

## The Supreme Court of Canada Dismisses Franchisee Attempt To Avoid Guaranty Obligations

Kate Byers, Derek Ronde

October 17, 2017

In September 2017, the Supreme Court of Canada (SCC) dismissed an application by a franchise agreement guarantor for leave to appeal a decision of the Ontario Court of Appeal. In this case, the Court of Appeal had upheld the decision of Justice O'Marra of the Ontario Superior Court of Justice to grant summary judgment in favour of The Cora Franchise Group (Cora). The original claim involved Cora seeking to enforce a guarantee of a franchise corporation which was in default of its financial obligations to Cora. The guarantor, who was the principal of the franchisee, sought to bring a multi-million dollar counterclaim for damages it claimed the franchise corporation had suffered as a result of Cora's actions.

The guarantor argued that the company's losses should be set off against the amounts the guarantor owed to Cora under the guaranty. Justice O'Marra had originally found in favour of Cora in respect of its claim and the guaranty and dismissed the counterclaim, accepting Cora's arguments that set-off was precluded by the franchise agreement and did not apply to the claimed losses, and that the counterclaim was statute-barred under the *Limitations Act*.

In upholding the decision, the Court of Appeal held that Justice O'Marra had not erred in dismissing the guarantor's claim for a set-off against Cora because the right to damages asserted was that of the franchisee, not the guarantor, and the franchise agreement clearly precluded set-off. Further, the Court of Appeal also found no error in Justice O'Marra's dismissal of the guarantor's purported counterclaim as statute-barred: the guarantor and franchise corporation were well aware of its claim more than two years prior to asserting the counterclaim. Finally, the Court of Appeal accepted Cora's argument on a cross-appeal that Justice O'Marra had erred in failing to order damages up until the date of the hearing of the summary judgment motion, and ordered a reference in respect of those additional amounts owing by the guarantor to Cora.

The Supreme Court of Canada panel, composed of the Honourable Justice Moldaver, the Honourable Justice Karakatsanis, and the Honourable Justice Wagner, subsequently dismissed the guarantor's application for leave to appeal the Court of Appeal decision.

### Key Take-away Principle

The takeaway for franchisors is that Ontario courts are willing to enforce guarantees related to financial obligations under franchise agreements, and will also scrutinize attempts by franchisee guarantors to use

# Cassels

set-off and counterclaims as means to complicate simple collection matters. These decisions are reassuring for franchisors who are owed significant sums by their franchisees, and support the idea that summary judgment can be an effective method to obtain judgment in this type of case.

The SCC decision can be found [here](#) and the Court of Appeal decision can be found [here](#).

*Cora was represented in this matter by Derek Ronde and Kate Byers of Cassels Brock.*

Cora also was successful in repelling an attempt by the guarantor to stay the effect of the Court of Appeal's judgment pending the application for leave to appeal to the Supreme Court of Canada. A copy of this decision can be found [here](#). *Cora was represented by Derek Ronde and Alexandra Murphy on this motion.*

---

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