

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1087057 BC Ltd. v. RFSP Equipment & Operating Inc.*,
2026 BCSC 80

Date: 20260119
Docket: S257785
Registry: New Westminster

Between:

1087057 BC Ltd.

Petitioner

And

RFSP Equipment & Operating Inc.

Respondent

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for Petitioner:

R.S. Atwal

Counsel for Respondent:

L. Grant

Place and Dates of Hearing:

New Westminster, B.C.
November 4, 2025 and January 14,
2026

Place and Date of Judgment:

New Westminster, B.C.
January 19, 2026

Overview

[1] This petition concerns the enforceability of a condition (the “Condition”) that the respondent franchisor imposed on the petitioner franchisee when the petitioner wished to sell its franchise business.

[2] The petitioner alleges that the respondent unreasonably withheld its consent to the sale unless the petitioner agreed to pay a portion of the sale proceeds into trust, to be used to pay a debt owed by a separate corporation. The petitioner alleges that the Condition was unconscionable and is not enforceable. The petitioner seeks an order that the sale proceeds be paid to it.

[3] The respondent alleges that the Condition is not unconscionable, and that it is enforceable. The respondent alleges that the petitioner, the other corporation, and their principals are related and alter egos of each other. There is a possible fraudulent transfer or conveyance between them to become judgment proof. If the court does not dismiss the petition, the respondent submits that it should be sent to the trial list, or alternatively adjourned to await further developments in a separate action or action to be commenced.

[4] For the reasons that follow, I find that the sale proceeds currently held in trust shall be paid to the petitioner.

Evidence

Persons and Corporations

[5] The directors and shareholders of the petitioner are Devendra Singh and Charanjit Bhatti, in equal shares. The petitioner, Mr. Singh, and Mr. Bhatti are the franchisees, and the respondent the franchisor, under a franchise agreement dated August 23, 2016 (the “Franchise Agreement”). The Franchise Agreement concerned the operation of a Freshslice Pizza restaurant on Marine Drive in West Vancouver, BC (the “Marine Freshslice”).

[6] The other corporation connected to this dispute, but not a party to this proceeding, is Three Enterprises Ltd. (“Three Ltd.”). Three Ltd. was dissolved in

December 2019. Its directors were Mr. Singh, Mr. Bhatti, and Jimmy David. Three Ltd. entered into a franchise agreement with the respondent to operate two Freshslice Pizza restaurants – one on Pinetree Way, in Coquitlam, BC (the “Pinetree Freshslice”), and one on Mount Seymour Parkway, in North Vancouver, BC (the “Seymour Freshslice”).

Promissory Notes

[7] The petitioner, through its senior bookkeeper, tenders the evidence of three promissory notes. These are:

- a) a promissory note dated April 8, 2016, in the amount of \$118,000 plus interest at 9% per annum, signed by Three Ltd., and by Mr. Singh, Mr. Bhatti, and Mr. David in their personal capacities (the “April 8 Promissory Note”);
- b) a promissory note dated April 30, 2016, in the amount of \$120,000 plus interest at 9% per annum, signed by Three Ltd. (the “April 30 Promissory Note”); and
- c) a promissory note dated November 3, 2016, in the amount of \$142,727.20 plus interest at 9% per annum, signed by Three Ltd. (the “November 3 Promissory Note”), and by Mr. Singh, Mr. Bhatti and Mr. David. There was an issue whether these three signed in their personal capacities or as officers of Three Ltd.

[8] There is no evidence regarding the circumstances of these promissory notes. The response to application states that they were financing to enable the purchases of the Pinetree Freshslice, the Seymour Freshslice, and the Marine Freshslice. However, there is no affidavit stating this. The response to petition pleads that the amount owing under the promissory notes as of July 2022 was \$106,363.70, and that this balance was owed by Three Ltd., Mr. Singh, Mr. Bhatti, and Mr. David. Again, there is no affidavit stating this or setting out what sum, if any, was owed under each promissory note.

