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BLOGS

Post-Termination Injunctions: Noncompetes

Virginia Federal Court Grants Injunction and Applies Covenant Not to Compete Against Nonsignatory

A Virginia federal court late last month granted an injunction to franchisor Little Caesar against both its former franchisee and a nonsignatory to the franchise agreement, including requiring the third party to stop operating a competing business at the location of the former franchise. The case is *Little Caesar Enter., Inc. v. Little Caesar's, Va., Inc.*, No. 2:09-cv-00112-JBF-JEB (E.D. Va. Aug. 28, 2009). The defendant was granted a franchise and told, before opening the restaurant, that Little Caesar would not entertain any changes in ownership of the franchise until six months after the restaurant had opened for business. The franchisee, however, added a new partner to the business without Little Caesar's prior approval. The third party represented himself as an owner of the franchise to the landlord of the premises and signed an amendment to the lease. After opening, the real franchisee abandoned the shop and, without Little Caesar's knowledge, left the restaurant in the hands of the undisclosed partner. Little Caesar then terminated the franchise. The undisclosed partner continued to operate the business and subsequently converted it to a competing pizza business. At the injunction hearing, the undisclosed partner admitted that he had used Little Caesar's trademarks without authorization. He also admitted that he was using Little Caesar's proprietary system in operating the competing business and was using the same telephone number as before in serving customers.

The court granted Little Caesar's motion for a preliminary injunction, ordering both defendants to comply with the franchise agreement's post-termination provisions, including the covenant not to compete. In doing so, the court stated that it would not permit the undisclosed partner "to profit from his own misdeeds, especially at the direct expense of Little Caesar, which appears to have acted in this matter at all times in good faith." The court also ordered the defendants to assign their interests in the lease to Little Caesar. Gray Plant Mooty represented the franchisor in this case.