

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

BLOGS

Vicarious Liability

Franchisor Not Liable for Franchisee's Construction Costs

A federal court in New York has granted a franchisor's motion to dismiss a count of unjust enrichment by a construction company hired by a franchisee. *Vertex Construction Corp. v. T.F.J. Fitness, L.L.C.*, 2011 U.S. Dist. LEXIS 135453 (E.D.N.Y. Nov. 23, 2011). The defendant, Retrofitness, is the franchisor of fitness facilities. The co-defendant franchisee entered a construction contract with the plaintiff for a "build-out" of its facility. Retrofitness was not a party to the construction contract. The construction company alleged that it was underpaid for its services by over \$350,000. The lawsuit included an unjust enrichment claim against Retrofitness, alleging that Retrofitness as the franchisor was unjustly enriched "as a consequence of using Vertex's work and services."

The court agreed with the defendant that in order to recover under an unjust enrichment theory, the plaintiff must be able to prove that performance was rendered for the defendant. Because any benefit conferred was for the franchisee only, the construction company could not sustain a claim. Further, because the complaint did not allege that the franchisor requested, approved, supervised, agreed to pay for, or assumed any other obligations with respect to the project, the relationship was too attenuated to support a claim. The motion was granted without leave to re-plead.