

## Alberta Court Upholds Franchisee's Obligation to Pay Fees Accrued During Overholding Period

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The Alberta Court of Queen's Bench recently granted summary judgment to a franchisor in a claim for unpaid rent and other charges during an overholding period, following the expiry of a sublease and franchise agreement (the governing agreements).<sup>1</sup> The plaintiff, TDL Group Corp. (TDL), was both the sub-lessor and the franchisor.

In this case, the defendant franchisee, MRMA Holdings Ltd. (MRMA), operated a Tim Horton's franchise for approximately 10 years. Following the expiry of the governing agreements, MRMA continued to operate its store for a period of 12 weeks. TDL claimed that during this time, MRMA accumulated \$97,613 owing in unpaid rent, and \$92,888 owing for supplies and services provided by TDL. TDL successfully sought summary judgment for payment of these charges in full.

While MRMA conceded an additional amount that was owed for rent and other charges prior to expiration of the governing agreements, it disputed the amounts TDL claimed were owing during the overholding period, asserting that TDL's only claim was based on unjust enrichment, and that there was insufficient evidence to quantify that claim.

With respect to the amounts owed for rent, the Court granted summary judgment for the full amount claimed, on the basis that there were specific provisions in the sublease agreement that provided for the continuation of payments during an overholding period. While there was no similar provision in the franchise agreement, TDL successfully argued that there was an implied contract, obligating MRMA to pay for the relevant charges on same basis as it had during the term of the franchise agreement. The Court agreed, relying on case law indicating that when parties carry on as usual after the end of a fixed term contract, the provisions of that contract should continue to apply.

MRMA, in its defense, claimed that it had not merely carried on as usual but had expressly attempted to address the question of compensation during the overholding period, and was ignored by TDL. The Court rejected this distinction and held that since MRMA was contractually bound to pay rent as an overholding tenant, and had given no indication of its intent not to pay for other charges as it always had, it was reasonable to conclude that MRMA was in agreement to pay ongoing charges as it had for the previous 10 years. Furthermore, the Court held that the franchise agreement and sublease were commercially intertwined and that it would be unreasonable to believe that the parties were not implicitly operating under both agreements during the overholding period. The Court further rejected MRMA's other claims for lack of consideration in the implied contract and for equitable set-off between the claims.

# Cassels

This decision may have positive implications for franchisors on an ongoing basis, as it demonstrates a Court's willingness to imply the continuation of a contract in an overholding situation, even absent express overholding provisions. However, given that the sublease in fact contained an overholding provision, and that the court found the sublease and franchise agreement to be intertwined, it is uncertain whether a franchise relationship that entirely lacks such a provision would be similarly interpreted by the courts. It is, therefore, still best practice for franchisors to routinely include express overholding provisions in their franchise and related agreements.

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<sup>1</sup> *TDL Group Corp v MRMA Holdings Ltd*, 2017 ABQB 713, <<http://canlii.ca/t/hnx39>>

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