

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AZHAR CHAUDHRY, an individual, ARS RESTAURANT, INC., an Illinois Corporation, and LUCKY STAR #5409, INC., an Illinois Corporation, Plaintiffs, vs. INTERNATIONAL HOUSE OF PANCAKES, LLC, a Delaware Limited Liability Company Defendant	Case No. 15-cv-3504 JURY TRIAL DEMANDED
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COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiffs AZHAR CHAUDHRY, ARS RESTAURANT, INC., and LUCKY STAR #5409, by their attorneys, for their complaint against Defendant INTERNATIONAL HOUSE OF PANCAKES, LLC, state and allege as follows:

Purpose of this Lawsuit

1. In this action, the Plaintiffs seek to enjoin the termination of their franchise agreement by the Defendant, which Defendant announced in a letter dated April 17, 2015 (submitted as Exhibit A). As will be described below, the individual Plaintiff, Azhar Chaudhry has been a franchisee in the International House of Pancakes (“IHOP”) brand since 1997 and had, at one time, a total of three IHOP restaurants: one in Bridgeview, Illinois that he

acquired in 1997 and which remains his franchise today; a second in Arlington Heights, Illinois which he acquired in 2004 and which is the subject of the April 17, 2015 termination letter; and a third in St. Charles, Illinois which he acquired in 2006, and which this Defendant terminated in 2013. The Plaintiffs contend that both the 2013 termination and the purported 2015 termination were breaches of contract and in addition were part of a pattern and practice of intentional racial discrimination by this Defendant (and/or its affiliates) against Muslim individuals of South Asian and/or Middle Eastern descent, in the greater Chicagoland market. Plaintiffs seek to enjoin the April 17, 2015 termination of the Arlington Heights franchised IHOP restaurant and seek damages from the 2013 termination and other damages to the fullest extent of the law.

PARTIES

2. Plaintiff Azhar Chaudhry (“Chaudhry”) is a Muslim American who emigrated from Pakistan and is a naturalized American citizen, residing at 7555 Sholer Avenue in Bridgeview, Illinois, within the Northern District.

3. Plaintiff ARS Restaurant, Inc. (“ARS”) is an Illinois corporation created by Chaudhry, and Chaudhry is the sole shareholder of this company, which has its principal place of business at 31 East Golf Road, Arlington Heights, Illinois, within the Northern District, where it operates a franchised IHOP restaurant (the “Arlington Heights IHOP restaurant”).

4. Plaintiff Lucky Star #5409 (“Lucky Star”) is an Illinois corporation created by Chaudhry, and Chaudhry is the sole shareholder of this company, which presently has its principal place of business at 7240 West 79th Street, Bridgeview, Illinois, within the Northern District, where it operates the “Bridgeview IHOP restaurant.” Previously, this company also operated Chaudhry’s franchised IHOP restaurant located at 125 Smith Road, St. Charles, Illinois, also within the Northern District (the “St. Charles IHOP Restaurant”).

5. Hereinafter, unless otherwise indicated, the term “Chaudhry” will refer collectively to the individual and both of the corporate plaintiffs that are identified in paragraphs two, three and four.

6. Defendant International House of Pancakes, LLC (“IHOP LLC”) is a Delaware limited-liability company with its principal place of business in Glendale, California. On information and belief: (i) IHOP LLC’s sole member is DineEquity, Inc., a Delaware corporation with its principal place of business in Glendale, California; and (ii) IHOP LLC is the successor in interest to International House of Pancakes, Inc. with respect to the Franchise Agreement with Plaintiff as more fully alleged below.

JURISDICTION AND VENUE

7. Plaintiffs bring suit under 42 U.S.C. §1981 and also under state law as more fully alleged below.

8. The Court has original jurisdiction over Count II of the complaint pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1988, as well as under 28 U.S.C. § 1332(a), as the amount in controversy exceeds the sum of \$75,000 exclusive of interest or costs, and the parties are citizens of different states.

9. The Court has original jurisdiction over Count I of the complaint pursuant to 28 U.S.C. § 1332(a), for the reasons outlined in paragraph 8, as well as supplemental jurisdiction over Count I of the complaint pursuant to 28 U.S.C. § 1367(a), as it arises from the same operative facts as the federal claim.

10. The Defendant is subject to personal jurisdiction in the State of Illinois because it sells franchises in Illinois, and therefore is “doing business” in Illinois and is subject to suit here pursuant to long-arm jurisdiction under 735 ILCS 5/209.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because substantial portions of the unlawful conduct alleged herein occurred in the Northern District of Illinois, Eastern Division.