Pinetree Action

[9] On June 1, 2018, the respondent and Freshslice Properties Ltd. as plaintiffs, commenced an action against Three Ltd., Mr. Singh, Mr. Bhatti, and Mr. David as defendants, in SCBC Action No. 186313, Vancouver Registry (the “Pinetree Action”). The notice of civil claim (“NOCC”) alleges that the defendants entered into a franchise agreement with the plaintiff (respondent in this action) on March 31, 2016, to operate a Freshslice Pizza restaurant on Pinetree Way. The franchise agreement was alleged to have been cancelled on February 23, 2018, due to the defendants’ abandonment of the business in contravention of the franchise agreement. The NOCC alleges that the defendants signed the November 3 Promissory Note but then pleads that the defendants’ payment on that note was returned NSF on February 16, 2016, and thereafter the defendants cancelled their payments. It appears this is a typo, and the NSF date was February 16, 2018. The NOCC also pleads that the defendants signed as co-covenantors on a second assignment and assumption of lease agreement as tenants at the Pinetree Freshslice location, and that on about March 1, 2018, the defendants stopped paying rent. The NOCC seeks judgment for: (1) the balance owing under the November 3 promissory note; and (2) payment of all rental amounts due for the Pinetree Freshslice.

[10] The only promissory note that is the subject of the action is the November 3 Promissory Note.

Decision Not to Renew the Franchise Agreement for Marine Freshslice

[11] From 2016 to 2021, the petitioner, Mr. Singh, and Mr. Bhatti operated the Marine Freshslice.

[12] On January 15, 2021, the Vice President of the Marketing and Legal Affairs of the respondent, Mr. Tom Horler (now deceased) wrote to Mr. Singh and Mr. Bhatti advising that, as a result of poor evaluations of the Marine Freshslice, the Franchise Agreement would not be renewed after its expiration on July 31, 2021. The petitioner, Mr. Singh, and Mr. Bhatti were provided 90 days to sell the Marine

Freshslice, and thereafter if the restaurant was not sold, a month-to-month extension may be granted by the respondent.

[13] The petitioner, Mr. Singh, and Mr. Bhatti continued to operate the Marine Freshslice until its proposed sale in 2022.

Sale of Marine Freshslice

[14] On July 15, 2022, the petitioner entered into a contract of purchase and sale (the “CPS”) to sell the Marine Freshslice to an arms-length purchaser. The parties signed several addendums to the CPS. The two which are relevant are:

- a) an addendum dated August 18, 2022, agreeing that the buyers will hold back \$106,363.70 (the “Funds”) from the sale proceeds; and
- b) an addendum dated October 15, 2022, agreeing that the seller’s lawyer (the petitioner’s counsel) will hold the Funds in their trust account.

[15] The sale completed on November 15, 2022, and the Funds, which the petitioner seeks to be paid to it, remain in trust.

The Condition

[16] The circumstances which led to the two addendums above, and the Condition, are described below.

[17] Pursuant to the Franchise Agreement, the consent of the respondent was required for the sale of the Marine Freshslice to complete. The petitioner sought the respondent’s approval.

[18] On August 17, 2022, Mr. Horler, on behalf of the respondent, imposed the Condition, which made the respondent’s consent to the sale conditional upon the Funds being held in trust until the Pinetree Action was concluded. His email states:

Both Dev and Charanjit were signatories along with a third party to a promissory note to Freshslice which has an unpaid balance of \$106,362.70.

We are currently involved in litigation over this matter. This matter needs to be cleared up and the balance owing brought to zero for this transaction to proceed.

We are willing however to have the proceeds kept in trust until the litigation is concluded. Please make the appropriate amendment to the purchase agreement.

[19] Consistent with the Pinetree Action, Mr. Horler's email refers to one promissory note only, and states nothing about any rent owing.

