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BLOGS
Arbitration

Court Grants Plaintiffs' Motion For Voluntary Dismissal

In *PCPA, LLC v. The Flying Butcher, LLC*, 2016 WL 3920170 (D.N.H. July 18, 2016), a federal court granted the plaintiffs' motion to dismiss their complaint without prejudice. The Flying Butcher, former franchisees of Meat House Franchising, executed a franchise agreement with Meat House that included an arbitration clause that covered disputes "arising out of or relating to operation of the Franchised Business or this Agreement." In 2014, Meat House's secured creditors entered into an Asset Purchase Agreement with one of the plaintiffs – PCPA, LLC – pursuant to which PCPA claimed that it acquired the right to enforce Meat House's franchise agreements. Shortly thereafter, PCPA claimed that The Flying Butcher improperly terminated the franchise agreement and failed to comply with their post-termination obligations under that agreement.

In response to the termination, PCPA filed a statement of claim with the American Arbitration Association against The Flying Butcher for breach of contract, trademark infringement, and unfair competition. The Flying Butcher argued that the franchise agreement was not validly transferred to PCPA and that PCPA had no right to enforce the agreement's arbitration clause. The arbitrator agreed. Shortly thereafter, PCPA commenced an action in federal court seeking a declaration that the franchise agreement was validly transferred to it, and contemporaneously submitted a motion to the arbitrator arguing, among other things, that the arbitrability questions should be decided by a court, not the arbitrator. The arbitrator eventually rejected PCPA's arguments and closed the case. Upon receiving the arbitrator's order, PCPA promptly notified The Flying Butcher that PCPA intended to dismiss its complaint without prejudice. The Flying Butcher nonetheless filed its answer later that same day, and submitted a motion for summary judgment two days later. PCPA then filed a motion to voluntarily dismiss its lawsuit without prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(2).

Rule 41(a)(2) provides that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." The court observed that PCPA's motion for voluntary dismissal was filed early in the process – the pretrial conference was not yet scheduled, no discovery plan had been submitted, and no meaningful discovery had occurred. Although The Flying Butcher claimed that it had already invested significant time and effort into the matter and had filed a motion for summary judgment, the court found that such efforts were primarily the product of The Flying Butcher's own aggressive litigation strategy. In

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com



addition, PCPA argued that it moved to dismiss its claims because the arbitrator's orders had rendered many of them moot, and that a petition to vacate the arbitrator's award would be the most appropriate way to challenge the arbitrator's decision. The court agreed, granting the plaintiffs' motion to dismiss without prejudice.