SUPERIOR COURT

2025 QCCS 5227 (CanLII)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-17-106244-190

DATE: 29 September 2025

BY THE HONOURABLE AZIMUDDIN HUSSAIN, J.S.C.

10001325 CANADA INC.
Plaintiff
v.
CACAO 70 INC. (FORMERLY 8710759 CANADA INC.)
-and-
BING TANG
-and-
GUANG LIANG XU
-and-
YING ZHI WANG
Defendants

JUDGMENT
(Action in damages by franchisee against franchisor)

OVERVIEW

[1] The Plaintiff 10001325 Canada Inc. (**Franchisee**), a corporate vehicle for Ms. Jiahui Lu, who is its main shareholder, claims breach of contract and damages against the Defendant Cacao 70 Inc. (**Cacao 70** or **Franchisor**) in connection with a franchise agreement signed between the two companies on 17 December 2016 (**Franchise Agreement**).

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[2] The Franchise Agreement was for the operation of a Cacao 70-branded restaurant (**Franchisee's Restaurant**) at Les Promenades de Gatineau (**Gatineau Mall**).

[3] The Franchisee's Restaurant opened on 22 June 2017, but it struggled from the beginning and by 20 July 2018, the Franchisee was compelled to resiliate the Franchise Agreement and hand the Franchisee's Restaurant to the Franchisor. The latter tried to run the establishment directly but also failed to turn a profit, and therefore had to close it definitively.

[4] According to the Franchisee, the Franchisor and its ultimate directing minds, the Defendants Bing Tang, Guang Liang Xu, and Ying Zhi Wang, fraudulently provided false financial information to induce it to enter into the Franchise Agreement, thus vitiating its consent and justifying the annulment of the Agreement.

[5] The Franchisee alleges that during the operation of the Franchisee's Restaurant, Cacao 70 did not provide adequate information and the level of support required under the Franchise Agreement, thus leading to a failure of the Franchisee's Restaurant.

[6] On top of this argument, the Plaintiff also alleges that the Defendants fraudulently schemed together with a view ultimately to remove the Franchisee after it had already paid hundreds of thousands of dollars for the construction of the Franchisee's Restaurant, and then take over the establishment for their own benefit.

[7] In the context of the argument based on fraud, the Franchisee alleges that Ms. Lu and her husband, Mr. Cheng Geng, were taken advantage of as vulnerable, new Chinese immigrants by Messrs. Tang, Xu, and Wang, more established businesspeople who immigrated from China to Canada some ten years or more prior to the arrival of the couple.

[8] The Franchisee is seeking $870,221.25 in damages, primarily for expenses incurred for the construction of the Franchisee's Restaurant.

[9] By way of a cross-application, the Franchisor is seeking $115,834.61 in damages for reimbursement of construction costs, indemnity for early termination, and advertising fees.

[10] The questions that the Court needs to answer are set out below, and for the reasons set out in the next section, the Court answers each of the questions as follows:

10.1. Did the Defendants provide false information and fraudulently induce the Plaintiff to enter into the Franchise Agreement? No;

10.2. Did the Defendants fraudulently seek to take over the Franchisee's Restaurant by letting it fail? No;

10.3. Did Cacao 70 breach the Franchise Agreement, thus being liable in damages to the Franchisee? Yes, but not for the full amount claimed;

10.4. Is the Franchisee liable to Cacao 70 in damages under the latter's cross-application? Yes, but not for the full amount claimed.

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ANALYSIS

1. APPLICABLE LEGAL PRINCIPLES

1.1 Definition of franchise agreements

[11] A franchise agreement is a contract of successive performance whereby a franchisor grants to a franchisee the right to use, under the banner of the franchisor and with the support of the latter and its methods of marshaling clientele, the management system previously tested by the franchisor which, due to the competitive advantage it confers, reasonably allows the diligent franchisee to run a profitable business.[1]

[12] In this relational contract, franchisors essentially license to their franchisees their intellectual property, commercial know-how, and expertise so that the latter can operate their businesses according to the vision set out by the franchisors. The contractual obligations of the franchisors in this respect exist over the life of the franchise relationship, hence the characterization of franchise contracts as relational contracts.[2]

[13] In the present case, the Franchisee relies on the law regarding franchisors' obligation of information and disclosure vis-à-vis franchisees, which begins before the contract and lasts for the duration of the contract.[3] The Franchisee also invokes the law regarding franchisors' obligation of support towards franchisees.

1.2 Franchisors' obligation of information and disclosure

[14] Franchisors are held to a high standard regarding the obligation of information and disclosure given, among other things, the upper hand they have in the relationship with franchisees.[4]

[15] Additionally, the Superior Court has observed that franchisors' obligation of information is inversely proportional to the level of business experience of franchisees:

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1 *Provigo Distribution inc c Supermarché ARG inc* (1998), AZ-98011010 (CA) at 23, citing JM Leloup, *La franchise, droit et pratique*, 2nd ed (Paris: Delmas, 1991) at 26.

2 *Dunkin' Brands Canada Ltd c Bertico inc*, 2015 QCCA 624 at para 62; France Allard et al, eds, *Private Law Dictionary and Bilingual Lexicons—Obligations* (Cowansville, QC: Yvon Blais, 2003) sub verbo "relational contract (doctrine of)".

3 *9150-0595 Québec inc c Franchises Cora inc,* 2011 QCCS 1034 at paras 148 and 150, aff'd 2013 QCCA 531; *Camions Daimler Canada ltée c Camions Sterling de Lévis inc,* 2017 QCCA 798.

4 *9185-0529 Québec inc c Voyage Vasco inc,* 2019 QCCS 3702 at para 45.

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“En outre, le franchiseur doit agir avec plus de prudence en présence d’un candidat franchisé inexpérimenté en affaires. En effet, le risque qu’un tribunal conclue à des représentations trompeuses se trouve alors accru.”[5]

[16] The Franchisee emphasizes the obligation of information both in the precontractual phase and the phase after the contract is signed.

[17] The reference to the precontractual phase touches on the law regarding enlightened consent, error induced by fraud, and annulment of the contract.[6] In the franchise context, the issue can arise in connection with franchisors’ representations about projections of profitability of franchises.[7] Projections need to be prepared prudently, reasonably, and with due diligence, failing which these projections can be deemed to be misrepresentations.[8]

[18] Error induced by fraud vitiates consent if, but for that fraud, the party would not have signed the contract or would have done so according to different rights and obligations. Fraud can result from either positive acts, or silence or concealment.[9]

[19] The party alleging error due to fraud bears a heavy burden to establish the various elements substantiating this error, namely its determinative character, the counterparty’s intention to deceive, and the fact that the counterparty is the author of the fraud or has knowledge of it.[10]

[20] To determine whether the alleging party’s consent was vitiated by fraud, the Court must examine the situation objectively, but also taking into account the specific situation of the party alleging fraud and the context of the representations made to it.[11] The analysis must focus on the period of the signature of the contract.

[21] Where consent is vitiated by error due to fraud, the alleging party’s ostensible failure to inform itself cannot negate the effect of the fraud.[12]

[22] In a franchising context, the caselaw[13] has established the following criteria to assess whether there is error due to fraud where the franchisee relied upon sales projections provided by the franchisor:

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5 *Ibid.*
6 Articles 1399, 1400, 1401, 1407, 1422 CCQ.
7 Jean H. Gagnon, “Les projections financières remises par un franchiseur à un futur franchisé: quand sont-elles considérées comme constituant de ‘fausses représentations’ de la part du franchiseur” (1998-99), 11 CPI 659 at 9, 16.
8 *Ibid* at 11.
9 Article 1401 CCQ.
10 *Ville de Salaberry-de-Valleyfield c Construction NRC inc*, 2021 QCCA 844 at para 29.
11 *Boulineau c Mouhmouh*, 2023 QCCS 3236 at para 128.
12 *Superior Energy Management Gas, lp c 9102-8001 Québec inc*, 2013 QCCA 682 at paras 15-16.

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- Did the franchisor know at the time of signing the contract that the information in the financial projections provided to the future franchisee was false or inaccurate?

- Did the franchisor know at the time of signing the contract that it will be impossible for the future franchisee to achieve the results mentioned in the financial projections?

- Were these projections prepared in a reasonable and prudent fashion?

- Did the franchisor make other representations to the future franchisee that could have an impact on the level of confidence that the franchisee would accord to the projections?

- Did the franchisee know at the time of signing the contract that the *pro forma* statements were only forecasts and not a guarantee or a representation of the franchisor as to the financial results that could be expected from the operation of the business in question?

- Did the franchisee act in a prudent manner in reviewing the financial forecasts provided and did it adequately take into account other information that was easily available at the time of signing the contract?

- Are the differences between the financial forecasts in the *pro forma* statements and the actual financial results recorded as revenue, expenses, or investments?

- Does the future franchisee have experience in the area of activity of the franchisor?

1.3 Franchisors' obligation of support

[23] Aside from the obligation of information, the Franchisee invokes the caselaw on franchisors' obligation of continuing support to franchisees during the life of the franchise contract.[14] The obligation of collaboration is implied given the nature of franchise agreements and the imperatives of equity.[15]

[24] The Court of Appeal has highlighted the obligation of franchisors essentially to work hand-in-hand with their franchisees in the latter's commercial endeavour and to

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13 *9138-7688 Québec inc c Pan'Développement inc*, 2008 QCCS 3439 at para 90, referring to the criteria established by the Honourable Joel Silcoff in *9069-7384 Québec inc c Superclub Vidéotron ltée,* [2004] RJQ 892 (Sup Ct).

14 *Provigo Distribution, supra* at 30-31.

