

Billy's Restaurant files lawsuit against former owner over no-compete clause

By **JAMES CLARK**

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(McMinnville, Tenn.)

A dispute between two local restaurants is heading from the grill to the courtroom.

The new owners of Billy's Restaurant in Newtown have filed a lawsuit against former owner Billy Foutch claiming he is violating a no-compete clause for his role in operating another restaurant across town.

Sparta Street Kitchen, owned by Foutch's daughter Deborah Foutch, opened March 17. While Billy Foutch holds no ownership stake in Sparta Street Kitchen, the new owners of Billy's Restaurant contend he is a vital part of that business and has been seen working there on several occasions.

"Billy Foutch has breached a very important element of his contract by going against the non-compete provision just six months into the deal," said attorney Ryan J. Moore, who is representing Darryl Bouldin and Danny Vickers, the new owners of Billy's Restaurant. "We realize Mr. Foutch has no ownership in Sparta

<u>SANDWICHES</u>	
Gatorburger.....	\$4.25
Gatorburger w/Bacon.....	\$5.95
Bar-B-Q.....	\$3.25
Hamburger.....	\$3.00
Cheeseburger.....	\$3.25

The menu at Sparta Street Kitchen shows Gatorburger at the top.

Street Kitchen, but the non-compete provision goes so much deeper than mere ownership. He is not to be involved, or engaged directly or indirectly, with any restaurant for a two-year period that has a similar theme, decor, menu, or style as Billy's Restaurant. Sparta Street Kitchen's menu is identical to my clients' and features the signature Gator Burger."

The two parties are scheduled to be in court Tuesday and appear before Judge Bart Stanley for this civil lawsuit.

Moore says a major source of contention is that Mr. Foutch has been seen regularly at Sparta Street Kitchen in a working capacity.

"He has been seen working in the kitchen, greeting customers and

managing employees," said Moore.

When contacted Friday, Foutch did not deny his involvement with Sparta Street Kitchen. He stressed he has no ownership in the restaurant and is only helping there to assist his daughter, the owner, and his grandson, the manager.

"I guess I'm never supposed to step foot in a restaurant again," said Foutch. "It belongs to my daughter and I was over there helping her. To be honest, this is something my daughter did so my grandson could have a job. My name is not anywhere on anything. I asked a lawyer before I did anything over there and I was told it was OK."

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Billy's Restaurant

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There is a 16-page contract between sellers Billy and Marie Foutch, and buyers Darryl Bouldin and Danny Vickers pertaining to the Sept. 13, 2013 sale of Billy's Restaurant. The portion of the contract labeled Section 7.3 deals with non-competition. It states:

"From the Closing Date for a two-year period thereafter, Seller shall not, individually or jointly with others, directly or indirectly, whether for his, her or its own account, or for that of any other person or entity, engage in or own or hold any ownership interest in any person or entity engaged in a restaurant business that operates primarily with a theme, decor, menu, or style of cuisine the same as or substantially sim-

ilar to that of the Restaurant."

Sparta Street Kitchen opened less than six months after the sale of Billy's Restaurant. Moore says in the three weeks since Sparta Street Kitchen opened, there have been noticeably fewer customers at Billy's and sales have dropped 15 percent.

"The restaurant is not nearly as busy as it had been over the past six months," said Moore. "Dine-in and call-in orders are down. Waitresses and kitchen staff are being forced to leave early and come in late due to this decline in business, which is a direct result in Mr. Foutch's violation of the Asset Purchase Agreement. My clients would have never purchased this business had they known Mr. Foutch would go into competition against them."

The new owners of Billy's

Restaurant say this would not be an issue if Mr. Foutch decided to work in a Chinese restaurant, or re-entered the restaurant business in another county. However, they find it insulting he is cooking his famous Gator Burger – and even listing it on the menu as such – three miles away.

In filing the lawsuit, Bouldin and Vickers want the court to order a temporary injunction that prohibits Mr. Foutch from being involved in the operations of Sparta Street Kitchen.

"We're simply asking him to abide by the terms of the non-compete paragraph," said Moore. "By failing to do this, he is essentially biting the hand that feeds him because my clients are making monthly payments to him over the next two years."