

**BLOGS**

Encroachment

## **Bankruptcy Court Allows Contract Claim to Proceed Against Franchisor That Granted Franchise 2.17 Miles From Plaintiff**

In *Black Angus Holdings, LLC v. Back Yard Burgers, Inc. (In re Black Angus Holdings, LLC)*, 2010 Bankr. LEXIS 995 (Bankr. D. Kan. Mar. 24, 2010), a Kansas federal bankruptcy court declined to dismiss a franchisee's breach of contract claim arising out of the opening of a restaurant in an area that overlapped with the franchisee's protected area. The franchise agreement between the parties prevented the franchisor from establishing another restaurant within an "exclusive radius" of two miles from the franchisee's restaurant. After the franchisor established a new franchise 2.17 miles away, the franchisee alleged it could no longer sustain its business and was forced into bankruptcy. Although the parties agreed the new restaurant was located outside the protected area, the franchisee argued that its area overlapped with that of the new restaurant. In denying the franchisor's motion, the court held the use of the phrase "exclusive radius" in the franchise agreements could be read to suggest that franchisees' protected areas would not overlap with each other.