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BLOGS

Preliminary Injunctions

North Carolina Federal Court Holds Terminated Franchisee in Contempt for Violating Preliminary Injunction Enforcing Nonsolicitation Covenant

After finding a group of terminated franchisees in contempt of court for violating a preliminary injunction enforcing their covenant against solicitation, the U.S. District Court for the Western District of North Carolina awarded a franchisor nearly \$100,000 in attorneys' fees and costs and extended the nonsolicitation covenant for an additional year. *Atl. Pinstriping LLC v. Atl. Pinstriping Triad, LLC*, 2018 WL 4265564 (W.D.N.C. Sept. 6, 2018). Atlantic terminated the parties' franchise agreements and then filed a motion for a temporary restraining order seeking to enjoin the former franchisees' patent and trademark infringement and enforce their posttermination covenants against competition and solicitation, both of which had two-year terms. After the motion was granted, the parties engaged in arbitration. The former franchisees initially refused to produce customer invoices, but eventually complied with the arbitrator's order compelling their production.

The invoices, along with third-party discovery, revealed that the former franchisees had solicited at least sixteen former customers to their new business, beginning on the same day the preliminary injunction was entered. The former franchisees asked customers not to contact them by email and to make sure no one saw them perform pin striping work, evidencing the former franchisees' knowledge that their conduct violated the injunction. The court also found the former franchisees had either failed to preserve authentic customer invoices, or altered them in an attempt to cover up their violations. Because the former franchisees' conduct deprived Atlantic of the benefit of the preliminary injunction, the court extended the nonsolicitation covenant for another year. Additionally, in light of the former franchisees' abusive litigation tactics, including repeated last-minute delays and obstruction, the court awarded Atlantic its attorneys' fees and costs.

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