[20] Mr. Singh states that the respondent imposed the Condition due to the separate dispute between the respondent and Three Ltd. He did not agree with the Condition. However, after multiple phone calls with Freshslice representatives, it was clear that they would not agree to the sale of the Marine Freshslice without this term being included. The petitioner was under pressure to complete the sale of the Marine Freshslice, as it was going into debt. Mr. Singh states that the petitioner is not indebted to the respondent.

[21] This petition was commenced on May 5, 2025.

Summary Trial in the Pinetree Action

[22] On August 8, 2025, Mr. Singh, Mr. Bhatti, and Mr. David brought a summary trial application in the Pinetree Action. Justice Sharma dismissed the claim against them. The action against Three Ltd. is extant.

[23] The entered order states that the action against the three personal defendants is dismissed. A transcript of the reasons for judgment was not filed, but counsel for the petitioner advises that Justice Sharma found that the November 3 Promissory Note was made only by Three Ltd. In other words, Mr. Singh, Mr. Bhatti, and Mr. David signed only in their capacity as officers of Three Ltd.

Arguments of the Parties

[24] The petitioner referred to clause 15.3 of the Franchise Agreement for the proposition that the respondent franchisor must act reasonably in considering whether to consent to a sale of the Marine Freshslice. The petitioner argued that the

respondent knew the sale required its consent and that the petitioner needed to sell the Marine Freshslice, and it was unconscionable for the respondent to insist on the Condition for a debt owed by Three Ltd. and not by the petitioner. The petitioner cited *Uber Technologies Inc. v. Heller*, 2020 SCC 16, and argued that an unconscionable inequality of bargaining power forced the respondents to accept the unfair Condition.

[25] The respondent argued that the petitioner and Three Ltd. were related companies because they had overlapping directorships, and that the two corporations, Mr. Singh, and Mr. Bhatti were all alter egos of one another. The response to petition alleges:

13. [The petitioner], Mr. Singh, and Mr. Bhatti jointly owned the Marine Freshslice at all material times. In the alternative, while [the respondent] is not fully aware of the transaction, Mr. Singh and Mr. Bhatti transferred their ownership of the Marine Freshslice to [the petitioner] without consideration and in bad faith at some unknown time between its purchase by Mr. Singh, Mr. Bhatti, and [the petitioner] and the sale of the Marine Freshslice (the “Transfer”). The purpose of the foregoing transfer was to improperly move assets beyond the reach of RFSP as creditor.

[26] The response to petition further pleads:

21. The Transfer was made to delay, hinder, prejudice, or defraud the respondent of its just and lawful remedies. The Transfer is therefore void and of no effect: *Fraudulent Conveyance Act*, RSBC 1996, c 163.

22. The Transfer was not made in good faith and lacked fair and reasonable consideration, which created a fraudulent preference to RFSP’s detriment: *Fraudulent Preference Act*, RSBC 1996, c 164.

[27] Finally, the response to petition pleads:

25. ... as a portion of funds advanced by way of the promissory notes was used to purchase, construct, and operate the Marine Freshslice, [the petitioner] received the benefit of [the respondent’s] loan as part-owner of the Marine Freshslice.

26. ... [the petitioner] is indebted to [the respondent] as an alter ego of Three [Ltd.], Mr. Singh, and Mr. Bhatti.

[28] The respondent argues that it plans to bring a summary trial application against Three Ltd. in the Pinetree Action, and once that is obtained, bring a fraudulent conveyance/preference action against the petitioner, Mr. Singh, and Mr.

Bhatti. The respondent argues that the hearing of this petition should be adjourned until this has taken place. In the alternative, the respondent argues that if this court does not dismiss the petition, it should be referred to the trial list.

Analysis

[29] I do not accede to either party’s analysis. After this application was heard in regular chambers, and I had an opportunity to read the Franchise Agreement, I sent a memo to counsel to reattend court to provide further submissions. They did so.

