

A Boost of Guidance from the Alberta Court of Appeal Regarding Relief From Forfeiture

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The recent decision in *Booster Juice Inc. v. West Edmonton Mall Property Inc.*, 2019 ABCA 58, has provided further guidance on the factors that courts may consider when granting relief from forfeiture.

The respondent, Booster Juice Inc., negotiates Booster Juice retail locations for its franchisees in Alberta. For over a decade, the appellant franchisee ran a successful Booster Juice location in the West Edmonton Mall. The dispute between the parties arose over a proposed second Booster Juice location in the mall. The parties entered into a lease agreement for the second location. However, the West Edmonton Mall subsequently and unilaterally changed the location and orientation of the second location, and invoked a cross-default clause contained in the second lease agreement.

At the trial level, the judge found that the unilateral changes to the location and orientation of the proposed second Booster Juice constituted a repudiatory breach, since it deprived Booster Juice of substantially the whole benefit of the second lease agreement. Following that determination, the trial judge granted relief from forfeiture, and noted the following factors in the record supporting the equitable and discretionary relief, including:

1. The history of successful operations at the first Booster Juice location indicated little likelihood of default on the lease;
2. There was no evidence of issues with financial stability at the first location;
3. The profitability of the first location, including the likelihood that any subsequent tenant would bring in a lower rental income for the West Edmonton Mall; and
4. The fact that Booster Juice was unlikely to “disappear into the night leaving the landlord to suffer a significant loss.”

At the appeal, the Court of Appeal of Alberta considered whether the landlord was entitled to apply a cross-default clause in the lease for the second location in order to terminate Booster Juice’s lease at the first location. The Appellate Court found that the trial judge made no reviewable error in finding that Booster Juice accepted the landlord’s repudiation of the second lease agreement. It further concluded that the enforceability of the cross-default clause was a moot point since the lease agreement was terminated before the landlord sought to rely on the cross-default clause. The Court of Appeal agreed with the trial judge’s decision that even if the cross-default clause was enforceable, relief from forfeiture was still appropriate, and reiterated the factors the trial judge considered in granting the equitable relief.

Key Takeaway Principle

Due to the discretionary nature of relief from forfeiture, a trial judge's decision is insulated from appellate review unless the trial judge's decision is unreasonable or based on an error in principle or in law. Franchisors and franchisees ought to be mindful that courts will consider the full factual matrix, including evidence of the parties' conduct, history, and profitability, when granting equitable remedies, including relief from forfeiture.

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