15 Article 1434 CCQ; *Dunkin' Brands, supra* at para 70.

"faire bénéficier celui-ci de son assistance technique, de sa collaboration donc de ses nouveaux outils ou, au moins, trouver d'autres moyens de maintenir la pertinence du contrat qui le lie pour que les considérations motivant l'affiliation ne soient pas rendues caduques ou inopérantes."[16]

[25] The obligation of continuing support is so demanding that franchisors must also see to it that economic harm to their franchisees is minimized where it might not be possible to avoid it altogether: "L'appelante, liée par une obligation de bonne foi et de loyauté à l'endroit des intimées, avait le devoir devant ce nouveau tournant [the advent of discount stores] de travailler de concert avec son franchisé, de lui fournir les outils nécessaires, sinon pour empêcher qu'un préjudice économique ne lui soit causé, du moins pour en minimiser l'impact."[17]

[26] The obligation of continuing support implicitly includes the obligation on the part of franchisors to consult with their franchisees.[18]

1.4 Contractual obligations

[27] In the present case, the Franchisee brings the existing law on franchise contracts to bear in the interpretation of article 7 of the Franchise Agreement, which constitutes the contractual foundation for its claim. Article 7 reads as follows (reproduced as is, including bold and underlining):

> **ARTICLE 7- FRANCHISOR'S OBLIGATIONS**
>
> 7.1. **Support and Services** The Franchisor will provide the Franchisee support and services including the following support and services:
>
> 7.1.1. **Initial training program** Provide to the Operator and all other employees designated by the Franchisor before the beginning of the operations of the Establishment, an initial training program for the duration deemed necessary by the Franchisor but not usually exceeding thirty (30) days, at a place designated by the Franchisor. The costs of initial training including equipment will be borne by the Franchisor. All expenses incurred by the Operator and other employees of the Franchisee during the initial training, including travel expenses, accommodation and subsistence expenses and remuneration, shall be borne by the Franchisee;
>
> 7.1.2. **Additional training program** Provide to the Operator, to the Franchisee's chef or to any other employees designated by the Franchisor, additional training programs as it may determine acting reasonably. All expenses incurred by the Operator, the chef and the other

16 *Provigo Distribution, supra* at 31.
17 *Ibid* at 33.
18 *Dunkin' Brands, supra* at para 32.

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> Franchisee's employees for this additional training, including their travel, accommodation and subsistence expenses and remuneration, shall be borne by the Franchisee;
>
> 7.1.3. **Planning assistance** Advise the Franchisee in respect of the lay out of the Location;
>
> 7.1.4. **Manuals** Lend the Franchisee a copy of the Manuals for the Term;
>
> 7.1.5. **Policies marketing** Advise the Franchisee by communicating marketing policies and promotion of the Cacao 70 Concept in regard to the Cacao 70 Products;
>
> 7.1.6. **Advertising Fund** Manage the advertising funds in accordance with Article 11;
>
> 7.1.7. **Initial inventory** Determine the quantity and the contents of the initial inventory of Products and Equipment necessary for the opening of the Establishment to the public, with which the Franchisee will comply;
>
> 7.1.8. **Supplying sources** Seek sources of competitive supply, to the extent possible, for the Products and materials. It is understood that Franchisee and the Franchisor shall comply with the provisions of Article 10 regarding the supplies.

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2. APPLICATION OF THE ABOVE PRINCIPLES TO THE PRESENT CASE

2.1 Context

[28] The social context of this litigation is an integral part of the legal arguments of the Franchisee.

[29] More specifically, the Franchisee argues that its principal, Ms. Lu, and her husband Mr. Geng, were fraudulently taken advantage of as vulnerable, new Chinese immigrants, by Messrs. Tang, Wang, and Xu, who immigrated earlier from China.

[30] Ms. Lu immigrated to Canada in 2015, and Mr. Geng arrived in 2013 as a student. In contrast, Mr. Tang immigrated in 2005, and Messrs. Wang and Xu arrived as students in 2001 and 2000, respectively.

[31] Cacao 70 is held by Cacao 70 Canada Inc., which in turn is held by Cacao 70 International Inc., which in turn is held by three numbered companies.

[32] Each of the numbered companies is held respectively by Messrs. Tang, Wang, and Xu. Mr. Tang's numbered company is held also by his wife, Ms. Jiao Yu, as second shareholder. It is this numbered company that is the primary shareholder of Cacao 70.

[33] The same individuals are directors and officers of Cacao 70: Mr. Tang is president, Ms. Yu is secretary, and Messrs. Wang and Xu are vice-presidents.

2.1.1 Ms. Lu and Mr. Geng

[34] Ms. Lu is a shareholder, director, and the president and secretary of the Franchisee. The two other individuals who are also shareholders, directors, and officers of the company did not play a material role in the events leading to the litigation. The Franchisee was incorporated specifically to operate the Franchisee's Restaurant.

[35] Mr. Geng is Ms. Lu's husband. While he does not have any formal position within the corporate structure of the Franchisee, he played an integral role with his wife in the decision to invest, and then in operating the Franchisee's Restaurant at the Gatineau Mall.

[36] Ms. Lu has a master's degree in business administration from China, in addition to a bachelor's degree in computer science. She was born in China and grew up there. She was working as a senior accounts manager in China before she immigrated to Canada to join Mr. Geng, which was in 2015.

[37] Prior to Ms. Lu's immigration, Mr. Geng was studying in Canada for a master's degree in civil engineering at the University of Ottawa, which he graduated from in 2015. He was also born in China and grew up there. He trained as a civil engineer in China and worked in construction in Beijing for 10 years, for general contractors and developers.

[38] During her career in China, Ms. Lu worked for a company that dealt with luxury brands, conducting renovations of their stores. Upon arrival in Canada, she thought it would be difficult to find a job like the accounts-manager job she had in China. She and Mr. Geng started looking for opportunities in the franchising world. They thought of the fast-food chain Subway, but heard that there was a long waiting list.

[39] Ms. Lu was particularly focused on the franchising world because she wanted to combine the fact of having one's own business with the support system that she expected a franchisor would provide in terms of guidance on how to run a business and dealing with accounting issues, especially since the couple did not have any knowledge of how to run a business in Canada.

2.1.2 Mr. Tang

[40] Mr. Tang obtained his bachelor's degree in chemistry in 2002 from a university in China and his master's degree in pharmaceutical studies in 2004 from a university in the U.K.

[41] Mr. Tang worked as a researcher for a pharmaceutical company in China for six months, and then immigrated to Canada in 2005. He and Ms. Yu bought a coffee shop

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by the name of Paris Café in 2007, on the corner of Crescent Street and Ste-Catherine Street West, in downtown Montreal.

[42] The location of Paris Café was good, but it faced stiff competition since Starbucks was across the street. In the second year of their ownership of the business, the couple decided to change the offerings to desserts, notably crêpes, and changed the name to Paris Crêpes. As Mr. Tang described it in testimony, business "went through the roof".

[43] The couple wanted to open a second outlet, but could not find the right location. Given their three-year experience and success in the desserts business, they decided to develop a new brand in that field, with students in mind as their target clientele.

[44] They focused on chocolate, all the while excluding coffee and tea since the former was subject to too much competition and the latter was difficult for Mr. Tang to get a feeling for in the market.

[45] Mr. Tang went to New York to study the market of chocolate dessert establishments. He discovered the concept of "bean to bar" chocolate, which means that the company that sells the chocolate at the retail level through restaurants is also the one that controls the manufacture of it from its start as a cacao bean.[19]

[46] The exploratory visit to New York by Mr. Tang became the inspiration for the idea of Cacao 70, a chocolate dessert restaurant. In 2021, the couple opened the first restaurant bearing the name. Sales went from the $50,000 to $60,000 range in the first year, to $1 million in the second year.

[47] As Mr. Tang tells it, the employees at the first location were very enthusiastic about the concept and they wanted to get involved in the business as franchisees. The next round of openings was by former employees who branched out as franchisees.

[48] Mr. Tang sought the advice of consultants in the world of franchising and continued his market research, travelling to New York, Seattle, and a farm in Dominican Republic. He describes the factory built to supply chocolate to Cacao 70 as the largest bean-to-bar factory in Canada. Chocolate was the constant base for all dishes offered by Cacao 70, such that even a sandwich would have chocolate fondue on the side. This was intended by Mr. Tang as the distinction with other restaurants.

[49] By 2016, Cacao 70 had eight stores. Six of these were owned by former employees who came on board as franchisees.

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19 "Cacao" denotes the bean, while "cocoa" denotes the processed form of the bean.

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2.1.3 Mr. Wang

[50] Mr. Wang came to Canada in 2001 when he was 18 years old. He studied marketing at Concordia University and graduated in 2007. He subsequently completed a certificate on management in the restaurant industry.

[51] Since his graduation from Concordia, Mr. Wang worked in the restaurant industry. As a student, he worked the night shift at Mr. Tang's café when it was called Paris Café. Mr. Tang promoted him to night shift manager. Mr. Wang eventually worked there full time and started opening the store in the mornings as well.

[52] When Mr. Tang opened Cacao 70, Mr. Wang worked at the first store on Atwater Street, on the western edge of downtown Montreal, and stayed with the business since then. He became an investor in 2012. The second location was on Ste-Catherine Street East, in the area known as the Gay Village. Mr. Wang also helped train staff at two or three franchisee locations. In this process, Mr. Wang learned a lot about chocolate, its different categories and the ingredients.

[53] Regarding the operations of the Franchisee, Mr. Wang was requested by Mr. Tang to help in trying to get a reduction of the rent charged by the landlord of the Gatineau Mall, when Ms. Lu reached out to Mr. Tang to say that sales were not high enough to be able to afford the rent. The attempt to get a rent reduction did not succeed.

2.1.4 Mr. Xu

[54] Mr. Xu studied art at the university level in China, graduating in 1999. He thereafter worked as an actor on Chinese television for a year.

[55] In 2000, Mr. Xu came to Canada and studied languages, and then enrolled in a computer science program at Lasalle College in Montreal until 2007, but did not complete it.

[56] Mr. Xu's first job in Canada was at Paris Crêpes, where he started to work as a line manager after a friend introduced him to Mr. Tang in 2007. He was then promoted to restaurant manager.

[57] Around 2011, Mr. Xu started to work at the first location of Cacao 70, at the request of Mr. Tang. His position was store manager and he assisted Mr. Wang. He describes the business as doing well, with lineups every day, especially on the weekends. He would often need to call for extra help because of how busy things were.

