**Terry Walsh v. Pizza Ranchero, Inc. [[1]](#footnote-1)©**

COMMON FACTS

Pizza Ranchero, Inc. (Pizza) headquartered in Okoboji, Iowa, is the franchisor of a regional system of pizza and chicken restaurants, with 162 units throughout the Midwest. Terry Walsh was a franchisee located in Boone, Iowa. By letter dated January 15, 2009, Pizza terminated Walsh’s franchise because he/she was persistently unwilling over an extended period of time to operate his/her restaurant in compliance with Pizza’s standards. Restaurant inspection reports (both by Pizza personnel and by an independent company) and customer complaints found the restaurant failing to meet franchise standards as to cleanliness, customer demands, and friendliness of the staff.

When the Walsh store was opened in June 2005, it met all projected sales. Sales reached $550,000 in approximately August 2007, when another store was franchised in the University town of Ames, Iowa, approximately 20 miles away.

At the time Walsh was considering purchasing his/her Pizza Ranchero store, the franchise representative provided him/her with a document entitled “Town Selection Criteria.” It set forth three categories: “population, number of high schools, and within 20 miles of a larger city.” Next to each category the rep wrote the following:

Population: 5,000 – 15,000

Number of high schools: at least 1

Within 20 miles of larger city: 50,000

The document also stated that the “ideal Pizza Ranchero restaurant would be located near a college or university.”

Based on the above criteria, Walsh selected Boone, Iowa. It included a population of 5,000 people, it had one high school, and it was near a university town, Ames, Iowa (Iowa State University). More important, the next closest Pizza Ranchero was 50 miles away.

The franchiser rep told Walsh that a Boone location met each of the location criteria. It was in a town of 5,000 people, it had one high school, a college or university was located within 20 miles in a city of approximately 50,000 people, and it was 50 miles from an existing Pizza Ranchero restaurant.

Relying on these representations, Walsh went forward with the purchase. He/She borrowed $130,000 from a local bank, used $112,000 of his/her savings, and borrowed $80,000 from the Small Business Administration. He/She had a store built, equipped and was ready for operations on June 20, 2005. At that time, he/she signed the franchise agreement, which included an exclusive territory which was to be set out in exhibits 1 and 2. However, these exhibits were not attached. He/She was told not to worry about it, they would be forthcoming shortly. When he/she received the exhibits, they provided an exclusive territory of 5 miles radius and not 20 miles.

With the Ames store opening, Walsh’s sales dramatically decreased. He/She claims that Pizza violated the exclusive territory he/she was promised, and Pizza contends that his/her exclusive territory was only 5 miles in radius. Pizza argues that when Walsh signed the franchise agreement, Exhibits 1 and 2 were attached. It further contends that Walsh’s decreased sales were due to the way he/she managed his/her store – it was not clean, customers complained, and the help was not friendly.

Walsh has sued for breach of contract and fraud and seeks $642,798.36 in damages. Pizza defends on the ground that there was no breach in that Walsh’s territory was 5 miles in radius and his/her failure was the way he/she operated the store.

The franchise agreement provides:

LICENSEE AND PRINCIPAL ACKNOWLEDGE THAT (1) THEY ARE ENTERING INTO THIS AGREEMENT AFTER HAVING MADE AN INDEPENDENT INVESTIGATION OF PIZZA’S OPERATION, AND NOT BASED UPON REPRESENTATIONS OR PROMISES TO THEM (INCLUDING, BUT NOT LIMITED TO, ANY PROJECTIONS OR PROMISES) AS TO INCOME OR EARNINGS POTENTIAL OF ANY KIND; AND (2) COMPANY HAS MADE NO REPRESENTATIONS, PROMISES OR STATEMENTS, ORAL OR WRITTEN, TO OR WITH THEM WHICH ARE NOT CONTAINED IN THIS AGREEMENT.

Exhibit 1 attached states:

The territorial rights of Pizza Ranchero in Boone, Iowa are for an area that is 5 miles in any direction from the Pizza Ranchero in Boone, Iowa.

The parties agreed to mediate. Walsh lowered his/her demand to $450,000 and Pizza offered $100,000.

**Taylor George v. Allianz Transportation, Inc. and Casey Heming[[2]](#footnote-2)©**

COMMON FACTS

On August 3, 2008, the plaintiff, Taylor George, was driving his/her minivan and towing a homemade trailer containing many of his/her possessions. Plaintiff was traveling north on Interstate 35, near Mason City, Iowa, when a semi-truck, owned by the defendant Allianz Transportation, Inc. (Allianz) and driven by the defendant Casey Heming, started to pass him/her and struck the rear end of plaintiff’s trailer. The impact pushed his/her car into a spin off the highway, rolling over three times. Plaintiff was wearing his/her seatbelt and survived. He/She was unconscious for several minutes, and when he/she became conscious smelled gasoline. He/She unbelted himself/herself and climbed out of the vehicle, which was upside down.

