

Hard Rock Cafe's Foreign Unit No Shield In Franchise Row

By **Jeff Zalesin**

Law360, New York (June 02, 2015, 8:28 PM ET) -- A Florida federal judge ruled Tuesday that Hard Rock Cafe International USA Inc. must face a Bahamas-based franchisee's suit claiming it exaggerated its profitability and demanded exorbitant royalties, finding the court has jurisdiction although the franchise deal involves a foreign Hard Rock affiliate.

U.S. District Judge Paul G. Byron said it was "a close question" whether the suit should be dismissed on the grounds that the restaurant chain's Island of Jersey affiliate Hard Rock Ltd. was an essential party, but the balance tipped in favor of letting the case proceed. The judge also mostly rejected the argument that the claims in the complaint are insufficient, though he released Hard Rock USA from a civil conspiracy claim.

Plaintiff HRCC Ltd. initially sued HRL along with Hard Rock USA and three people, but dropped HRL in response to an order noting that the federal court couldn't hear a dispute between foreign entities. HRL entered the franchise contract with HRCC and owns the Hard Rock trademark for use in the Caribbean, according to Judge Byron's opinion.

"The court finds that while HRL has an interest in this litigation, the ability to protect that interest is not impaired or impeded by its absence from this litigation," the judge wrote. "The court can, and will, tailor the verdict form to ensure that any judgment rendered against defendants has no effect on HRL. Similarly, defendants may file appropriate motions in limine and proposed limiting instructions to prevent jury confusion."

If HRL does not intervene in the case, Judge Byron said, Hard Rock USA is capable of defending HRL's interpretation of the franchise contract.

The judge also refused to dismiss the case for improper venue, saying it was far from certain that there is another forum where HRCC could pursue its claims, despite Hard Rock's insistence that the case could be brought in Jersey court.

"Defendants fail to cite controlling authority from the relevant forum, and fail to offer a declaration demonstrating that the Royal Court of Jersey would accept this case," he wrote.

Although Hard Rock USA will have to litigate the case in federal court, Judge Byron ruled the company need not face HRCC's claim that it committed civil conspiracy.

"A corporation acts through its agents, officers and employees and cannot conspire with its own agents unless the agent has a personal stake in the activities that are separate and distinct from the corporation's interest," the judge wrote. "It is clear that Hard Rock USA did not act with a distinct interest."

But the three individual defendants in the case lost their bid to duck the conspiracy claims.

The judge also allowed HRCC to proceed with claims for constructive termination and claims under Florida's Unfair and Deceptive Trade Practices Act, with the caveat that HRCC can't seek compensatory damages and lost profits under the Florida statute.

Nassau-based HRCC **filed the suit** in December, claiming Hard Rock refused to allow the franchise to reduce food costs or restaurant hours to maintain profitability despite allowing other franchise locations to do so, and that the company's executives harassed and intimidated HRCC to force it to enroll in the costly "Loyalty Program."

Hard Rock ultimately forced the franchise to liquidate because it refused to succumb to the company's "scare tactics," HRCC said, alleging the conduct was fueled by the company executives' personal dislike for the franchise's director.

Alejandro Brito, an attorney for HRCC, told Law360 that Tuesday's decision keeping the case in federal court is significant and bucks the trend of Florida federal judges "shutting the valve" on foreign plaintiffs seeking to enforce contract rights. Partly in response to such decisions, he said, some American companies have set up foreign affiliates to do their international franchising for them.

"It's done so that the franchisors can distance themselves from the possibility of having to defend claims on U.S. soil," Brito said.

An attorney representing Hard Rock USA declined to comment Tuesday.

HRCC is represented by Gabriel Estadella, Robert Zarco and Alejandro Brito of Zarco Einhorn Salkowski & Brito PA.

The defendants are represented by Christian C. Burden and Cassidy Jones of Quarles & Brady LLP.

The case is HRCC Ltd. v. Hard Rock Cafe International et al., case number 6:14-cv-02004, in the U.S. District Court for the Middle District of Florida.

--Additional reporting by Kelly Knaub. Editing by Chris Yates.

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