[58] Mr. Xu, like Mr. Wang, became an investor in Cacao 70 in 2012. He describes his involvement in the business as being motivated by the dream of being the best chocolate restaurant in Montreal and across Canada.

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[59] Mr. Xu was part of the construction process for the Cacao 70 location at the Gatineau Mall. He applied for the municipal permit regarding the signage of the restaurant to appear on the outside of the mall. During the construction process, Mr. Xu attended in person at least once per month. He dealt with questions from Ms. Lu and Mr. Geng about the construction.

2.2 Issue of whether the Franchisee was fraudulently induced to sign the Franchise Agreement

[60] The Plaintiff alleges that it was fraudulently induced by the Defendants, and specifically Mr. Tang and the broker Richard Zhou, to sign the Franchise Agreement based on information the Plaintiff characterizes as false regarding profitability and profile of Cacao 70 in the market.

[61] The Plaintiff initially did not claim nullity of the Franchise Agreement arising from the alleged fraudulently obtained consent. It amended its originating application to this end in the month prior to trial.

[62] The fraud argument of the Plaintiff seeks to engage the personal liability of Messrs. Tang, Wang, and Xu as alter egos of Cacao 70, through the various legal grounds allowing for liability of the shareholders and directors behind a corporation.

[63] Regarding the liability of shareholders, the Plaintiff seeks a finding of personal liability of the individual Defendants as shareholders through a lifting of the corporate veil of Cacao 70, arguing that the corporate form of the latter was used to dissemble fraud.[20]

[64] Regarding the liability of directors, the Plaintiff seeks to set aside the directors' immunity that would otherwise benefit the individual Defendants, and have them held liable through the various theories that allow for directors' liability, notably extracontractual liability, participation in an extracontractual fault of the corporation, and bad faith and malicious intent entailing liability in case of contractual fault of the corporation.[21]

[65] For the reasons set out below, the Court does not consider that the Franchisee was fraudulently induced to sign the Franchise Agreement.

[66] A key evidentiary aspect in the analysis is the promotion that was done by Cacao 70 to attract potential franchisees. In the case of Ms. Lu and Mr. Geng, this took the form of an ad, a Powerpoint presentation, and discussions with Messrs. Tang and Zhou.

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20 Article 317 CCQ.

21 *Constructions Serafini inc c Gold Coin Development Corp,* JE 2000-2173 (CA) at para 20.

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[67] In 2016, Mr. Geng received an online advertisement in Mandarin forwarded by a friend on the Chinese messaging network, WeChat, promoting franchise opportunities with Cacao 70.[22]

[68] Mr. Geng and Ms. Lu had already seen a Cacao 70 restaurant, in the Byward Market in Ottawa, and had a positive impression of it because it was always busy. They noticed that even on cold days, there would be a line outside the restaurant. The façade of the Ottawa restaurant was featured on the first page of the ad.

[69] Ms. Lu was excited by the ad, she felt it spoke to her. The ad was explicitly addressed to recent immigrants from China. For example, at the bottom of the first page and the top of the second page, the ad reads as follows (translated version, reproduced as is):

> In fact, in Canada, it is not difficult for young people to start a business. Examples of successful entrepreneurship among young people abound here. These successful people in our eyes are always good at seizing the opportunity: they see opportunity when others can't see it; they have already started to implement their plans when others still don't understand. Later on, when everyone sees this opportunity, they have already succeeded; when everyone starts to do it, they had already earned their first pot of gold.
>
> To some extent, international students and new immigrants in Canada have all thought about of doing business themselves. Some are struggling to find an investor; some are not aware of the business model here.
>
> Now, if you just invest a small amount of money (perhaps just the price for a small apartment), you can have your own Cacao 70 chocolate chain store in the downtown core, and have the corporate team to decide on things from site selection to business operation. If you want to start a business in Canada, will you let go such an opportunity?[23]

[70] At that time, Ms. Lu and Mr. Geng had between $200,000 and $300,000 to invest. Ms. Lu noticed the figures mentioned on page 4 of the ad: $650,000 to $850,000 for the investment amount for a Cacao 70 franchise, with the minimum investment amount being $200,000. The ad stated that the annual return on investment is 20%-25% in the first five years, and 30%-35% after that.

[71] Ms. Lu did not know any Chinese franchisors at that time, and so she felt that this franchisor, having been started by people of Chinese origin, would understand her and Mr. Geng, and it would therefore be easier to do business.

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22 Exhibit P-5.
23 Exhibit P-5.

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[72] Since Ms. Lu was in China at the time of the advertised franchising meeting, and Mr. Geng could not attend, the contact person for Cacao 70 sent them the Powerpoint presentation[24] that was used at the meeting and told them to contact Mr. Zhou.

[73] As it turned out, Mr. Zhou was a broker who found potential franchisees for Cacao 70, and in consideration, he would receive a commission based on the franchise fee if the party signed on as a franchisee. He clearly acted as an agent of the Franchisor, given the extent of his representations on behalf of the latter. He is not named as a party in the proceedings and was not called as a witness at trial.

[74] Just like the ad, the original Powerpoint presentation in question was also in Mandarin. The English translation is titled “Cacao70 Investing and Franchising Meeting”, with subheading “Ottawa Regional Session”, and composed of pages bearing the following headings (reproduced as is from the translation):

- Outline;
- Cacao70 Concept;
- In the eyes of others;
- Market Overview;
- Target Market;
- Teams of Cacao70;
- Return of Investment;
- Revenue Projection;
- Start-up Cost (Total $650-850K);
- Revenue Break down;
- How can I join Cacao70.

[75] Ms. Lu and Mr. Geng were impressed by the Powerpoint presentation, as they were with the ad before it. On the page with the heading “Market Overview”, there is a list of cities with Cacao 70 restaurants, and next to it, the texts “Revenue 1.5M ~ 2 M per year” and “Profitability 250 ~ 300 K per year (After tax)”.

[76] The page with the heading “Teams of Cacao70” is an organizational chart containing the names of 18 teams such as “Training Center”, “Store Development”, “Marketing”, and “Operation”.

[77] On 22 February 2016, Mr. Geng met with Messrs. Tang and Zhou at the Cacao 70 headquarters in Montreal, on Ste-Catherine Street East. Ms. Lu was in China at the time, and so her husband recorded the meeting so that she could hear it first-hand.

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[24] Exhibit P-6.

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[78] Mr. Tang took the lead in the discussions and was effusive about the possibilities for Mr. Geng and Ms. Lu. He told Mr. Geng that, on average over five years, the return on investment is 20% to 25% per year. The money to build the store would be the investment. He specified that the cost per store is generally around $700,000 to $800,000.[25]

[79] Mr. Tang said to Mr. Geng,

> If you want to work, you won't have any risk. There is a large amount of salary there. Our store manager's annual salary is $50,000, many of them reach 60,000. Only his salary is already $60,000. Think about it. On top of that, you don't own a store alone. You might need to grab two other investors with you. The one working in the store has no risk at all. You don't even need to think about it.[26]

[80] Mr. Geng left the meeting very reassured and updated his wife about it. Both agreed to continue their due diligence upon her return from China.

[81] At the beginning of March 2016, Ms. Lu visited six Cacao 70 restaurants in Ottawa and Montreal. At one store in Ottawa and another in Montreal, Ms. Lu was able to speak with the respective franchisees. The one in Montreal told her that the business is doing well but a lot of effort is required. The one in Ottawa told her that the business is profitable, but not by much, and one of the owners would have to be involved as manager.

[82] In light of these discussions, Ms. Lu and Mr. Geng had more questions for Messrs. Tang and Zhou, notably as to whether the financial projections in the ad and Powerpoint presentation were realistic.

[83] On 29 March 2016, the couple met with Messrs. Tang and Zhou, again at the headquarters of Cacao 70. As requested by Mr. Tang previously, Mr. Geng handed him a cheque of $50,000 as a refundable deposit in order to qualify for the waiting list to become a Cacao 70 franchisee.[27]

[84] Mr. Tang mentioned that one of the Ottawa stores, the one close to Lansdowne Park, and the store in the Distillery District in Toronto, broke even in the first month and then made a profit after that. At one point, Mr. Tang and Ms. Lu were exchanging about profitability and the time-period within which it would be reasonable to expect to attain it.

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25 Exhibit P-43A.
26 Exhibit D-13 at line 286.
27 Exhibit D-6.

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[85] Ms. Lu said, “I understand, you can’t tell me after three months that it will be profitable”, to which Mr. Tang replied, in referring to Mr. Geng, “Because he says that he wants to work in the store, so there is no risk, no risk at all”.[28]

[86] To this, Ms. Lu asked, “Is that right?”, and Mr. Tang answered, “Yes, because your salary is very high and is in the store, our store manager has a salary of up to $50,000.”

[87] The Franchisee attaches much weight to Mr. Tang’s mention at both meetings of there being no risk, and makes the argument that this was a key inducement to enter into the Franchise Agreement.

[88] In response, Mr. Tang testified at trial that what he meant was that there was no risk to Mr. Geng and Ms. Lu in terms of their individual incomes, but that this was not a description of the business as a whole.

[89] In May 2016, Mr. Tang presented to Ms. Lu some possible locations for the opening of a Cacao 70 franchise, all in Ontario. Ms. Lu visited the sites and expressed an interest for the one on Yonge Street in Toronto, a commercial artery and that city’s longest street.

[90] However, after analyzing the lease being proposed by the owner of the site in Toronto, Ms. Lu decided against it since there was a provision in it giving the owner the right to terminate the lease after the third year in order to add more floors to the building.

[91] On 20 August 2016, the Franchisor published an ad promoting a location in Gatineau. A second ad, on 9 September 2016, described the location as having a total seating capacity of 55-65 people, and specified a projected “store budget” of $550,000 to $650,000, and a projected opening date of February 2017.[29]

[92] The glowing description of the location reads as follows (reproduced as is from the English translation of the original Mandarin version):

> Les Promenades Gatineau, the only large high-end shopping mall in this area […]
>
> This location is quite similar as the cacao 70’s successful store in the shopping mall of Quebec City. The estimated revenue of Quebec City store is $1.5 million. The head office of cacao 70 is very confident in this Gatineau location.
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> In addition, compared with the rents of other shopping malls across Canada, the cost efficiency of rent here is very reasonable. While the monthly rent of a

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28 Exhibit P-43B at 23:38-23:46.
29 Exhibit P-10A.

