

# COURT OF APPEAL FOR ONTARIO

CITATION: 2355305 Ontario Inc. v. Savannah Wells Holdings Inc., 2025 ONCA  
505

DATE: 20250714

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Thorburn, Copeland and Monahan JJ.A.

## BETWEEN

2355305 Ontario Inc., doing business as Jayasena Management Corp., carrying  
on business as Wild Wing, Kaushalya Jayasena and Chathura Jayasena

Plaintiffs (Respondents)

and

Savannah Wells Holdings Inc.\*, 2239214 Ontario Inc.\*, 1516081 Ontario Inc.\*,  
Rick Smiciklas\*, Dasminder Chandiok and Century 21 Leading Edge Realty Inc.

Defendants (Appellants\*)

Rick Smiciklas, acting in person for the appellants<sup>1</sup>

Jonathan Mesiano-Crookston and Niki Kanavas, for the respondents

Heard: July 7, 2025

On appeal from the judgment of Justice Jasmine T. Akbarali of the Superior  
Court of Justice, dated February 10, 2023, with reasons reported at 2023 ONSC  
1008.

## REASONS FOR DECISION

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<sup>1</sup> Mr. Smiciklas obtained leave from Lauwers J.A. to represent the appellant corporations as a non-lawyer.

[1] This is an appeal of a franchisee's action brought under the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c.3 (the "Act") for damages following rescission of a franchise agreement for non-disclosure. At trial, the respondents sought and obtained a declaration that they rescinded agreements related to a Wild Wing franchise and damages from the franchisor 2239214 Ontario Inc. ("Franchisor") and franchisor's associates within the meaning of the Act (1516081 Ontario Inc., Savannah Wells Holdings Inc. and Rick Smiciklas).

[2] The appellants appeal the trial judge's findings that:

1. The Franchisor was not entitled to rely on the statutory exemption to disclosure contained at ss. 5(7)(a) and 5(8)(a) of the Act;
2. The respondents validly rescinded the franchise and ancillary agreements pursuant to the Act;
3. The respondents were entitled to statutory compensation pursuant to s. 6(6) of the Act; and
4. The respondents were entitled to costs on a substantial indemnity.

[3] For the reasons that follow, we see no error in the trial judge's conclusion that the grant of the franchise was "effected by or through" the Franchisor, such that disclosure was required under s. 5(1) of the Act and that the respondents were entitled to damages upon rescission of the agreement. We also see no error in the trial judge's costs award.

**I. THE FIRST ISSUE: WHETHER THE TRIAL JUDGE ERRED IN HOLDING THAT THE EXEMPTION FROM DISCLOSURE DOES NOT APPLY**

[4] The Act is designed to redress the imbalance of power between franchisor and franchisee, and to provide a remedy for abuses stemming from this imbalance. Disclosure is required under the Act to provide prospective (and often inexperienced) franchisees with sufficient information to make informed decisions: *2189205 Ontario Inc. v. Springdale Pizza Depot Ltd.*, 2011 ONCA 467, 336 D.L.R. (4th) 234, at paras. 23-24, leave to appeal refused [2014] S.C.C.A. No. 35648. Pursuant to s. 5(1), a franchisor must provide a disclosure document before “the signing by the prospective franchisee of the franchise agreement or any other agreement relating to the franchise” other than certain specific agreements described in s. 5(1.1).

[5] The Act provides for exemptions to a franchisor’s disclosure obligation. In this case, the appellants sought to rely on s. 5(7)(a), which applies to a resale of a franchise if the grant of the franchise is not effected by or through the franchisor. This and other exceptions provided under s. 5(7) are to be narrowly construed: *Springdale Pizza*, at para. 32. Accordingly, in general, where a franchisor requires a new franchise agreement to be signed, they can no longer rely on the s. 5(7)(a) exemption: *2256306 Ontario Inc. v. Dakin News Systems Inc.*, 2016 ONCA 74, at para. 8. If, on the other hand, the franchisor merely passively consented to the

transfer of the franchise, the exemption can apply: *Springdale Pizza*, at paras. 31-33; see also s. 5(8)(a) of the Act.

[6] A party relying on this exemption from disclosure must satisfy the four criteria set out at s. 5(7)(a): “(i) the franchisee is not the franchisor, an associate of the franchisor or a director, officer or employee of the franchisor or of the franchisor’s associate, (ii) the grant of the franchise is for the franchisee’s own account, (iii) in the case of a master franchise, the entire franchise is granted, and (iv) the grant of the franchise is not effected by or through the franchisor” (emphasis added).

[7] Pursuant to s. 12 of the Act, at trial, the onus was on the Franchisor to prove that the exemption applied.

[8] The trial judge did not err in finding that the criteria at s. 5(7)(a)(iv) was not met on the facts of this case. There was ample evidence upon which the trial judge could and did rely to conclude that the grant of the franchise was effected through the Franchisor. The trial judge described two alternate bases for this conclusion that are consistent with the decisions of this court in *Springdale Pizza* and *Dakin News*.

