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Bankruptcy

District Court Affirms Bankruptcy Court Determination That Option Holder Had Standing Under Texas Deceptive Trade Practices Act

In *Carroll v. Farooqi*, 2013 U.S. Dist. LEXIS 22329 (N.D. Tex. Feb. 19, 2013), the United States District Court for the Northern District of Texas affirmed a U.S. Bankruptcy Court's holding that an individual had standing to pursue an action against a franchisor under the Texas Deceptive Trade Practices Act (DTPA). The case involved an unsuccessful sale of a Salad Bowl franchise. The CEO of the fast causal franchise company (who was also its president, chairman, and CFO) contacted a potential buyer of a franchise. The buyer signed a thirty-day option contract and paid \$25,000 to the CEO for the franchise fee. Unfortunately, the buyer was unable to line up financing and demanded that the CEO refund his initial franchise fee. After the CEO filed an individual Chapter 13 bankruptcy case, the buyer initiated an adversary proceeding—a lawsuit in the bankruptcy case—against him. Among other things, the bankruptcy court held that the CEO had violated the DTPA, awarded the buyer a judgment for \$88,000, and found that the debt was non-dischargeable in bankruptcy.

On appeal to the district court, the CEO did not challenge the bankruptcy court's decision that he violated the DTPA, but did appeal the finding that the buyer had standing to maintain an action under the statute. Specifically, the CEO argued that the buyer was not a "consumer" under the DTPA because he entered into an "option contract," which was neither a "good" nor a "service" under the Texas statute. The district court rejected that argument, holding that "a franchise may be a good or service under the DTPA." Moreover, in determining whether a party was a "consumer" for purposes of the DTPA, Texas law directed courts to examine a party's "central objective" in the transaction. Since the district court found that the buyer's "purpose in the entire transaction was to purchase a Salad Bowl franchise, not an Option Agreement," it concluded that the buyer had standing to bring a DTPA claim against the CEO.

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