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Bob Rotanz, co-owner of Mac and Bob's in Salem, notifies employees on Wednesday that the company is declaring bankruptcy to protect itself from potential lawsuits. The landmark restaurant had required its bar and wait staff to share a portion of their tips with the dishwashers, which violates the Fair Labor Standards Act. Rotanz said he didn't know the policy was illegal.



Lawsuit tips Mac and Bob's fortunes

In any barroom debate over the most successful restaurant in the Roanoke Valley, it's a sure bet Mac and Bob's in Salem would make many of the short lists. Launched in 1980 with 10 stools in a rented cubbyhole on East Main Street, the restaurant now seats 330 and still has occasional lines to get in. It's not at all a stretch to call it a Salem institution.



Dan Casey

dan.casey@roanoke.com
981-3423

That growth has occurred in an industry in which most independent operators don't last five years. But now, owners Bob Rotanz and Joe Dishaw are in a jam they never anticipated. Wednesday morning, they gathered scores of Mac and Bob's employees together and announced the restaurant is filing for Chapter 11 bankruptcy.

Mac and Bob's will remain open, as Rotanz and Dishaw work to sort out a financial mess they once feared might cost more than \$1 million and put them out of business. Rotanz told me he hasn't had a peaceful night's sleep all summer.

Meanwhile, a close friend has set up a "Go Fund Me," page online to help Rotanz and Dishaw recoup some of their legal costs. The page began accepting donations on Wednesday morning. As of Wednesday night, it had raised more than \$42,000.

How did we get here? It's a bizarre story that involves Mac and Bob's servers and dishwashers, shared tips and federal wage-and-hour laws, which for the restaurant industry are more complicated than usual.

The saga also includes a Texas lawyer who advertises with the website paycheckcollector.com and a lawsuit filed by a Mac and Bob's server who quit in April. But for a brief glitch in July 2017 with Mac and Bob's criminal background-check process, the restaurant never would have hired that waiter, Rotanz said.

The bottom line, Rotanz said, is Mac and Bob's inadvertently violated the law by requiring its servers to share a small portion of their tips with the restaurant's dishwashers. That policy stretches back at least 20 years, he added.

It was implemented because "the dishwash-



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CASEY: Chapter 11 bankruptcy keeps restaurant open

FROM 1

er has the most difficult job in the restaurant, especially on weekend nights," Rotanz said. He added that until recently, he had no idea that practice was illegal. The dishwashers, he added, were already earning at least \$9 per hour before those tips. (Since the lawsuit, he's raised their pay.)

The policy required servers to share 1 percent of their nightly sales with the dishwashers, with the money coming from the servers' tips. Here's an example Rotanz offered: A server would sell \$300 worth of food and drink during a shift. From that, a waiter or waitress could expect about \$60 in tips. From those, the server would pay \$3 to that night's dishwashing staff.

While it's legal for restaurants to require tip-sharing between servers and other dining-room employees, federal law prohibits sharing tips with kitchen staff unless the restaurant pays servers at least \$7.25 per hour, the federal minimum wage.

Like many restaurants, Mac and Bob's pays servers substantially less. That's because the federal minimum wage for tipped employees is \$2.13 per hour, and waiters and waitresses make up the difference with tips. In the industry, it's known as a "tip credit."

At Mac and Bob's, Rotanz said, servers' tips average "20 percent or more." On rare occasions when tips don't bring waiters and waitresses' earnings up to \$7.25 per hour, the restaurant makes up the difference, Rotanz said.

That was pretty much the landscape at the restaurant when it hired Matthew Jonathan Snider, 38, as a waiter in July 2017.

Rotanz said that Snider worked at the restaurant slightly more than nine months, during which he shared a total of \$1,105 in tips with dishwashers.

After Snider resigned in April, he hired attorney Drew Herrmann of Fort Worth, Texas. Herrmann specializes in representing employees in wage and hour claims. And in May, Snider sued Mac and Bob's in federal court, alleging the restaurant illegally forced him to share tips

with dishwashers. (Herrmann did not return phone calls for comment Tuesday and Wednesday.)

That lawsuit was similar to a class action. It sought damages not only for Snider but for all other Mac and Bob's servers in the past three years. The law also provides for damages equal to double the tips the dishwashers received, plus an additional \$10.24 per hour for each hour those servers worked, plus interest.

Mac and Bob's, Rotanz said, has counted more than 150 current and past servers who've worked there in the past three years. When he ran the numbers, the potential liability astounded him. If the restaurant had to pay all of them double damages for shared tips plus \$10.24 for every hour worked, it could cost Mac and Bob's \$830,000. That doesn't take into account attorneys fees for the employees or the restaurant.

