

2016 SEP -1 P 3 39

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

PRECISION FRANCHISING LLC,
a Virginia limited liability company,

Plaintiff,

v.

CEG, INC.,
a California corporation,

CLARENCE GOODMAN,
a resident of California, and

SHYLYNN GOODMAN,
a resident of California,

Defendants.

Case No.

1:16CV1118

LMBIDD

COMPLAINT

1. This action arises from breaches of contract in connection with the operation of a Precision Tune Auto Care franchise by Defendants CEG, Inc., Clarence Goodman, and Shylynn Goodman (collectively "Defendants"). Precision Franchising LLC ("PFL") seeks a determination that Defendants breached their Franchise Agreement by failing to pay operating fees, marketing fees, and note payments to which it was entitled under the Franchise Agreement, a Renewal Agreement, and certain promissory notes. Plaintiff also seeks monetary damages in an amount to be determined.

PARTIES

1. Plaintiff PFL is a Virginia limited liability company with its principal place of business at 748 Miller Drive SE in Leesburg, Virginia. It is engaged in the business of

franchising independent business persons to operate Precision Tune Auto Care service centers throughout the United States. PFL franchisees are licensed to use the trade name, service marks, and trademarks of Precision Tune Auto Care and to operate under the Precision Tune Auto Care system, which involves the retail sale of automotive products and services, including lubrication, oil change, brake products, and related services utilizing unique and specialized training, management, marketing techniques, and related materials; procedures and methods of operation; uniform standards, specifications, and procedures for products, equipment, and services; distinctive appearance; advertising and promotional programs; and proprietary marks and information.

2. Upon information and belief, Defendant CEG, Inc., (“CEG”) is a California corporation with its principal place of business in California.

3. Defendant Clarence Goodman (“Clarence”) is a natural person and, upon information and belief, is a resident of the State of California. Clarence personally guaranteed the obligations of CEG under the Franchise Agreement pursuant to an executed Guaranty Agreement.

4. Defendant Shylynn Goodman (“Shylynn”) is a natural person and, upon information and belief, is a resident of the State of California. Shylynn personally guaranteed the obligations of CEG under the Franchise Agreement pursuant to an executed Guaranty Agreement.

JURISDICTION AND VENUE

5. The Court has subject matter over this action pursuant to 28 U.S.C. §§ 1332(a) and 1367(a). The parties are citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

6. This Court has *in personam* jurisdiction over Defendants because they have entered into contracts in this district and have caused tortious injury in this district by their acts and omissions. In addition, CEG has entered into a contract by which it agreed to submit to the jurisdiction of this Court. Specifically, under Paragraph 26.1 of the Franchise Agreement, CEG irrevocably submitted to the jurisdiction of this Court, and waived all questions of personal jurisdiction.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims against Defendants occurred in this district. In addition, CEG has entered into a contract by which it agreed to this venue. Specifically, under Paragraph 26.1 of the Franchise Agreement, CEG promised to submit to the exclusive venue of this Court.

BACKGROUND FACTS

The Precision Tune Auto Care System

8. PFL is the licensor of the Precision Tune Auto Care system. PFL has licensed others to operate automotive service businesses identified with the Precision Tune Auto Care service mark and related marks and logos and to utilize confidential methods and procedures developed by Precision Tune Auto Care for the operation of Precision Tune Auto Care service centers.

CEG's Obligations under the Franchise Agreement

9. PFL entered into a Franchise Agreement with CEG effective December 8, 2003. Under the Franchise Agreement, CEG assumed the rights and obligations to operate a franchise location at 3425 Midway Drive, Suite B, San Diego, California 92110 (the "Franchised Business"). A copy of the Franchise Agreement is attached hereto as Exhibit A.

10. Pursuant to Paragraph 4.2 of the Franchise Agreement, CEG agreed that it would pay PFL an operating fee equal to 7.5% of the weekly gross sales of the Franchised Business,¹ but not less than \$300 per week.

11. Pursuant to Paragraph 13.1 of the Franchise Agreement, CEG agreed that it would pay PFL or its designee or spend as directed by PFL advertising fees equal to 9% of the weekly gross sales of the Franchised Business, but not less than \$360 per week.

12. Pursuant to Paragraph 15.2 of the Franchise Agreement, CEG agreed that it would be in default if it failed to promptly pay when due any operating or advertising fees or any other amounts owing to PFL, its subsidiaries, affiliates, or divisions arising out of the Franchise Agreement or relating to the Franchised Business. Under Paragraph 15.3 of the Franchise Agreement, CEG agreed that in the event that it did not cure its default, PFL would immediately terminate the Franchise Agreement without notice or opportunity to cure.

