

Freenev Anita

DC-14-13790

No. _____

MADISON JOBE
Plaintiff,

v.

DICKEY’S BARBECUE
RESTAURANTS, INC.
Defendant.

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IN THE DISTRICT COURT

____ JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION, REQUEST FOR DISCLOSURES, AND
JURY DEMAND**

Plaintiff Madison Jobe (“Jobe”) brings this Original Petition and Jury Demand against Defendant Dickey’s Barbecue Restaurants, Inc. (“Dickey’s”) and shows as follows:

Claims for Relief/Discovery Control Plan

1. Plaintiff seeks monetary relief over \$100,000, inclusive of actual damages, exemplary damages, costs, expenses, pre- and post-judgment interest, and attorney fees, TEX. R. CIV. P. 47(c), and intends to conduct discovery under Discovery Control Plan - Level 2.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this litigation because the amount at issue is in excess of the minimum jurisdictional limits of this Court.

3. Venue is appropriate in this Court because all or a substantial part of the events or omissions giving rise to the claim occurred in Dallas County, Texas; Dickey’s employed Jobe in Dallas County, Texas; and Dickey’s principal place of business is located in Dallas County, Texas.

Parties

4. Plaintiff Jobe is a natural person and is a resident of Denton County, Texas.
5. Defendant Dickey's is a domestic corporation organized and existing under the laws of the State of Texas. Defendant may be served with process by serving its registered agent for the service of process, Roland Dickey Jr., at 801 E. Plano Parkway Suite 135, Plano, TX 75074, or wherever he may be located. In addition, Defendant may be served with process by serving its president and any vice president. TEX. BUS. ORGANIZATIONS CODE §5.225.

Factual Background¹

1. Dickey's is a barbecue restaurant franchisor and operator of corporate restaurants specializing in pit-smoked meats and other barbecue-style offerings.
2. Jobe is a 40-year veteran of the franchise restaurant industry with contributions made to regional and national concepts such as Red Robin, Sirloin Stockade, and other restaurant franchises. Most recently, he served as Pizza Inn's Chief Development Officer.
3. In April 2014, Dickey's hired Jobe as its Vice President – Franchise Sales, reporting to President, Roland Dickey Jr.
4. In the weeks after his start however, Jobe observed that the opportunity was not an appropriate fit. And, at the end of June, Roland Dickey Jr. received Jobe's notice of resignation. Jobe left his separation date open to facilitate a smooth transition.

¹ The averments contained in this Petition are made upon information and belief. Wherever it is alleged that Dickey's did any act or thing, it is alleged that Dickey's did such act or thing by or through its principals, agents, representatives, employees, officers, managers, and/or affiliates, and that such act or thing was done within the scope of such person's employment and authority, and with the knowledge, participation, approval and ratification of Dickey's and the persons and/or entities that control and operate Dickey's.

5. In July 2014, Roland Dickey Jr. approached Jobe about staying with Dickey's in a new position created specifically for Jobe: Senior Vice President – International and Non Traditional Development. In this position, Jobe would be responsible for expanding Dickey's concept abroad as well as identifying domestic franchise opportunities for restaurants locations in airports, entertainment venues, and other non-store front locations. Roland Dickey Jr. also confided in Jobe that he wanted Jobe to help train his successor, Vice President – Operations Tim Sharp, who was being replaced by a newly hired Chief Operating Office and possessed no franchise sales experience.

6. The terms of Dickey's agreement with Jobe are clear: Dickey's agreed to pay Jobe a base salary of \$175,000 annually plus a monthly payment equal to the greater of \$10,000, or 25% of Dickey's international/nontraditional franchise fees collected.

7. During negotiations, Jobe insisted on the \$10,000 minimum monthly guarantee because Dickey's possessed no existing strategy for selling international or non-traditional franchises and Dickey's would not begin collecting international and non-traditional franchise fees for some time. In the absence of the \$10,000 guaranteed monthly minimum, Jobe would earn substantially less in his Senior Vice President position than the position he was vacating and Jobe would not have accepted the offer. Roland Dickey Jr. agreed to pay the \$10,000 monthly minimum without qualification or precondition.

