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## BLOGS

### Terminations

# Actual Notice of Default Letter Overrides Franchisor's Failure to Comply Strictly With Notice Provision

A United States District Court in Miami, Florida rejected a franchisee's bid to invalidate a notice of default sent by email for failure to comply with the franchise agreement's notice provisions. *Tim Hortons USA, Inc. v. Singh*, 2017 WL1326285 (S.D. Fla. Apr. 4, 2017). Tim Hortons had sent a notice of default by both email and overnight mail. The notice gave the franchisee, Singh, five days to cure certain financial defaults. Tim Hortons terminated the franchise after Singh allegedly failed to cure its default within five days of receiving a copy of the emailed notice. Having proffered a cure within five days of receiving the copy of the notice sent by overnight mail, Singh challenged the validity of the emailed notice and the timeliness of the notice of termination, in addition to challenging whether Tim Hortons had adequate grounds for termination in the first place. Tim Hortons moved for summary judgment on all issues.

In granting partial summary judgment in favor of Tim Hortons, the court observed that under Florida law, strict compliance with a notice provision is not required if a party has received actual notice. Undisputed evidence on the record demonstrated that Singh received the emailed copy of the notice of default. For instance, evidence showed that Singh forwarded the emailed notice to a family member within an hour of receiving it. The court also rejected an argument by Singh that Tim Hortons was required to provide a copy of the notice to each of the franchisee's representatives and guarantors. It found that the franchise agreement's notice provision only required that notice be sent to the franchisee. Although the court granted the portion of Tim Horton's motion for summary judgment that related to the validity of the emailed notice of default and the timeliness of the notice of termination, the court denied the remainder of Tim Horton's motion for summary judgment as it related to Singh's challenges to the adequacy of the grounds for termination.

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