13. Pursuant to Paragraph 17.2 of the Franchise Agreement, CEG agreed to pay to PFL all costs and expenses, including legal and accounting fees, incurred in connection with obtaining damages or injunctive or other relief for the enforcement of any provisions of the Franchise Agreement.

¹ Paragraph 4.6 of the Franchise Agreement defines the term “gross sales” as

the amount of sales of all products and services sold in, on, about or from the [Franchised Business] by Franchisee, whether for cash, barter or on a charge, credit or time basis, without reserve or deduction for inability or failure to collect, and including income of every kind and nature related to the Franchised Business. Gross sales shall not include the amount of any excise or sales or use tax levied on retail sales and payable over to the appropriate governmental authority. In computing gross sales, Franchisee may deduct the amount of over-rings, refunds, allowances, or discounts to customers (including coupon sales) provided that such amounts have been included in gross sales and provided that Franchisee complies with the requirements, including time limits, established by Franchisor from time to time in writing.

14. Contemporaneous with CEG's execution of the Franchise Agreement, Clarence and Shylynn executed a Guaranty Agreement personally guaranteeing CEG's obligations under the Franchise Agreement. Through this Guaranty Agreement, Clarence and Shylynn each individually agreed to pay all court costs and reasonable attorneys' fees together with any and all expenses incurred by PFL in the event that CEG's liabilities are enforced through legal action. A copy of the Guaranty Agreement is attached hereto as Exhibit B.

PFL Renews the Franchise Agreement

15. Pursuant to Paragraph 3.1 of the Franchise Agreement, the term of the agreement was for ten years; thus, the Franchise Agreement was set to expire on December 8, 2013. PFL offered to renew the Franchise Agreement with CEG by letter on May 29, 2013 (the "Renewal Agreement"). Under the terms of the Renewal Agreement, the Franchise Agreement would continue on the same terms and conditions until December 8, 2018. All named Defendants signed the Renewal Agreement.

16. As part of that Renewal Agreement, Defendants executed a promissory note with PFL in the amount of \$54,421.51 on or about May 29, 2013. A copy of that promissory note ("First Note") is attached hereto as Exhibit C.

17. On or about January 20, 2014, CEG and Clarence executed another promissory note with PFL in the amount of \$13,033.29. A copy of that promissory note ("Second Note") is attached hereto as Exhibit D.

CEG's Defaults

18. On or about March 28, 2016, PFL sent CEG a Notice of Default ("First NOD") stating that CEG was in default of its obligations under the Franchise Agreement. The First NOD stated that CEG was in breach of Paragraph 15.2 of the Franchise Agreement for failure to

pay its operating fees, marketing fees, and note payments in a timely manner. Further, the First NOD stated that failure to cure the defaults would result in the acceleration of the promissory notes, which collectively totaled \$34,436.92 in principal at the time of the notice. A copy of the First NOD is attached hereto as Exhibit E.

19. On or about June 3, 2016, PFL sent CEG a second Notice of Default ("Second NOD") stating that, while CEG had made some payments since receiving the First NOD, it was in still default of its obligations under the Franchise Agreement. The Second NOD stated that since the First NOD, CEG had fallen further behind on its payment of operating fees, marketing fees, and note payments, in breach of Paragraphs 4.2 and 15.2 of the Franchise Agreement. Further, the Second NOD stated that failure to remain current on payments after June 17, 2016, may result in the acceleration of the promissory notes. A copy of the Second NOD is attached hereto as Exhibit F.

Count I
(Breach of Contract – Monetary Damages)

20. The allegations of paragraphs 1 through 19 are hereby incorporated by reference.

21. CEG's has breached the Franchise Agreement, Renewal Agreement, First Note, and Second Note.

22. As a direct and proximate result of CEG's breaches, PFL has suffered and is continuing to suffer irreparable injury, and has incurred monetary damages of over \$75,000.00, exclusive of costs and attorneys' fees, in

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a. Enter a judgment in favor of PFL for the damages it has incurred as a result of the Defendants' breaches of the Franchise Agreement, the Renewal Agreement, the First Note, and the Second Note, including interest;
- b. Award PFL prejudgment interest;
- c. Award PFL its costs and attorneys' fees incurred in connection with this action pursuant to Paragraph 17.2 of the Franchise Agreement and the Guaranty Agreement; and
- d. Award PFL such other relief as this Court may deem just and proper.

Respectfully submitted,



Eric L. Yaffe (*Pro Hac Vice* To Be Filed)

Julia C. Colarusso (VSB #80241)

Whitney A. Fore (VSB #87526; Federal
Court Admission To Be Sought)

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Dated: September 1, 2016

*Attorneys for Plaintiff
Precision Franchising LLC*