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BLOGS

Class Actions

New York Court Declines to Find Liability for Franchisor In Class Action Sales Tax Collection Dispute

A federal court in New York held that it lacked subject matter jurisdiction to hear claims that Dunkin' Donuts franchises assessed an unlawful surcharge, under the guise of a sales tax, in *Estler v. Dunkin' Brands, Inc.*, 2016 WL 5720814 (S.D.N.Y. Oct. 3, 2016). Gray Plant Mooty represented the franchisor in this case. The plaintiffs alleged that various franchisees in New York City had improperly assessed sales tax on prepackaged coffee, which is exempt from sales tax under New York law. The plaintiffs brought claims against the franchisor, Dunkin' Brands, and several franchisees alleging, among other things, that the franchisor assisted the franchisees in the setting of prices and the collection of sales tax.

The district court determined that it lacked subject matter jurisdiction to hear the plaintiffs' claims, in part because the New York tax laws at issue provide exclusive administrative remedies for the refund of sales taxes believed to be erroneously, illegally, or unconstitutionally collected. According to the court, the plaintiffs' attempt to recast the taxes as "surcharges" did nothing to change the exclusive nature of the remedy. Therefore, the court held that it lacked jurisdiction to hear the case and that the plaintiffs' only recourse was to follow the refund procedure set forth in the statutes. The court also found that the plaintiffs' New York General Business Law § 349 claim, which alleged that the defendants engaged in deceptive business practices, was misplaced because § 349 is a consumer protection statute that does not cover the ministerial act of the collection of sales tax.

Related People

Maissa Frank

Partner

Washington, D.C.

202.295.2209

maissa.frank@lathropgpm.com