

A Bigger Slice of Post-Judgment Interest: Ontario Court Upholds Franchise Agreement Provision Entitling Franchisor To Higher Interest

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In a recent decision of the Ontario Superior Court of Justice, *241 Pizza (2006) Ltd. v. Loza*, a franchisor was entitled to post-judgment interest of 24% per year in accordance to the terms of the parties' franchise agreement. This decision provides franchisors with helpful reassurance that the interest provisions in their agreements may be upheld by Canadian courts.

In this case, the franchisor was successful on a motion for summary judgment to collect amounts owed from the defendant franchisee for unpaid royalties and other amounts. In seeking the final order from the Court regarding their judgment, the franchisor sought post-judgment interest on the damages at a rate of 24% per annum. This amount was in accordance with the terms of the franchise agreement.

The Court commented that although the 24% rate "seems excessive," it is the amount that was contracted for between the parties. The court noted a purported imbalance of power between the parties, but held that the clause formed a part of the standard agreement and that the franchisee had legal advice when entering into the franchise agreement. The Court held that, "To fail to enforce this clause in the absence of exceptional circumstances would be to impose a rule that all such clauses are in the nature of a penalty. Without further evidence, I cannot do that. Furthermore, to fail to enforce this clause would be to interfere with the freedom of contract of the parties."

Although it would be open for a franchisee to challenge such a provision as unconscionable, this case is evidence that a significant post-judgment (and likely pre-judgment) interest provision may be enforceable in Ontario.

A copy of the decision can be found [here](#).

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