BLOGS
Employment

Franchisee's Misclassification Claim Barred by Res Judicata

The United States Court of Appeals for the First Circuit recently refused to allow a franchisee to pursue a claim that he was an employee of franchisor Jan-Pro on the grounds that the franchisee had already lost a similar case in a Georgia state court. *Depianti v. Jan-Pro Franchising Int'l, Inc.*, 2017 WL 4324323 (1st Cir. Sept. 29, 2017). Depianti, a unit franchisee of a thirdparty who was a Jan-Pro master franchisee, brought suit in the federal court in Massachusetts, where his franchise was located, arguing that he was an employee of Jan-Pro. At the same time, Jan-Pro filed a case in Georgia, where it is headquartered, seeking a declaratory judgment that it was not Depianti's employer. Ultimately, the Georgia Court of Appeals ruled in favor of Jan-Pro on the merits, finding that Jan-Pro satisfied the three-part test under Massachusetts law showing that the franchisee was not its employee. It found that the franchisee was free from the control and direction of JanPro; the cleaning services performed by the franchisee were outside the usual course of Jan-Pro's business; and the franchisee was an independent business.

Meanwhile, the franchisee's case in federal district court in Massachusetts continued. The district court certified to the Massachusetts Supreme Judicial Court the question of whether Jan-Pro could be liable under the test for employee misclassification, even though it was not in a contract with Depianti. The Massachusetts Supreme Judicial Court concluded that it *could*, but declined to determine whether Jan-Pro was liable under the facts of the case. By that time, the Georgia appellate court had already determined that Depianti was not Jan-Pro's employee. Therefore, the federal district court, and subsequently the First Circuit, concluded that the determination of the Georgia court that the parties did not share an employer-employee relationship was a final judgment on the merits, and that the Massachusetts courts were bound by that decision under the doctrine of res judicata.

Related People

Maisa Frank
Partner
Washington, D.C.
202.295.2209
maisa.frank@lathropgpm.com