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BLOGS

Class Actions

Second Circuit Affirms Dismissal of Putative Class Action Against Franchisor and Franchisees Regarding Sales Tax Charges

The United States Court of Appeals for the Second Circuit affirmed the Southern District of New York's dismissal of a putative class action against Dunkin' Donuts and several of its New York franchisees for allegedly improperly charging sales tax on pre-packaged coffee. *Estler v. Dunkin' Brands, Inc.*, 2017 WL 2258614 (2d Cir. May 23, 2017). In New York, as in many other states, pre-packaged coffee is considered a grocery item and is not subject to the sales tax charged on ready-to-eat restaurant items.

Dunkin' contended that its franchisees determined and charged sales tax without its involvement, however the matter was resolved not on that ground but on other grounds advanced by Dunkin'. Specifically, the Second Circuit affirmed the trial court's determination that it did not have jurisdiction to hear the case because the putative class failed to exhaust the exclusive administrative remedy provided by New York Tax Law §§ 1139-40. This remedy provides an administrative procedure through which customers who believe they have been improperly charged sales tax can obtain a refund from the state tax commission. The Second Circuit rejected the plaintiffs' argument that this administrative procedure should not apply to exempted grocery items such as pre-packaged coffee. The court also found that it could not offer relief under the plaintiffs' constitutional claims because the plaintiffs had an adequate remedy available under state law. Finally, the court found that the exclusive administrative remedy applied to allegations of a violation of New York's deceptive business practices statute, despite a provision of that law stating that the statute applies to any conduct "whether or not subject to any other law of this state." The court found that this provision merely stands for the principle that the availability of other causes of action would not bar an additional claim under the statute and that this provision did not relate to the exclusivity of administrative remedies.

Putative plaintiff classes had filed four similar suits against Dunkin' in New Jersey, Florida, and Illinois. Over the past year, Gray Plant Mooty has successfully defended each of these cases on behalf of Dunkin'.

Related People

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