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Non-Signatory Bound to an Agreement’s Arbitration Clause

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In *Ice Rak, LLC v. Rita’s Franchise Co., LLC*, the Court enforced an arbitration agreement against a non-signatory of the same agreement because courts will consider the significance of the franchisees’ actions and representations regarding their relationship with the franchisor prior to the dispute.

Regina Tullio and Ramil Kaminsky entered into a franchise agreement with Rita’s Franchise Company, LLC (“RFC”) on July 31, 2020, to open a Rita’s frozen dessert shop in Florida. The agreement included a mandatory arbitration clause. Shortly after the agreement was signed, Tullio and Kaminski incorporated Ice Rak, LLC and served as its managers and sole members. On May 2, 2021, Ice Rak found a location for the Rita’s shop and signed a lease agreement. Tullio and Kaminsky personally guaranteed the lease. That day, RFC, Ice Rak, and Ice Rak’s landlord signed a lease rider stating that the location would “only be used . . . for the operation of a Rita’s shop,” and listed Ice Rak as the “franchisee” and RFC as the “franchisor.”

Throughout the business relationship, RFC had discussions with Tullio and Kaminsky about transferring the franchise agreement from them in their individual capacities to Ice Rak, but it never occurred. Regardless, Ice Rak continued to hold itself out as an RFC franchisee until RFC terminated the agreement and demanded liquated damages on October 20, 2023. When Tullio and Kaminsky refused to pay, RFC filed a demand for arbitration. Ice Rak then sued RFC for declaratory judgment with the United States District Court for the Middle District of Florida, Tampa Division, arguing that Ice Rak had no obligation to RFC because it was not a signatory to the franchise agreement. RFC moved to compel arbitration and stay Ice Rak’s lawsuit.

Because Ice Rak was not a signatory to the agreement, the central issue in the case concerned whether the franchise agreement and its arbitration clause between, on the one hand, RFC and, on the other hand, Tullio and Kaminsky, was enforceable against Ice Rak.

The Court focused on the principle of equitable estoppel. Equitable estoppel provides that a non-signatory is “estopped” from avoiding an agreement, including its arbitration clause, after the non-signatory has claimed the benefits of that agreement. Here, Ice Rak directly benefited from acting as and representing itself as an RFC franchisee. Ice Rak sold RFC’s products, advertised under its

brand, and obtained agreements with RFC vendors. Not only did Ice Rak benefit from holding itself out as an RFC franchisee for years, but the Court also recognized that reversing that position now would only disadvantage RFC. Because this “unfair gamesmanship” of reaping the benefits of an agreement while trying to avoid the costs is precisely the “inconsistent behavior . . . the doctrine of equitable estoppel is designed to prevent,” the Court held Ice Rak was bound to the franchise agreement.

Further, the Court rejected Ice Rak’s argument about the existence of an oral agreement with RFC. There was no evidence of any such agreement between the parties. In fact, the conversations regarding transferring the franchise agreement from Tullio to Kaminsky were evidence that Ice Rak and RFC, indeed, did not have a separate oral agreement. Thus, Ice Rak had an obligation to arbitrate on the grounds of equitable estoppel.

Kellie Maguinness contributed to this article

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