> similar mall in Toronto would cost $15,000 at least, the monthly rent here costs only $9,500.

[93] Mr. Tang promoted the Gatineau option to Ms. Lu and Mr. Geng, and to this end, he showed them sales data from a franchise in Sainte-Foy, in suburban Quebec City, and said that the Gatineau market is similar. According to Ms. Lu, Mr. Tang told them that they should budget to spend $600,000 on construction and working capital.

[94] The couple then did their due diligence on the Gatineau location. They visited the Gatineau Mall multiple times, and analyzed the data from the Sainte-Foy location. Based on this, and the positive encouragement of Mr. Tang, they decided to go ahead.

[95] Between October and December 2016, two other shareholders came on board with Ms. Lu, and the Franchisee was incorporated.

[96] On 17 December 2016, the Franchisor and Franchisee signed the Franchise Agreement, Mr. Tang and Ms. Lu signing on behalf of their respective companies. The Franchisee was incorporated in late November in preparation for the Franchise Agreement. Aside from Ms. Lu as 50% shareholder, the other shareholders were Jianmin Zhang, resident in China, and Hanbin Lin, resident in Ottawa. The latter two shareholders remained mostly silent investors throughout.

[97] According to Ms. Lu, no clause of the Franchise Agreement could be negotiated, hence making it into a contract of adhesion.[30] The Franchisor disputes this, and calls the Franchise Agreement a contract by mutual agreement,[31] pointing to the fact that some verbal derogations from the contract were indeed arrived at during discussions between the parties.

[98] For example, at the behest of Ms. Lu and Mr. Geng, it was verbally agreed with Mr. Tang that if the Franchisee did not break even in the first year, no royalties would be charged under article 5.2 of the Franchise Agreement. The Franchisor respected this verbal agreement by crediting back to the Franchisee in November 2017 the one payment it made in August 2017, and then not charging for royalties again.

[99] The Franchisor admits that there was a refusal to formally modify article 5.2, but argues that since royalties are at the core of how the contract generates revenue for the Franchisor, the refusal does not transform the Franchise Agreement into a contract of adhesion.

[100] The Court concludes that the evidence does not support a finding of the Franchise Agreement being a contract of adhesion. The Franchisor agreed to a verbal derogation from article 5.2, and it respected that agreement. In any event, such a characterization would be of no consequence since there is no issue of interpreting a

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30 Article 1379 CCQ.
31 *Ibid*.

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vague or ambiguous contractual provision or of annulling a clause alleged to be abusive.

[101] The parties do not dispute the interpretation of article 7 of the Franchise Agreement. Rather, the Franchisee argues that the Franchisor did not abide by its obligations thereunder, whereas the Franchisor argues that it did. The debate is over the application of article 7 to the facts, rather than an interpretation of the provision.

[102] Returning to the argument of the Franchisee regarding error due to fraud, the Court summarizes as follows the four main points of the Franchisee in support of its argument that it was fraudulently induced to sign the Franchise Agreement:

102.1. The online ad[32] that Ms. Lu and Mr. Geng first saw about franchising opportunities with Cacao 70 was misleading because it gave the impression that the Franchisor has been in the restaurant business longer than it actually was, and because no market study backed up its claim of being a pioneer and leader in the market of chocolate restaurants;

102.2. The online ad and the Powerpoint presentation[33] were misleading as to the financial projections;

102.3. The Powerpoint presentation gives an impression of a sophisticated and well-developed corporate structure, notably through its page with the organizational chart depicting 18 departments, even though most of these were non-functional;

102.4. Mr. Tang told Ms. Lu and Mr. Geng that there was no risk with the project.

[103] The Court addresses each of these four points as follows and concludes that the Plaintiff does not discharge its burden to establish that there was fraud, and to establish that but for the error due to fraud, it would not have signed the Franchise Agreement, or would have contracted on different terms.[34]

[104] The Court's analysis is informed by the legal principles and criteria reviewed in the section above.

[105] Regarding the first point, the Franchisee points out that the ad mentions the opening of the first Cacao 70 restaurant as being in 2011, when in fact the first franchisee restaurant opened in 2014. The comparison is one of apples and oranges. The reference to 2011 in the ad is a reference to this first Cacao 70 store, not to a franchisee store. Mr. Tang opened the first Cacao 70 restaurant in 2012, and so the ad

32 Exhibit P-5.
33 Exhibit P-6.
34 Article 1401 CCQ.

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is not materially inaccurate. In any event, whether Cacao 70 began in 2011 or 2012 was not determinative for Ms. Lu and Mr. Geng.

[106] As for there being no market study backing up the claim in the ad that Cacao 70 is a pioneer and leader in the market of chocolate restaurants, the passage in question reads as follows (reproduced as is from the English translation of the original Mandarin version): "Cacao70, a chocolate-based theme restaurant, has devoted itself to the operation of chocolate restaurants for 5 years. It is a leader of the chocolate eatery brand pack in Canada and the pioneer and a forerunner in the Canadian chocolate restaurant concept."[35]

[107] The Court sees no fraudulent misrepresentation in this and does not see why a market study would be necessary in order to make the assertion that the business is a pioneer and a leader. The Court heard Mr. Tang's testimony as to the ways in which he considered Cacao 70 to be distinct. He honestly believed that it was a pioneer in Canada, for example, because of the "bean to bar" concept. At worst, the assertions fall within the realm of mere puffery.

[108] Moreover, Ms. Lu and Mr. Geng were not relying on some kind of special distinction in the market profile of Cacao 70. It was not determinative for them. It is to be recalled that they looked at the option of buying a Subway franchise, and so it can be inferred that what was important for them was to get into a franchise business, regardless of this or that characteristic in the market.

[109] Regarding the second point, the Court considers that whatever exaggerations there were in relation to financial projections, for example, revenue of stores being $1.5 to $2 million,[36] even though the maximum level reached was $1.7 million by only one store, Ms. Lu and Mr. Geng did not rely on specific numbers. The specific level of revenue was not determinative for them.

[110] Rather, they relied on the big picture depicted by the ad and the Powerpoint presentation, namely that Cacao 70 stores are generally profitable. They were also aware of the nuance, obtained through their own investigation with other franchisees, that the profit margins were not significant and that the owners needed to be directly involved as managers.

[111] More importantly, the litigation is not about a failure to have met a certain level of profitability. The fact that the revenue range of $1.5 to $2 million was inaccurate would be relevant if the Franchisee were suing because its revenues did not reach $2 million, for example, and it found out afterwards that the actual highest revenue was $1.7 million.

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35 Exhibit P-5 at 2.
36 Exhibit P-6 at 5.

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[112] The litigation is about the Franchisee's Restaurant having failed for the Plaintiff within the first year. That failure is attributable to the Franchisor's breach of its obligation of support, as analyzed further below, and not the Franchisor's representations at the time of signing the Franchisee Agreement. The evidence does not support the assertion that the Franchisee would not have signed had the revenue range in the Powerpoint presentation been $1.5 to $1.7 million, rather than $1.5 to $2 million.

[113] Regarding the third point, namely that the Powerpoint presentation gives an impression of a sophisticated and well-developed corporate structure, notably through its page with the organizational chart depicting 18 departments, even though most of these were non-functional, the Court again finds that this was not determinative for Ms. Lu and Mr. Geng.

[114] What was important for them was the feeling of being supported. After the ad, the Powerpoint presentation, and their discussions with Messrs. Tang and Zhou, they felt that they were going to be supported. This was the big picture.

[115] The fact of there being 18 departments on the organizational chart in the Powerpoint presentation is not what swayed their decision. The chart could easily have shown a mere two or three departments, and it is likely that Ms. Lu and Mr. Geng would have still arrived at the signing of the Franchise Agreement with the feeling that the Franchisor would support the Franchisee.

[116] Regarding the fourth point, namely the fact that Mr. Tang mentioned during the two meetings that there was no risk, the Court does not accept the Plaintiff's characterization of this as fraudulent misrepresentation. The Plaintiff tried to get much evidentiary mileage out of this, to the point of engaging in a debate with the Defendants about the admissibility of new evidence of a recording of the meeting of 22 February 2016, and thereby extending the trial beyond the initially scheduled dates.

[117] In the end, this bit of evidence is underwhelming. Frankly, no reasonable person in the circumstances of Ms. Lu and Mr. Geng would interpret Mr. Tang's words to mean that the franchise is a zero-risk business. There is no such thing as a zero-risk business, and the reasonable person knows this.

[118] The Court considers that if Ms. Lu and Mr. Geng actually thought that Mr. Tang was saying that there is no risk inherent in starting the franchise, this was an inexcusable error.[37] With their level of education, especially Ms. Lu having an MBA and Mr. Geng having worked in private construction, they should have known that there is no such thing as a business with no risk.

[119] While the caselaw provides that the concept of inexcusable error does not apply where there has been a fraudulent misrepresentation,[38] the Court in the present case

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37 Article 1400 CCQ.

38 *Superior Energy, supra* at para 15.

does not accept in the first place that Mr. Tang's mention of "no risk" was a fraudulent misrepresentation.

[120] No intention to deceive on the part of Mr. Tang can be inferred from the evidence. There is nothing serious, precise, and concordant to this effect.[39]

[121] To the extent that Ms. Lu and Mr. Geng misunderstood the point of his statements and jumped to the conclusion that there was no risk in investing in the franchise, this was an inexcusable error of interpretation of what Mr. Tang said.

[122] Since they should have known that there is no such thing as a zero-risk business enterprise, Ms. Lu and Mr. Geng should have interpreted Mr. Tang's words the way they were intended and the way a reasonably prudent person would understand them, namely that what he was referring to was personal income within the context of the business, as opposed to guaranteed profitability of the entire business.

