

# MATA

Mediation and Training Alternatives

## Chips with Everything

### General Information

#### Background

The Chip Butty Emporium (CBE) is a franchise operation, working on the basis that modern society wants chips with everything. CBE took that assumption one step further and offered chips with nothing. Fat chips, thin chips, straw chips and shaped chips. Chips in a whole variety of bread and with a whole variety of sauces, but nothing else. The secrets of its success, apart from a robust marketing campaign, were the particular potato used and the special oil in which the chips were cooked, giving them a crispness that lasted. There is nothing limp or soggy about CBE!

About two years ago Matt and Sue Lawson went to a franchise fair in Birmingham. Matt had been made redundant by his computer maintenance firm and was looking to use the redundancy money in giving him, and Sue, a new direction. Chris Richardson, the owner of the CBE operation, was at the exhibition and convinced the Lawsons about the sound investment that CBE offered, with very little risk attached. Chris produced a standard business plan and franchise agreement and by the end of their meeting, Matt and Sue had signed up to the deal and paid £50,000 (half the franchise fee) on the day. The balance of the fee was due six months after opening the take-away unit.

The main terms of the franchise were:

>The Lawsons agreed to:

- Pay CBE 10% of gross takings
- Pay CBE rent and insurance for the retail unit
- Purchase all materials (potatoes, oil, sauces, bread) from CBE

There were the usual constraints on the operation such as not being able to sell other refreshments or retail other goods and to trade within the CBE manual of operation. These constraints ensured that the CBE model was identical wherever it traded.

In return, CBE agreed to:

- Find and equip a suitable premises in the Lawsons chosen location
- Sign the lease to that premises
- Effect the necessary insurances.

Planning permission was not required as the 'take-away' model which the Lawsons were purchasing was within the normal A1 retail conditions. Other models that CBE had developed were café-bar and eat-in, both of which required A3 planning permission.

Within the franchise agreement was a standard exclusion clause absolving CBE from any liability arising from anything they said, whether in writing or oral. Unfortunately the Lawsons did not realise the relevance of that clause and had decided not to use a solicitor because the franchise paperwork was so simple and easily understood. Chris had explained that this particular clause was about the model business plan which could

only give an indication of the business potential, the reality being whatever the Lawsons were able to achieve (which may well be much better than the model).

Matt and Sue found an ideal premises in a busy retail centre near their home and CBE negotiated the lease and fitted the unit out in accordance with the franchise agreement. The unit was big enough to have some stools and tables for casual users, which was an added attraction.

Unfortunately, within a few days of opening, the local Council visited the unit and told Matt and Sue that they required an A3 planning permission for the type of business they were operating and threatened them with closure. Chris took over the matter, obtained a stay of closure, and applied for the A3 licence. Chris told Matt and Sue that this would be an asset as they could then use more of the space for bar-style eat-in and could sell alcoholic drinks as well as the tea/coffee/soft drinks currently sold. Although the Lawsons had no plans to expand the business so soon, they could see the sense in having that option in the future.

Three months later the Council refused permission to operate an A3 unit in this location, stating that the centre was designated A1 only. CBE appealed on the basis that the take-away franchise operation was only A1 and so fell within the Council's stipulations. The appeal was unsuccessful and nine months after opening, the Council served notice that the unit must close within three months. Which it did.

### **The dispute**

After many months of trying, the Lawsons eventually met with Chris Richardson to discuss the return of their money, on the basis that CBE had failed to provide a proper retail unit and had misled them into signing the franchise agreement. CBE stated that they had discharged their obligations fully and that similar units were trading in A1 premises in several locations. This was an unfortunate situation that was outside their responsibility and therefore they did not intend paying anything.

The Lawsons consulted a solicitor and proceedings were commenced. They claimed the return of their initial £50,000 (they withheld the second payment as the problem had already arisen) and a further £65,000 for expenses and losses incurred during the twelve months of operation plus legal costs and interest. A total of around £135,000.

CBE responded with a claim for the remaining £50,000 for the franchise fee, plus costs and interest.

Both solicitors recommended mediation.

### **Attending the mediation**

Either Matt or Sue Lawson  
Their solicitor

Chris Richardson  
CBE solicitor

Mediator(s)

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