

Ontario Court of Appeal Allows Appeal on Rescission Decision

October 9, 2018

In a previous newsletter, we discussed the Ontario Superior Court of Justice's decision in *2212886 Ontario v Obsidian Group*, wherein the Court granted the franchisee's motion for partial summary judgment for a declaration that the franchise agreement was properly rescinded pursuant to the *Arthur Wishart Act (Franchise Disclosure), 2000*¹.

As an update to this case, the Ontario Court of Appeal reversed the lower court decision, finding that the motion judge erred in granting summary judgment for the plaintiff franchisee by making crucial findings of fact on an inadequate paper record without the benefit of oral evidence.

The franchisee's rescission claim hinged on a factual dispute as to whether an earnings projection was presented to the franchisee without providing a hard copy. The evidence before the motion judge consisted of contradictory affidavit evidence by the parties, an inadequate paper record, and inconsistent evidence by the franchisee. This raised credibility issues and, according to the Court of Appeal, the "obvious need for oral evidence." As such, the Court of Appeal determined that the motion judge erred by granting summary judgment on the evidence before him.

The Court of Appeal also considered the two-year window for a franchisee to bring a rescission claim pursuant to s. 6(2) of the *Wishart Act*. The Court of Appeal did not interfere with the motion judge's ruling that the franchisee's rescission rights ran from the execution of the replacement agreement, rather than the date of the first franchise agreement executed by the parties.

Key Takeaway

Ontario courts may closely scrutinize summary judgment decisions in rescission cases to determine whether the parties have actually established the evidentiary record to enable a finding of summary judgment. This appears to reflect a growing trend towards a more conservative approach to summary judgment than what had been anticipated following the Supreme Court of Canada's decision in *Hyrniak v. Mauldin*.²

A copy of the Court of Appeal's decision can be found [here](#).

¹ S.O. 2000, c. 3 (the "*Wishart Act*").

² [2014] 1 SCR 87.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.