[123] In other words, if Mr. Geng works as a manager in the franchise, there is no risk to the personal income he will draw from the revenue generated by the operation of the franchise. This does not mean that the franchise as a whole is guaranteed to survive or to be profitable forever.

[124] The proper interpretation of what Mr. Tang said should have been obvious when the couple spoke with the franchisee who told them that operating at a profit is possible as long as they are involved as managers. That is clearly circumspect and contingent advice, which does not echo the unconditional understanding of Ms. Lu and Mr. Geng regarding Mr. Tang's statements about there being no risk.

[125] If working in the store as a manager elevated the business prospects of the franchise to the level of "no risk", the franchisee to whom Ms. Lu and Mr. Geng spoke would have said as much. No such thing was said by that franchisee, and so even if the couple misunderstood the meaning of what Mr. Tang said, their meeting with the franchisee should have served as a corrective to that misunderstanding.

[126] The evidence does not support the conclusion that, but for Mr. Tang's statement about there being no risk, the Plaintiff would not have signed the Franchise Agreement. To the contrary, the evidence supports the conclusion that Ms. Lu and Mr. Geng considered the franchise to be aligned with their objectives, even if Mr. Tang had said nothing about risk.

[127] For all these reasons, the Court rejects the Plaintiff's claim of vitiation of consent due to error induced by fraud.

[128] That being said, it turns out as a matter of fact that Mr. Geng's income was actually not secure, and both he and Ms. Lu found themselves working without pay by

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[39] Article 2849 CCQ.

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the end of April 2018 given the crisis situation with the cash flow of the Franchisee's Restaurant. The Franchisee was in a significant deficit position at the end of the first year, which the Court concludes below was due to the faults of the Franchisor in not providing the contractually required level of support.

[129] However, the difficult situation by the end of April 2018 is to be analyzed within the context of the faults committed by the Franchisor after the signing of the Franchise Agreement, as opposed to the context of alleged fraudulent misrepresentation prior to signing. To put it another way, the fact that Mr. Tang's statement about Mr. Geng's salary not being at risk ended up being erroneous is a consequence of the Franchisor's three faults described below, rather than constituting a fraudulent misrepresentation at the time it was made.

2.3 Issue of whether the Defendants had a fraudulent intent to take over the Franchisee's Restaurant

[130] After the alleged fraudulent inducement to sign the Franchise Agreement, the second part of the fraud claim alleged by the Plaintiff is that the Defendants intentionally let the Franchisee's Restaurant fail so that they could take it over, and thereby obtain a fully functioning store after getting the Plaintiff to pay hundreds of thousands of dollars to start the franchise and build the physical premises of the business.

[131] The Court concludes that there is no basis in the evidence to find, as the Plaintiff alleges, that a fraudulent scheme was put into place by the Defendants in order to induce the Franchisee to spend money on the construction of the restaurant at the Gatineau Mall, force it to fail by not providing adequate support, and then take it over once the Franchisee pulled out of the project.

[132] The Franchisor itself had to shut down the Franchisee's Restaurant very soon after taking it over from the Franchisee, and so there was not even any benefit to it, were it to be the case that it manoeuvred in such a way to sabotage the franchise.

[133] If the Plaintiff made the fraud argument because it was concerned that the principals of Cacao 70 might have structured the corporate entity in a way to make it judgment-proof, there are other recourses to deal with such a situation. For the same reason, the Court disregards Mr. Tang's answers on cross-examination regarding his assets.

2.4 Cacao 70's obligation of information

[134] The Plaintiff's argument regarding Cacao 70's obligation of information has already been canvassed in the section further above addressing the question of whether the Franchisee was fraudulently induced by the Franchisor to sign the Franchise Agreement.

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[135] The Plaintiff does not make an argument about the breach of the obligation to inform that is distinct from the point about error due to fraud. In other words, the Plaintiff does not point to faults of Cacao 70 as far as the latter's obligation to inform is concerned in the period after the signature of the Franchise Agreement.

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2.5 Cacao 70's obligation of support

[136] It is the Plaintiff's argument regarding Cacao 70's obligation of support that covers the period after the signature of the Franchise Agreement. It is in respect of that period that the Plaintiff alleges that Cacao 70 breached its obligation of support.

[137] As set out further above, the caselaw provides that franchisors must support their franchisees. The Franchise Agreement echoes the caselaw in stipulating contractually at article 7.1 that the Franchisor "will provide the Franchisee support and services".

[138] The article lists the following things: an initial training program, additional training programs, planning assistance regarding the layout of the restaurant, manuals, marketing policies, management of the advertising fund, determination of the quantity and contents of the initial inventory, and sources of competitive supply.

[139] The word "support" is not defined in the Franchise Agreement. The word "services" is defined at article 2.1.26 as follows: "'Services' means all services including marketing authorized by the Franchisor, as well as any modifications, additions or withdrawals of such services as may be established by the Franchisor from time to time".

[140] The caselaw cited above allows for a more complete understanding of the meaning of "support" and "services" in the franchising context.

[141] The Plaintiff invokes three faults on the part of Cacao 70 on the issue of the latter's obligation of support:

141.1. Failure to provide a formal structure of support and competent personnel for the Franchisee;

141.2. Failure to protect the franchise network and the Franchisee;

141.3. Failure to follow-up on the Franchisee's requests for support.

[142] For the reasons set out below, the Court agrees with the Plaintiff that Cacao 70 breached its obligation of support.

[143] A succinct way to describe what happened is that each party went into the project with a different understanding of what the other must do. Mr. Tang testified that Cacao 70 should not be seen as a "daycare", but rather as a school where the Franchisor gives the tools so that the Franchisee can run its business.

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[144] The Court finds that the Franchisee did not go into the project thinking it would be like a daycare, or that it could just sit back and count its profits. Ms. Lu and Mr. Geng were ready to work hard, but they were not given the level of support that they expected under the Franchise Agreement. Their expectations of support were reasonable according to the applicable legal criteria.

2.5.1 Events after the signature of the Franchise Agreement

[145] To understand the Court's reasoning leading to the above conclusion, it is necessary to begin with the factual chronology of events between the signature of the Franchise Agreement in December 2016 and the failure of the Franchisee's Restaurant in July 2018.

[146] At the time of the signature of the Franchise Agreement, the Franchisee was obliged under article 5.1 to pay an initial franchise fee to the Franchisor in the amount of $50,000 plus taxes, which it did.

[147] More expenses were on the horizon because the Franchise Agreement contemplated the opening of the Franchisee's Restaurant on 1 June 2017, and article 14.1 required the Franchisee to "perform and carry out the construction and layout of the Premises, at its expense and risk".

[148] As it happens, it is the Franchisor who took charge of the construction process with a general contractor, with the Franchisee having to pay the related invoices. The fact that the Franchisor took charge of the construction counts in its favour and is an example of the Franchisor actually providing support where it was clear that Ms. Lu and Mr. Geng were not in a position to know how to manage the construction in a way that would meet the Franchisor's requirements.

[149] The invoices from the Franchisor to the Franchisee related to the construction of the Franchisee's Restaurant took the form of a series of laconic invoices with a lump sum amount of $100,000 each, with the exception of one in the amount of $70,000.[40] The invoices were issued over a period of months, starting from 13 December 2016 to 15 June 2017. The invoices contain a description with the address of the Gatineau Mall and below it, "Location construction deposit", followed by the sequential number of the deposit, i.e. deposit #1, #2, etc.

[150] The total dollar amount for construction invoiced by Cacao 70 to the Franchisee was $570,000. This was paid by the Franchisee.[41] The 13 December 2016 invoice for the franchise fee was $50,000, plus taxes, for a total of $57,487.50, which was also paid by the Franchisee, on 4 January 2017.[42] The total expense incurred by the Franchisee

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40 Exhibits P-13, P-14.
41 *Ibid.*
42 Exhibit P-7.

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was $627,487.50. Ms. Lu and Mr. Geng had budgeted for $600,000 since that is what Mr. Tang told them when they discussed the Gatineau location as an option in 2016.

[151] In the spring of 2017, Ms. Lu and Mr. Geng felt that they were not receiving adequate details about the cost breakdown of the construction expenses.

[152] On 11 May 2017, Mr. Geng wrote to Tina Jiang, a Cacao 70 administrative assistant whom the couple had met when they visited the head office, informing her in response to her request for $100,000 for construction costs that "up to now, according to the original budget of $600,000, a total of $450,000 has been invested in our store. After $100,000 is transferred on Monday, total cash available for immediate use at the hands of all our shareholders is $50,000. Is it possible to get an estimate of additional investment for the next step until opening so that preparations can be made?" (reproduced as is from the certified translation of Mandarin to English).[43] There is no evidence of a response to the question.

[153] By 11 May 2017, the Franchisee had paid a total of $370,000 in construction deposits,[44] plus $57,487.50 for the initial fee. On 15 May 2017, it paid another $100,000 in satisfaction of an invoice of the same date.[45]

[154] On 15 June 2017, the Franchisor sent an invoice for a construction deposit in the amount of $100,000,[46] thus taking the total of the Franchisee's payments to $627,487.50, i.e. beyond the $600,000 that the Franchisee had budgeted for. When Mr. Geng contacted Ms. Jiang to express concern about this, the latter added to the concern by saying that yet another invoice, in the amount of $71,000, would be issued soon.

[155] When Ms. Lu contacted Mr. Tang about the budget overrun, he was at first surprised at the amount and said would verify, but then called back to say that there was no mistake and that this was the cost. He made a distinction regarding the $50,000 franchise fee.

[156] The construction process delayed the grand opening of the Franchisee's Restaurant. It was scheduled to open "approximately" on 1 June 2017, according to the Franchise Agreement. This was postponed to 15 June, and then to 20 June, and then again to 22 June. The postponements were not adequately explained, according to Ms. Lu.

