

COURT OF APPEAL FOR ONTARIO

CITATION: Ritson Division Retail GP Limited v. 2562583 Ontario Inc. (Meltwich Food Co.), 2025 ONCA 435
DATE: 20250616
DOCKET: COA-24-CV-1086

Rouleau, van Rensburg and Gomery JJ.A.

BETWEEN

Ritson Division Retail GP Limited

Plaintiff (Respondent)

and

2562583 Ontario Inc. o/a Meltwich Food Co.*, Janarthanan Jeyaparan*
and Meltwich Hospitality Group Inc.**

Defendants
(Appellants*/Respondent**)

Chandralal Handapangoda, for the appellants

Monica Peters, for the respondent Meltwich Hospitality Group Inc.

Dylan Baker, for the respondent Ritson Division Retail GP Limited

Heard: May 2, 2025

On appeal from the judgment of Justice Edward M. Morgan of the Superior Court of Justice, dated September 26, 2024, with reasons reported at 2024 ONSC 5326.

REASONS FOR DECISION

[1] This is an appeal of a judgment granted in a motion for summary judgment.

For the reasons that follow, the appeal is dismissed.

[2] The appellants are 2562583 Ontario Inc. o/a Meltwich Food Co. (the “Franchisee”) and its principal, Janarthanan Jeyaparan. Pursuant to a Franchise Agreement with the respondent Meltwich Hospitality Group Inc. (the “Franchisor”) they operated a Meltwich restaurant from January 2018 until July 2018 out of a commercial unit in Oshawa, Ontario. The unit was leased from Ritson Division Retail GP Limited (the “Landlord”) under a 2015 lease between the Landlord and a former franchisee (the “Lease”), which had been assigned to the Franchisee pursuant to an assignment and assumption agreement (the “Assignment Agreement”).

[3] Mr. Jeyaparan signed the Franchise Agreement as guarantor of the Franchisee’s obligations to the Franchisor. Pursuant to the Assignment Agreement, as well as an indemnity agreement (the “Jeyaparan Indemnity”), he guaranteed the obligations of the Franchisee under the Lease. The Franchisor had guaranteed the obligations of the former franchisee under the Lease (the “Melt Indemnity”), and, as a signatory to the Assignment Agreement, agreed that the Melt Indemnity would continue in respect of the obligations of the Franchisee under the Lease.

[4] The Franchisor terminated the Franchise Agreement on August 15, 2018, after the Franchisee stopped paying rent and abandoned its business. After re-entering the unit and terminating the Lease, the Landlord commenced an action against the appellants and the Franchisor for breach of the Lease and seeking

payment under their guarantee/indemnity agreements, including Mr. Jeyaparan's Indemnity and the Melt Indemnity. The Landlord sought damages in the amount of \$208,932.62, for the loss of the benefit of the Lease from the date of termination to the expiry date, and lost future rent, with credit for mitigation.

[5] The Franchisee defended the action, alleging that the Landlord had participated in a subterfuge inflating the apparent volume of business at the premises to induce the appellants to sign the Lease. The appellants also challenged the damages claimed by the Landlord. The Franchisor defended the action, denying that the Melt Indemnity extended to the Franchisee's breaches of the Lease, claiming misrepresentation on the part of the Landlord (including with respect to the economic viability of the premises), and challenging the Landlord's damages. The Franchisor also crossclaimed against the appellants for contribution and indemnity in respect of amounts it might be called upon to pay the Landlord and for damages for breach of the Franchise Agreement. The appellants defended the crossclaim, asserting that they were unaware of the Melt Indemnity at the time they signed the Assignment Agreement, and pleading that the Franchisor participated in a subterfuge and made certain misrepresentations, including as to the viability of its brand, to induce them to enter the Franchise Agreement.

[6] The parties exchanged documents and attended examinations for discovery, but the Landlord took no further steps in the action against the appellants.

[7] In March 2024, the Landlord settled its claim against the Franchisor through an agreement described by the parties and the motion judge as a “Mary Carter agreement” (the “Settlement Agreement”). Under the Settlement Agreement, the Franchisor agreed to pay the Landlord \$175,000 (inclusive of costs, interest, and HST) in satisfaction of the claims against it. The funds were to be paid in 36 equal monthly installments beginning 15 days from the date of execution of the Settlement Agreement. The Franchisor expressly preserved its right to pursue the crossclaim against the appellants.

