BLOGS

Damages

California Court of Appeals Affirms Rejection of Reverse Royalty Damages in a Breach of Contract Action by Franchisee

An appellate court in California has affirmed a trial court's rejection of more than $4 million in lost business profits, which appellant Glen Suh alleged in a breach of contract action against franchisor Boba Time, Inc. *Suh v. Pak*, 2024 WL 768839 (Cal. App. Feb. 26, 2024).

An appellate court in California has affirmed a trial court's rejection of more than $4 million in lost business profits, which appellant Glen Suh alleged in a breach of contract action against franchisor Boba Time, Inc. *Suh v. Pak*, 2024 WL 768839 (Cal. App. Feb. 26, 2024). Suh, the owner of an It's Boba Time franchise, filed suit against Boba Time after the franchisor began opening other stores within an area that he believed to be his exclusive territory. Suh claimed not only to have lost out on more than $1 million in lost profits when the competing stores cut into his sales, but also argued that Boba Time deprived him of "reverse royalties" connected to his rights related to future stores that may open within the exclusive territory, which his expert valued at $4,714,622. Although the trial court found Boba Time had breached the exclusive territory and awarded damages for lost sales, it rejected the additional damages because Suh failed to demonstrate with reasonable certainty that he was entitled to reverse royalties. Suh appealed, arguing he was entitled to these damages.

The court of appeals affirmed the trial court's denial of Suh's claim for reverse royalties. The court noted the distinction under California law between established and unestablished businesses when determining entitlement to lost business profits. Generally, lost anticipated profits for an unestablished business are not recoverable because they are speculative, but the court noted that an expert's opinion on lost anticipated profits may be sufficient when it is supported by tangible evidence with a "substantial and sufficient factual basis." Suh was therefore required to demonstrate with reasonable certainty the gross sales and viability of current and future It's Boba Time stores within his territory. The court concluded that Suh failed to meet this burden because his expert was not an expert in the retail food and beverage industry, failed to research whether the market could sustain additional franchised stores within the exclusive territory, failed to research the expected demand for Boba beverage stores in the territory, and failed to consider the impact of other competing beverage stores. The court also determined that the record did not support the expert's extrapolation of the revenue at Suh's sole location onto other It's Boba Time stores because it was too attenuated.

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