

Soldier suing after being stripped of Subway restaurant franchises

While serving in Afghanistan with the U.S. Army Reserve, Leon Batie Jr. dodged roadside bombs and scrambled to safety when rockets pierced the night sky.

When he returned to Dallas in early 2006, another battle loomed.

As Batie was returning from Afghanistan, he learned he was being stripped of the two Subway restaurants he bought before mobilizing.

The stores were sold to Subway insiders, with one transaction yielding a Subway executive a \$100,000 profit, according to a lawsuit Batie filed last year in state court in Dallas County. One issue in the case is set for trial this week.

The suit, which alleges violations of the U.S. Servicemembers Civil Relief Act, seeks more than \$6 million from the Subway affiliate that controls leases.

Batie said he also wants to provide cover for the next reservist who finds himself in the line of franchise fire.

"I want to make sure that if ever there's another reservist that's in a similar situation as mine, that the franchisor ... doesn't trample over their rights," said Batie, whose plan to launch a South Dallas Subway was heralded in a front-page story in The Dallas Morning News in 2001.

"For Subway to take my businesses without ever notifying me was just wrong."

Larry Fowler, an attorney for Subway Real Estate Corp., the main defendant, said, "Corporate policy is not to comment on pending litigation." The company has filed a motion to dismiss the suit.

An employee with the Subway area developer in Dallas and a spokesman at the chain's headquarters in Connecticut declined to comment.

In 2002, still early going in the Afghan war, Batie joined a select group: reservists who were also business owners.

Most entrepreneurs, who tend to be independent-minded, "don't last very long in the National Guard and Reserve," said Mathew Tully, a partner in Washington, D.C., law firm Tully Rinckey.

Tully is not an attorney in this case but is considered an expert in lawsuits involving service members' rights. He estimated the ratio of employees to entrepreneurs in the Reserve at maybe 1,000 to 1.

Although federal laws protect reservists' home-front jobs, there is no way to guarantee that a stateside business can stay afloat with the boss in a war zone 8,000 miles away. Still, Batie viewed his chances of being deployed as remote. He spent his time pursuing a different

vision.

"I had these grandiose dreams of opening nine, 10 Subways," said Batie, 41, a South Carolina native who lived in Rowlett in 2002. "I had wanted to ... be a franchisee for the rest of my life." Batie's vision became more concrete in the summer of 2002, when he opened his first Subway at 3125 Grand Ave., now wedged between a Family Dollar store, Badd Kreationz Unisex salon and Star Beauty Supply.

"It was a diamond in the rough," he said. "I knew that by going into that area and providing a service to the people ... the chances of being successful would be pretty good."

With about \$50,000 from savings and \$300,000 in loans from two banks and the city of Dallas, Batie became a sandwich maker.

In the summer of 2003, he opened a second store on Gaston Avenue, a half-mile from Baylor University Medical Center at Dallas. He planned to open a third.

When Batie's marching orders came in March 2005, sending him off to help train the Afghan army, he said he left the care and feeding of his two Subway outlets to his younger brother, Chris, franchisee Travis Brown and Brown's wife, Natalie.

It did not go well.

Summer sales fell as regulars went on vacation or saved their cash for the nearby State Fair, Travis Brown said. There was not enough cash flow to cover the bills, he said.

Both locations fell behind in rent, with Chris Batie and Travis Brown blaming each other for the problem. Leon Batie and Subway disagree on how much was owed. Subway puts the amount at \$13,400, but Batie counters that he has copies of checks showing payments were made but not credited to his account, according to Grant Walsh, Batie's co-counsel on the case.

Subway's real estate arm terminated Leon Batie's leases and sold the stores.

The Gaston store was sold in May 2006 for \$35,000 to OPM Ventures LP, owned by Mark Holubec and Roger Dalton, according to the lawsuit and Cheryl Mullin, Batie's lead attorney. The two are executives with the Dalton Gang, Subway's local development agent. That location was resold 20 months later for \$135,000, the lawsuit says.

Travis Brown said Subway officials asked him to take over the Grand location, which from the beginning served as a symbol of hope in the hardscrabble district.

With both stores gone – and a six-figure debt load remaining – Batie sued under the Servicemembers act. The law bars anyone from terminating an active-duty service member's installment contract, including leases, without a court order.

The case was originally filed in federal court in 2007 but was moved last year to state court. It's scheduled to go to trial in October, but a related trial, on the Gaston Avenue eviction, is set to begin Thursday.

Meanwhile, Batie, who has rejoined the Army full time, said he has negotiated a smaller, confidential, settlement with Comerica Bank and J.P. Morgan Chase. He hopes to see Subway pay that debt.

Travis Brown is also a defendant in the lawsuit. He said he can't afford an attorney. He calls taking over the Grand Avenue store the worst decision he ever made – because of the lawsuit and frequent headaches, including thefts and break-ins.

"We're a little bitter about the whole situation," said Brown, who owns three local Subways. "We did a favor for a person who came to us. I worked pretty hard to keep them from closing the [stores]. I put my reputation on the line."

Brown said Leon Batie was notified by phone – before the termination – that the stores were in serious trouble, which Batie denies.

Walsh, Batie's attorney, said that's not the point.

"The fact remains that Subway violated federal laws that were specifically enacted to protect our men and women who answer the call to serve our country," said Walsh, an attorney with Mullin Law in Richardson.

"This case boils down to holding the Subway companies accountable for their actions and setting a precedent that shows other mega-corporations that there are consequences if they ignore federal law and trample on the unique ... protections granted to America's service members."