[157] In Ms. Lu's email of 20 June 2017 to Mr. Tang expressing concern about the postponements, she also raised the fact that the occupancy permit from the City of Gatineau was still not received and that she was told by the Franchisor that everything

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43 Exhibit P-12.
44 Exhibit P-13.
45 *Ibid.*
46 Exhibit P-14.

would be all right since the file was apparently submitted three months ago. She specified that “we don’t have experience or knowledge on this issue, and we will rely on your judgement” (reproduced as is from the uncertified translation of Mandarin to English).[47]

[158] On 11 July 2017, Ms. Lu and the two other shareholders of the Franchisee met with Mr. Tang to discuss the financial situation. The Franchisee would not be able to pay the $71,000 mentioned by Tina Jiang in June, and so the parties agreed upon a solution.

[159] The Franchisee would pay $51,000, and the balance of $20,000 would take the form of a loan from the Franchisor and would be reimbursed by the Franchisee over a period of three years. The loan document was signed on 2 August 2017.[48] This also contained an amount of $6,200.60 to cover the first chocolate order. The amount actually paid by the Franchisee under this agreement was $17,478.01, leaving an unpaid balance of $39,722.59.[49]

[160] Ms. Lu was of the opinion by this point that had she known the project would involve an investment of around $700,000, as opposed to the $600,000 she was told by Mr. Tang, she would not have accepted to be 50% shareholder of the Franchisee. She felt it was impossible at this stage to back out.

[161] The above is a description of the construction phase. It did not go according to budget or to schedule, and this was not due to negligence of the Franchisee.

[162] That being said, the Court does not count the construction problems as being a fault of the Franchisor. There is not enough evidence to support this conclusion, which would require a delay analysis and details about the critical path of the construction project.

2.5.2 First fault of the Franchisor

[163] The first fault of the Franchisor that the Court considers to be part of the breach of the contractual obligation to support the Franchisee relates to the arrival of competitors. In parallel to the construction process, two potential competitors appeared in the Gatineau Mall.

[164] In February or March 2017, when Ms. Lu and Mr. Geng went to the Gatineau Mall to check on the progress of the construction, they saw a poster for Chocolato, a restaurant specializing in chocolate products.

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47 Exhibit P-15.
48 Exhibit P-16.
49 Exhibit D-7.

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[165] From the poster, they could see that the same food as Cacao 70 was being offered. It was located in the food court, some 30 metres from where the Franchisee's Restaurant would be.

[166] This factor was not part of their initial assessment of the suitability of the location for their restaurant. Ms. Lu testified that no one from Cacao 70 told her about the upcoming arrival of Chocolato, and that if she had known about it at the time of signing the Franchise Agreement, she probably would not have signed and would have at least asked the Franchisor about its plans to deal with Chocolato. She says she informed Cacao 70 in February or March 2017 about the upcoming arrival of Chocolato.

[167] In July 2017, a breakfast-and-brunch restaurant, by the name of Allô Mon Coco, also opened in the Gatineau Mall. The construction took place in June. According to Ms. Lu, the arrival of this restaurant led to an immediate and significant drop in revenue of the Franchisee. Ms. Lu noted that Allô Mon Coco sold waffle and chocolate fondue, as did Cacao 70.

[168] According to Ms. Lu, Cacao 70 knew before the signing of the Franchise Agreement that Allô Mon Coco would open. As evidence for this, she cites the fact that, on 13 June 2018, Mr. Wang admitted to the landlord of the Gatineau Mall when trying to negotiate a reduction in the rent for the Franchisee, that the Franchisor was aware of the upcoming opening of Allô Mon Coco.

[169] Mr. Wang's testimony contradicts this since he says that he learned of Allô Mon Coco and Chocolato only when Ms. Lu informed him of them when preparing for the meeting with the landlord in June 2018.

[170] The Court must therefore make a determination of credibility. The Court concludes that Ms. Lu's version is more credible. It is difficult to imagine that in the Franchisor's discussion with the landlord in negotiating the lease, dated 4 April 2017,[50] the upcoming opening of Allô Mon Coco would not have been discussed.

[171] In fact, the provision concerning the Franchisee's Restaurant's protection from competition is drafted in such a way as to reflect how Messrs. Tang and Wang saw both Chocolato and Allô Mon Coco as distinct from Cacao 70, and moreover, there is a grandfather clause that also exists in case an establishment that already has a lease is deemed to be a competitor (bold in original):

> Landlord covenants and agrees that during the **1st Lease Year of the Term**, it shall not lease or permit the use of any other sit down restaurant having an exterior entrance on the parking lot of the Project, as it exists on the Commencement Date, for the principal use of the retail sale of desserts (the "Covenant").

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50 Exhibit D-1.

> Notwithstanding the foregoing, it is understood and acknowledged by the parties that the Covenant shall have no application to:
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> […]
>
> the rights of any other tenants under existing leases or agreements and the premises or business of any tenant (and their successors and assigns or any replacement tenant) operating in the Project at the date of this Lease […][51]

[172] The testimony of both Mr. Tang and Mr. Wang hewed closely to the above description of Cacao 70 such that the Court infers that they were aware of the upcoming arrival of Chocolato and Allô Mon Coco when the Franchisor signed the lease.

[173] For example, Mr. Tang testified that Chocolato is not a dine-in, sit-down restaurant, whereas Cacao 70 is. He said that the former involves chocolate dipping sauces with candy, with no table service or serving dishes. He admitted that Chocolato sold hot chocolate like Cacao 70, but still asserted that it is not a competitor.

[174] Mr. Wang testified that Chocolato is an ice-cream store. In contrast, as he explained it eloquently if not poetically, Cacao 70 is a place for sharing a moment, using chocolate as a medium, which has existed for hundreds of years. He explained that chocolate was originally used as food for deities and kings in what became known as Latin America. Europeans took chocolate back to Europe and it became candy there.

[175] Mr. Wang went on to say that chocolate goes together with coffee and tea culture, it is not just candy, and that products like dark chocolate are good for health. He added that chocolate can be added to different dishes, like salad. An objective of Cacao 70 was to make sure that people understood the different ways in which chocolate could be used as food.

[176] As for Allô Mon Coco, Mr. Tang also distinguished between it and Cacao 70. He emphasized that the latter is a chocolate-based dessert place, open from 9:30 a.m. to 9:30 p.m., whereas Allô Mon Coco is a breakfast place that opens from 7 a.m. to 3 p.m., or 6 a.m. to 1 p.m.

[177] However, Mr. Tang did admit that both offer brunches. He downplayed this by saying that brunches are not the focus for Cacao 70, desserts are the focus.

[178] Amidst all these fine distinctions without expert guidance, what stands out for the Court is the fact that the testimony conforms to the clause in the lease such that Chocolato and Allô Mon Coco fall outside the definition of a competitor that would be excluded from Gatineau Mall in the first year. This leads the Court to the conclusion that the Franchisor knew about the two establishments and had them in mind when agreeing to the clause with the landlord.

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[51] Exhibit D-1 at 70-71.

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[179] As for Messrs. Tang and Wang's substantive view that Chocolato and Allô Mon Coco were not competitors of Cacao 70, the Court states the following. The chocolate theme is common to both Chocolato and Cacao 70, and the brunch theme is common to both Allô Mon Coco and Cacao 70.

[180] Regarding Allô Mon Coco, the Court also has the testimony of Ms. Lu, who said that there was an immediate drop in revenue after it opened in July. This is borne out by the sales data in the Franchisor's exhibits,[52] which shows that the Franchisee's sales started at $18,646.55 in late June 2017 upon opening, then climbed to $44,634.42 in July, and then dropped to $33,223.72 in September 2017, i.e. after Allô Mon Coco's July opening.[53] The sales figures for the months subsequent to September 2017[54] and until July 2018 were the following:

- November 2017: $34,471.75;
- December 2017: $36,652.24;
- January 2018: $34,221.41;
- February 2018: $31,809.54;
- March 2018: $35,978.66;
- April 2018: $29,673.99;
- May 2018: $23,749.19;
- June 2018: $21,789.26;
- July 2018: $24,191.63.

[181] The Court is reinforced in its conclusion about the overlap between Cacao 70, Chocolato, and Allô Mon Coco by reviewing the "Activities" provision at Section 0.01.01 of the Sublease Agreement signed by the Franchisor and Franchisee on 30 May and 1 June 2017.[55] In that provision, the Franchisee's activities are stipulated as follows, reproduced as is except that bold is added to show the overlap with Chocolato as a dessert place and Allô Mon Coco as a brunch place:

> SUBLESSEE's principal use shall be for the sale and consumption in a restaurant setting of various chocolate based deserts, dishes, and drinks. The **desserts shall include but not be limited to chocolate cakes, ice cream, and chocolate fondue**. The **dishes shall include but not be limited to chocolate pizzas, chocolate waffles and crepes**. The drinks shall include but not be limited to hot chocolate (with and without alcohol), chocolate milk, chocolate shakes, and chocolate beer. The Tenant shall also have the right to sell as ancillary use items such as but not limited to smoothies, various types of coffee and tea, **omelets**, sandwiches, salads, parfaits, fruit plates, beer and alcohol.

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52 Exhibit D-9.
53 The sales figure for August 2017 does not appear in exhibit D-9.
54 The sales figure for October 2017 does not appear in exhibit D-9.
55 Exhibit D-1 at 2.

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[182] The relevant point is that the two competitors did not exist at the time that the Franchisor proposed the Gatineau location, and Ms. Lu and Mr. Geng did their due diligence. The competitors emerged after the Franchisee had already signed the Franchise Agreement, and therefore the Franchisor had an obligation to support the Franchisee in specifically countering the competition, rather than convincing itself that the two establishments were not competitors.

[183] In this regard, the question of whether Messrs. Tang and Wang knew about the upcoming arrival of Chocolato and Allô Mon Coco, and when the Franchisee told the Franchisor, is secondary. The main point, as a matter of franchise law, is that the Franchisor had an obligation to inform itself of the potential competition and proactively support the Franchisee in countering the competition.

[184] As cited above, the Court of Appeal in *Provigo Distribution* stated that the franchisor in that case had an obligation to work with the franchisee to minimize the economic impact of the arrival of competitors, by supplying the franchisee with the necessary tools.[56]

[185] It is important to distinguish a businessperson who starts an enterprise anew and one who starts a franchise. The trade-offs are obviously different in each scenario, and the franchisee who pays fees and royalties to its franchisor agrees to the ensuing reduction of its profit margin but expects certain services in return, one of them being support in dealing with competitors.

