



RAISING THE BAR

IFA LEGAL SYMPOSIUM

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Enforcement and Risks of Post-Termination Buybacks and In-Term Step-In Rights

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Step-In Rights – When?

- Death
- Disability
- Abandonment
- Franchisee default
- Crisis
- Other?

Step-In Rights – Why?

- Preserve Franchisee's Asset
 - What happens if no step-in?
- Opportunity/time to complete transfer
- Prevent damage to brand

Step-In Rights – Alternatives?

- Succession plan
- Multiple operators
- Termination
- Repurchase
- Other?

Step-In Rights – Nuts & Bolts (FA)

- Triggering events
 - What’s a “disability”? Permanent/temporary?
- Notice/Option
- Money
- Indemnity
- Third-parties

Step-In Rights – Nuts & Bolts (Other Agreements)

- Management Agreement
 - Term
 - Money flow/compensation
 - Reporting
 - Staffing/Employment
 - Split responsibilities?

Step-In Rights – Nuts & Bolts (Other Agreements)

- Management Agreement (cont.)
 - Allocation of Risk
 - Authority
 - Preservation of rights (esp. if franchisee default)
 - Release of claims?
 - Governing law/Venue

Step-In Rights – Nuts & Bolts (Other Agreements)

- Power of Attorney
 - Telephone Number
 - Website/URL
 - Other?
- Lease Rider

Step-In Rights – When Things Go Wrong

- *Creative American Education, LLC v. The Learning Experience, LLC*

Step-In Rights – Disclosure Concerns

- Item 6
- Item 11
- Item 12
- Item 17
- Item 19
- Item 20
- Item 22

Buybacks & Takeovers – When/Why?

- De-franchising?
- Bridge to new franchisee
- Strong location
- Preserve brand
- Ability?
- Statutory obligation?

Buybacks & Takeovers – Nuts & Bolts (FA)

- Business or assets?
- Which assets?
- Valuation
- Notice/Option timing
- Preservation of assets

Buybacks & Takeovers – Nuts & Bolts (Other Agreements)

- Conditional Lease Assignment/Lease Rider
- Security Agreement (UCC)
- Telephone Number Assignment

Buybacks & Takeovers – Disclosure Concerns

- Item 17
 - Obligations on Termination/Nonrenewal
 - ROFR
 - Franchisor's Option

Buybacks & Takeovers – When Things Go Wrong

- *In re Meena*
 - No clear termination
 - Parties not clear
- *Sensormatic Electronics Corp. v. First National Bank Pennsylvania*
 - Notice period means what it says

In-Term Purchase Rights – Types

- ROFR
- ROFO
- Option

In-Term Purchase Rights – ROFR/ROFO

- Triggering event
- “Bona fide” offer
- What kinds of transfers?
 - Gift, inheritance, partial transfer, “package deal”, etc
- Notice/election
- Substitution of cash for property?

In-Term Purchase Rights – Options – Why?

- Shifting risk/Seizing Upside
- Changing economics
- Exit the market
- Sale of system
- IPO

In-Term Purchase Rights – Options – Key Points

- Valuation must be “fairer”
 - Multiple of EBITDA/Revenues
 - “FMV”
 - Book Value
- Use of appraisers

In-Term Purchase Rights – Options – Disclosure

- Item 9?
- Item 17