

Restaurant Wars: Breach of Fiduciary Duties at the Palm Restaurant Empire

December 7, 2018 – *The TMCA*

by Jonathan Montcalm

One of the philosophies of the world-famous Palm restaurant is to treat guests like family. That philosophy may need to be re-examined in light of [a recent decision](#) by the New York Supreme Court in *Ganzi v. Ganzi*, a case involving the families behind the renowned restaurant empire (for those of you not from the Empire State, the Supreme Court in New York is the trial-level court). Following a non-jury trial, Justice Andrea Masley of the Commercial Division found that Walter Ganzi, Jr. (Wally) and Bruce Bozzi, Sr.—grandchildren of the Palm’s founders—breached their fiduciary duties to two family-held corporations in part by issuing below-market license agreements for use of the Palm IP to restaurants and other entities owned by Wally and Bruce. The court awarded damages exceeding \$73 million, which could balloon to over \$120 million after accounting for interest and attorneys’ fees.

The first Palm restaurant was opened in New York City in 1926 by Pio Bozzi and John Ganzi. The Palm IP includes various trademarks and service marks, as well as design and décor elements of the restaurant, including the display of photographs and



Related Capabilities

- Trademark, Copyright + Advertising
- Intellectual Property Litigation

caricatures. That IP has been put to great use by Wally and Bruce, who have an interest in other Palm restaurants that have opened around the world for the past 45-plus years. Wally and Bruce have built an empire through these “New Palms,” which collectively grossed \$1.5 billion from 2006-2017. As revealed through the lawsuit, however, this empire was built in part on improper self-dealing by Wally and Bruce for which Wally’s cousins have now held them to account.

The original Palm restaurant was owned by Just One More Restaurant Corp. (JOMR), which also owns the Palm IP. The land on which the original Palm was located was owned by Just One More Holding Corp. (JOMH). Over the years, majority ownership in JOMR and JOMH passed down to Wally and Bruce. Wally’s cousins Gary Ganzi, Claire Breen, and the estate of Charles Cook (another of Wally’s cousins) all hold minority shares in both JOMR and JOMH. After learning that JOMR actually owned the valuable Palm IP, and that it had been licensed for next-to-nothing, they sued Wally and Bruce in 2012 on behalf of themselves and derivatively on behalf of JOMR and JOMH.

The trial involved three derivative claims for breach of fiduciary duty and one claim for diversion of corporate opportunity, all arising from three distinct courses of self-dealing by Bruce and Wally. First, JOMR entered into 54 license agreements in 2007 and 2011 with the New Palms through which the Palm IP was licensed for a mere \$6,000 per year—the same price at which the Palm IP had been licensed for the first New Palm in Washington D.C. in 1972. Second, for \$12,000 a year, JOMR entered into a license agreement with a management company owned by Wally and Bruce, permitting that company to sub-license the Palm IP to third parties, which it did at market rates. Those sub-licenses resulted in the establishment of a Palm restaurant at JFK airport, the creation of Palm-branded household goods for retail stores, and millions in sub-licensing fees for the management company. Third, JOMH leased the real estate where the original Palm was located to JOMR at below market rates. All of these actions were taken without the knowledge of Wally’s cousins, the minority shareholders. In fact, little to no corporate formalities had been observed since the 1970s. As the court put it, Wally and Bruce “treated JOMR as their own without any regard to the other shareholders.”

In finding in favor of JOMR on the first claim for breach of fiduciary duty, the court noted that the 54 license agreements constituted a “textbook example of fiduciary misconduct” because those agreements “grossly” favored the New Palms (and thus Wally and Bruce), over JOMR, and deprived JOMR of fair market value for the Palm IP. The fair market value should have been based upon the revenues of the New Palms, and the court credited expert testimony that a royalty rate of five percent was appropriate, entitling JOMR to more than \$68 million, plus interest. The court also declared all 54 of the licenses between JOMR and the New Palms as void, and enjoined Wally and Bruce from further harming JOMR through below-market licensing of the Palm IP.

The second claim for breach fiduciary duty and the claim for diversion of corporate opportunity both arose out of the license agreement with Wally’s and Bruce’s management company. The court held that the license agreement was a “plainly self-interested transaction,” and noted that “[a] more obvious example of the breach of a

fiduciary's duty of loyalty is difficult to envision." The court ruled that JOMR was entitled to \$3,146,995 for these claims, which it calculated by subtracting the \$12,000 per year that JOMR received from the management company from the sub-licensing revenues it earned through its deals pertaining to the JFK airport Palm and the branded household goods.

The court also found in favor of JOMH based on Wally and Bruce undervaluing the real estate at which the original Palm was located. JOMH had charged JOMR \$63,233 annually in rent for a property that should have commanded \$223,000 in annual rent as of late 2006. JOMH was thus entitled to \$1,742,000 in damages. Finally, the plaintiffs were awarded their attorneys' fees under N.Y. B.C.L. § 626(e). Counsel to Wally and Bruce has indicated that they intend to appeal the decision.

It is notable to remember that, because this was a derivative action, although the damages award is sizeable, the damages are owed not directly to the plaintiff cousins, but instead to JOMR and JOMH, in which Wally and Bruce are still the majority shareholders. Nevertheless, following the award and the voiding of the license agreements, JOMR—and the cousins' minority positions in JOMR—will increase in value significantly.

Putting the family dynamics aside, the most interesting result of this case from an IP perspective is the court's adoption of a five percent royalty rate as fair market value for IP licenses in the context of the hospitality industry. Licensors and licensees of similar business both should be aware of this precedent when determining fair market value for such IP.