FACTUAL BACKGROUND

12. Azhar Chaudhry became a franchisee of IHOP LLC, or its predecessor, in 1997 when he acquired the Bridgeview IHOP restaurant at the address indicated above. He continues to operate that franchise as of the date of this Complaint.

13. In 2004, Chaudhry acquired the Arlington Heights IHOP restaurant and entered into a second franchise agreement with IHOP LLC, or its predecessor, that has a “contract date” of August 31, 2004, an “effective date” of January 4, 2005, and which has a twenty year term that would not expire until 2025. A copy of this franchise agreement (the “2005 Franchise Agreement”) is submitted as Exhibit A.

14. Pursuant to the 2005 Franchise Agreement, and at all times since January 2005, Chaudhry has operated the “Arlington Heights IHOP Restaurant.” Furthermore:

- a. Chaudhry has performed or substantially performed all of his obligations to IHOP LLC under the Franchise Agreement for the Arlington Heights IHOP Restaurant.
- b. Chaudhry is not in material default of any provisions of his Franchise Agreement for the Arlington Heights IHOP Restaurant.
- c. The Arlington Heights IHOP Restaurant enjoys substantial customer acceptance, generates substantial revenues for Chaudhry, and also generates substantial revenues for IHOP LLC in the form of royalty payments.

15. Under the 2005 Franchise Agreement, IHOP LLC has the right to conduct periodic inspections of the Arlington Heights IHOP Restaurant to make sure that is in compliance with IHOP system standards. For the first

several years of this franchise relationship, the Arlington Heights IHOP Restaurant received good grades.

16. However, beginning in 2014, IHOP LLC through its inspection agents began to claim that it was finding fault with the Arlington Heights IHOP Restaurant and began to give that unit lower inspection grades. This practice has continued to the present.

17. By letter dated April 17, 2015, IHOP LLC purported to inform Chaudhry that it has “immediately” terminated his 2005 Franchise Agreement for the Arlington Heights IHOP Restaurant. This letter was the culmination of an effort by IHOP LLC to declare multiple defaults at the Arlington Heights IHOP Restaurant, none of which had merit and/or each of which was cured by Chaudhry at considerable expense. In effect, the Defendant was determined to reach the point of an allegedly incurable default. The Defendant continuously “moved the goal posts” to prevent Chaudhry from ever being in full compliance (according to the Defendant’s shifting definitions of what full compliance required).

18. In declaring default and terminating Chaudhry’s 2005 Franchise Agreement for the Arlington Heights IHOP Restaurant, IHOP LLC breached the Franchise Agreement; specifically the Defendant breached the implied covenant of good faith and fair dealing which requires that when one party to a contract is vested with contractual discretion, it must exercise that discretion reasonably and with proper motive, and may not do so

arbitrarily, capriciously or in a manner inconsistent with the reasonable expectations of the parties.

19. As more fully alleged below, IHOP LLC is acting with improper motivation that includes, without limitation, a pattern and practice of racial animus and racial discrimination against Muslim American franchisees of Middle Eastern or South Asian background.

20. Previously, in a similar pattern of abusive inspections, IHOP LLC manufactured false grounds for its 2013 termination of the St. Charles IHOP Restaurant franchise agreement, causing substantial financial damages to Chaudhry and his operating company in amounts that will be proven at trial but which in itself exceeds \$75,000.00.

21. The Defendant's 2013 termination of the St. Charles IHOP Restaurant franchise agreement was part of the pattern and practice of racial discrimination alleged herein.

22. In addition, Chaudhry continues to operate the Bridgeview IHOP Restaurant, as alleged above. However, this IHOP restaurant is also threatened by the arbitrary and capricious conduct of IHOP LLC as alleged herein.

COUNT I

Breaches of Contract

23. Plaintiffs incorporate the allegations of paragraphs 1 through 22 of this Complaint as though fully set forth herein.

24. For the reasons alleged above, IHOP LLC's 2013 termination of the St. Charles IHOP Restaurant franchise agreement was a breach of contract, including its implied covenant of good faith and fair dealing. Chaudhry was in compliance or substantial compliance with his obligations as a franchisee at that location, and the franchisor's conduct leading to that termination was arbitrary, capricious and abusive of its contractual discretion under the applicable franchise agreement.

25. For the reasons alleged above, IHOP LLC's purported April 17, 2015 termination of the Arlington Heights Restaurant franchise agreement was a breach of contract, including its implied covenant of good faith and fair dealing. Chaudhry was in compliance or substantial compliance with his obligations as a franchisee at that location, and the franchisor's conduct leading to that termination was arbitrary, capricious and abusive of its contractual discretion under the applicable franchise agreement.

