

British Columbia Supreme Court Rejects A Franchise-Related “No Poaching” Employment Class Proceeding

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In [Latifi v The TDL Group Corp.](#), 2024 BCSC 832, a plaintiff attempted to certify a class proceeding regarding “no poaching” provisions in Tim Hortons restaurant franchise agreements, alleging that these provisions were a conspiracy to harm employees. In a helpful decision for franchisors, the Court granted summary judgment to the defendant franchisor, pointing to the failure of the plaintiff employee to appreciate the predominate purpose of the provisions.

Facts

A proposed representative plaintiff sought to certify a class of “all persons who are or were employees at a Tim Hortons restaurant in Canada” against The TDL Group Corp. (TDL), the ultimate owner of the Tim Hortons franchise system.¹ In turn, TDL sought to have the action summarily dismissed. The class action was primarily concerned with a clause in the standard franchise agreement which prevents franchisees from employing or seeking to employ anyone from another Tim Hortons franchise without written approval of the defendant. The plaintiff argued that the defendant conspired with its franchisees to harm employees by including this “no-hire” clause.

Analysis

The defendant provided affidavit evidence stating that the “no-hire” clause was designed to benefit franchisees by providing them with assurance that after spending time and resources to train an employee, another Tim Hortons franchisee could not immediately solicit the employee without TDL’s approval. The defendant argued that the clause recognized the proximity of Tim Hortons franchisees but did not preclude one from soliciting employees using higher wages or better conditions. TDL argued that this evidence irrefutably established that the “no-hire” clause had a valid commercial purpose, and that the plaintiff failed to demonstrate that the defendant conspired with its franchisees to harm employees.

The plaintiff’s proposed issues for trial were (1) whether the tort of predominant purpose conspiracy required conspirators to injure the plaintiff merely for the sake of injuring him, (2) what evidence is required to provide the predominant purpose of a competition conspiracy causing “economic injuries,” and (3) whether the “no-hire” clause could be viewed in isolation from the franchise agreements.²

Cassels

With respect to issue (1), the Court agreed with the defendant that in order to meet the legal test for predominant purpose conspiracy, the plaintiff was required to provide that the harm caused by the defendant was the “predominant purpose” of the harm, and not merely its ancillary purpose. Since the law establishing that a “predominant purpose” was required was well-settled, no trial was required to address that issue. The Court then recharacterized issues (2) and (3) to instead ask if the predominant purpose of the “no-hire” clause was to injure employees of Tim Hortons. The Court found that the plaintiff did not adduce any evidence that the primary goal of the “no-hire” clause was to injure employees, nor could he demonstrate that the defendant had conspired with that purpose in mind, instead relying only on the term of the franchise agreement itself. The Court therefore granted summary judgment and dismissed the plaintiff’s claim.³

Takeaways

The ban on “no-hire” or “anti-poaching” clauses pursuant to the *Competition Act* will only apply where the plaintiff can establish the elements of a conspiracy. This decision supports the view that “no-hire” clauses that prevent employees moving between franchisees without the franchisor’s approval may be acceptable so long as there is no evidence that the goal of the clause is to injure the plaintiff (or class of plaintiffs).

¹ *Latifi v The TDL Group Corp.*, [2024 BCSC 832](#) at [para 2](#) [*Latifi*].

² *Latifi* at [para 80](#).

³ *Latifi* at paras [125-127](#).