

Get it in Writing: The Alberta Court of Queen's Bench Provides Guidance on Oral Franchise Agreements and Franchise Rescission

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In *1384334 Alberta Ltd. v. Buster's Pizza Donair & Pasta Enterprises Ltd.*,^[1] the Alberta Court of Queen's Bench addressed a claim by a purported franchisee that it had entered into an oral franchise agreement and was entitled to take advantage of the statutory rescission provisions in Alberta's franchise legislation. The decision examines the nature of the franchise parties' agreement and is a helpful reminder that Alberta courts will not easily acknowledge the existence of a complex commercial agreement like a franchise agreement if the courts are unclear on the essential terms of the parties' arrangement.

The case involved a familial dispute about a quick service restaurant business. The plaintiffs, Sarah and Fred Salame, sought to open a Buster's Pizza restaurant in Edmonton, Ontario. Alex Salame, Fred's cousin, operated the Buster's Pizza brand and company. Alex (via Buster's) entered into a lease for a location and Fred renovated the location and installed restaurant equipment. The business opened in August 2008 and Fred and Sarah operated it until September 2009, when Fred and Sarah advised that they were vacating it. Alex changed the locks, purchased some of the leased equipment, and sold the restaurant to a third party.

Fred and Sarah then brought a claim against the purported franchisors Alex and Buster's Pizza, claiming that they never complied with the franchise disclosure requirements under Alberta *Franchises Act* and that Fred and Sarah were entitled to rescind the franchise agreement and claim statutory damages. Alex and Buster's Pizza denied that there was any franchise agreement, arguing that Fred opened and operated the restaurant without approval and refused to execute the agreements provided to him. The action was bitterly contested by the parties and eventually went to trial over a decade later.

All parties agreed that there was no written franchise agreement. However, the plaintiffs Fred and Sarah argued that there was a verbal agreement between the parties and that it was subject to the terms of the *Franchises Act*, and, as such, could be statutorily rescinded. Alex and Buster's Pizza pointed to Sarah and Fred refusing to sign any agreements regarding the restaurant and Fred not having permission to open without an agreement in place.

The parties gave conflicting evidence supporting their positions. The trial judge accepted Alex and Buster's Pizza's evidence that there was a refusal to sign the necessary agreements and that Fred opened without

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permission. However, the trial judge accepted Fred and Sarah's evidence that they were not advised that they were not permitted to open the restaurant.

Ultimately, the Court was not satisfied on a balance of probabilities that the parties reached the necessary consensus on the essential terms of an agreement before the restaurant opened. This was not a case where there was an oral agreement that the parties simply failed to commit to writing. In respect of the written agreements provided by Alex and Buster's to Fred and Sarah, there were fundamental terms that Fred and Sarah would not agree to. The Court noted that the plaintiffs could not indicate what the terms were of the so-called verbal franchise agreement that was reached, and specifically noted that the fees payable and requirement for a personal guarantee were essential terms that the parties could not agree on. In summary, the Court held that Fred and Sarah could not prove that the parties reached consensus on the essential terms of an agreement. As there was no agreement between the parties, there was no franchise agreement and the plaintiffs were not entitled to take advantage of the statutory rescission provisions of the *Franchises Act*.

Although unsuccessful on their *Franchises Act* claim and an additional claim for unjust enrichment, the plaintiffs Fred and Sarah were ultimately successful on a claim for conversion in respect of the leased restaurant equipment and defeated Alex and Buster's Pizza's counterclaim against them.

We note that other provincial franchise legislation specifically exclude oral franchise agreements.[2] For example, subsection 2(3) of Ontario's *Arthur Wishart Act (Franchise Disclosure), 2000* states that the legislation "does not apply to the following continuing commercial relationships or arrangements: ... A relationship or arrangement arising out of an oral agreement where there is no writing which evidences any material term or aspect of the relationship or arrangement." As such, for the purpose of determining issues regarding oral agreements and franchise legislation, *Buster's Pizza* has limited to no application beyond Alberta. However, to the extent that there is a franchise dispute involving an oral franchise agreement and related contract or tort claims, *Buster's Pizza* provides a helpful recitation of the principles of contract formation in the franchise context.

Key Takeaways

Beyond highlighting Alberta's anomalous franchise legislation in respect of oral agreements, the key takeaway from *Buster's Pizza* arises out of the breakdown in the relationship between the parties that resulted in over ten years of legal wrangling and "a great deal of animosity." The failure of the parties to commit their business arrangement to written agreement and the subsequent failure to document breaches and communications in writing made for an unnecessarily complex and time-consuming dispute that forced the court into making multiple findings about the reliability and credibility of witnesses. Franchise parties should ensure that they have clear written documentation in respect of not only their franchise agreement but the performance and enforcement of it as well.

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A copy of the decision can be found here.

¹ 1384334 Alberta Ltd v Buster's Pizza Donair & Pasta Enterprises Ltd, 2020 ABQB 369 (*Buster's Pizza*) (CanLII), <http://canlii.ca/t/j89pk>

² Franchise legislation in Ontario, Manitoba, British Columbia, New Brunswick, and PEI all contain the same exclusion.

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