[8] After settling with the Landlord, the Franchisor brought a motion in the action for summary judgment on its crossclaim against the appellants.

The Motion Judge’s Decision

[9] The motion judge first found there was no real controversy regarding the enforceability of Mr. Jeyaparan’s guarantee in favour of the Franchisor under the Franchise Agreement. He noted that Mr. Jeyaparan had personally guaranteed the Franchisee’s performance of its obligations under the Franchise Agreement and that breach of the Lease and cessation of the franchise business were breaches of the Franchise Agreement giving rise to a claim by the Franchisor.

[10] The motion judge referred to s. 14.1 of the Franchise Agreement, which he summarized as requiring the Franchisee to indemnify the Franchisor “against all liabilities and expenses (including legal fees and court costs)” incurred by the

Franchisor when the Franchisor became a party to a claim “due to any act or omission of the Franchisee, or due to any violation of the Franchise Agreement”.

[11] The motion judge found that it was “entirely uncontroversial that the Franchisee breached section 15.1(j) of the Franchise Agreement by failing to comply with the terms and conditions of the Lease – i.e. by not paying Rent”, thereby “causing the termination of the Lease, and causing the Franchisor to incur the settlement expense.”

[12] The motion judge then held that there was “no sustainable defense to that claim by the Franchisor under the Franchise Agreement.” After reviewing the evidence concerning the Franchisee’s defences going to the validity of the Franchise Agreement, the motion judge rejected them all. He concluded there was “no merit to the Franchisee’s defenses to the crossclaim” and “no defense to Mr. Jeyaparan’s liability to indemnify the Franchisor under the guarantee/indemnity provision of the Franchise Agreement.”

[13] The motion judge was of the view that, on weighing the evidence, evaluating proportionality and judicial economy, and assessing the impact on access to justice as required on a motion for summary judgment, he should grant relief to the Franchisor.

[14] Consequently, the appellants were ordered to indemnify the Franchisor for the full settlement amount. Since “the Franchise Agreement permits the Franchisor

to claim any expenses incurred as a result of the Franchisee's breach", the appellants were also ordered to pay the Franchisor \$21,533.64 for its legal expenses on a full indemnity scale attributed to defending and then settling the Landlord's claim. The full amount of the judgment was \$196,533.64, payable jointly and severally by the appellants. The motion judge granted additional costs to the Franchisor in the all-inclusive sum of \$2,000.

Issues on Appeal and Discussion

[15] The appellants raise three main arguments on appeal. The first two submissions are characterized by the appellants' counsel as the Franchisor having no cause of action against the appellants.

[16] First, the appellants assert that the Franchisor had no liability to the Landlord, and therefore no basis on which to seek contribution and indemnity. The appellants point to the Franchisor's statement of defence in which it denies that it was a party to the Assignment Agreement or that it had any continuing liability under the Melt Indemnity in respect of the Franchisee's obligations under the Lease. The appellants emphasize that the Melt Indemnity is dated in 2015 and is specific to the obligations of the former franchisee.

[17] There is no merit to this argument. Notwithstanding the position taken in the statement of defence, the Franchisor signed the Assignment Agreement, in which it agreed at s. 9 that it would indemnify the Landlord for the Franchisee's

performance of its covenants and obligations under the Lease pursuant to the indemnity attached as Appendix “A” to the Lease (the Melt Indemnity), which would remain in full force and effect. The Melt Indemnity and the Assignment Agreement were therefore properly relied on by the Landlord when it sued the Franchisor as guarantor of the Franchisee’s obligations under the Lease.

[18] Second, the appellants assert that the guarantee and indemnity provision of the Franchise Agreement, s. 14.1, does not cover the liabilities assumed by the Franchisor under the Settlement Agreement.