[186] The Court ascertains from the evidence that the Franchisor did nothing to address proactively the potential competition from the two establishments.

[187] If Messrs. Tang and Wang were so confident that Chocolato and Allô Mon Coco presented no risk to Cacao 70, they could have commissioned a market study to put Ms. Lu and Mr. Geng at ease.

[188] Such a report would have likely had the added benefit of helping the Franchisee market itself in the Gatineau Mall over the course of many months in order to emphasize the distinction between it and the other two restaurants, if indeed such distinctions could be substantiated. Through such a study, Ms. Lu and Mr. Geng could have learned of consumer preferences and adjusted their menu and marketing accordingly.

[189] In fact, it seems that no market study was ever done by Cacao 70 in order to understand where it finds itself in the market, what consumers' preferences are, and who its competitors are. The Plaintiff characterizes this as amateurish. The Court considers it inconsistent with the Franchisor's contractual obligations towards the Franchisee.

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[56] *Provigo Distribution, supra* at 33.

[190] What the Franchisor did study generally, i.e. not specific to the Franchisee's Restaurant, was how to maximize store performance, control quality, and innovate on the menu. It did this by mandating an external consulting firm.[57]

[191] Confronted with what seem *prima facie* to be potential competitors of the Franchisee, the Franchisor was obligated to support it by either showing through an expert study that these were not competitors, or by providing material and relevant marketing strategies to try to outperform the competition.

[192] Neither of these forms of support was forthcoming, and yet the very essence of a franchise contract is the transfer of know-how from franchisors to franchisees.[58] That know-how necessarily includes how to deal with competitors since the presumption is that businesses are operating in a free market.

[193] The Plaintiff points out that none of the principals of Cacao 70 obtained specialized training, even in limited form, in the area of management of franchise networks. The Court does not consider this to be a legal obligation of franchisors, but does note that the lack of specialized training might explain the hands-off approach of the Franchisor towards the Franchisee.

2.5.3 Second fault of the Franchisor

[194] The Court now turns to the second fault of the Franchisor. It relates to the lack of competent personnel made available to the Franchisee.

[195] Cacao 70 sent from Montreal one manager and two assistant managers to prepare the grand opening of the Franchisee's Restaurant in June 2017.

[196] The manager hired a floor manager from Ottawa, but this person did not speak French. It is Ms. Lu who noted this and brought it to the attention of the manager. The manager reacted by saying that it would be all right, but Ms. Lu insisted that it was an impossible obstacle. The floor manager was let go, but the point is that this was wasted time and energy at a crucial moment.

[197] The manager himself could not speak French, nor could the two assistant managers, and one of them could hardly speak English, according to Ms. Lu.

[198] The manager hired another floor manager, who could speak both languages.

[199] When the grand opening arrived on 22 June 2017, the manager was showing kitchen staff how to clean and do the food preparation. In the ordinary course of things, one would have thought that all initial training would already be done by the time a store

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57 Exhibit D-11.
58 *Provigo Distribution, supra* at 23, 31.

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opens, lest it give the impression to the first customers that the operation is a work in progress.

[200] While the Franchisor provided to Ms. Lu and Mr. Geng some training materials, such as manuals, they did not receive a proper training session tailored to their zero level of knowledge on how to run a franchise.

[201] Mr. Tang could very well convince himself that this business was not for people in “daycare”, but then he should have disqualified the Franchisee before signing the Franchise Agreement if he thought that Ms. Lu and Mr. Geng were not fit for the challenge of running a Cacao 70 franchise.

[202] The inauspicious start did not jibe well with the image that the principals of the Franchisor themselves have of their business.

[203] For example, to hear Mr. Wang wax eloquent about chocolate, gastronomy, and history, thus clothing Cacao 70 with a certain Epicurean refinement, one would have expected the Franchisor to give to the Franchisee all the possible means to start the Franchisee’s Restaurant commensurate with the self-image of the Franchisor.

[204] Clearly, the Franchisee’s Restaurant did not start with its best foot forward, due to the deficient support from the Franchisor as it relates to personnel.

[205] The problems caused by the manager continued until August 2017. The Plaintiff lists them as follows:

- Hiring of two employees but only one of them had a social insurance number;
- Setting up a tip-sharing arrangement among the employees, thus sparking an investigation by the Commission des normes, de l’équité, de la santé et de la sécurité du travail (**CNESST**), which forced Ms. Lu to hire a lawyer to deal with the imbroglio;
- Making errors in the calculation of staff salaries;
- Omitting vacation pay for staff.

[206] These problems came to light when Mr. Geng took over as manager in August 2017. He and Ms. Lu were not equipped to handle these issues, which were actually caused by the manager sent by Cacao 70.

[207] It is not an answer to say, as did Mr. Tang during the trial, that the Franchisee had to hire an accountant in order to work through the problems identified by the CNESST. He considered the Franchisor’s role to be limited to store operations.

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[208] This is simply unsustainable as a matter of franchise law. The definition of what Mr. Tang refers to as “store operations” must itself be understood widely. Employees are part of store operations, restaurants cannot function without them. The rules regarding the payment of employee salaries are not common knowledge, and so it cannot be expected that franchisees should just deal with them on their own, without support from franchisors.

[209] Moreover, even if it could be argued that franchisors cannot be expected to support their franchisees in matters involving the CNESST, this point falls under the category of unknown unknowns in that Ms. Lu and Mr. Geng, as recent immigrants here, did not know that there were intricate details to know about the regulatory framework in Quebec regarding protection of employees.

[210] At the very least then, the Franchisor was obligated to bring to their attention from the outset that the regulatory framework is something they should apprise themselves about since the Franchisor would not be educating them about this. This would have been at least some form of support.

[211] The Franchisor did not make competent personnel available to the Franchisee. The organizational chart in the Powerpoint presentation certainly looks impressive with its 18 departments, but the evidence shows that some of these did not even exist, and whatever existed was clearly inadequate to provide the contractually requisite level of support to the Franchisee.

2.5.4 Third fault of the Franchisor

[212] The Court now addresses the third fault of the Franchisor leading to its breach of the obligation of support. This fault relates to issues regarding visibility of, and access to, the Franchisee’s Restaurant.

[213] For five months, the Franchisee’s Restaurant operated without direct access to the exterior. The other establishments at the Gatineau Mall would close at 6 p.m., four days a week, before the high-traffic period of the restaurant. The main entrance to the mall would be locked.

[214] The Franchisor did intervene with the landlord of the Gatineau Mall and convince it to leave the main doors unlocked in the evenings when the Franchisee’s Restaurant was still open. This happened at some point between June and November, but until that point, the restaurant was essentially subject to the general opening hours of the mall. This obviously limited the flow of clientele towards the restaurant.

[215] While the Franchisor provided posters so that users of the Gatineau Mall would know that they could use the main doors to access the Franchisee’s Restaurant when the rest of the mall was closed, the situation of the locked doors should not have happened in the first place.

[216] The Franchisor should have known that there was an administrative processing time at the City of Gatineau for construction permits and should have timed its filing accordingly so that the permit would be issued in time for the construction to be done prior to the grand opening.

[217] The Franchisor should also have had a backup plan whereby, in case of administrative delay of the permit, it would have already spoken with the landlord of the Gatineau Mall to keep the main doors unlocked when the other establishments were closed, and to set up posters as of the grand opening to indicate that customers can use the main doors to access the Franchisee's Restaurant.

[218] The Franchisor did apply as a credit in November 2017 the royalty amount paid by the Franchisee for the month of August 2017.[59] More generally, the Franchisor also refrained from further charging the Franchisee for royalties throughout the year, amounting to $33,944.52 in uncharged royalties,[60] given that the Franchisee did not break even.

[219] However, the point remains that the support mechanisms ensuring a smooth introduction of the Franchisee's Restaurant to the general public were not in place from the beginning.

[220] The lack of diligence in this respect is reflected in Mr. Tang's testimony, which sought to minimize the impact of the lack of external access. He said that Cacao 70 is a "destination concept", meaning that the customers of Cacao 70 are people who already know they want to go there. It is not really for people who are just passing by. Therefore, the lack of a direct external access does not have much of an impact, according to him.

[221] The problem with this view is that Mr. Tang has no market study based on statistics supporting the view, and so it is essentially his own anecdotal understanding of the clientele.

[222] Moreover, the view does not address the fact that, for a while, the Franchisee's Restaurant did not even have the benefit of the main doors of the Gatineau Mall since these were locked as of 6 p.m., four days a week.

[223] An additional point, and this circles back to the lack of market study, is that Mr. Tang's understanding of customer behaviour does not allow for the possibility that perhaps customers of the Gatineau Mall engage in patterns of consumer behaviour that are different.

[224] Mr. Tang does not have data indicating that all malls are the same, and that consumers behave the same no matter their locality, and therefore it is possible that the

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59 Exhibit P-17.
60 Exhibit D-9.

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Franchisee's Restaurant could have benefitted from walk-in traffic, contrary to Mr. Tang's understanding of the clientele of Cacao 70.

[225] On the above point, the Court notes that Cacao 70 had no franchisor-franchisee committee, which would have allowed for an exchange of facts and ideas across the franchise network in Canada. If Cacao 70 did not want to commission a market study, at least a franchisor-franchisee committee would have helped it understand a little more the market that its franchisees were facing day in, day out.

[226] However, even this committee did not exist. Caselaw has established that the absence of such a committee can count among the contractual faults of a franchisee.[61]

[227] The external access was completed on 28 November 2017. Until then, there was a large poster on the façade of the Gatineau Mall that announced that Cacao 70 was now open and that the entrance was to the left of the poster.[62] If the objective was to make a splash when a retail business opens, this was certainly off the mark.

[228] In contrast, when Allô Mon Coco opened, at around the same time as the Franchisee's Restaurant, it had an external entrance right from the beginning.[63] The contrast is telling.

[229] Even after the construction of the external entrance for the Franchisee's Restaurant, there remained another problem: the signage that was supposed to be installed on the exterior façade of the building was not in place.

