

BLOGS
Transfers

Florida Federal Court Grants Partial Dismissal of Claims Arising From Transfer of Franchise

A federal court in Florida granted in part and denied in part a motion to dismiss a lawsuit brought by plaintiffs seeking to sell their Tim Hortons franchises to a third party. *Picktown Foods, LLC v. Tim Hortons USA, Inc.*, 2017 U.S. Dist. LEXIS 186107 (S.D. Fla. Nov. 8, 2017). The plaintiffs, who are five different Tim Hortons franchisees, had entered into a purchase agreement with a third party to sell each restaurant for \$880,000, but Tim Hortons did not consent to the sale, which was required under the franchise agreements before a sale could close. Tim Hortons indicated that it would only approve the sale if the purchase price were reduced to \$550,000, which was the estimated value of the equipment at the five restaurants. The plaintiffs brought suit, alleging that Tim Hortons had unreasonably withheld consent, was improperly seeking to freeze the price in order to ensure more money would be invested in the brand after the sale, and that Tim Hortons had improperly withheld information about potential sale restrictions from the disclosure documents provided to each plaintiff before they became franchisees.

The court dismissed the plaintiffs' disclosure-related claims as time-barred under the two-year period of limitations for claims under the franchise agreement. Because each franchisee had received an FDD more than two years prior to the lawsuit, any claim that the FDD was defective was untimely. The franchise agreements attached to each FDD indicated that Tim Hortons could "arbitrarily withhold its consent to any transfer . . . if it determines in its sole and absolute discretion that the sale or transfer price to be paid by any proposed transferee is inappropriate." As a result, the plaintiffs' disclosure claims were not only untimely, but they also failed to present any omission of material terms related to potential restrictions on transfers. The court denied the motion to dismiss, however, regarding the plaintiffs' claims that Tim Hortons improperly withheld consent. The court noted that the contractual right to "arbitrarily withhold consent" was broad, but not without limits. Indeed, the consent provision only allowed Tim Hortons to withhold consent when it had made a determination that the purchase price was inappropriate—which was alleged in the complaint not to have occurred—and when Tim Hortons provided the plaintiffs with written notice of such a determination, which also was alleged to have not occurred. Moreover, the contract provided the plaintiffs a right to seek injunctive relief to compel Tim Hortons to grant consent to a sale, which would be a meaningless right if Tim Hortons indeed had unbridled discretion to withhold consent to a transfer. As a result, the plaintiffs were permitted to move forward with their claims that Tim

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Hortons' improper withholding of consent was a breach of contract and also tortiously interfered with the purchase agreement.