

## The Butcher's Block: BC Court of Appeal Enforces Injunction Based on Breach of Non-Competition Provision

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In *Garcha Bros Meat Shop Ltd. v. Singh (Garcha)*,<sup>1</sup> the British Columbia Court of Appeal (the BCCA) upheld a lower court ruling granting an injunction to a franchisor in order to prevent related parties of the franchisor's former franchisee from aiding in the breach of a non-competition provision. The decision is a helpful precedent for franchisors who are attempting to combat attempts by franchisees to undermine restrictive covenants in franchise agreements.

In this case, the franchisor, Garcha, terminated the franchise agreement of the franchisee, SJP, and its principal, Kaur. The franchise, a butcher shop, had been managed by Singh, Kaur's husband. The franchise had operated out of a location in Burnaby, British Columbia (the "franchised location"). The franchise agreement contained a post-term restrictive covenant that prevented SJP and Kaur from operating at the franchised location for 30 months from the date of termination.

After termination, a company called 112 was incorporated. Singh's cousin, Sandhu, became the sole shareholder, director and officer of 112. SJP assigned the lease for the franchised location to 112. Singh guaranteed 112's obligations to the landlord. 112 then carried on business as a butcher shop at the franchised location under a different name.

Garcha brought an injunction against SJP, Kaur, Singh, 112, Sandhu, and another related party to prevent them from operating the new butcher shop in breach of the non-competition covenant. The British Columbia Supreme Court granted the injunction. The defendants who were the new operators, 112, and Sandhu, appealed the decision.

In upholding the decision, the BCCA focused on the crux of the argument made by the franchisor in the case, namely that that franchisor had established a strong *prima facie* case that the appellants, together with Singh, had participated in a group effort to avoid the consequences of the restrictive covenant, and had created 112 to further a conspiracy. The Court relied on an Ontario decision, *Ontario Duct Cleaning Ltd. v. Wiles*,<sup>2</sup> where the Court noted that an injunction could be extended to a non-party company in respect of a non-competition provision where the company was incorporated for the purpose of defeating the non-competition obligation. The Court also relied the absence of consideration paid by 112 and Sandhu for the assets of the business.

The Court declined to specifically address the legal issue of whether the principle of privity of contract

prevents non-signatories to a non-competition covenant prevents them from being bound. Rather, it noted that there may be other legal principles that undermine the principle of privity of contract in this context, and instead focused on the test for an injunction, namely:

...the key is the finding of a strong *prima facie* case, made by the judge here, that the successor company (112) was incorporated by the franchisee, Kuldip Singh and the individual appellants for the purpose of defeating the franchisee's non-competition obligations

The BCCA also supported the lower court's finding that the franchisor has established a strong *prima facie* case that the restrictive covenant was reasonable. The motions judge had found that there was no real ambiguity in the language of the non-competition, despite its broad language concerning the type of business in which the franchisee was forbidden from competing. Further, the motions judge also noted that the 10km radius non-competition area was actually reflective of the protection that the franchisee had enjoyed during the term of the franchise agreement.

The BCCA also declined to overturn the motions judge's decision that potential loss of goodwill, business reputation and franchise control constituted irreparable harm in the context of the injunction test, and further upheld the lower court's decision regarding the balance of convenience between the parties.

Franchisors should be encouraged by the decision in *Garcha*, as it reflects an appellate court's support of both injunctions to enforce non-competition provisions as well as injunctions against non-parties where there is an attempt to undermine or evade those provisions. Franchisors should pay attention to the specific context and facts set out in *Garcha*, but it is promising for the franchising industry to see reasonable non-competition provisions upheld and enforced despite conspiratorial attempts to undermine them.

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<sup>1</sup> *Garcha Bros Meat Shop Ltd. v. Singh*, 2022 BCCA 36 (CanLII), <<https://canlii.ca/t/jm246>>

<sup>2</sup> *Ontario Duct Cleaning Ltd. v. Wiles*, 2001 CarswellOnt 6190.