Cassels

Irreparable Harm Kneaded: British Columbia Court Declines to Grant an Injunction Against Former Freshslice Franchisees

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The enforcement of non-competition provisions in franchise agreements is a controversial legal issue that is often reliant on the unique facts and evidence of each dispute and the contracts between the franchise parties. For example, as discussed in our previous newsletter, the British Columbia Court of Appeal recently upheld the enforcement of a non-competition provision in its decision in *Garcha Brothers Meat Shop Ltd. v. Singh*.[1] However, in *RFSP Equipment v Singh,*[2] the Supreme Court of British Columbia declined to order an injunction against several former franchisees of a pizza chain that had rebranded *en masse* and continued to operate.

In *Singh*, the Court heard two applications in two separate actions for interlocutory injunctions restraining the defendants (former franchisees of Freshslice Pizza (Freshslice)) from operating pizza restaurants at various locations. The restaurants had been operating as franchises of Freshslice and then, overnight, rebranded as either HellCrust Pizza or Yummy Slice Pizza. The rebranding consisted of the following: removing all Freshslice marks; replacement of Freshslice dough purchased from other suppliers; changing of telephone numbers; cessation of use of Freshslice social media accounts, introduction of a new menu; and, implementation of a new point of sale system. Immediately after rebranding, the defendants delivered a notice of rescission, and Freshslice subsequently filed for interlocutory injunctions.

Freshslice argued that the rebranding was contrary to and in breach of various franchise agreements and their restrictive covenants. On the other hand, the defendants alleged that Freshslice repudiated the various franchise agreements, that they accepted the repudiation and the agreements were thereby brought to an end. The defendants also denied any use of confidential information, denied the restrictive covenants were reasonable, denied that consumers could be confused by the rebranding, and denied that Freshslice had suffered irreparable harm, among other things.

The franchise agreements contained the following restrictive covenants: (a) the franchisees were prohibited from being involved in a business that is similar to or competitive with Freshslice during the term of the agreement; (b) the franchisees were prohibited from being involved in a business that is similar to or competitive with Freshslice either at the franchised location or within 5km of any Freshslice restaurant for a period of two years from the date of a transfer, assignment or termination of the franchise agreements; (c) the franchisees were prohibited from diverting any business or customer of the franchised business to any

competitor; and (d) the franchisees were either prohibited from having any other business interests or, in some cases, this restriction was limited to corporate franchisees. Ultimately, the Court found these clauses were not ambiguous and were reasonable in their scope of the restricted activity, geography, and timing.

Despite being satisfied that Freshslice had made out a strong *prima facie* case that the former franchisees had in fact breached their contracts, the Court declined to grant the injunctions to prevent the former franchisees from operating the HellCrust Pizza or Yummy Slice Pizza locations. The Court was not satisfied that the plaintiffs would suffer irreparable harm if the injunctions were not granted and found that the balance of convenience was in favour of the defendants.

A key consideration for the Court was that the defendants completely rebranded the restaurants such that there was no possibility the brand, goodwill, or reputation of Freshslice would be affected by the continued operation of the defendants' restaurants. Moreover, the defendants deposed that the injunctions would be financially crippling, result in layoffs of their respective employees and adversely affect their goodwill and brands. As such, the Court held that the considerations of justice and equity favoured the continuation of the *status quo* as opposed to the granting of the injunctions as an award of damages was considered to be an adequate remedy.

Going forward, franchisors should keep in mind that even where there is a serious issue to be tried and there is a strong *prima facie* case, in certain circumstances courts may still be inclined to find that there is no irreparable harm to a franchisor in allowing former franchisees to compete in breach of their franchise agreements. This inclination may still operate despite the existence of previous jurisprudence that establishes that the rebranding and continued operation of former franchises may be considered irreparable harm (such as in the initial decision upheld by the BC Court of Appeal in the *Garcha Bros*. case). As such, parties should ensure that evidence is led to establish irreparable harm in order to bolster their interpretation of this key part of injunction test. As the Court in *Garcha Bros*. notes, the "specific facts of each case" are often the deciding factor, and litigants should put their best foot forward in that regard.

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

[2] *RFSP Equipment v. Singh*, 2022 BCSC 538 (*Singh*) <https://www.canlii.org/en/bc/bcsc/doc/2022/2022bcsc538/2022bcsc538.html>
