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BLOGS

Bankruptcy

Franchisor Obtains Relief From the Automatic Stay to Enforce Post-Termination Obligations of Former Franchisees

In *In re Tornado Pizza, LLC*, 2010 Bankr. LEXIS 1108 (Bankr. D. Kan. Apr. 9, 2010), and companion case *In re Team KC, Inc.*, 2010 Bankr. LEXIS 1107 (Bankr. D. Kan., Apr. 9, 2010), a Kansas federal bankruptcy court granted franchisor Domino's Pizza Franchising, LLC relief from the automatic stay to enforce the post-termination obligations of the former franchisee in bankruptcy. The bankruptcy court ruled that the franchise agreements, which were validly terminated pre-bankruptcy, were not executory contracts that could be assumed and assigned in the bankruptcy case. The bankruptcy court also held that the decision by Domino's to stay enforcement of the terminations for a period of time to allow the terminated franchisee an opportunity to sell its stores did not give rise to separate executory contracts that could be assumed in the bankruptcy case. Finally, the bankruptcy court held that where a contract would expire on its own terms by the mere passage of time, a bankruptcy filing prior to expiration would not prevent expiration and would not preserve the expired or expiring agreement. Accordingly, the court held that the former franchisees had no continuing rights to operate Domino's stores following the expiration of the period granted by Domino's to allow for the sale of the stores.

The terminated franchisee also argued that Domino's had waived its terminations of the franchise agreements by accepting royalty payments following the terminations. The bankruptcy court rejected that argument by pointing out that waiver under the applicable law (Missouri or Kansas law) required the intentional relinquishment of a known right. Here, the termination notices stated that during the period of time that the terminated franchisees were allowed to sell their stores, they must remain in compliance with the franchise agreements, including the payment of royalties. The acceptance of the royalties was consistent with the notices of termination, and therefore Domino's did not waive its right to enforce the termination.