26. IHOP LLC's conduct with respect to the Arlington Heights IHOP Restaurant has caused and will continue to cause substantial injury and damages to the Plaintiffs,

27. To preserve the Plaintiffs' equity in the Arlington Heights IHOP Restaurant, the Court must enjoin IHOP from proceeding with the termination that it purported to announce on April 17, 2015.

28. The Plaintiffs will suffer irreparable injury which might be difficult to quantify in the absence of the requested injunctive relief.

29. The entering of the requested injunctive relief will be fully consistent with law, equity and public policy.

COUNT II

Claims for Violations of 42 U.S.C. § 1981

30. Plaintiffs incorporate the allegations of paragraphs 1 through 29 of this Complaint as though fully set forth herein.

31. Section 1981 of the Civil Rights Act, 42 U.S.C. §1981, was enacted after the Civil War for the purpose of securing the rights of the newly freed slaves and their descendants to “make and enforce contracts” in the same manner as enjoyed by “white citizens” (among other rights secured by § 1981). Specifically, § 1981 provides:

a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) “Make and enforce contracts” defined

For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

32. For purposes of § 1981, Plaintiff Azhar Chaudhry is a non-white citizen that enjoys under § 1981 the same legal right to the making, performance, modification, and termination of contracts, and the enjoyment

of all benefits, privileges, terms, and conditions of the contractual relationship, as white citizens.

33. For purposes of § 1981, both of the corporate plaintiffs are minority-owned companies that derivatively enjoy under § 1981 the same legal right to the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship, as companies that are owned or controlled by white citizens or white citizens themselves.

34. As a matter of law, every IHOP franchise agreement creates a contractual relationship that is protected by § 1981.

35. As alleged herein on notice pleading, IHOP has violated § 1981 by its intentionally discriminatory evaluations of the Arlington Heights, St. Charles and Bridgeview IHOP Restaurants; and in terminating the Arlington Heights and St. Charles IHOP Restaurants on the pretext of these discriminatory evaluations, and other discriminatory conduct that is alleged on information and belief.

36. On information and belief, the discriminatory conduct of IHOP LLC being alleged herein is part of a pattern and practice of racial discrimination by IHOP LLC against its Muslim franchisees of Middle Eastern or South Asian background who own IHOP restaurant franchises in the greater Chicago market and/or the Midwest (MW) region as defined by IHOP.

37. The alleged pattern and practice will be established (without limitation) by the grades assigned by IHOP LLC to its Muslim franchisees of Middle Eastern or South Asian background in comparison to non-Muslim Franchisees as revealed by IHOP LLC in a document entitled “IHOP ConnectAB System-Wide Rankings,” which is published on a private web page that is accessible to IHOP franchisees.¹

38. IHOP LLC’s conduct has caused and will continue to cause substantial injury and damages to the Plaintiffs.

39. To preserve the Plaintiffs’ equity in the Arlington Heights IHOP Restaurant, the Court must enjoin IHOP from proceeding with its termination.

40. The Plaintiffs will suffer irreparable injury which might be difficult to quantify in the absence of the requested injunctive relief.

41. The entering of the requested injunctive relief will be fully consistent with law, equity and public policy.

¹ The information from these web pages is not submitted as an exhibit because, on information and belief, the Defendant regards this information as confidential. However, by this Complaint, the Defendant is on notice of a Litigation Hold request to preserve all of this information, whether published on the alleged web page or in other places, from 2005 to the present. The Defendant is further requested to put a hold on all of its records of defaults, terminations and franchise transfers

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor and against the Defendant as follows:

- A. Preliminary and Permanent Injunctive Relief against the termination of the Arlington Heights Restaurant Franchise.
- B. Preliminary and Permanent Injunctive Relief against continued discrimination in violation of 42 U.S.C. § 1981.
- C. Damages sufficient to make the Plaintiffs whole, to the fullest extent available under law, in such amounts as may be proven at trial.
- D. Punitive damages sufficient to punish this Defendant for engaging in intentional discrimination in connection with its franchising program and to deter other from like misconduct.
- E. Costs, reasonable attorneys' fees and reasonable expert witness fees that may be incurred in this case, including without limitation the amounts recoverable under 42 U.S.C. § 1988.
- F. Such further relief as this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands trial by a jury of their peers on all claims as to which the right to trial by jury is established by the Seventh Amendment.

April 21, 2015

Respectfully submitted,

By: /s/ Shane D. Valenzi
One of Plaintiffs' Attorneys

Carmen D. Caruso (# 6189462) -- cdc@cdcaruso.com
Shane D. Valenzi (# 6314178) – sdv@cdcaruso.com
CARMEN D. CARUSO LAW FIRM
77 West Washington Street
Suite 1900
Chicago, IL 60602
(312) 626-1160
(312) 276-8646 (facsimile)