

Court Denies Franchisor's Motion for Summary Judgment on Breach of Franchise Agreement Claims Due to Comanagement of Franchises

A federal court in Florida recently denied a franchisor's motion for summary judgment, finding that issues of fact remained as to whether the franchisor or the franchisee was responsible for alleged breaches of the franchise agreement. *Creative Am. Educ., LLC v. The Learning Experience Sys., LLC*, 2015 U.S. Dist. LEXIS 60138 (S.D. Fla. May 7, 2015). Pursuant to a management agreement between the parties, the franchisor ("TLE") assumed initial management responsibilities for the two franchises at issue, then transitioned responsibility to the franchisee ("CAE"). At some point, the franchises were cited for failing to comply with state licensing and childcare regulations. They also experienced staffing issues. As a result, a representative from CAE wrote to TLE proposing the immediate closure of one of the franchises. TLE responded by assuming complete managerial control of both franchises. CAE sued TLE, and TLE asserted counterclaims alleging that CAE had breached the franchise agreement, and other agreements between the parties, by failing to comply with: (i) state laws and regulations and contractual staffing requirements; (ii) provisions prohibiting the abandonment of the franchises; and (iii) other contractual requirements after TLE's managerial take-over (e.g., the obligation to fund the franchises). TLE moved for summary judgment on its counterclaims.

The court denied TLE's motion for summary judgment, finding that issues of fact remained as to each of the counterclaims. First, the court found that it was unclear from the record whether the regulatory violations and staffing issues arose during, or resulted from, TLE's or CAE's management of the franchises. The court further held that issues of fact remained as to whether CAE's proposed closure of a franchise implicated a cessation of operations in violation of the franchise agreements, or a short-term closure to remedy regulatory violations. Whether CAE's "proposed" closure was sufficiently clear and definite to warrant preemptive action by TLE also remained an issue of unresolved fact. Finally, the court concluded that it could not determine, at summary judgment, whether TLE's managerial take-over of the franchises constituted a termination and, therefore, whether CAE had any continuing obligations under the 2 GRAY PLANT MOOTY franchise agreements. In support of CAE's theory that the agreements had been terminated, the court noted that TLE had, among other things, assumed complete managerial control without CAE's consent and banned CAE representatives from the franchise premises. In support of TLE's theory that the agreements had not been terminated, the court noted that TLE

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had not issued a notice of termination and that TLE alleged that CAE consented to its assumption of managerial control.