

BLOGS

Terminations

Arizona Federal Court Grants Temporary Restraining Order for Franchisor That Terminated Franchise Agreement Without Opportunity to Cure

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A federal court in Arizona recently granted a temporary restraining order for franchisor ReBath against one of its franchisees even though ReBath gave no opportunity to cure the defaults and had previously sent a notice of default with opportunity to cure for a similar issue. *ReBath LLC v. Foothills Serv. Sols. Co.*, 2021 WL 2352426 (D. Ariz. June 9, 2021). On April 26, 2021, ReBath initially sent Foothills a notice of default for past-due royalty payments and past-due product purchase payments, providing 30 days to cure the default. Foothills paid the past-due royalty payments in full on May 6, 2021. ReBath sent a notice of termination on that same day, stating, among other things, that Foothills was in default for failure to pay fees due three times in 12 months, in violation of the franchise agreement. This notice provided Foothills with no opportunity to cure. Foothills repaid the past-due product purchase payments a week later and notified ReBath that Foothills would not cease operation of its franchise. ReBath and Foothills both filed separate suits, which were later consolidated. ReBath brought claims for trademark infringement, unfair competition, trade secret violations, and breach of contract for post-termination obligations and breach of the covenant not to compete. Foothills asserted an equitable action for injunctive relief preventing termination of the Agreement, declaratory relief that Foothills was in compliance with the Agreement, breach of contract based on termination, and breach of implied covenant of good faith and fair dealing. Both parties sought temporary restraining orders. The Arizona district court granted ReBath's temporary restraining order in part and denied Foothill's.

The key issue was whether ReBath had the right to terminate the franchise agreement and the district court determined that ReBath had a likelihood of success of showing that its actions were proper under the franchise agreement. Under the language of the franchise agreement, ReBath had a right to terminate immediately if Foothills failed to pay fees due three or more times in 12 months. Even though the reasons for termination were similar to the reasons for the initial default, the reasons for termination were invoked under a different section of the franchise agreement. In addition, in its initial notice of default, ReBath preserved its right to invoke other remedies under the franchise agreement. The district court held that ReBath therefore showed a likelihood of success on the merits and granted in part its temporary restraining order.

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