and thus attorneys may not want to rely substantially on them.

75. *Id.* at 325.

76. *Id.*

77. *Id.* Reference to the choice-of-law clause raises the issue of whether the court indicated that a statute not intended to apply to a certain circumstance can be extended to apply through a choice-of-law clause. There is a body of law to the contrary. *See* N. Coast Tech. Sales, Inc. v.

court concluded that "[u]nder these circumstances, the fact that M&M is an out-of-state company does not preclude it from bringing a claim under the Act."[78]

It is unclear from the Minnesota Supreme Court's analysis whether it is referring only to generally accepted jurisdiction requirements not specific to the MFA as "hurdles" to application of section 80C.14 of the MFA to out-of-state franchisees or whether certain circumstances beyond those issues would allow a court to find the relationship provisions inapplicable. Regardless, the court soundly rejected the general determination of the Court of Appeals and of most federal courts that had addressed the issue that the MFA does not apply to wrongful termination or other unfair practices claims brought by out-of-state franchisees under section 80C.14.[79]

Conclusion

The Minnesota Supreme Court's decision in *Cambria* provides the bright-line rule that payments for the purchase of fabricated goods fall under the bona fide wholesale price exception to the MFA's statutory definition of a franchise fee. But the decision is narrowly tailored to that principle. M&M's argument was a novel one, and thus it is unclear whether there will be wide application of the principle in this decision. The decision leaves open how Minnesota courts are to address situations in which payments for separate services accompany the payment for goods, such as cases in which there is not a single fabricated good at issue. The decision also did not take the opportunity to address whether the statutory language that "any payment for . . . services" constitutes that a franchise fee must be read literally or whether an ordinary business purpose limitation should be read into the statute. Given the Minnesota Supreme Court's reliance on the express statutory language in deciding both issues before it, and its reluctance to add a limitation to the jurisdiction scope of the relationship provisions of the MFA that is not expressly contained in the MFA, there is reason to believe that the Minnesota Supreme Court may be reluctant to adopt the ordinary business purpose limitation found in a number of nonbinding MFA decisions.

The *Cambria* decision also clarified prior conflicting non-precedential case law by holding that the MFA does not categorically preclude an out-of-state company from enforcing an unfair practices claim, including one

Pentair Tech. Prod., Inc., No. 12-CV-1272 PJS/LIB, 2013 WL 785941, at *2 (D. Minn. 2013) (a choice-of-law clause dictates that a court must "apply the statutes . . . *as they are written*. But the choice-of-law clause does not *change* those statutes . . . ."); Buche v. Liventa Bioscience, Inc., 112 F.Supp.3d 883 (D. Minn. 2015) (choice-of-law provision designating Pennsylvania law did not change the terms of the statute so that it would be applicable).

78. *Cambria Co.*, 11 N.W.3d at 325.

79. Although not raised in *Cambria*, a separate issue exists whether an extraterritorial effect of a state franchise act violates the Dormant Commerce Clause. *See, e.g.*, John W. Halpin, Mark M. Leitner & Joseph S. Goode, *Thinking Outside the State: The Dormant Commerce Clause and Its Impact on State Relationship Laws*, 39 Franchise L.J., 515 (2020).

based on termination, under the MFA. This holding may not have significant application outside of the MFA because, unlike the MFA, most state franchise acts specifically address the jurisdictional scope of their provisions governing franchise relationships. The decision does, however, underscore the Minnesota Supreme Court's focus on the express language of the statute and its reluctance to add requirements or restrictions not contained within that express language. Finally, the decision serves as a reminder that federal cases interpreting a state statute are not binding precedent and may not even be considered by a state court, as was the case here in which the Minnesota Supreme Court did not mention the federal cases addressing the MFA's jurisdictional scope.