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## BLOGS

Bankruptcy

# Delaware Bankruptcy Court Finds That Franchise Agreements Were Not Terminated Prior to Bankruptcy Petition

Ruling on cross motions for summary judgment, the U.S. Bankruptcy Court for the District of Delaware found that a franchisor had failed to provide clear and unambiguous notice of its intention to terminate in notices it gave to the franchisee, so that no termination occurred prior to the filing of the franchisee's bankruptcy petition. *In re RMH Franchise Holdings, Inc.*, 2018 WL 4637456 (Bankr. D. Del. Sept. 25, 2018). RMH Franchise Holdings and its affiliates are the second-largest franchisee of Applebee's Neighborhood Bar & Grill restaurants, operating 160 restaurants in fifteen different states (some 10 percent of the Applebee's system). RMH ceased making royalty payments in June 2017. On September 20, 2017, Applebee's notified RMH of the deficiency and provided the franchisee with 90 days to cure, explicitly stating that the franchises would be terminated without further notice if RMH failed to cure during that period. Applebee's then extended the cure period several times, but did not restate its intention to terminate. Applebee's next provided an additional period of forbearance of exercising its termination rights. At the end of the forbearance period on May 8, 2018, RMH filed for bankruptcy, and Applebee's brought an independent suit and purported to terminate RMH's franchises in two states retroactive to the end of the extended cure period, on April 27, 2018. Applebee's then filed an adversary action in the bankruptcy court.

The bankruptcy court held that Applebee's failure to repeat in the cure extension letters the termination notice contained in the September 20 letter deprived RMH of clear and unambiguous notice of intent to terminate. Even if there was notice to terminate, the court held, Applebee's also forbore exercise of its remedies until the petition date, May 8. In its forbearance notice, Applebee's did not distinguish between termination and the exercise of post-termination rights. Finally, the fact that Applebee's sought to terminate certain of RMH's franchises retroactively on May 8 showed that no termination had taken effect by that date, when RMH filed its petition.

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