[9] The first basis was premised on her finding that the June 2013 franchise agreement produced by the respondents and signed by Mr. Smicklas on behalf of the Franchisor was legitimate. The trial judge found that, by requiring the

respondents to sign a new franchise agreement, the Franchisor could not argue that a franchise agreement was already in place between it and the respondents such that it was exempted from the disclosure requirement.

[10] While the appellants disputed the legitimacy of the franchise agreement, the trial judge preferred the respondents' evidence on this issue. She was entitled to rely on, *inter alia*, Mr. Chandiook's e-mail that he would bring the respondents to the franchise head office in June 2013 "for [their] Franchise Agreement". She further noted that the appellants could have called their employees to testify at trial but did not, nor did they produce any relevant documents on this point.

[11] The trial judge also determined that the Franchisor played more than a passive role in the grant or transfer of the franchise based on the involvement of Dasminder Chandiook in the transaction. There was ample evidence to support her finding that Mr. Chandiook acted as the Franchisor's representative in steering the respondents to the specific franchise that was for sale and providing them information about it. Mr. Chandiook had access to Wild Wing's systems and how to operate them and had information that could only come from Wild Wing. The respondents' evidence, which the trial judge accepted, was that they understood Mr. Chandiook to be associated with Wild Wing and to have facilitated their purchase of a Wild Wing franchise.

[12] As such, we see no error in the trial judge's conclusion that the Franchisor was not entitled to rely on the statutory exemption from disclosure set out in ss. 5(7)(a) and 5(8)(a) of the Act.

## **II. THE SECOND ISSUE: DAMAGES PURSUANT TO RESCISSION OF THE AGREEMENT**

[13] After the respondents had incurred losses running the franchise for 18 months, they served a notice of rescission on the Franchisor and walked away from the franchise. Having found that the exemption from disclosure did not apply, the trial judge held that,

Given the breach of the franchisor's disclosure obligation, the plaintiffs were entitled to rescind the agreements relating to the franchise within two years of entering into the franchise agreement. By delivering their Notice of Rescission on January 14, 2015, less than two years after signing the franchise agreement on June 7, 2013, they rescinded in accordance with the statute. They are thus entitled to damages under [the Act].

[14] We see no error in the trial judge's conclusion that the respondents validly rescinded the franchise agreement and ancillary agreements with the Franchisor, and that they were entitled to statutory compensation under s. 6(6) of the Act.

[15] The appellants argue that the trial judge erred in her assessment of compensation owing to the respondents. While they appear to take issue with the entire award of damages the trial judge ordered based on s. 6(6) of the Act, the

only head of damages they point to as incorrect is the \$325,000 for purchase of supplies and equipment.

[16] As for the damages for purchase of supplies and equipment, subsection 6(6)(c) of the Act requires a franchisor to purchase from the franchisee any supplies and equipment that the franchisee had purchased pursuant to the franchise agreement, at a price equal to the purchase price paid by the franchisee.

[17] The respondents led expert evidence from Ephraim Stulberg, a forensic accountant, to support their damages claims, including that for \$325,000 of equipment that was not returned to them. The appellants conceded his expertise and the trial judge found him to be a properly qualified expert.

[18] The respondents' expert calculated this loss to be \$325,000 by subtracting from the purchase price of \$360,000 paid under the agreement of purchase the \$35,000 he assumed was a transfer fee (and which he accounted for in his calculation of damages under s. 6(6)(a)). The trial judge was entitled to accept his calculations.

### **III. THE THIRD ISSUE: THE COSTS AWARD**

[19] Nor do we see any error in the costs awarded by the trial judge. Absent an error in principle, deference is owed: *Brad-Jay Investments Ltd. v. Szijarto* (2006), 218 O.A.C. 315 (C.A.), at para. 21, leave to appeal refused [2007] S.C.C.A. No. 92.

[20] The respondents claimed substantial indemnity costs from March 2022 forward based on an offer to settle dated March 15, 2022 in the amount of \$525,000 plus prejudgment interest and costs of \$75,000. Since the respondents were awarded damages in an amount that exceeded their offer to settle (\$672,188.00), they were presumptively entitled to partial indemnity costs up to March 15, 2022, and substantial indemnity costs thereafter pursuant to r. 49.10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[21] The trial judge found that there were other grounds to make an award of substantial indemnity costs, such as: the appellants made allegations of fraud, collusion and perjury against the plaintiffs without any evidence, and threats of collateral proceedings against counsel for the respondents. Furthermore, trial time was increased unnecessarily by the appellants.

[22] The respondents claimed costs of \$392,387.05 on a substantial indemnity basis. Ultimately, the trial judge awarded the appellants substantial indemnity costs, but reduced the amount to \$250,000. The appellants have not demonstrated any error in principle in her approach.

#### IV. CONCLUSION

[23] For the above reasons, the appeal is dismissed. Partial indemnity costs of this appeal are awarded to the respondents in the amount of \$20,000, all inclusive.

“Thorburn J.A.”

“J. Copeland J.A.”

“P.J. Monahan J.A.”