[30] Clause 15.3 of the Franchise Agreement is not the applicable clause. Clause 15.3 applies to the sale of a partnership interest in a franchisee partnership. However, the same basic obligation – that the consent of the franchisor to a sale shall not be unreasonably withheld – is contained in clause 15.1, which is the applicable clause. That clause also contains other terms which are directly relevant to this dispute. The relevant portions of that clause are:

15.1 Assignment by the Franchisee

The Franchisee acknowledges that the Franchisor in granting this franchise and the rights and interests under this contract has relied upon, among other things, the character, background qualifications and financial ability of the Franchisee. Accordingly, this contract, ...shall not be sold... without the prior written consent of the Franchisor, which shall not be unreasonably withheld.

...

In considering the request for a sale the Franchisor may consider, among other things, the information set out in the Franchisee’s application, the qualifications, good character, requisite general business experience, apparent ability to operate the Franchised Business and credit standing of the proposed transferee, and its partners, managers, as appropriate. In addition, the Franchisor shall be entitled to require as a condition precedent to the granting of its consent that:

...

(d) as of the date of the Franchisee’s request for consent and as of the effective date of Transfer there shall be no default in the performance or observance of any of the Franchisee’s obligations under this contract or any other contract between the Franchisee and the Franchisor or any Affiliate or supplier thereof ...

...

The refusal of the Franchisor to consent to the proposed Transfer based upon the non-compliance with any of the foregoing conditions shall be deemed to be a reasonable withholding of such consent. ...

[Emphasis added.]

[31] Clause 20.14 defines “Franchisee”, and includes the following:

20.14 Franchisee Defined, Use of Pronouns

The word “Franchisee” whenever used in this contract shall be deemed and taken to mean each and every person or party mentioned as a Franchisee herein ...

[32] In my view, as Ms. Singh and Mr. Bhatti were franchisees under the Franchise Agreement, if they owed money to the respondent under the Franchise Agreement or *any other contract* at the time the CPS was made, the respondent’s refusal to consent to the sale is “deemed to be reasonable withholding of such consent”.

[33] I therefore reject the arguments of the petitioner that the Condition was unconscionable because the petitioner and Three Ltd. are separate legal entities and the alleged debt concerns a different restaurant (the Pinetree Freshslice), and different litigation to which the petitioner is not a party. This argument ignores the rights of the respondent pursuant to clause 15.1 of the Franchise Agreement. These were terms agreed to by the parties, and there is no allegation that the Franchise Agreement was unconscionable.

[34] In my view, whether Mr. Singh and Mr. Bhatti were liable under any other contract is the crux of the matter. At the time Mr. Horler proposed the Condition on August 17, 2022, the liability of Mr. Singh and Mr. Bhatti was a live issue in the Pinetree Action. If Mr. Singh and Mr. Bhatti were liable, then the respondent had the right under the Franchise Agreement to withhold its consent to the CPS.

[35] I do not read Mr. Horler’s email as suggesting anything more than until the liability of Mr. Singh and Mr. Bhatti is determined in the Pinetree Action, that the Funds be held in trust. Mr. Horler states that the respondent is willing “to have the proceeds kept in trust until the litigation is concluded.” Reading the whole of the

email, which concerns only the liability of Mr. Singh and Mr. Bhatti, “the litigation” refers to the litigation against those individuals. There was no right under the Franchise Agreement for the respondent to withhold consent because Three Ltd. allegedly owed it funds. Nor did Mr. Horler suggest this.

[36] With the subsequent decision of Justice Sharma dismissing the action against Mr. Singh and Mr. Bhatti, there has now been a determination that they do not owe the debts alleged in the Pinetree Action. There is no evidence to indicate that Mr. Singh or Mr. Bhatti are indebted to the respondent on the April 8 Promissory Note or April 30 Promissory Note. Those notes were not the subject of the Pinetree Action, and there was no suggestion by Mr. Horler that Mr. Singh or Mr. Bhatti were indebted on these promissory notes or otherwise indebted to the respondent, such as for rent. The litigation against Mr. Singh and Mr. Bhatti is concluded and pursuant to the Condition, the Funds should be released.

