

BLOGS

Practice of Franchise Law

Florida Appellate Court Reinstates Defamation Case

A trial court's dismissal of defamation claims against a franchisor and related parties, including the franchisor's legal counsel, was reversed last week by a court of appeals in Florida. *Rolle v. Cold Stone Creamery, Inc., et al.*, 2017 WL 815365 (Fla. App. March 1, 2017). This case arose when Rolle, a former franchisee, participated in a 2010 CNBC documentary regarding franchising. In response to the documentary, the franchisor retained attorney Robert Zarco, who wrote a letter to CNBC (with a copy to Janet Sparks, a freelance writer for the Blue Mau Mau website), asking that CNBC discontinue airing the program. The letter contained a number of statements critical of the franchisee, and the franchisee responded by suing the franchisor and its counsel for defamation. The defendants moved to dismiss the case on the grounds that the letter could not be actionable in defamation due to the "litigation privilege" doctrine.

In reversing the trial court's dismissal order, the Florida appellate court held that the attorney's letter was not absolutely privileged, at least under the facts as pleaded in the franchisee's complaint. There was no litigation on file at the time the letter was sent, and the letter did not "explicitly threaten litigation," according to the appellate court. In addition, the court ruled that the letter was not framed as a "pre-suit notice" under Florida law. While the court noted that the defendants ultimately might prevail on litigation privilege grounds or another defense, the franchisee's defamation case will be allowed to proceed for the time being.

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