BLOGS

Personal Liability

Court Upholds Enforcement of Personal Guaranty

A federal court in Texas recently decided that a franchisor may recover on a guaranty agreement despite the guarantor's claim that the guaranty was unenforceable because he did not receive the value that he was allegedly promised in exchange for executing it. *Burger King Europe GMBH v. Groenke*, 2015 WL 6751121 (N.D. Tex. Nov. 5, 2015). Groenke had an ownership interest in multiple entities that owned and operated a number of Burger King franchises in and around Berlin, Germany. After the opening of insolvency proceedings for Groenke's entities, Burger King brought claims against him, seeking payment of past due fees under a guaranty, which Groenke had executed in June 2010 in connection with his company's acquisition of 15 Burger King franchises that were suffering heavy losses. He also received a development agreement to open as many as 38 new franchises. In response to Burger King's claims in the lawsuit, however, Groenke asserted the affirmative defenses of failure of consideration and frustration of purpose. He claimed that he agreed to execute the guaranty in exchange for an oral promise to allow him to acquire 91 additional Burger King stores and a larger development agreement. Because he never received those stores or that development agreement, Groenke said there was no consideration for the guaranty.

The court decided otherwise. It first noted that none of the terms material to the acquisition of the restaurants or the development agreement, including the exact price, the amount of development fees, the number of restaurants to be developed, or the geographic territory, were agreed to prior to signing the guaranty. In fact, the parties were still negotiating the terms in the fall of 2011, as evidenced by a term sheet. Additionally, the term sheet provided that any party could terminate negotiation of the transaction at any time for any reason. In August 2012, Groenke acknowledged in a letter that the parties had broken off negotiations for the 91 stores, belying Groenke's contention that the alleged promises constituted an enforceable deal. Finally, the court found that integration clauses in the contemporaneous agreements relating to the acquisition of the 15 franchises and the 38 store development agreement barred any oral promises. Therefore, the court found that the evidence did not support Groenke's affirmative defenses and entered a judgment in favor of Burger King.

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com