

Court Grants Summary Judgment on Breach of Contract Claim After Finding No Contract

A federal court in South Carolina has granted summary judgment to a franchisor after finding no material question of fact regarding whether a contract ever existed between the parties. *Theo's Pizza, LLC v. Integrity Brands, LLC*, 2019 WL 1282325 (D.S.C. Mar. 20, 2019). Ted and Marcia Contos began communicating with Integrity Brands, LLC ("IBL") with the hope of developing an Uncle Maddio's Pizza Joint franchised restaurant. The Contoses created two limited liability companies: (i) Thea and Theo, LLC to develop the premises for the restaurant, and (ii) Theo's Pizza, LLC to serve as the franchisee. Thea and Theo, LLC entered into a market development agreement with IBL to govern the Contoses' relationship with IBL until the opening of the restaurant. Although that agreement required Thea and Theo, LLC to sign IBL's franchise agreement within 10 days after IBL approved the location for the restaurant, the parties never actually signed such an agreement. In 2013, after having spent over \$600,000 in developing the restaurant, the Contoses opened their first location for business. Between 2013 and 2016, the Contoses never turned a profit on the restaurant.

Theo's Pizza filed suit against IBL seeking a declaratory judgment regarding the parties' relationship and alleged that IBL had violated the South Carolina Business Opportunity and Sales Act and the South Carolina Unfair Trade Practices Act. In the alternative, Theo's Pizza argued that IBL had committed a breach of contract. IBL moved for summary judgment on all claims. The court had already ruled in a prior decision that there was no enforceable arbitration provision between the parties because there was no evidence that they had entered into a binding agreement. The court noted that the parties had not presented any additional evidence or arguments regarding the existence of a written contract or an oral contract that would satisfy the statute of frauds. Accordingly, the court granted IBL's motion for summary judgment on the breach of contract claim because there was no dispute of fact, and the court had previously held that there was no agreement between the parties. Because disputes of material fact remained for the statutory claims, the court denied summary judgment on those issues.

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