

BLOGS
RICO

Claim Against Franchisor Survives Motion to Dismiss

In *HT of Highlands Ranch, Inc. v. Hollywood Tanning Systems, Inc.*, 2008 WL 5109745 (D. N.J. Dec. 1, 2008), four unrelated franchisees joined together to sue their system's franchisor and its related entities, setting forth several causes of action, including a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO). The plaintiffs' RICO claim was based on their allegation that the franchisor fraudulently created vague equipment leases, which it then used as a basis to invoice the plaintiffs for equipment that did not exist or for used equipment that was passed off as new.

To sustain a RICO claim, a plaintiff must plead the existence of "predicate racketeering acts" that are related to each other and which "amount to or pose a threat of continued criminal activity." On a motion to dismiss by the defendants, the court found the plaintiffs' allegations, if proved, would qualify as related racketeering acts in furtherance of a crime. Further, relying on prior RICO cases, the court found that the plaintiffs' allegations satisfied the "continuity" analysis—both because the acts continued in time for a period of 12 months or more and because the plaintiffs had alleged that the fraudulent leases constituted the "regular way of conducting defendant's ongoing legitimate business."