

Closing Time: The Ontario Superior Court of Justice Examines a Damages Claim Resulting from the Termination of an Overholding Franchisee

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A recent decision of the Ontario Superior Court of Justice provides a helpful look at the different issues that can arise when looking at a franchisor's entitlement to outstanding rent and royalties upon the termination of an overholding franchisee.

In *Coffee Time (2015) Corporation vs. 1685247 Ontario Limited*,¹ the franchisor, Coffee Time, sought summary judgment for amounts owing from its former franchisee, 168, in respect of royalties, advertising fees, and rent purportedly owed under the parties' sublease. The franchise parties had a franchise agreement that expired in August 2017 and a sublease that expired the same month. After the franchise agreement expiry, the parties continued their business relationship, as the franchisee continued to use the Coffee Time marks and "receive the benefits of being a franchisee." Additionally, after the sublease expiry, the franchisee continued to occupy the subleased location and pay rent.

In August 2018, approximately one year later, the franchisor terminated the franchise agreement for, among other reasons, the franchisee's failure to pay franchise fees. The franchisor took possession of the subleased premises.

The franchisor brought a claim for outstanding franchise fees as well as rental arrears under the sublease, including accelerated rent from September 2018 to November 2018, which is when the franchisor surrendered its head lease to the landlord.

The Court had no concern in finding that the franchise agreement and the sublease had continued in an overholding capacity after the expiry of both agreements. The Court then addressed a variety of defences put forward by the defendant franchisee.

First, the franchisee claimed that the claims against it were statute barred under the *Limitations Act*. In respect of the franchisor's claim for damages, the Court held that the franchisee was entitled to claim amounts for franchise fees for over two years from the date the claim was discovered due to the running of limitation periods being suspended for six months due to COVID (as per Ontario legislation). The Court also held that the franchisor was entitled to rely on the six-year limitation period for rental arrears and accelerated rent under the *Real Property Limitations Act*.

Cassels

Second, the Court held that the franchisor was in fact entitled to damages for outstanding unpaid rent, but the franchisee pointed to a reduction of rent given by the landlord under the head lease renewals that were not passed on to the franchisee, which was confirmed by the Court for the purposes of adjusting the amounts owed.

Third, the Court declined to allow the franchisor's claim for three months accelerated rent. The Court pointed to the parties being on a month-to-month tenancy and the franchisee not having an obligation to pay rent for any fixed remaining term. The Court explained:

The last month of the term of the month-to-month Sublease was August 2018, the month when it was terminated. There were no further rentals due under the Sublease and no remaining term. Therefore, the Plaintiff is not entitled to recover accelerated rent from the Franchisee.

Lastly, the Court declined to permit the franchisor to charge the franchise agreement's rate of interest on amounts owed under the sublease due the specific language of the franchise agreement and sublease.

Franchisee terminations in overholding scenarios give rise to a myriad of potential issues, including limitation periods, interest, and potential damages arising from breaches of the head lease. Parties should carefully review their contractual rights to ensure that they are claiming amounts to which they are legally entitled.

¹ *Coffee Time Corp v 1685247 Ontario Ltd.*, 2023 ONSC 3353 (CanLII), <<https://canlii.ca/t/jxhj6>> (*Coffee Time*).