Cassels

Separation Anxiety: The British Columbia Supreme Court Reminds Franchisors That Related Franchisees Still Need to be Disclosed Separately

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The recent British Columbia Supreme Court in *Taprobane Group Holdings Ltd. v. Brownies Foods Ltd.* is a warning to franchisors that the exemptions from franchise disclosure for additional franchises under the BC *Franchises Act* will likely be interpreted in a conservative fashion by Canadian courts.

In this case, a franchisee, Taprobane Group Holdings Ltd. (Taprobane Group) sought to rescind its franchise agreement with its franchisor, Brownies Foods Ltd. (Brownies), due to the failure to provide a disclosure document as required under the *Franchises Act*.

The franchisor had entered into two separate franchise agreements with two distinct entities: Taprobane Foods Limited (Taprobane Foods) and Tabrobane Group. Taprobane Foods was incorporated in 2019 and the directors and shareholders of the company were Devin Amerasinghe and his wife, Iromie Amerasinghe. In 2019, Taprobane Foods entered into a franchise agreement with Brownies for a restaurant in Maple Ridge, BC. Later in 2021, Taprobane Group was incorporated. The directors and shareholders were Devin and Iromie Amerasinghe as well as their son, Adrian Amerasinghe. In 2022, Taprobane Group and Brownies entered into a franchise agreement for a restaurant in Mission, BC.

Contrary to the requirements of the *Franchises Act*, Brownies did not provide a disclosure document to either Taprobane Foods or Taprobane Group. In 2022, Taprobrane Group delivered a notice of recission to the franchisor in respect of the Mission franchise agreement based on the absence of any disclosure.

Brownies argued that it was exempt from the obligation to provide a disclosure document based on the s. 5(8)(c)(i) exemption under the *Franchises Act*. Section 5(8)(c)(i) provides an exemption for the grant of an additional franchise to an existing franchisee if:

(i) the additional franchise is substantially the same as the existing franchise that the franchisee is operating, and

(ii) there has been no material change since the existing franchise agreement, or latest renewal or extension of the existing franchise agreement, was entered into.

Brownies argued that because the principals of both Taprobane Foods and Taprobane Group were the same, it was entitled to rely on the exemption. Moreover, Brownies explained that it was approached by the principals of Taprobane Foods seeking a second franchise and believed that Taprobane Group was simply a holding company for Taprobane Foods.

The Court rejected the application of the exemption. The Court took a narrow interpretation of the definition of “franchisee” under the *Franchises Act,* and held that Taprobane Group was not an existing franchisee. The Court explained that, prior to entering the Mission franchise agreement, Taprobane Group did not have any legal relations or connection to the Franchisor. Although there was some overlap in the share ownership and directorship of Taprobane Group and Taprobane Foods, they were distinct and separate legal entities. For this reason, Taprobane Group could not rely on the exemption, and the Court granted the franchisee’s rescission claim.

The key takeaway for franchisors is that if they are entering into a second franchise agreement with an existing franchisor, they should ensure that the franchisee corporation is the same if the franchisor has an expectation of relying on the additional franchise exemption. Moreover, franchisors should always remember that the additional franchise exemption also includes the requirement that there has been no material change since the original franchise agreement. Lastly, out of an abundance of caution, a franchisor may wish to disclose regardless of the potential existence of an exemption.

A copy of the decision can be found here.
