



# 54TH ANNUAL IFA LEGAL SYMPOSIUM



**IFA**<sup>®</sup>

INTERNATIONAL FRANCHISE ASSOCIATION



# 2022 Judicial Update

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# JOINT EMPLOYMENT AND MISCLASSIFICATION

Norman M. Leon



# JOINT EMPLOYMENT

**MOTIONS TO DISMISS ARE RARELY GRANTED . . . UNLESS  
THE PLAINTIFF IS PROCEEDING *PRO SE***

- *Stewart v. Chick-Fil-A*, 2021 WL 2290770 (S.D. Cal.)
- *Nelson v. Argyropoulous*, 2021 WL 4352326 (S.D.N.Y.)

# JOINT EMPLOYMENT

**RESULTS ARE UNPREDICTABLE . . . EVEN WHEN OTHER COURTS HAVE  
DEEMED IDENTICAL ALLEGATIONS INSUFFICIENT**

*Morana v. Park Hotels & Resorts*, 2022 WL 769327 (S.D.N.Y.)

versus

*McCardle-Bracelin v. Congress Hotel, LLC*, 2022 WL 486805 (N.D.N.Y.)

*Johnson v. McDonald's Corp.*, 2021 WL 4912883 (E.D. Wis.)

versus

*Doe v. McDonald's USA, LLC*, 2020 WL 7133520 (E.D. Pa.)

# JOINT EMPLOYMENT

## FRANCHISORS HAVE CONSISTENTLY DEFEATED JOINT EMPLOYMENT CLAIMS AT SUMMARY JUDGMENT

- *Ries v. McDonald's USA, LLC*, 2021 WL 5768436

### ... BUT THERE'S AN EXCEPTION TO EVERY RULE

- *Ward v. Cottman Transmission Systems, LLC*, 2022 WL 909637 (D.N.J.)

# MISCLASSIFICATION

## YOU WIN SOME . . .

- *Haitayan v. 7-Eleven, Inc.*, 2021 WL 4078727 (C.D. Cal.)

## AND YOU LOSE SOME . . .

- *Patel v. 7-Eleven, Inc.*, 183 N.E.3d 398 (Mass. 2022)
- *Goro v. Flower Foods, Inc.*, 2021 WL 4295294 (S.D. Cal.)

# MISCLASSIFICATION

**AND SOMETIMES YOU WIN WITHOUT HAVING TO WIN EVERYTHING**

- *Mujo v. Jani-King Int'l, Inc.*, 13 F.4th 204 (2d Cir. 2021)



# Questions?

Your NEW GO-TO

# FAIR DEALING

**COPYRIGHT ACT**  
Sect. 29

529.1 CRITICISM/REVIEW  
529.2 NEWS REPORTING

research  
private study  
education  
parody  
satire



USA FAIR USE

short excerpt

entire artistic work from a work containing other artistic

SINGLE ARTICLE  
Journal

SINGLE CHAPTER

10%

entire newspaper ARTICLE

entry

entire poem score  
containing other poems/scores

encyclopedia dictionary

proposed policy exception

e-books

MORE EXCEPTIONS

license agreement → Liblicence@brocku.ca

e-journal

LOOK UP @ LIBRARY WEBSITE

YES? post NEED HELP? contact reserves@brocku.ca  
NO?

CONTACT

**CONTRACT**

MAY over-ride fair dealing

MUSIC SOUND AUDIO-VISUAL TV FILM  
10%

OTHER REQUIREMENT

WANT

## Encroachment, Disclosure, Fraud, and Termination

Allison R. Grow

# Encroachment

- *Kazi v. KFC US, LLC*, 2021 WL 1978754 (D. Colo. May 17, 2021)
- *Kazi v. KFC US, LLC*, 2021 WL 6081832 (D. Colo. Dec. 22, 2021)

# Disclosure

- *MTR Capital, LLC v. Lavidia Massage Franchise Development, Inc.*, 2021 WL 1626353 (E.D. Mich. Apr. 27, 2021)

# Pleading Fraud

- *Sugarlips Bakery, LLC v. A&G Franchising, LLC*, 2022 WL 210135 (M.D. Tenn. Jan. 24, 2022)

# Termination and Expiration

- *Servpro Indus., Inc. v. Woloski*, 2022 WL 633844 (6th Cir. Mar. 4, 2022)
- *JTH Tax, LLC v. D'Souza*, 2021 WL 4353099 (D. Hawaii Sept. 24, 2021)
- *Mountain Mike's Pizza, LLC v. SV Adventures, Inc.*, 2021 WL 6136178 (E.D. Cal. Dec. 29, 2021)

# Lifting the Stay

- *Takiedine v. 7-Eleven, Inc.*, 2021 WL 3223070 (E.D. Pa. July 29, 2021)

# Questions?



A pink piggy bank is centered on a wooden block. Above it, a black umbrella is open, with its handle extending down to the piggy bank. The background is a dark, textured grey.

