

**BLOGS**

Fraud/Misrepresentation

Georgia Federal Court Holds That Franchisees Adequately Stated Claims for Fraud and RICO Violations, but Antitrust Claims Based on Alleged “Kickbacks” to Franchisor Failed

On October 27, 2008, the United States District Court for the Northern District of Georgia decided a trilogy of virtually identical cases, *Moe Dreams, LLC, et al. v. Sprock, et al.*, 2008 WL 4787493 (N.D. Ga. 2008), *Peterson, et al. v. Sprock, et al.*, 2008 WL 4787351 (N.D. Ga. 2008), and *Massey, Inc., et al. v. Moe’s Southwest Grill, LLC, et al.*, 2008 WL 4767788 (N.D. Ga. 2008), in which it addressed civil RICO claims, fraud claims and claims under the Robinson-Patman Act. In all three cases, the plaintiffs—comprised primarily of investors and franchisees—initiated an action for claims arising out of the franchise agreements they entered into with the defendant franchisors. The plaintiffs each asserted claims based on allegations that the franchisors: (1) made material misrepresentations in the Uniform Franchise Offering Circulars and the franchise agreements; (2) intermingled individual and corporate assets; and (3) failed to disclose kickback payments from suppliers.

In each case, the plaintiffs argued that the franchisors engaged in a pattern of racketeering activity in violation of the Georgia Civil RICO Act. In denying the franchisors’ arguments that the plaintiffs failed to properly plead their RICO claims, the court held that although the plaintiffs did not clearly and succinctly allege each predicate act and each element of their RICO claims, the complaints contained sufficient information, when considered in their entirety, to allow the franchisors to determine the facts that comprised the claims. The court, therefore, found that the plaintiffs met their burden of pleading the RICO claims.

Each of the plaintiffs also argued that the franchisors made material false representations of fact and omitted mandatory disclosures in the UFOCs and franchise agreements. The plaintiffs alleged that, among other things, the franchisors failed to disclose and/or concealed kickback payments that they were receiving from suppliers. The plaintiffs also identified several alleged false statements that were made by the franchisors. The court rejected the franchisors’ arguments that the plaintiffs failed to allege fraud with particularity after determining that the complaints adequately provided the franchisors with specific allegations of fraud, including the source of the alleged fraudulent misrepresentations.

Finally, each of the plaintiffs argued that the franchisors’ receipt of alleged “kickbacks” from suppliers constituted a violation of Section 2(c) of the Robinson-Patman Act. The court, however, held that the plaintiffs did not adequately plead a claim under the Robinson-Patman Act and failed to meet the two requirements necessary for antitrust standing. Specifically, the court found that the plaintiffs’ alleged injury was not the type of injury the price discrimination law was designed to prevent, that the plaintiffs failed to allege any improper intent or conduct on the part of the suppliers who made the payments to the franchisors, and that other suppliers or customers of the plaintiffs were the proper plaintiffs to bring an antitrust action based upon the franchisors’ alleged conduct.