[37] The response to petition alleges that the respondent believes Mr. Singh and Mr. Bhatti made themselves judgment proof by transferring their ownership of the Marine Freshslice to the petitioner, which is their own company. The respondent also argues that a portion of the loan funds to Three Ltd. were used at the Marine Freshslice location, and therefore the petitioner received the benefit of these. The respondent argues that the hearing of this petition should be adjourned to enable it to bring a possible fraudulent conveyance/preference action.

[38] I reject those arguments for the following reasons. First, to the extent the argument is based on the alleged liability of Mr. Singh and Mr. Bhatti making themselves judgment proof through a fraudulent preference or conveyance, Justice Sharma has found that they are not liable to the respondent. Second, no material facts are pleaded, nor is there evidence, which would support a claim that a loan to Three Ltd. – even if some loan funds found their way to the petitioner – would make the petitioner liable to the respondent. Third, there has been significant delay. The Pinetree Action has been outstanding for seven years, and the respondent has not yet obtained judgment against Three Ltd., which the respondent says is the first step

it will take prior to filing a fraudulent conveyance/preference action. Fourth, given the above, I conclude that this argument is an attempt to obtain pre-judgment security for an alleged debt of Three Ltd. without any pleaded legal basis or evidence to do so.

[39] The respondent also argues that the petitioner is indebted to it because it is the alter ego of Three Ltd., Mr. Singh and Mr. Bhatti.

[40] I reject this argument. Again, Mr. Singh and Mr. Bhatti have been found not to be liable to the respondent. Other than the fact that Mr. Singh and Mr. Bhatti are directors of both the petitioner and Three Ltd., there are no facts pleaded or evidence which would support that a corporate veil should be pierced to make the petitioner liable for Three Ltd.'s alleged debt: *B.G. Preeco I (Pacific Coast) Ltd. v. Bon Street Holdings Ltd.* (1989), 60 D.L.R. (4th) 30 at paras. 36–41, 1989 CanLII 230 (B.C.C.A.); *Edgington v. Mulek Estate*, 2008 BCCA 505 at paras. 22–26; *XY, LLC v. Zhu*, 2013 BCCA 352 at paras. 88-89.

[41] In summary, this petition can be resolved by the terms of the Franchise Agreement, which was not argued to be unconscionable. Mr. Horler's email and the Condition were consistent with the Franchise Agreement and offered a solution so the sale could proceed. As it has now been determined that Mr. Singh and Mr. Bhatti are not liable in the Pinetree Action, the respondent does not have any right to keep the Funds. Even if Three Ltd. is liable in the Pinetree Action, Three Ltd. does not come within clause 15.1 of the Franchise Agreement, and the respondent would not be able to withhold the Funds for amounts owed by a separate legal entity – whether related or not. The respondent neither pleaded material facts nor evidence that would provide a legally viable basis for the petitioner to be liable for Three Ltd.'s alleged debt.

[42] Finally, I address the respondent's argument that this matter be referred to the trial list. Pursuant to Rule 16-1(18) and Rule 22-1(7)(d) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR], the court may transfer a petition to the trial

list, or order hybrid procedures within the petition proceeding to assist in determining the issues: *Cepuran v. Carlton*, 2022 BCCA 76 at para. 160.

[43] In my view, there is no basis to do either. There was no conflicting evidence on this application, no need for credibility assessments, and only the interpretation of clear contractual terms. The amount involved is modest compared to the cost of proceeding to a trial or further hybrid procedures. Cross-examination or a trial would not elucidate the issues further. The respondent filed little evidence, simply attaching the Franchise Agreement, the three promissory notes, and corporate registry searches showing the directorships and registration status of the petitioner and Three Ltd. Ordering this matter to the trial list would be contrary to the object of the *SCCR* as set out in Rule 1-3 to secure the just, speedy and inexpensive determination of the proceeding on its merits.

Orders

[44] The Funds in the trust account of the petitioner’s counsel shall be paid to the petitioner. The respondent shall pay to the petitioner its assessable costs of this petition at Scale B.

“Norell J.”