# INSURANCE AND FORCE MAJEURE

Eleanor Vaida Gerhards

# COVID-19 First Party Pandemic Damage Claims

## NO COVERAGE

- *Byberry Services and Solutions LLC v. MT. Hawley Ins. Co.*, 2021 WL 3033612 (N.D. Ill., July 19, 2021)
- *Gateway Clippers Holdings LLC v. West Bend Mutual Ins. Co.*, 2021 WL 3784991 (E.D. Mo. August 26, 2021)
  - *Golden Corral Corp. v. Illinois Union Ins. Co.*, 2021 WL 4097684 (E.D. N.C. September 8, 2021)
  - *Fountain Enterprises, LLC v. Markel Ins. Co.*, 2021 WL 4999447 (D. VA. October 26, 2021)

# Duty to Defend COVID-19 Nuisance Claims

- *McDonald's Corporation, McDonald's USA, LLC v. Austin Mutual Ins. Co.*, 526 F. Supp. 3d 346 (N.D. Ill. 2021)

# Non-COVID-19 Franchise Insurance Coverage Disputes

- **Misappropriation Trade Secrets; Restrictive Covenants - No duty to defend or indemnity**
  - *Great Am. Ins. Co. v. Beyond Gravity Media, Inc.*, 2021 WL 4192738 (S.D. TX Sept 15, 2021)
- **Violations of Illinois's Biometric Information Privacy Act - No duty to defend or indemnity**
  - *Am. Family Mut. Ins. Co., S.I and Austin Mut. Ins. Co. v. Carnagio Enterprises, Inc.* No. 20 C 3665, 2022 BL 109861 (N.D. Ill. March 30, 2022)
- **William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 – YES! Duty to Defend**
  - *Starr Indemnity and Liability Company v. Choice Hotels International Inc.*, 2021 WL 2457107 (D.C. S.D. NY June 16, 2021)

# Force Majeure

- *Nails v. Hoang Minh T Ha*, No. 20-14388-CIV-MARTINEZ/MAYNARD, 2021 BL 343870, 2021 Us Dist Lexis 172265 (S.D. Fla. Sept. 09, 2021) – Factor to set aside default judgment
- *Jackson Hewitt Inc. v. Collins Njoku*, Civ. No. 21-7665 (U.S. D.C. NJ May 6, 2021) – Factor mitigated injunctive relief granted
- *La Simple Co. Ltd v. SLP Enterprises, LLC*, 2021 WL 1648762 (April 27, 2021) – No
- *Lucky U, LLCX v. S&F Inv., LLC, A&V Petroleum, LLC and Fadi Qumbargi*, Civil No. 3:21cv931 (Dist. CT, January 11, 2022) – No
- *Level 4 Yoga, LLC v. Corepower Yoga, LLC*, 2022 WL 601862 (DE Chancery March 1, 2022) – No.

# Questions?

# PRICING AND REBATES / MARK UP CASES

Michael D. Joblove



# When are the franchisor's prices unfair or unreasonable?



# Money Mailer I

*Money Mailer v. Brewer*, 449 P.3d 258 (Wash. 2019)

- Was it fair to charge franchisees twice for the franchisor's costs?



# Questions Certified to Washington Supreme Court

1. In determining if a price is fair and reasonable, may the franchisee rely on the price paid by the franchisor without regard to whether this was a true market price?
2. Is twice the franchisor's price unreasonable?

# Washington Supreme Court's Response:

## Market Forces are key:

- What price did the franchisor pay?
- What are the prices of the franchisor's competitors?
- What do the other franchisors charge franchisees?
- What are business and industry practices?
- What price could the goods be obtained for on the opening market?

# Money Mailer I

## Ultimate holdings:

- Twice the franchisor's price is not per se unfair or unreasonable.
- The issue will be a question of fact.
- Post Washington Supreme Court decision, franchisee's motion for summary judgment denied.

# Money Mailer II

2020 WL 3639623 (W.D. Wash. Sept. 6, 2020)

- Franchisee's renewed motion for summary judgment denied.
- Money Mailer's statement in FDD that it charged franchisees "customary prices" for products not necessarily misleading based upon Washington Supreme Court standards.

# *Tim-Minn, Inc. v. Tim Hortons USA, Inc.*

2021 WL 4482733 (S.D. Fla. August 2, 2021)

- What happens if franchisor’s disclosure states that its prices will be “what we consider to be a reasonable mark up on items sold to you?”
- Is discretion unlimited?



## Other Recent Cases:

- *Upshaw v. Lacado*, 2021 WL 3085757 (Tex. App-Fort Worth [2nd Dist.] July 22, 2021)
- *Jai Sai Baba, LLC v. Choice Hotel Int'l, Inc.*, No. 5:20-cv-02823 (E.D. Pa. March 19, 2021)
- *Fruit Creations, LLC v. Edible Arrangements, LLC*, 2020 WL 5095460 (M.D. Tenn. Aug. 27, 2020)

# Questions?



# International



Chad Finkelstein

# Canada

- Expedited examinations of trademarks
- *Miller Thomson LLP v. Hilton Worldwide Holding LP*
- Possible amendments to Quebec's language laws
- Amendments to Ontario franchise legislation
- *Sobeys Capital Incorporated / Sobeys Capital Incorporee* (joint employer)

# European Union

- TFEU
- Amendments to the VBER and possible inclusion of franchise relationships

# Questions?