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Contracts

Franchisee's Breach of Contract and Breach of Good Faith and Fair Dealing Claims Dismissed in Termination Case

In *Damabeh v. 7-Eleven, Inc.*, 2013 U.S. Dist. LEXIS 66565 (N.D. Cal. May 8, 2013), a federal court in California dismissed a franchisee's claims that 7-Eleven breached the express terms of the franchise agreement, breached the implied covenant of good faith and fair dealing, and tortiously interfered with the franchisee's prospective business advantage when 7-Eleven terminated the franchise agreement instead of repairing damage to the franchisee's store. The parties' claims and defenses relied on a franchise agreement provision providing that the agreement could be terminated if the store was damaged and, in 7-Eleven's determination, could not "reasonably be repaired or replaced within thirty days or less." During a fire in a neighboring store, firefighters cut a hole approximately 1.5 feet in diameter in the ceiling of the franchisee's store. 7-Eleven determined that the store could not be repaired within thirty days and terminated the franchise agreement.

The court dismissed the franchisee's claim that the termination constituted a breach of contract because the termination provision merely required 7-Eleven to make a "determination" that the store could not be repaired within thirty days, even if that determination was "wrong" or "unsupported." And evidence that a 7-Eleven representative told the franchisee, prior to the issuance of the termination letter, that the store could be repaired in one week did not change the court's holding. Nothing in the agreement precluded 7-Eleven from reassessing its determination, the court decided. Further, the franchisee's claim that 7-Eleven had breached the implied covenant of good faith and fair dealing by removing merchandise from the store after the termination, without the franchisee's knowledge, was dismissed because the agreement expressly permitted 7-Eleven to reclaim merchandise from the store upon termination and it neither explicitly nor implicitly required the franchisee's knowledge that 7-Eleven was doing so. Finally, the court dismissed the franchisee's tortious interference claims because the franchisee had not shown that 7-Eleven's conduct was wrongful, that 7-Eleven owed a duty to the franchisee, or that the franchisee's relationship with any "particular" individual had been interfered with.

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