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Sal's restaurant owners claim founder defrauded them of $10M

By Adolfo Pesquera | Daily Business Review | May 9, 2012

Convinced they overpaid for years on restaurant supplies, three owners of Sal's Italian Ristorante locations filed a lawsuit claiming the Coconut Creek company's founder defrauded them of more than $10 million.

At first glance, the lawsuit filed in Broward County and assigned to Circuit Judge David Krathen looks like a retaliatory strike. In March, Nuno Beira got sued by a supplier, Different Concepts, because he refused to buy their logo pizza boxes bearing the chain logo. In April, Beira turned around and sued Different Concepts, Sal's Italian Ristorante and their owner, Salvatore Stellino.

"The pizza boxes was the straw that broke the camel's back. Nuno had just had it," said Jerry Marks, the Boca Raton-based franchise litigator who negotiated a $206 million settlement for Quiznos franchisees in 2010.

Quiznos was in a fight with its franchisees over rebates the company earned from suppliers that, although disclosed in the franchise agreement, were considered exorbitant by the restaurant owners.

In Sal's case, Marks said, the company controlling the brand name forced the restaurateurs to buy from certain suppliers, but never disclosed the home office was getting rebates.

Moreover, Sal's acted like a franchise chain without complying with Federal Trade Commission franchise disclosure regulations and Florida trade practices law, the complaint states. Prospective buyers did not receive the franchise disclosure documents needed to perform due diligence.

Nuno Beira is joined in his lawsuit by his brother Eddie Beira, Christopher Vingiano and their business entities, which control six of the 20 restaurants in the South Florida chain.

But the plaintiffs did not sue out of retaliation over the pizza boxes, Marks said. That was just coincidence. The Beira brothers and Vingiano had been preparing a lawsuit for months, and it was spurred out of a belief that over the years, Stellino had illegally pocketed millions that should have gone to them.

Gregory Beck, Stellino's Fort Lauderdale-based attorney, said his client would deny the claims made by its "licensees."

In an email, Beck said, "Their allegations are untrue and we are confident that we will prevail. Beyond that, we will not comment further on this active litigation."

Marks said undisclosed franchises are more common than many would-be entrepreneurs realize.

"What you have are businesses that are successful and they want to expand using a franchise-type method. But they don't want to call it a franchise," Marks said.

The Federal Trade Commission, he said, provides a simple identifying threshhold. If a company sells its name or trademark, requires the buyer to follow a marketing plan, and makes the buyer spend more than $500 in the first six months, then it's a franchise and subject to franchise disclosure law.

A GOLDEN OPPORTUNITY

In 2000, Nuno Beira and Vingiano were making pizzas for Stellino when he offered them what was described in their lawsuit as the "opportunity of a lifetime."

They entered into asset purchase agreements that did not mention a franchise. But they had to pay $400 a month per store for licensing and follow Sal's training manual.

While Beiras and Vingiano were learning the management side of their businesses, they lost sight of Stellino for almost three years. In March 2003, their mentor began a 33-month sentence at a federal prison in Miami-Dade County for income tax evasion.

In addition to incarceration, Stellino paid restitution of $1.4 million. He didn't complete resitution payments until March 2008.

Marks estimates the money damages began after Stellino was freed, and occurred for at least five years. The preferred suppliers paid Stellino 3.5 percent rebates on their gross sales to his restaurateurs.

Among the vendors that are now defendants are food service distributor Cheney Brothers, wine distributor Opici Company of Florida, and Different Concepts, a Stellino company that is also based at his Coconut Creek headquarters for Sal's.

"They were part of a conspiracy to defraud, because they never told our clients about the rebates they were paying to Sal," said Keith Kanouse, a franchise contracts lawyer at Kanouse & Walker in Boca Raton who brought Marks into the case for his trial experience.

Examples of the above market rates the plaintiffs were forced to pay include plum tomatoes at $20.67 a case versus $18 a case; tubed squid at $3.87 a pound versus $2.90 a pound and pepperoni at $2.79 a pound versus $2.54 a pound, according to the complaint.

The vendors profited on margins far above the rebates they gave Stellino. Yet, while the restaurateurs knew they paid too much, it was not until PepsiCo mistakenly sent a quarterly rebate check of $18,280 in February 2010 to Nuno Beira instead of to Stellino that the rebate practice was discovered. Marks submitted a copy of the check as an exhibit in the lawsuit. Kanouse said PepsiCo was not named a defendant in the lawsuit, but that could change.

"We may amend later, but we feel we have enough people in the lawsuit," Kanouse said. "Through discovery, we will find out who all the suppliers were that were paying rebates. We may join others based on what we discover."

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