

Ontario Court Rejects 'Audacious' Attempt by Franchisee to Escape Loan Obligation

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October 9, 2018

In a recent decision of the Ontario Superior Court of Justice, *Royal Bank of Canada v. Everest Group Inc.*¹, the Court rejected a novel and creative franchise-related argument by a former franchisee (Everest) and its guarantors (collectively, the Guarantors) who were seeking to avoid payment under their loan obligations to their bank, Royal Bank of Canada (RBC).

In this case, the Guarantors operated a Paramount Fine Food restaurant franchise in Toronto. The business was financed through a loan from RBC that was guaranteed by the Guarantors. The restaurant operated for approximately one year but was unprofitable. The Guarantors delivered a statutory notice of rescission to the franchisor, Paramount, under the *Arthur Wishart Act (Franchise Disclosure)*, 2000², seeking rescission of the franchise agreement and statutory damages of almost \$3 million. In response to the notice of rescission, the franchisor took back the restaurant and the Guarantors ceased operating the business. RBC learned of this, and took the position that the Guarantors were in breach of their loan agreement, which dictated (among other things) that it was a breach of the agreement if Everest ceased operations. RBC sought summary judgment on its loan and the guarantees.

The Guarantors took the unique position that although Everest was not longer running the restaurant, it was not in breach of the loan agreement. The Guarantors instead argued that Everest did not cease to carry on business; rather, instead of a restaurant operation, Everest's actual business was recovering its financial investment in the restaurant by way of its *Wishart Act* rescission claim.

In flatly rejecting the Guarantors' argument, the Court commented on the "audacity and originality" of it. Nevertheless, the Court held that Everest was in breach of the loan agreement and that there was no basis for reading the Guarantors' strained interpretation into the standard terms of the loan agreement, commenting, "There is nothing subjectively or objectively unreasonable in the bank declining to await the far from certain outcome of proceedings between the franchisor and franchisee before enforcing the rights that it contracted for..." The Court found that the Guarantors were in breach of their agreements, and granted RBC summary judgment on its loans and the guarantees.

Key Takeaway

The takeaway from this case is likely limited to the unique circumstances faced by the parties and the "Hail Mary" argument made by franchisee counsel in an attempt to forestall judgment by RBC. Ontario courts

Cassels

appear willing to take a commercially sensible approach to loan agreements that supports the business efficacy of the transaction. This is likely helpful in the long term, as it ensures ongoing access to credit facilities by franchise parties.

¹ 2018 ONSC 4973.

² S.O. 2000, c. 3 (the "*Wishart Act*").

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