[19] Section 14.1 provides as follows:

The Franchisee agrees that if the Franchisor or any of its officers, directors, shareholders, employees or agents shall incur any costs or expenses, become a party to any claim, demand or penalty, or become a party to any suit or other judicial or administrative proceeding by reason of any act or omission of the Franchisee or those for whom it is responsible in law, or by reason of any act occurring on the Premises or any sale of Products, or in the negotiation of, or by reason of any violation of this Agreement, any agreements entered into pursuant to this Agreement or of the Lease or the Sublease, or by reason of any act or omission arising out of or in respect of the Business, the Franchisee shall indemnify and hold the Franchisor and its officers, directors, shareholders, agents and employees harmless against all liabilities, losses, suits, claims, judgments, costs and expenses (including legal fees, court costs and other expenses of litigation or judicial or administrative proceedings) to which the Franchisor and its officers, directors, shareholders, agents and employees shall or may become liable for or suffer, including without limitation, all costs whatsoever (including legal fees) incurred by the

Franchisor in enforcing its rights and remedies under this Agreement.

[20] The appellants contend that the Franchisor did not “become liable” to pay the settlement amount because the Landlord’s action did not result in an order or judgment against the Franchisor; rather the Franchisor voluntarily assumed the responsibility to make payments to the Landlord. As such, the appellants assert that the Franchisor’s crossclaim can only materialize after there is a judgment in the main action.

[21] Again, we do not agree with this submission. The Franchisor was named as a defendant to the Landlord’s action based on its guarantee of the Franchisee’s obligations under the Lease. As a party to the litigation, and after assessing the merits of the Landlord’s claim, it was entitled to settle, rather than to incur the further expense of defending the action. Importantly, as the motion judge observed at para. 24 of his reasons and the appellants confirmed on appeal, there is no suggestion that the amount of the settlement was excessive or otherwise improvident. Contrary to the appellants’ argument, there is no basis for interpreting s. 14.1 to require a judicial determination in each case where litigation is commenced before the Franchisor “becomes liable” for the default of the Franchisee. And, arguably, the Franchisor would have been liable to the Landlord for the Franchisee’s default under the Lease pursuant to the Melt Indemnity, even without a court proceeding by the Landlord.

[22] As a third issue on this appeal, the appellants argue that the motion judge erred in granting judgment for the full amount of the Franchisor's settlement with the Landlord, when the Settlement Agreement only requires payment in instalments over three years, and without evidence that the Franchisor had in fact made any payments to the Landlord.

[23] This argument was not raised at first instance. In any event it does not assist the appellants.

[24] We understand from counsel for the respondents that the Franchisor has complied with the terms of the Settlement Agreement by making the instalment payments to the Landlord when due. The Franchisor was not required to sue for the full amount only after making all instalment payments, or to sue as each payment was made. Damages in an action can and often do include future amounts. While in some cases, it is appropriate to apply a discount rate to damages awarded for future losses, no such argument was raised in this case.

[25] Finally, the appellants suggest that the procedure followed in this case was improper and amounted to an abuse of process. We disagree. First, the Settlement Agreement was disclosed to the appellants. Second, in response to the summary judgment motion on the crossclaim the appellants had the opportunity to put forward their defences to the crossclaim. If the appellants had succeeded in their defence to the crossclaim, then summary judgment would have been refused. The

defences to the crossclaim – relying on alleged subterfuge and misrepresentation – were considered by the motion judge, and rejected because they were not supported by the evidence. Third, the motion judge confirmed that there was no issue as to the amount of the settlement, that is the amount that the Franchisor had agreed to pay in respect of the appellants’ breach of the Lease. And, finally, should the Landlord choose to pursue its claim against the appellants the amount of its settlement with the Franchisor will be taken into account; it will not be entitled to double recovery: see *Laudon v. Roberts*, 2009 ONCA 383, 308 D.L.R. (4th) 422, at para. 55, leave to appeal refused, [2009] S.C.C.A. No. 304.

Disposition

[26] For these reasons we dismiss the appeal. Costs are payable by the appellants to the respondent Franchisor in the inclusive sum of \$6,000. No costs of the appeal to the Landlord.

“Paul Rouleau J.A.”
“K. van Rensburg J.A.”
“S. Gomery J.A.”