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Workers' Comp Case Before Pennsylvania High Court Could Weaken Franchising

by William O. Mandycz

On May 3, 2016, the Pennsylvania Supreme Court granted *allocatur* in *Saladworks v. Workers' Compensation Appeal Board (Gaudioso and Uninsured Employers Guaranty Fund)*, to determine "whether a franchisor may be subject to liability as a statutory employer under § 302(a) of the Workers' Compensation Act." *Saladworks, LLC v. W.C.A.B.(Gaudioso)*, 135 A.3d 1016 (Pa. 2016). The court's ultimate ruling, while focused directly on workers' compensation claims, could chip away at the franchise model and tremendously diminish its value in Pennsylvania. Accordingly, franchisors and franchisees in the Commonwealth and elsewhere should pay attention to this case.

The *Saladworks* case comes before the Supreme Court following a Commonwealth Court decision that found Frank Gaudioso was not an employee of Saladworks, LLC (Saladworks) for the purposes of the Workers' Compensation Act. *Saladworks, LLC v. W.C.A.B. (Gaudioso)*, 124 A.3d 790 (Pa. Commw. Ct. 2015). The Commonwealth Court upheld an earlier ruling by a workers' compensation judge that Saladworks was not Gaudioso's employer, despite the fact that his direct employer—G21, LLC (G21)—was a company doing business under the Saladworks name as a franchisee. The Pennsylvania Uninsured Employers Guaranty Fund (UEGF) petitioned the Pennsylvania Supreme Court to hear the case, contending that Saladworks was Gaudioso's employer for the purposes of his workers' compensation claim and was liable for benefits allegedly owed to Gaudioso.

The case arose after Gaudioso slipped and twisted both of his knees while working at the Saladworks franchise owned by G21. *Saladworks, LLC*, 124 A.3d at 791. Gaudioso initially petitioned for workers' compensation benefits against Saladworks, before modifying his petition to name G21 as defendant instead of Saladworks and filing a separate petition against UEGF (due to the fact that G21 did not have workers' compensation insurance). UEGF then moved for joinder of Saladworks, contending that it was Gaudioso's employer. Saladworks moved to dismiss the joinder petition because it "had no relationship with Claimant but was a franchisor that granted certain rights to G21 to use its registered trademarks and system pursuant to the terms and conditions of the Franchise Agreement." Saladworks contended that it merely trains franchise owners, assists with marketing, offers on-site assistance in opening a location, conducts performance reviews, and provides business manuals. *Id.* at 791-92. The workers' compensation judge agreed, granting Saladworks' motion. *Id.* at 792. UEGF appealed and the Workers' Compensation Appeal Board reversed the ruling of the workers' compensation judge, thus allowing joinder of Saladworks. *Id.* at 794.

The fundamental question in this case revolves around § 302(a) of the Workers' Compensation Act, which states in key part that a "contractor who subcontracts all or any part of a contract and his insurer shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured its payment as provided for in this act." The Act continues by stating that "a person who contracts with another ... to have work performed of a

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kind which is a regular or recurrent part of the business occupation, profession or trade of such person shall be deemed a contractor, and such other person a subcontractor." Accordingly, as the Commonwealth Court explained, the key question in this case "is whether the work performed by G21 under the [Franchise] Agreement was a regular or recurrent part of the business, occupation, profession, or trade of Saladworks." *Saladworks, LLC*, 124 A.3d at 794. The Court determined that it was not.

In reaching its conclusion, the Commonwealth Court paid special attention to the Pennsylvania Supreme Court's recent ruling in *Six L's Packing Co. v. Workers' Compensation Appeal Board (Williamson)*, 44 A.3d 1148 (Pa. 2012). In that case, the court addressed the applicability of § 302(a) where a company had engaged an independent contractor to perform shipping duties and a truck driver employed by that independent contractor sought benefits from the company as an additional statutory employer. *Williamson*, 44 A.3d 1148. The court determined that the independent contractor was a "subcontractor" pursuant to § 302(a) and that the company was therefore a statutory employer that was secondarily liable for the payment of workers' compensation benefits. *Id.* at 1159.

The Commonwealth Court found, however, that *Six L's* was distinguishable from the current case. As opposed to the independent contractor hired in *Six L's* to perform routine services in the form of deliveries, the franchise arrangement between Saladworks and G21 did not involve the same level of interaction. In particular, the court held that Saladworks' "main business is the sale of franchises to franchisees that desire to use its name and 'System' and marketing expertise ... [and w]hile Saladworks and G21 are connected through the [Franchise] Agreement ... it is not in the restaurant business or the business of selling salads." *Saladworks, LLC*, 124 A.3d at 799. In comparison, *Six L's* involved a company that hired an independent contractor to "perform an essential part of its business: the transportation of produce from a warehouse to a processing facility ... [and the claimant] was injured performing this essential function." Accordingly, the court held that Saladworks was not the claimant's employer under § 302(a) and joinder was inappropriate.

The franchise business model offers significant benefits to franchisees, franchisors, and ultimately customers. Such arrangements allow an individual or small company to go into business with the support of a franchisor, while providing franchisees with a level of independence and an established product that often enjoys widespread recognition. This gives the franchisee the benefits of an existing customer base and often increases its chances for success. In addition, franchisors offer important support prior to opening—such as the selection of a site, assistance designing the store, financing assistance, and support training employees—and continuing support in the form of training, advertising, supervision of operations, and often access to bulk purchasing. Franchisors also offer consumers consistency and quality assurances.

If the Pennsylvania Supreme Court were to overturn the Commonwealth Court's well-reasoned ruling and hold that franchisors like Saladworks are liable for the workers' compensation claims of franchisees' employees, it would weaken the basis of franchising arrangements in Pennsylvania. Franchising arrangements enable the separation of franchisors from franchisees and the companies they operate, thus offering liability protection to the franchisor and ownership and operational control to the franchisee.

While this case appears limited to the context of workers' compensation claims, it is likely that plaintiffs' lawyers would utilize any negative precedent to attack franchisors in other areas of the law. The Pennsylvania Supreme Court's decision could prove highly influential when other courts examine franchising relationships and determine the liability franchisors face. Any negative ruling here would therefore be likely to filter into other areas of franchise law and potentially weaken what has long been a mutually beneficial type of business relationship, something the Pennsylvania Supreme Court should consider carefully in its ruling.

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