

Supreme Court of British Columbia Grants Injunction to Preserve Contractual Rights

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A recent case out of the Supreme Court of British Columbia demonstrates the significance of preserving a franchisor's contractual rights under a franchise agreement. On December 21, 2018, in *New Beginnings Early Learning (White Rock) Ltd. v. CEFA Systems Inc*, 2018 BCSC 2417, the Supreme Court of British Columbia granted an injunction brought on behalf of the franchisor defendant enjoining the franchisee corporate plaintiffs from disposing of or encumbering any assets or shares pending a final disposition of the within Action.

The defendant, CEFA, is the developer and franchisor of a distinctive format of early child learning and junior kindergarten schools, including curriculum. CEFA claims that it lawfully terminated the franchise agreements that were in place with the corporate plaintiff in the face of unauthorized de-branding of their schools. The plaintiffs, on the other hand, assert they elected to rescind the franchise agreements and respective guarantees since they were induced to enter them as a result of intentionally false and misleading representations.

On the application for an injunction, CEFA was not seeking to enjoin the plaintiffs from continuing to operate their de-branded schools and from using or disposing of revenues. Rather, CEFA was seeking to prevent the plaintiffs from disposing of or encumbering the assets of the schools, which it claims to be entitled to purchase at fair market value pursuant to the franchise agreements. This would effectively prevent a change of control of the plaintiffs.

In applying the well-established injunction test, the Court concluded that CEFA demonstrated serious issues of contractual interpretation to be tried, specifically whether it's right to prevent a change in control of the plaintiffs survives termination of the franchise agreements. In considering the balance of convenience prong of the injunction test, the Court ruled in favour of CEFA because it had made it clear that it intends to purchase the assets of the plaintiffs and the franchised business, and there was a risk that there would be no assets remaining if the injunction was not granted. Finally, the Court emphasized that CEFA's loss of its contractual rights may also impact its reputational interests supporting CEFA's claim to irreparable harm.

Key Takeaway Principle

Courts will consider whether injunctive relief is necessary so as not to deprive a party of contractual rights. This is especially the case where a franchisor demonstrates a clear intention to exercise and implement

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such rights. The consideration of whether injunctive relief is appropriate will also be incited by the need to ensure key subject matters of litigation are preserved, including the impact to a franchisor's reputation and goodwill.

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