8. The terms of the parties' agreement are memorialized in a written offer letter signed by Jobe and Dickey's Chief Administrative Officer, Michelle Frazier:



07/18/2014

Madison Jobe
1500 Odell Drive
Carrollton, Texas 75010
Madison_job@yahoo.com

Dear Madison,

Dickey's Barbecue Restaurants, Inc. is pleased to offer you a position as Senior Vice President of International and Non-traditional Development. This position is effective July 21, 2014.

By signing this offer letter you are accepting the above position with Dickey's Barbecue Restaurants, Inc.

This position pays a base salary of \$175,000.00 annually. The position commission structure is comprised of the greater of \$10,000 or 25% of franchise fees collected monthly. With the creation of this position, a complete strategic plan is due for approval by Roland Dickey, Jr. and Madison Jobe on or before September 1, 2014. This plan should include, but is not limited to, the full division of international and non-traditional franchising, growth and development, department infrastructure, systems and support, travel policies, etc.

All commission payments are issued through payroll on the first of every month.

Please contact me if you have any questions.

Michelle Frazier
Chief Administrative Officer
Dickey's Barbecue Restaurants, Inc.

Accepted: _____

A handwritten signature in black ink, appearing to read "Madison Jobe", written over a horizontal line.

Date: _____

07/18/2014

9. Jobe started in the position in late July 2014. He immediately began assisting Sharp, who assumed the Vice President – Franchising Sales position. Jobe provided Roland Dickey Jr. the strategic plan outlined in the offer letter on August 28th. According to Dickey Jr., the plan was “f*cking awesome.”

10. In September 2014, Jobe began reporting directly to Sharp. Consistent with Dickey’s payroll practices, Jobe submitted paperwork in early September to obtain payment of the August guaranteed monthly minimum on or around October 1st.

11. Only Dickey’s did not deposit the payment into Jobe’s bank account.

12. In early October, Jobe inquired with Sharp why the \$10,000 payment had not been made. Initially, Sharp was unaware of Jobe’s agreement and the \$10,000 monthly minimum, but Jobe furnished Sharp with a copy of the signed offer letter. Sharp agreed that the offer letter clearly set forth the monthly minimum and told Jobe that he would get back in touch with him after obtaining an answer.

13. According to Sharp, he spoke with Roland Dickey Jr. and Frazier about the matter. Sharp said it was Dickey’s “position” that no minimum monthly payment was due because no international or nontraditional franchise fees had been collected in August. Sharp added that Dickey’s franchise sales were down and there were no international/nontraditional deals yet so—going forward—Dickey’s would not honor the agreement to pay the \$10,000 monthly minimum unless Dickey’s collected franchise fees from international/nontraditional deals that month.

14. “This is not acceptable,” Jobe explained, adding that the very reason Dickey’s and he included the monthly minimum in the agreement was because it was a time-

consuming and lengthy process to get to a point where Dickey's was collecting revenues on international/nontraditional deals.

15. Jobe refused to accept Dickey's attempt to renegotiate the agreement. Consequently, Sharp terminated Jobe's employment and escorted him out of the building.

16. Dickey's terminated Jobe's employment without good cause.

17. At the time of his termination, Jobe worked in the Senior Vice President position for the entire months of August and September and until October 13th. Dickey's paid him none of the guaranteed monthly minimums.

18. In early November 2014, Jobe, through his counsel, wrote Dickey's demanding payment of his monthly minimums in an effort to avoid litigation. This suit is necessary because Dickey's refuses to honor the payment terms of the parties' written agreement.

Count I: Breach of Contract

19. Jobe realleges and incorporates the allegations stated in Paragraphs 1 through 18 as if expressly restated verbatim herein.

