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## BLOGS

Attorneys' Fees

# Franchisee Cannot Recover Attorneys' Fees After Franchisor's Voluntary Dismissal

The U.S. District Court for the Western District of Texas has denied a franchisee's motion for attorneys' fees after the franchisor voluntarily dismissed its claims without prejudice. *Stockade Cos., LLC v. Kelly Rest. Grp., LLC*, 2018 WL 3018177 (W.D. Tex. June 15, 2018). Stockade entered into multiple franchise agreements with Kelly Restaurant Group ("KRG") for KRG to develop various franchised Stockade restaurant concepts. When KRG continued to operate the restaurants following the termination of the franchise agreements, Stockade sued KRG for trademark infringement, breach of KRG's noncompetition covenant, and misappropriation of trade secrets. After the court preliminarily enjoined KRG from using Stockade's marks, KRG rebranded the restaurants. Stockade again sought to enjoin KRG from operating the rebranded restaurants, but the court declined to grant an injunction. Subsequently, KRG filed a motion to dismiss Stockade's claims, and Stockade responded by voluntarily dismissing the lawsuit without prejudice. KRG then filed a motion to recover its attorneys' fees and costs.

KRG argued that it was the prevailing party under Federal Rule of Civil Procedure 54(d)(2) and was therefore entitled to recover its attorneys' fees under the franchise agreements, the Texas Uniform Trade Secrets Act, and Federal Rule of Civil Procedure 41(d). However, the court held that KRG could not be the prevailing party for purposes of Rule 54 because Stockade had dismissed its claims without prejudice, which did not alter the legal relationship between the parties. As further evidence that KRG had not prevailed, the court observed that Stockade did not dismiss its claims in order to avoid an unfavorable judgment on the merits. Rather, Stockade sought to pursue those claims in arbitration, purportedly because it found it more sensible to do so. The court also noted that Stockade had partially succeeded by obtaining a preliminary injunction regarding KRG's post-termination use of its trademarks. Finally, the court determined that even if KRG had met the threshold requirement that it was the prevailing party under Rule 54, it still would not be entitled to attorneys' fees under the franchise agreements and the specific statutes and rules it was relying on.

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