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## BLOGS

### Terminations

# Vague Allegations Regarding Lack of Franchisor Marketing Insufficient for Franchisee to Survive Summary Judgment

The United States Court of Appeals for the Third Circuit recently affirmed a trial court's grant of summary judgment in favor of a hotel franchisor on its breach of contract claim, and on the franchisee's counterclaims, despite the franchisee's claims that the franchisor first breached its obligations under the franchise agreements. *Red Roof Franchising, LLC v. Patel*, 2014 U.S. App. LEXIS 8078 (3d Cir. Apr. 29, 2014). Red Roof terminated Patel's franchise agreements in New Jersey and Minnesota as a result of uncured failure to pay royalties and other amounts due. Red Roof then initiated separate lawsuits to enforce termination of the franchise agreements and to recover damages for breach of contract. Patel conceded that he had failed to pay the amounts owing but argued his obligation to pay was negated by Red Roof's prior breach. Specifically, he alleged Red Roof failed to administer its guest reservation system and marketing programs as required under the franchise agreements. He also claimed the reservation system had been inoperative for up to one and a half days, on eight or nine occasions over "several years". Patel also alleged that Red Roof failed to create "any new advertising or marketing programs that generated new customers for the hotel," and operated existing programs ineffectively.

The district court granted summary judgment in favor of Red Roof. On appeal, the Third Circuit held that Patel's proffered evidence regarding Red Roof's alleged breach did not create a genuine dispute of material fact that would act to prevent the summary judgment. The court cited previous decisions holding that an affiant must "set forth facts, rather than opinions or conclusions" to defeat summary judgment. Moreover, Patel also failed to present sufficient evidence on "an equally crucial element" of his opposition—the showing that he sustained damages as result of Red Roof's breach.

## Related People

### Maisa Frank

Partner

Washington, D.C.

202.295.2209

[maisa.frank@lathropgpm.com](mailto:maisa.frank@lathropgpm.com)