

The “Recipe” for a Proper Renewal: Ontario Court Rules Against a Franchisee Attempting to Stop a Franchise Expiration

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December 21, 2021

A recent decision of the Ontario Superior Court of Justice provides a helpful precedent for franchisors seeking to confirm and enforce the expiry of their franchise agreements. In *FPMG Hospitality Inc. v. Recipe Unlimited Corporation*,¹ the Court ruled against an interlocutory injunction to prohibit a franchisor from acting on its expiration terms of a Harvey’s restaurant franchise agreement in Brantford, Ontario. The decision confirms that courts will enforce the expiration terms of franchise agreements in the appropriate circumstances.

In 2010, FPMG Hospitality Inc. (FPMG) and Recipe Unlimited Corporation (Recipe) negotiated and signed two franchise agreements for Harvey’s restaurants in Brantford and Sarnia. The Brantford Harvey’s agreement stated that FPMG, the franchisee, did not have a right to renew the agreement after it expired at the end of the initial 10-year term. However, the Sarnia Harvey’s agreement contained the right to renew upon expiration and was in fact being renewed.

Recipe, the franchisor, delivered a Notice of Expiration to inform FPMG that the Brantford Harvey’s agreement would expire and terminate on August 31, 2021 pursuant to the terms of the franchise agreement. FPMG opposed the notice, arguing that based on Recipe’s conduct, it was entitled to an extension of the franchise agreement for another 10-year term.

FPMG argued that Recipe made oral representations leading it to believe that it might have the possibility of renewal at the end of the term. However, the Court instead relied on the “entire agreement clause” of the franchise agreement that specifically stated there were no representations or statements not contained in the agreement that form part of the agreement.

Further allegations by the franchisee included that Recipe unfairly dealt with FPMG in comparison to other franchisees, and that it failed to comply with franchise disclosure requirements. However, the Court considered the evidence uncertain and the positions weak.

Ultimately, the Court applied the law on injunctions and concluded that FPMG was not entitled to the injunction order. FPMG chose to sign the agreement despite being aware of the agreement’s expiry date and being fully informed that it had no right to renew. Furthermore, the Court held that FPMG would not

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suffer irreparable harm if it were not permitted to stay in possession of the Brantford Harvey's operation. Given that FPMG anticipated the franchise had a 10-year lifespan, any business decisions were made in light of that knowledge.

Although it was a moot point, the Court was satisfied that the balance of convenience weighed in favour Recipe. Should the injunction be granted, Recipe would be compelled to be in a relationship against its will, with an entity that had no express right to continue in the relationship.

Key Takeaways

This case reassures franchisors that the decision not to renew an agreement that does not contain a right of renewal does not, on its own, constitute a breach of the duty of fair dealing. The duty of good faith arises out of the specific contractual arrangement agreed to by the parties. Most importantly, franchisors will not be compelled to renew an agreement where there is no contractual right to renew.

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

¹ 2021 ONSC 7156.