

BLOGS

Discovery

Franchisee Is Prohibited From Obtaining Discovery From Shareholder of Franchisor

A United States District Court in Indiana granted a motion for a protective order prohibiting a franchisee from obtaining discovery from a major shareholder of the franchisor in *Noble Roman's, Inc. v. Hattenhauer Distributing Co.*, 2016 WL 1162553 (S.D. Ind. Mar. 24, 2016). Noble Roman's and Hattenhauer were parties to franchise agreements pursuant to which Hattenhauer was granted the right to make and sell Noble Roman's pizza products at convenience stores in exchange for royalty payments based on Hattenhauer's gross sales. The dispute arose when Noble Roman's audited Hattenhauer's operations and determined that additional royalties were owed due to underreported sales. When Noble Roman's brought suit to recover the unpaid royalties, Hattenhauer filed a counterclaim alleging that Noble Roman's used knowingly flawed audits as an improper means to improve its financial performance. To support its claims, Hattenhauer sought discovery of a wide range of information from Privet Fund, a major shareholder of Noble Roman's, including documents and information relating to Privet Fund's investigation and analysis of Noble Roman's operations, management, finances, and business plans and Privet Fund's acquisition of Noble Roman's stock. Noble Roman's, calling the subpoenas issued by Hattenhauer an improper fishing expedition, sought a protective order prohibiting Hattenhauer from obtaining such material.

The court first determined that Noble Roman's had standing to challenge the discovery requests due to its own legitimate interests in the case. The court acknowledged that if the subpoenas were enforced, Noble Roman's would be required to devote employee and attorney time, effort, and expense to review the information sought from Privet Fund. Next, the court noted that recent amendments to Rule 26 of the Federal Rules of Civil Procedure were designed to protect against overly broad discovery requests and to emphasize judicial management of the discovery process. The court observed that although discovery requests may fall within the permitted scope of discovery, the court may still impose limits on such requests if "the discovery is unreasonably cumulative, can be obtained in a more convenient way, or the discovering party has already had ample opportunity to obtain what it is seeking." The court ultimately found that Hattenhauer did not meet its burden to demonstrate that the information sought from Privet Fund was proportional to the needs of the case. According to the court, Hattenhauer failed to consider the amount in controversy, whether the burden imposed by such discovery would outweigh its likely benefits, and whether

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com



the information could be obtained from other and more convenient sources. As a result, the court granted Noble Roman's motion for a protective order.