20. Jobe and Dickey's entered into a valid contract. Jobe tendered performance under the contract. Dickey's breached the contract's terms. Jobe, by reason of Dickey's breaches, has been damaged in an amount in excess of the minimum jurisdictional limits of this Court. Jobe's damages include, but are not limited to, the amount of unpaid minimum monthly payments for August, September, and part of October 2014, his reasonable attorneys' fees, costs of court, and pre-judgment and post-judgment interest as allowed by law.

Count II: Fraud/Fraudulent Inducement

21. Jobe realleges and incorporates the allegations stated in Paragraphs 1 through 20 as if expressly restated verbatim herein.

22. Dickey's made one or more representations to Jobe to enter into a contract with Dickey's, including representations that Dickey's would pay Jobe, among other things, a guaranteed \$10,000 monthly minimum. The representations were material. Dickey's representations to Jobe were false when made and Dickey's knew the representations were false or made them recklessly, as a positive assertion, and without knowledge of their truth. Dickey's intended for Jobe to rely on the representations and Jobe entered into the contract based on Dickey's representations. Jobe would not have entered into the contract with Dickey's if Dickey's did not agree to pay him the guaranteed monthly minimum.

23. As a result of Dickey's false representations, Jobe has been injured and sustained damages in an amount in excess of the minimum jurisdictional limits of this Court. Jobe's damages include, but not limited to, actual damages (benefit-of-the-bargain), special damages, consequential damages, reliance damages, mental anguish damages, costs of court, and pre-judgment and post-judgment interest as allowed by law.

24. In addition, Dickey's false representations were intentional, willful, wanton, malicious, or with reckless indifference. Accordingly, Jobe is entitled to recover exemplary damages from Dickey's in an amount to be determined by the trier of fact.

25. Dickey's is liable for the fraudulent conduct of Roland Dickey Jr. and Michelle Frazier because each acted as a principal, with actual or apparent authority, and/or within the scope of his/her employment.

Count III: Attorneys' Fees

26. Jobe realleges and incorporates the allegations stated in Paragraphs 1 through 25 as if fully stated herein.

27. As a result of Dickey's conduct, Jobe has been forced to retain an attorney and is represented by the undersigned attorney in this action. Jobe presented his claim for payment under the written contract to Dickey's. Dickey's has not tendered payment since Jobe presented his claim. Consequently, in connection with Count I, Jobe is entitled to recover his reasonable attorneys' fees and costs under Chapter 38 of the TEXAS CIVIL PRACTICE & REMEDIES CODE.

Conditions Precedent

28. All conditions precedent to bringing this action have been satisfied or exhausted.

Jury Demand

29. Jobe hereby requests a jury trial on all claims and issues in this case. TEX R. CIV. P. 216

Discovery

30. In conjunction with this Original Petition, Jobe requests that Defendant Dickey's timely serve Jobe with its TEX R. CIV. P. 194 disclosures and furnish Jobe with deposition dates when he may take the oral depositions of Roland Dickey Jr., Tim Sharp, and Michelle Frazier.

Relief Sought

WHEREFORE, Plaintiff Madison Jobe requests that Defendant Dickey's Barbecue Restaurants, Inc. be cited to appear and answer, and that, after trial by jury or summary disposition, Plaintiff have judgment against Defendant as follows:

- a. Actual damages;
- b. Special damages, compensatory, consequential, incidental, mental anguish and reliance damages;
- c. Exemplary damages;
- d. Prejudgment and post-judgment interest, in the maximum amount allowed by law;
- e. Reasonable attorneys' fees, expert fees, and costs of suit; and
- f. Such other and further legal and equitable relief to which Jobe may be justly entitled.

Respectfully submitted,

HERSH LAW FIRM, A PROFESSIONAL CORPORATION



Barry S. Hersh
State Bar No. 24001114

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Texas Board of Legal Specialization*

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