

BC Court Toasts Vicarious Liability Claim for "Defective Sandwich"

Christopher Horkins

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In one of the great opening lines of modern jurisprudence, the British Columbia Supreme Court recently stated in *Chow v Subway Franchise Restaurants of Canada Ltd.*: "This case concerns a claim for personal injury damages caused by a defective sandwich."¹

The plaintiff in this case alleged that she purchased a sandwich from a franchised Subway restaurant in Victoria, British Columbia and, while consuming the sandwich, found blood on the bun and the wrapper. The plaintiff alleged that this caused her to suffer personal injury damages for mental distress, shock and similar claims. The plaintiff's claim, however, was not directed at the individual franchisee or any of its employees. Instead, she advanced a claim against the franchisor and its affiliates, without specifically pleading a theory of vicarious liability.

In response, the franchisor brought a motion for summary judgment and put forward evidence that the location was operated by a separately-owned franchisee corporation and that all of the employees of the location, including management, were employees of the franchisee. The franchisor further explained that all of the day-to-day operations of the restaurant, including training employees on food preparation, inspection and work safety procedures, were handled by the franchisee.

After reviewing the well-established legal principles surrounding vicarious liability, the court concluded that the plaintiff's claims could not succeed, given that the plaintiff did not sue the "direct tortfeasor" (namely, the franchisee employee who prepared the allegedly defective sandwich) or their employer, the franchisee, and made no claim that could extend any liability by the direct tortfeasor to the franchisor. The claim was dismissed with costs.

Key Take-Away Principle

The *Chow* case demonstrates the importance of proper pleadings in product liability cases where claims are made against third parties by way of vicarious liability. This may apply where the end retailer (be it an automotive dealer or sandwich restaurant) is a separate and distinct entity from the original manufacturer or brand licensor. While the plaintiff may associate the product with the larger company and seek to pursue them for their deeper pockets, that company may ultimately have little or nothing to do with the defect alleged in the product. Poorly pleaded claims seeking to fix liability against the latter may be subject to early dismissal by way of summary judgment.

¹ *Chow v Subway Franchise Restaurants of Canada Ltd.*, 2017 BCSC 1034 (CanLII), <<http://canlii.ca/t/h4fnn>>

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