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BLOGS

Damages

Fourth Circuit Vacates Franchisee's Award of Lost Profits Due to Lack of Consideration

The United States Court of Appeals for the Fourth Circuit vacated part of a district court's order that had awarded lost profits to a franchisee in connection with his attempt to repurchase his franchised businesses. *JTH Tax, Inc. v. Aime*, 2018 WL 3770028 (4th Cir. Aug. 8, 2018). The franchisee, Aime, operated nine tax preparation businesses pursuant to franchise agreements with JTH. When the IRS suspended Aime's electronic filing number, JTH purchased and assumed control over the businesses. The purchase agreement included an option for Aime to buy back the franchises if he could obtain a new filing number by a certain date.

Aime was not able to obtain a new filing number by the buyback deadline, so JTH offered to extend the deadline. Aime continued to pay certain expenses of the businesses after the original deadline passed and while he was trying to obtain a new filing number. Soon after, the parties' relationship deteriorated, and they sued each other for breach of contract before the expiration of the extended deadline and before Aime obtained a new number. After a bench trial, the trial court awarded Aime over two million dollars, including the profits Aime lost because he was unable to repurchase his franchised businesses. Critical to the judgment was the trial court's holding that Aime could enforce JTH's promise to extend the buyback deadline.

On appeal, the Fourth Circuit held that JTH's offer to extend the deadline was, in effect, a gratuitous promise that was unenforceable. While JTH agreed to extend the deadline, there was no corresponding consideration by Aime. The appellate court held that even though it was foreseeable that Aime would continue to pay expenses of the franchised businesses after the original buyback deadline had passed, and JTH knew Aime would be induced to do so, the foreseeable inducement did not constitute consideration. As a result, the Fourth Circuit vacated the trial court's judgment to the extent it relied on the validity of the extended deadline.

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