Cassels

BC Court Toasts Claim Against Franchisor for "Defective Sandwich"

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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.

The *Chow* decision highlights an interesting intersection between franchise and product liability law. One of the benefits of the franchise model is that it disperses legal risks to the franchisee. Often, misunderstandings about the nature of the franchise business structure lead to poorly pleaded claims such as this one. The monolithic appearance of a franchised chain lead many to believe that locations are all operated by the same entity – after all, the franchise model is in part designed to give an appearance of uniformity between separately owned businesses under the same licensed brand. *Chow* is yet another decision that can be pointed to by franchisors when they are faced with defending such claims. Often, when the nature of the relationship is properly explained to plaintiffs’ counsel, these claims can be resolved early without going to court.

A copy of the decision can be found here.

[1] *Chow v Subway Franchise Restaurants of Canada Ltd.*, 2017 BCSC 1034 (CanLII)