

BC Court Upholds Franchise Arbitration Agreement

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In *Kang v. Advanced Fresh Concepts Franchise Corp.*,¹ the Provincial Court of British Columbia (Small Claims Court) granted a stay of a proceeding brought by a franchisee in small claims court, relying on the arbitration provision in the franchisee agreement between the franchisee and franchisor.

The franchise in question was a “grab and go” food service counter business located in a British Columbia grocery store. The franchisor (AFC) was a California-based company. The parties’ relationship broke down and AFC terminated the franchise agreement. In response, the franchisee Kang brought a claim in BC small claims court, seeking approximately \$35,000 in damages for contractual breaches and a breach of the duty of good faith. AFC brought a motion to stay the proceeding, claiming that the dispute fell under the ambit of the arbitration provision contained in the franchise agreement.

The Court held that British Columbia law applied and the applicable law concerning the stay was the British Columbia *International Commercial Arbitration Act* (the Act).² The Court held that all of the parties in the action were subject to the arbitration, the franchisor’s application to stay the action was timely, and the subject matter of the action was a matter agreed to be submitted to arbitration under the Franchise Agreement. As such, arbitration was appropriate.

Further, the Court rejected the franchisee’s argument that the arbitration provision was null and void as a result of section 12 of the *Franchises Act*, holding that the arbitration provision did not restrict the application of BC law or restrict jurisdiction or venue to a forum outside BC. The Court also held that the fees and process involved in the arbitration were not unconscionable, thereby distinguishing the case from the holding of the Supreme Court of Canada in *Uber Technologies Inc. v. Heller*, 2020 SCC 16.

This decision is a helpful reminder that a properly drafted arbitration provision may be enforceable in Canadian courts even in respect of small franchise businesses so long as it complies with relevant franchise legislation and contains a reasonable arbitration process.

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

¹ *Kang v. Advanced Fresh Concepts Franchise Corp.*, 2021 BCPC 262.

² Specifically, section 8 of the Act.

Cassels

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