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BLOGS

Noncompetes

Franchisor Obtains Summary Judgment for Liquidated Damages

In *American Dairy Queen Corp. v. Fortune Street Research and Writing, Inc.*, 2010 U.S. LEXIS 119782 (W.D. Ky. Nov. 10, 2010), franchisor ADQ, represented by Gray Plant Mooty, moved for summary judgment that it was entitled to liquidated damages under its franchise operating agreements with the franchisee, which had been operating three Dairy Queen restaurants. When ADQ learned that the franchisee was operating a chain of competing Rally's restaurants in Kentucky, it issued notices of default and gave the franchisee an option to cure by selling either the Dairy Queen or the Rally's restaurants. The franchisee elected to sell the Dairy Queen restaurants, and the parties eventually entered into a mutual cancellation agreement that contained a noncompete clause and a mutual release. Instead of selling the stores and honoring its noncompete obligations, however, the franchisee began running "Spy Street" restaurants at the same locations.

ADQ sued the franchisee for breaching both the mutual cancellation agreement and the underlying franchise agreements. ADQ argued that the franchisee's violation of the noncompete provisions revived its claims for liquidated damages under the franchise agreements. The franchisee contended that ADQ's claims under the franchise agreements were released under the mutual cancellation agreement and that ADQ had waived its right to liquidated damages. The court sided with ADQ, holding that because the franchisee breached the mutual cancellation agreement, ADQ's rights under the franchise agreements were revived at its election.