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Damages

Franchisor Allowed to Proceed With Lost Future Royalties Claim in Southern District of Florida

A federal court denied a franchisee's motion to dismiss its franchisor's claim for lost future profits in *Interim Healthcare Inc. v. Health Care@Home, LLC*, 2018 WL 830113 (S.D. Fla. Feb. 12, 2018). The defendant franchisee had operated an Interim Healthcare staffing franchise in Arizona for almost two years before Interim issued a notice of default based on the franchisee's failure to pay weekly service charges under the agreement. After the franchisee failed to cure its default, Interim terminated the agreement and brought suit for almost \$400,000 in past due royalties. Interim also sought more than \$1,400,000 in lost future royalties, calculated by multiplying the number of weeks remaining on the ten-year franchise agreement by the average weekly fees paid under the agreement.

The franchisee asked the court to dismiss the claim for lost future royalties, arguing that it was Interim's decision to terminate the contract—not the franchisee's own breach of agreement—that caused any future damages, and also that any such future profits were inherently speculative. The court denied the motion, noting that at the pleading stage, Interim had sufficiently pled a claim for lost future royalties. Although Florida courts were described as "hesitant" to award future royalties, the court found that Interim's complaint alleged a breach of the franchise agreement, lost profits as a proximate cause of that breach, that the losses were reasonably contemplated by the parties based on the 10- year term of the agreement, and that the losses were reasonably based on the average weekly fees and the remaining term of the agreement. The court acknowledged that Interim would have to prove those damages to "reasonable certainty by competent proof" at trial, but found enough for its claim to survive dismissal at the pleading stage.

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