

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

BLOGS

Bankruptcy

Delaware Bankruptcy Court Grants Motion to Dismiss Time-Barred Claims for Breach of Franchise Agreement

A federal bankruptcy court in Delaware has dismissed time-barred claims that a Chapter 7 Trustee alleged on behalf of a bankrupt franchisor, AVF Franchising, LLC, against several of its franchisees. *In re Start Man Furniture, LLC*, 2023 WL 2717662 (Bankr. D. Del. Mar. 30, 2023).

A federal bankruptcy court in Delaware has dismissed time-barred claims that a Chapter 7 Trustee alleged on behalf of a bankrupt franchisor, AVF Franchising, LLC, against several of its franchisees. *In re Start Man Furniture, LLC*, 2023 WL 2717662 (Bankr. D. Del. Mar. 30, 2023). AVF and related entities had filed for Chapter 11 bankruptcy protection, but their cases were converted to Chapter 7 cases and a Trustee was appointed. The Trustee initiated adversary proceedings against several franchisees, alleging breach of the franchise agreements for failure to pay royalties and for merchandise purchased from AVF, seeking damages and the turnover of bankruptcy estate property in the amount owed under the franchise agreements. The franchisees moved to dismiss, arguing that the Trustee's complaints were time-barred under the one-year limitations period in the franchise agreements. The Trustee argued that a timeliness defense was not appropriate for the motion to dismiss stage and that there were unresolved factual issues regarding possible trademark violations that were not time-barred.

The court rejected the Trustee's arguments. Although the court noted that, under 11 U.S.C. § 108(a), the bankruptcy filings extended the period of limitations to two years, that was not enough to save the cases from dismissal. The court acknowledged as a general rule that a statute of limitations defense is typically not appropriate to consider at the motion to dismiss stage. But because the complaints actually attached the franchise agreements and dated invoices giving rise to the claims, the applicability of the defense was clear. As a result, the court granted the motions to dismiss, noting that the possible trademark violations were a separate claim, not yet before the court, that the Trustee could still bring via separate actions.

Related Services

[Franchise & Distribution](#)