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## BLOGS

### Noncompetes

# Franchisor Survives Motion to Dismiss on Nondischargeability Complaint for Injury Resulting From Breach of Noncompete

In *Rescuecom Corp. v. Mohamed E. Khafaga*, 2009 WL 4269441 (Bankr. E.D.N.Y. Nov. 30, 2009), a franchisor brought a bankruptcy nondischargeability lawsuit against its former franchisee for

violation of the noncompete provision in the franchise agreement and diversion of business away from the franchisor. Khafaga was a franchisee in the Rescuecom system, which provides computer repair services. Khafaga was obligated to report his sales, submit annual financial records, and pay royalties for computer repair services rendered to his customers. Khafaga's wife secretly opened a competing business, Computer Medics USA, Inc., in order to divert sales, services, and revenue away from his Rescuecom franchise.

Rescuecom alleged that Khafaga's operation of a competing business in violation of the franchise agreement constituted a willful and malicious injury under 11 U.S.C. §523(a)(6), and therefore that the debt owed by Khafaga should not be discharged in his bankruptcy case. The bankruptcy court found that Khafaga's intentional conduct in setting up the competing business did reflect an intent to financially injure Rescuecom sufficient to satisfy the willfulness element and survive a motion to dismiss. Similarly, the court found that Khafaga's conduct in concealing a competing business to avoid paying royalties was sufficient to support a finding of aggravating circumstances and maliciousness. The court noted that because the case was at the pre-answer stage, it gave the franchisor the benefit of the doubt that it could prove a set of facts giving rise to willful and malicious injury.