BLOGS

Terminations

Termination Upheld Despite Franchisee's Expressed Willingness to Pay

A franchisee's failure to pay royalties and other fees constitutes a material breach of contract justifying termination—even if the franchisee had expressed a willingness to pay—according to a Florida federal district court. *Tim Hortons USA, Inc. v. Singh*, 2017 WL 4837552 (S.D. Fla. Oct. 25, 2017). Following a bench trial, the court upheld Tim Hortons' decision to terminate Singh for failure to pay monies owed and ordered Singh to pay all past-due amounts. The court did deny Tim Hortons its lost future royalties because the testimony of its senior finance manager regarding how much revenue Singh would have received (and paid fees on) was inadmissible.

Singh, through counsel, responded to a default notice with an "aggressive" letter in which the attorney claimed, among other things, that the parties had previously agreed to a payment plan, which turned out not to be true. Singh then later said it was willing to pay and asked for wiring instructions, but the court found that to be an "offer to pay," which was not the same as actual payment (and it came after the cure deadline anyway). Under Florida law, payment has not occurred until there is an actual "tender" of funds, and a suggested willingness to send funds and a request for information on where to send them do not a tender make, according to the court. That simply was not "substantial compliance" with the franchise agreement; thus, the franchisor had the right to terminate. The court also recognized that "contracts do not become unenforceable merely because their agreed-upon remedies create an unpleasant result for the breaching party." Course of conduct and detrimental reliance arguments also failed to help Singh.

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