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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
(Portland Division)

7-ELEVEN, INC., a Texas corporation,

Civil No.

Plaintiff,

COMPLAINT

(Declaratory Judgment – 28 U.S.C. § 2201(a))

v.

DANNY WONG, an individual,

Defendant.

Plaintiff 7-Eleven, Inc. ("7-Eleven") sues defendant Danny Wong ("Franchisee") and alleges:

NATURE OF ACTION

1. This is an action for declaratory judgment arising from Franchisee's repudiation of a settlement agreement.

PARTIES

2. 7-Eleven is a corporation organized and existing under the laws of the state of Texas with its principal place of business in Dallas, Texas.

3. Franchisee is an individual and a citizen of Oregon.

JURISDICTION AND VENUE

4. Jurisdiction in this Court is founded upon diversity of citizenship, 28 U.S.C. § 1332, the parties being citizens of different states and the matter in controversy in excess of \$75,000.00 exclusive of interest and costs.

5. Venue is proper in this District and Division under 28 U.S.C. § 1391 because both Franchisee resides and the property that is the subject of this action is situated in Multnomah County, Oregon.

GENERAL ALLEGATIONS

6. 7-Eleven is an operator and franchisor of convenience store retailing businesses and the premiere brand in that industry. There are more than 10,300 7-Eleven® stores in North America and some 52,100 7-Eleven stores worldwide.

7. Over several decades, 7-Eleven has developed methods and procedures – called a "system" – used in the operation of convenience store businesses.

8. 7-Eleven also owns a number of federally-registered trademarks and service marks, including 7-Eleven® Slurpee® and Big Gulp®. These marks and the 7-Eleven® mark in particular are used to identify and distinguish its products and services and are widely known to the public.

9. On March 9, 2007, Franchisee and 7-Eleven entered a franchise agreement, ancillary agreements and addenda (collectively the "Franchise Agreement") for 7-Eleven Store No. 19909D, located at 1931 North Lombard, Portland, Oregon, 97217-5641 ("Store 19909D"). A copy of the Franchise Agreement is attached as Exhibit 1.

10. Generally, the Franchise Agreement licenses Franchisee's use of 7-Eleven's system and marks and also leases to the Franchisee the store property and equipment, which are owned by 7-Eleven. In exchange for these benefits, Franchisee agrees to pay to 7-Eleven a percentage of its gross income.

11. The Franchise Agreement regulates the relationship between Franchisor and Franchisee and provides for, among other things, certain minimum merchandising obligations, store appearance and image standards and financial net worth requirements.

12. If Franchisee fails to comply with the Franchise Agreement, under paragraph 26, 7-Eleven may notify Franchisee of its violation and, as the case may be, permit Franchisee a period of time to cure that violation.

13. Between September 15, 2011, and January 16, 2013, 7-Eleven notified Franchisee of at least five separate instances of material breach of the franchise agreement.

14. Subsequently, Franchisee continued to violate the Franchise Agreement by not maintaining the store premises to minimum standards, failing to timely deposit cash receipts and failing to carry a reasonable and representative quantity of required merchandise categories.

15. Under Paragraph 26(b) of the Franchise Agreement, if Franchisee has received more than three notices of material breach in the preceding two years, 7-Eleven may terminate the franchise agreement immediately.

16. In recognition of 7-Eleven's right to immediately terminate the Franchise Agreement and to secure its forbearance of that right, on June 7, 2013, Franchisee and 7-Eleven entered into the Compromise and Settlement Agreement (the "Settlement Agreement") attached as Exhibit 2. This Settlement Agreement was the result of an arms-length negotiation between 7-Eleven and Franchisee, both of whom received the advice of counsel.

17. Generally, the Settlement Agreement permits Franchisee's continued operation of Store 19909D for a period of 180 days during which time Franchisee has the opportunity to sell its interest in Store 19909. Provided there were no further breaches of the Franchise Agreement and Store 19909D was unsold at the end of six months, 7-Eleven could, in its discretion, extend the sales period by 60 days.

18. Upon the expiration of six months from entry into the Settlement Agreement, in or around December of 2013, 7-Eleven agreed to extend the sales period to February 10, 2014.

19. Under the Settlement Agreement, Franchisee promised to surrender Store 19909D to 7-Eleven upon the earlier of (1) a default under the Settlement Agreement; (2) the end of the sale period, with no pending sale; or (3) the effective date of either an agreement between 7-Eleven and the Prospective Franchisee or a disqualification of the Prospective Franchisee by 7-Eleven.

20. On or around January 16, 2014, Franchisee stated to 7-Eleven that (1) he would violate the Settlement Agreement by refusing to surrender it upon expiration of the sales period; (2) his attorneys would assist him to this end.

21. All conditions precedent to this action have occurred, have been performed or have been otherwise met.

COUNT I - DECLARATORY JUDGMENT

22. 7-Eleven re-alleges paragraphs 1 through 21.

23. This is a claim for declaratory relief under 28 U.S.C. § 2201(a) and Rule 57, Federal Rules of Civil Procedure.

24. This action presents an actual and substantial controversy within this Court's jurisdiction under 28 U.S.C. § 1332 as the parties are of diverse citizenship and Store 19909D's real property, equipment and going concern value is far more than \$75,000.00 in amount.

25. An actual, justiciable controversy exists concerning Franchisee's obligation to surrender Store 19909D under the Settlement Agreement.

26. Both an actual injury and a substantial likelihood of future injury to 7-Eleven exist because Franchisee has repudiated the Settlement Agreement by stating that he would not honor its terms upon expiration.

WHEREFORE, 7-Eleven requests that this Court enter judgment against Franchisee as follows:

- a. A judgment declaring Franchisee in breach of the Settlement Agreement and declaring that Franchisee must surrender Store 19909D upon the expiration of the sales period;

- b. Injunctive relief enforcing the declaratory judgment and directing Franchisee to surrender Store 19909D and to comply with his other obligations under the Settlement Agreement;
- c. Its reasonable attorney fees, costs and expenses incurred in this action;
- d. An award of post-judgment interest; and
- e. Such further relief as this Court deems just and reasonable.

DATED this 27th day of January, 2014.

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