Plaintiff was taken to a local hospital where he/she was treated for cuts and bruises and soft tissue injuries. He/She was then released several hours later and he/she continued to plaintiff’s destination in northwestern Minnesota in a rental car.

Plaintiff sued for personal injuries and property damages. The damage to his/her vehicle has been settled. The original claim for property damages was $68,183.88, but was later reduced to $31,600.84. As for personal injuries, plaintiff claimed he/she was severely injured. Medical treatment, which included diagnostic testing and physical therapy, amounted to $16,341.50. His/Her first demand was $7,500,000.

Plaintiff, who is 60 years old, has a history of health problems, injuries and personal problems and argues that the accident exacerbated his/her physical and mental problems (the eggshell theory). He/She has suffered two heart attacks, has heart disease, fibromyalgia, sleep apnea, asthma, hypertension, carpal tunnel, cervical degenerative disk disease, myofascial cervical symptoms, lumbar degenerative disk disease, myofascial lumbar symptoms, knee injuries, bilateral knee degenerative joint disease, and bilateral shoulder tendonitis. Plaintiff is grossly overweight and walks with a cane. He/She blames all his/her problems, including those pre-existing, on the accident.

Prior plaintiff’s counsel took a default judgment against Allianz because it did not file an appearance. After a hearing, the judge entered a judgment awarding plaintiff $25,000 for past pain and suffering, $50,000 for future pain and suffering, $36,191.83 for property damage and $16,361.52 for medical expenses. This was set aside when the judge learned that plaintiff’s counsel had been in contact with the insurance carrier insuring Allianz but did not give it notice of the default proceedings. The case was reinstated and plaintiff’s counsel was then fired. The case was transferred to another venue.

Plaintiff’s expectations are quite high because his/her first attorney told him/her the case was worth over $1 million. The insurance carrier feels the case has limited value because its expert, who conducted an independent medical examination (IME), a Dr. Metz, concluded that the only injuries suffered by plaintiff from the accident were abrasions, lacerations, and bruising that have resolved without residuals. At this point, plaintiff has not disclosed an expert who will testify to the contrary.

Before a considerable amount of money is spent in depositions--there are 31 doctors and medical care providers who will have to be deposed--the parties agreed to mediate. Plaintiff reduced his/her demand to $500,000 and defendant offered $20,000.

**Great Northern Bank and Trust Co. v Shaun Bowes[[3]](#footnote-3)©**

COMMON FACTS

Shaun Bowe’s spouse, Pat Bowes (Bowes) committed a major fraud on the Great Northern Bank and Trust Company (GNB) and five other banks. Pat took out a loan of $3.5 million with GNB signing a promissory note secured by an alleged stock account with South Barney Stock Brokers. Pat represented that there was $8.8 million worth of stock in the account. Pat gave the loan officer a telephone number and email to verify the existence and amount of the account. When the loan officer telephoned, Pat answered and gave the alleged verification himself. The email was in fact Pat’s and when inquiry was made he again verified the alleged account and the amount. He used the same mode of operation in five other banks.

As it turned out there was no South Barney account and the entire transaction was a fraud. After receiving the loan, the funds were disbursed and could not be recovered. Pat then committed suicide. GNB seeks to recover the $3.5 million. There are no assets in Pat’s estate.

Shaun gets involved because she received the proceeds from several insurance policies taken out by Pat in her name. Because the policy vested, the proceeds of $3.1 million were paid to her even though there was a suicide.

GNB has now sued Shaun to recover the proceeds of the insurance policy. The gravamen of its action is that Shaun signed the note and security agreement for the loan and is therefore liable on the loan. Shaun defends on the ground that she signed the note and security agreement because Pat told her to do so. She did not read the documents or understand what she was signing.

The court gave partial summary judgment against GNB on the ground that it violated the federal Equal Credit Opportunity Act (ECOA), 15 U.S.C. ¶ 1691. This statute provides that when a lender requires a married spouse to co-sign a loan agreement when the applicant is qualified individually under the bank’s standard of creditworthiness, there is a violation. See Marine American State Bank v. Lincoln, 433 N.W.2d 709 (Iowa 1988). Shaun is therefore entitled to recover actual damages, punitive damages up to $10,000, and attorney’s fees, which to date are $150,000.

GNB contends that summary judgment is improper because there is a question of fact as to whether Shaun signed the loan agreement as a co-applicant, in which case Shaun would also be liable on the note.

The case is set for trial in three weeks and the parties decided to mediate the matter. At this time, both seek the $3.1 million in insurance proceeds now being held in escrow. GNB has offered to allow Shaun to keep $750,000 of the proceeds and Shaun has countered agreeing to allow GNB to recover $850,000 of the proceeds and she will keep the rest.

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