Todd Leeson, an employment attorney at Gentry Locke who represented the restaurant in the Snider case, had worse news for Rotanz and Dishaw. "Insurance companies do not typically provide insurance coverage for employers for alleged wage claim violations under the [Fair Labor Standards Act]," Leeson told me.

So Mac and Bob's settled the case with Snider. And they stopped requiring servers to share tips with dishwashers.

Under the settlement, Rotanz said, the restaurant paid Snider \$20,089, plus \$14,215 to his lawyer, Herrman. Rotanz said he and Dishaw hoped that would be the end of it. But it wasn't.

Almost as soon as those checks cleared, Herrmann filed another lawsuit on behalf of another former Mac and Bob's employee. Rotanz said he found himself staring into the bleak future of a never-ending chain of lawsuits and payouts that would require an amount of money he and Dishaw don't have.

That's the long story behind why they decided to declare Chapter 11 bankruptcy, which Rotanz said would be filed Friday, and the meeting Wednesday with employees.

Unlike a Chapter 7 bankruptcy, in which assets are sold and proceeds distributed among creditors, Chapter 11 allows a business to reorganize.

Under those protections, double wages and attorneys fees are not considered "priority" claims, said Andrew Goldstein, an attorney handling the restaurant's bankruptcy.

Also, "the bankruptcy code allows a reorganizing company to limit its priority wage exposure to the six months before the filing," Goldstein said. "Since these are wages [Rotanz] had no idea he owed, it seems like an appropriate remedy in this case."

Rotanz told me last week that he's flummoxed by the whole affair. In recent years there's been plenty of news about restaurant chains paying out multimillion legal settlements for cheating employees out of wages. But Mac and Bob's didn't profit a dime off the dishwasher tip-sharing arrangement.

"I just wanted to help the dishwashers," Rotanz said.

"There's a lot of people who do this thing wrong, with malice," said Frank Cotter, the friend of Rotanz's who set up the Go Fund Me page (Cotter's son, Joe, also works part time at Mac and Bob's). "He's trying to do everything right."

There's a footnote to this mess that sticks mightily in Rotanz's craw. That involves Snider and his application to Mac and Bob's, and the question on it that asks, "Have you ever been convicted of a crime?"

"He wrote 'NO,'" Rotanz said. Leeson shared a redacted copy of the application with me.

At the time of his hiring, Rotanz said, Mac and Bob's was changing from one employee background-checking service to another one. Because of that, Snider's background wasn't checked. Had that happened, the restaurant's management would have gotten an eyeful.

Snider told me he grew up in the Tidewater area. According to online records in Virginia Beach and Norfolk circuit courts, in 1999 and 2000 a Matthew Jonathan Snider was convicted of a string of felonies, including grand larceny, credit card theft, receiving stolen goods and statutory burglary.

The first, middle and last names are the same as the waiter who later worked at Mac and Bob's, and the convicted Matthew Jonathan Snider

has the same birth month and day as the Mac and Bob's employee, too. (Online court records redact the birth year.)

In one of the convictions, court records indicate Snider was ordered to pay \$15,163 in restitution to the victims. In another, a judge sentenced him to 9 years in prison, with eight years suspended, plus 99 years' probation.

When I talked Tuesday with Snider, he told me he realized after he left Mac and Bob's that he might have a case against the restaurant. The realization came when he read an essay Herrmann wrote on a Facebook page that's popular in the restaurant industry, Snider said.

"You can't be forced to tip out a kitchen employee," Snider said. He acknowledged he had settled the lawsuit with Mac and Bob's but declined to say for how much. Snider declined to comment on the specific crimes listed for Matthew Jonathan Snider on the state courts website.

"If a person's going to judge me for something I did 20 years ago, that doesn't say much about their character," Snider said.

He added: "Everyone has a past. Everyone makes mistakes. Personally, my past has no bearing or weight on what I did" in terms of the lawsuit. "Who I was 20 years ago has nothing to do with the person I am today."

And what about the answer listed on his Mac and Bob's job application, about whether he'd ever been convicted of a crime?

"I don't recall my application process for them," Snider told me.

But Snider does recall the handwritten letter of resignation he submitted to Mac and Bob's April 22. On the phone, he sounded kind of proud of it. "I actually took a picture of it," Snider told me.

It is two sentences. In the first, it says he's resigning with two weeks' notice. In the second, he wrote: "I wish the staff and employers great fortune in their future endeavors."

"Why did you write that?" I asked, referring to the second sentence.

"It just sounded professional," Snider replied.