

“Time” to End the Relationship: Ontario Court Weighs in on Franchise Agreement Overholding

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In *Coffee Time Donuts v. 2197938 Ontario Inc.*,¹ the Ontario Superior Court of Justice examined the enforceability of contractual obligations under a franchise relationship once the franchise agreement has expired but the parties have continued to maintain their relationship.

In this case, the franchisor Coffee Time sought summary judgment for a claim for unpaid royalties and advertising fees from their franchisee (219) in respect of a period from February 2016 to January 25, 2021. The franchisee resisted the claim by arguing that it was statute barred under the Ontario *Limitations Act*.

The parties entered into the franchise agreement in 2009. The agreement expired on July 31, 2014 without a renewal provision. However, the franchisee remained in operation and kept on paying royalties as if the agreement was still functional. The franchisee stopped making payments on February 16, 2016 but continued to use the “Coffee Time” name and suppliers. The business relationship between the parties terminated by consent on January 25, 2021. The plaintiff franchisor brought its claim on August 9, 2019.

The Court adopted the terms of expired franchise agreement as remaining operable until January 25, 2021 “on the basis the entirety of the agreement was being followed by the parties for almost 19 months following its expiry.” The franchisee attempted to argue that its payment of royalties from the termination of the agreement (July 2014) until it stopped paying (February 2016) was simply “out of courtesy” and was not a contractual obligation. The Court held that this “flies in the face of commercial realities” and disregarded that argument.

In determining whether some of the franchisor’s claims were statute-barred, the Court interpreted the expired (but applicable) franchise agreement as giving rise to a cause of action when the franchisee failed to pay when due any monies required to be paid. The Court therefore held that the franchisor’s claims for unpaid royalties for any period prior to two years before the Statement of Claim was issued were discoverable and therefore statute-barred under the *Limitations Act*.

The decision in *Coffee Time* is helpful guidance to franchise parties in respect of acknowledging that the terms of an expired franchise agreement may continue to govern if the parties continue to operate under the terms of that agreement in an “overholding” scenario, particularly where those terms involve the payment of funds owed.

Cassels

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

¹ *Coffee Time Donuts v. 2197938 Ontario Inc.*, 2021 ONSC 3109 (Coffee Time).

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