

## Ontario Court Strikes Pleadings in Franchise Dispute

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September 15, 2021

In *1051214 Ontario Limited v. Vivo Pizza Pasta Franchise Inc.*,<sup>1</sup> the defendant franchisor successfully brought a motion to strike a variety of claims made against the franchisor and/or its principal, Pino Trichilo. The case involved the disintegration of the contractual relationship between a franchisee and the franchisor in respect of the operation of an Italian food restaurant.

In striking the common law negligence claims against Trichilo in his personal capacity, the Court relied on long-established principals that officers, directors and employees of a corporation will be protected from liability unless the pleading against them properly establishes that the activity complained about takes those individuals out of their role of directing minds of a corporation. In other words, unless those individuals acted outside of their capacity as officers, directors, or employees of a corporation, they cannot be held personally liable for their actions of corporations they control, direct or work for. In this case, the franchisee failed to establish that the misconduct complained of (namely negligent misrepresentations) was carried out by Trichilo in his personal capacity. As such, the Court struck the pleading as against Trichilo.

Of course, in the franchise context, individuals may be liable for misconduct if the misconduct relates to certain statutory obligations. In this case, there was in fact a statutory rescission claim made against the franchisor, but the claim was brought two years after the parties executed the franchise agreement, meaning that the claim was statute barred under the applicable limitation period. The Court held that it was plain and obvious that the claim would fail and struck it without leave to amend.

The Court also struck a series of other pleadings due to the failure of the plaintiff to plead the requisite elements of the claims, including pleadings related to misrepresentation and equitable rescission.

The takeaway from this decision is that franchise parties should be careful to (a) not bring claims against other parties (such as in this case, franchisor principals) without ensuring that such claims are legally sustainable, and (b) ensure that all requisite elements of their claims are properly pleaded and within the requisite limitation periods. By exercising this care, parties can avoid the delay of pleadings motions and proceed to litigate the substance of any franchise disputes.

[A copy of the decision can be found here.](#)

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<sup>1</sup> *1051214 Ontario Ltd. v Vivo Pizza Pasta Franchise Inc.*, 2021 ONSC 5350 (CanLII), <<https://canlii.ca/t/jhdzn>>

# Cassels

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