

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

MISTER SPARKY FRANCHISING, L.L.C.,
a Florida limited liability company,

Plaintiff,

vs.

ON TIME ELECTRICIANS, INC.,
a Nevada corporation,

Defendant.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Mister Sparky Franchising, L.L.C. (“Mister Sparky” or “Plaintiff”), by and through its undersigned counsel, seeks declaratory relief against Defendant, On Time Electricians, Inc. (“OTE” or “Defendant”), and alleges:

PARTIES, JURISDICTION, AND VENUE

1. This is an action for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 for the purpose of resolving an actual and justiciable controversy concerning the termination of a franchise agreement between the parties dated February 8, 2013, as amended (the “Franchise Agreement”).¹ Specifically, Mister Sparky asks the Court to declare that Mister Sparky may properly terminate the Franchise Agreement for violations of the Franchise Agreement’s non-competition provisions.

¹ A true and correct copy of the Franchise Agreement is attached hereto as Exhibit A. A true and correct copy of the Amendment to the Franchise Agreement is attached hereto as Exhibit B.

2. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because complete diversity exists between parties and the amount in controversy exceeds \$75,000.

3. Mister Sparky is a Florida limited liability company and maintains its principal place of business in Sarasota, Florida. Because Mister Sparky is a limited liability company, its citizenship is determined by the citizenship of its members. *See Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004). Mister Sparky's sole member, Clockwork, Inc., is incorporated under the Delaware law and maintains its principal place of business in Sarasota, Florida. *See* 28 U.S.C. § 1332(c)(1). Accordingly, Mister Sparky is a citizen of Delaware and Florida.

4. OTE is a citizen of Nevada as it was incorporated under Nevada law and maintains its principal place of business in Las Vegas, Nevada.

5. The amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1332(a).

6. The value of the subject franchise to Mister Sparky, including the territory in and surrounding Las Vegas, Nevada, and the value of continuing franchise fees, exceeds \$75,000. *See Weiner v. Tootsie Roll Indus., Inc.*, 412 F. App'x 224, 227 (11th Cir. 2011) (unpublished). The term of the Franchise Agreement extends for a period of ten years commencing February 8, 2013 (see Ex. A at 4), and OTE is liable for continuing franchise fees commencing August 8, 2013 and a minimum franchise fee of \$250,000 per year commencing February 9, 2018 (*see* Ex. B at 2).

7. Pursuant to Article 18.3 of the Franchise Agreement, OTE agreed that jurisdiction and venue are proper in this District and consented to the exclusive jurisdiction

and venue of this Court for any controversy arising from or relating to the Franchise Agreement or the franchised business described thereunder. (*See* Ex. A at 36.)

8. In addition, this Court may properly exercise long-arm jurisdiction over OTE pursuant to the United States Constitution and Fla. Stat. § 48.193(a).

GENERAL ALLEGATIONS

9. Mister Sparky is in the business of franchising and licensing its distinctive business format and system and related standards, specifications, and procedures (the “System”) using the name and service mark “MISTER SPARKY®” and associated marks and logos (the “Licensed Marks”) for the operation of residential electrical services businesses. The System and the Licensed Marks are described more precisely at Articles 1.1, 1.3, 11, and 12 of the Franchise Agreement. (*See* Ex. A at 1, 22–24.)

10. Article 2.1(E) of the Franchise Agreement provides in relevant part: “This Agreement represents a valid, binding obligation of [OTE] and each of [OTE]’s owners, jointly or severally (each, an ‘Owner’).” (*See* Ex. A at 2.) Exhibit C to the Franchise Agreement identifies George Donaldson as OTE’s sole owner. (*See* Ex. A at c-1.)

11. Upon information and belief, Donaldson, OTE’s sole owner and president, accepted employment as Division President with American Residential Services, LLC (“ARS”) in December 2014. ARS provides residential electrical services in the United States.

12. Article 14.1, as amended, of the Franchise Agreement provides in relevant part: “Commencing on the Effective Date and for the balance of the Term, Franchisee (and its Owners if Franchisee is a business entity) shall not . . . be involved with a Competitive

Business. A ‘Competitive Business’ means a business that offers residential electrical products and services competitive with or similar to those offered by Mister Sparky, its affiliates, its franchisees or its licensees or its affiliates’ franchisees, licensees and members (including, but not limited to, the members of the Clockwork affinity groups), without regard to geographic location[.]” (*See* Ex. A at 26.)

13. Donaldson’s employment with ARS, as described at paragraph 11 above, constitutes involvement with a Competitive Business in direct violation of the non-competition provisions in Article 14.1, as amended, of the Franchise Agreement.

14. This violation of Article 14.1 constitutes grounds for immediate termination under Article 16.1(E) of the Franchise Agreement because it adversely affects the goodwill associated with Mister Sparky. (*See* Ex. A at 26, 31.)

COUNT ONE FOR DECLARATORY RELIEF
(Violation of Non-Competition Provisions)

15. Mister Sparky realleges and incorporates the allegations of paragraphs 1 through 14 of Mister Sparky’s Complaint as if fully set forth herein.

16. Mister Sparky seeks a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that Mister Sparky may properly terminate the Franchise Agreement based on Donaldson’s employment with ARS because it violates the non-competition provision of the Franchise Agreement, and because Donaldson has failed to cure such violation.

17. Because the parties have present adverse interests regarding their rights and obligations with respect to termination under the Franchise Agreement, an actual, present, and justiciable controversy exists between the parties.

18. Declaratory relief will clarify and resolve the uncertainty and controversy surrounding Mister Sparky's right to immediately terminate the Franchise Agreement.

Wherefore, Plaintiff Mister Sparky Franchising, L.L.C. requests that this Court:

A. Declare that Mister Sparky may properly terminate the Franchise Agreement under Article 16.1(E) based on Donaldson's employment with ARS; and

B. Grant such other and further relief as this Court may deem just and proper.

Dated: January 23, 2015

MCGUIREWOODS LLP

By: /s/ Kimberly T. Mydock

R. Eric Bilik

Florida Bar No. 0987840

ebilik@mcguirewoods.com

Kimberly Tolland Mydock

Florida Bar No. 0100571

kmydock@mcguirewoods.com

50 North Laura Street, Suite 3300

Jacksonville, FL 32202

Telephone: 904-798-3200

Facsimile: 904-798-3207

Attorneys and Trial Counsel for Plaintiff Mister Sparky Franchising, L.L.C.

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