

**BLOGS**

Tortious Interference

## New Hampshire Federal Court Rules that Franchise Agreement Does Not Excuse Franchisor from Tortious Interference with Franchisee's Third-Party Contracts

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A federal court in New Hampshire recently denied franchisor Planet Fitness's motion for judgment on the pleadings that it did not tortiously interfere with the prospective contracts of one of its franchisees. *Planet Fitness Int'l Franchise v. JEG-United, LLC*, 2021 WL 1946426 (D.N.H. May 14, 2021). In June 2020, Planet Fitness sued its franchisee, JEG-United, which operates five Planet Fitness gyms in Mexico. In response, JEG-United filed a counterclaim alleging that Planet Fitness had intentionally interfered with JEG-United entering into three separate prospective business contracts. Specifically, JEG-United alleged that Planet Fitness intentionally interfered in (1) JEG-United's negotiations with a major retail company to secure potential future gym locations; (2) JEG-United's preliminary partnership agreement with an investor to accelerate the development of gyms in Mexico; and (3) JEG-United's attempted purchase of a competing fitness company's gyms in Mexico. Planet Fitness moved for judgment on the pleadings, asserting it could not legally be found to tortiously interfere with JEG-United's relationships because Planet Fitness was a necessary party to the prospective contracts.

The district court disagreed. It explained that, although Planet Fitness would be a party to any future franchise agreements between itself and JEG-United that resulted from the three contractual relationships, Planet Fitness was not a party to JEG-United's attempts to develop the three business opportunities. JEG-United's negotiation with the retailer was for a lease agreement; JEG-United's dealing with the investor was a preliminary agreement for partnership; and JEG-United's negotiations with the competitor-business was a potential purchase. The fact that Planet Fitness might later have the right to reject any potential franchises borne out of those deals did not make Planet Fitness a party to them. Planet Fitness also alleged that, for JEG-United's tortious interference claim to stand it should have alleged that Planet Fitness acted with malice. However, under New Hampshire law, a plaintiff alleging tortious interference need only plead that a defendant's interference was intentional and improper; the plaintiff does not need to allege that the defendant's actions were motivated by malice. For those reasons, the district court denied Planet Fitness's motion for judgment on the pleadings.

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