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BLOGS

Terminations

Tenth Circuit Affirms Termination Following Franchisee's Refusal to Use Mandatory Meal Pricing

The United States Court of Appeals for the Tenth Circuit has affirmed the district court's grant of summary judgment in favor of a fast food franchisor in a case where the franchisee refused to sell and promote the franchisor's mandatory menu plan. *Steak N Shake Enter., Inc. v. Globex Co., LLC*, 2016 WL 4743685 (10th Cir. Sept. 12, 2016). The dispute arose when Steak n Shake expanded its "\$4 Menu" promotion, which offered a combination of items for a price of \$4 – less than what customers would pay if each item was purchased separately. The franchisee refused to adopt the new \$4 Menu and instead implemented its own "à la carte" plan, in which items were all sold at their higher, separate prices unless customers specifically requested the \$4 Menu pricing. The franchisee also removed all references to the \$4 Menu from its restaurants. After investigating the franchisee's practices, Steak n Shake terminated the parties' franchise agreements without providing an opportunity to cure and filed suit for breach of contract, and the district court entered summary judgment in its favor.

On appeal, the franchisee argued that a question of material fact existed as to whether it had materially breached the franchise agreements and contended that it was entitled to receive notice and a thirty-day opportunity to cure. The court of appeals disagreed, finding that reasonable minds could not dispute that the franchisee had knowingly failed to offer the mandatory \$4 Menu promotion and exceeded the franchisor's maximum pricing standards by charging higher total prices for the same meals. Accordingly, the court of appeals concluded that Steak n Shake properly terminated the franchise agreements.

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