[230] The Franchisee had already paid for this through the construction costs, although the Franchisor claims that it is the Franchisee's financial problems that prevented it from affording the costs associated with the installation of specific white boards on which the name of the restaurant would be printed.

[231] According to the blueprint provided by Mr. Xu,[64] which itself was provided to Mr. Geng only after the store had already opened, there was supposed to be a white background on which the name "CACAO 70", and under it, the words "ESPACE GOURMANDE" would be written in black, to highlight the name of the Franchisee's Restaurant on the external wall of the Gatineau Mall. This façade is visible from the parking lot and the street.[65]

[232] When Mr. Geng asked Mr. Xu about the contractor who was supposed to install the signage, Mr. Xu told him that the contractor was bankrupt, which was not actually true. Mr. Xu may have been in good faith in believing it to be true, and the Court has no

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61 *9145-5055 Québec inc (Restaurant Au Vieux Duluth LaSalle) c Restaurants Au Vieux Duluth inc*, 2020 QCCS 4365 at para 98, aff'd 2022 QCCA 1298 [***Au Vieux Duluth***].

62 Exhibit P-38.

63 Exhibit P-39.

64 Exhibit P-19.

65 Exhibit P-20.

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reason to think otherwise, but the point is that the Franchisor just sat on its hands until spring 2018, when the signage was ultimately installed.

[233] However, this signage had a colour scheme that was awry since there was not enough contrast between the lettering and the background. The lettering was black, and the wall on which it was affixed was a dark grey. From the vantage point of the street, the façade of the Franchisee's Restaurant looked similar to the garbage-disposal section of the mall in that both had the same dark grey colour on the external walls, while the other retailers had bright red or white signage that made their names stand out against the shades of grey of the mall façade.

[234] In addition to the colour problem, the size was also a problem since the signage was small.

[235] In May 2018, during rent discussions between the Franchisee and the Gatineau Mall's landlord when the Franchisee was conveying to the landlord its difficult financial situation, it is the landlord who made a suggestion about increasing the size of the signage. No such guidance was forthcoming from the Franchisor.

[236] As to that difficult financial situation, Ms. Lu testified that by the end of April 2018, revenue was low to such a point that there was no money to pay the rent to the Gatineau Mall's landlord. She and Mr. Geng were working for free, and they had to use their personal savings to cover the expenses of their daily lives. The situation caused enormous stress on the couple, both individually and on their relationship, leading to arguments, as well as a medical situation of internal bleeding for Mr. Geng. At one point, he lost consciousness and a neighbour had to call an ambulance.

[237] This evidence from spring 2018 on the financial situation of the Plaintiff, and the financial and emotional situation of the couple, was not contradicted by the Franchisor.

[238] In May and June 2018, Mr. Geng wrote to Messrs. Wang and Xu about the signage issue.[66] Mr. Xu responded that he will look for a supplier and ask for a quote, but there was nothing further.

[239] Again, it is the essence of franchise contracts that franchisors impart to franchisees the know-how they have about how to run the business in question. In the present case, that necessarily includes assisting the Franchisee in maximizing the access and visibility of its store.

2.5.5 End of the franchising relationship

[240] The Franchisee arrived at the end of its first year of operations and concluded that its state of financial loss was such that it could no longer continue running the restaurant. It cited the Franchisor's breach of the obligation to support, among other

66 Exhibits P-22, P-23.

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things, in its demand letter and termination notice sent on 20 July 2018, thereby resiliating the Franchise Agreement.[67]

[241] Within the meaning of article 1604 of the *Civil Code of Québec* (**CCQ**), the Court concludes that this was a legally justified resiliation of a contract of successive performance given the nature and extent of the Franchisor's default, as set out above. The three faults over the course of the year brought the Franchisee to a breaking point by July 2018.

[242] According to the balance sheet of the Plaintiff for the period from 10 to 30 September 2018, its total assets were $578,510.08 and its total liabilities were $741,832.42,[68] a situation of significant financial loss. This loss is corroborated by the steady decline in sales over the June 2017 to July 2018 period, recorded by the Franchisor itself and set out above.[69]

[243] The balance sheet, presented through the testimony of Ms. Lu in a summary fashion, was not contradicted by the Franchisor. That being said, the balance sheet is unsigned and the Court was not informed of the identity of the author.

[244] Accordingly, the Court attributes low probative value to the specific numbers contained with the document, but accepts that the document supports the Franchisee's assertion that it was in a situation of significant financial loss at the end of its first year of operations, rendering it unable to continue.

[245] A party with deeper pockets might have been able to absorb the loss and continued trying to make a profit into the second year, but the Franchisor agreed to sign the Franchise Agreement with the Franchisee, knowing the financial profile the latter had. In fact, as set out in the next section on the Franchisor's inability to save the Franchisee's Restaurant, the Franchisor had deeper pockets compared to the Franchisee and tried to run the restaurant in the second year, but failed in the same way as the Franchisee. Therefore, it is impossible to conclude that the scenario would have been different had the Franchisee continued to operate the restaurant, and in fact, the Franchisor speaks to the reasonableness of terminating operations after one year given that it did the same thing.

[246] Also, the Franchisor does not contest the particular financial figures presented by the Franchisee as proof of its loss. Rather, its argument is simply that it did not commit any fault in the performance of its contractual obligations. The financial loss suffered by the Franchisee, whatever it may be, was the result of ordinary business risk, according to the Franchisor. This is addressed in the causation analysis, below.

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67 Exhibit P-30.
68 Exhibit P-32.
69 Exhibit D-9.

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2.5.6 Franchisor's inability to save the Franchisee's Restaurant

[247] The Franchisor took over the operations as of 1 August 2018 and demanded payment of various amounts, such as loan balance, royalties, and other fees from the Franchisee by way of a responding letter dated 14 September 2018.[70]

[248] According to Mr. Tang's testimony, the Franchisor permanently shut down the restaurant towards the end of 2018 or beginning of 2019. However, according to the Franchisor's written answer to undertakings during discovery, the closing was in October 2019.[71] The Court considers the written answer to undertakings to be more reliable.

[249] In any event, in both scenarios, the liability of the Franchisor is reinforced. If Mr. Tang's testimony is accurate, then it means that the Franchisor realized within a matter of a few months that there was no hope of putting the Franchisee's Restaurant on a profitable footing. If the written undertaking answer is accurate, then the Franchisor had essentially the same length of time as the Franchisee to run the restaurant, yet still could not turn a profit.

[250] The fact that the Franchisor ran the restaurant for some 14 months but could not turn a profit is further addressed in the Court's causation analysis, below.

2.6 Damages claimed by the Plaintiff, and causation between fault and injury suffered

[251] The Plaintiff claims a total of $870,221.25 in damages against the Defendants, solidarily. This total is broken down according to the categories set out below. A claim for moral damages in the amount of $100,000 to compensate the Franchisee's shareholders for psychological distress was dropped during the trial.

[252] The Court excludes the responsibility of the individual Defendants, since there is no basis to find liability against them personally, as set out further above. There is therefore no question of awarding damages on a solidary basis.

[253] The heads of damages claimed by the Plaintiff are addressed below.

2.6.1 Lost investment of $650,000

[254] The Plaintiff claims an amount of $650,000 for lost investment. It is difficult to understand the Plaintiff's calculation of this figure. According to the Plaintiff's own exhibits, the total amount spent by the Franchisee on the construction invoices issued to

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70 Exhibit P-31.
71 Exhibit P-35.

it by the Franchisor was $570,000, and it paid $57,487.50 as the initial fee inclusive of taxes, bringing the total to $627,487.50 as the amount of investment expenses.[72]

[255] Subsequently, the Franchisee paid a total of $17,478.01 as reimbursement instalments under the loan agreement when the construction costs became too much to handle, as discussed further above. This amount is claimed by the Plaintiff under a separate head of damages, below.

[256] Accordingly, the Court will consider the amount of $627,487.50, and not $650,000, as the basis for the claim made by the Plaintiff for lost investment.

[257] The Plaintiff's damages argument was premised on the assumption that it would prevail on its theory of the case regarding vitiation of consent due to error induced by fraud. Since such a scenario would result in the annulment of the Franchise Agreement, the latter would be deemed never to have existed and each party would be bound to restore to the other the prestations received.[73]

[258] However, in the alternative scenario where the Court should find that there was no vitiation of consent, the Plaintiff simply asked that "compensation be operated between any amounts mutually owed".[74]

[259] The Court's reasoning on the damages to which the Plaintiff has a right proceeds as follows.

[260] The applicable principles on causation and recoverable damages are set out at articles 1607 and 1613 CCQ respectively: there is entitlement to damages for injury that is an immediate and direct consequence of the debtor's default, and a contractual party is liable only for damages that were foreseen or foreseeable at the time the obligation was contracted.[75] Foreseeability is determined according to what a reasonably prudent and diligent contracting party would foresee in the circumstances.[76]

[261] The Court concludes that it was indeed foreseeable for the reasonable contracting party at the time of the signing of the Franchise Agreement that if the Franchisor failed to support the Franchisee in 1) countering the competition at the Gatineau Mall, 2) providing competent personnel to help the Franchisee start the restaurant, and 3) helping the Franchisee with visibility and access, the Franchisee would suffer financial injury.

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72 Exhibits P-7, P-13, P-14.

73 Article 1422 CCQ.

74 *Re-Re-Amended Originating Application* at 22.

75 *SNC-Lavalin inc (Terratech inc et SNC-Lavalin Environnement inc) c Deguise*, 2020 QCCA 495 at para 630: "Pour être indemnisé, le préjudice doit être licite, certain et direct. En matière contractuelle, il faut ajouter à ces trois conditions la prévisibilité du dommage au moment où l'obligation a été contractée".

76 Jean-Louis Baudouin, Patrice Deslauriers & Benoît Moore, *La responsabilité civile*, 9th ed (Montreal: Yvon Blais, 2020) at para 1-368, cited in *SNC-Lavalin, ibid.*

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[262] The obligation to support is an essential part of franchise contracts.[77] Where that obligation to support is breached over the course of the first year of operations of the franchise, as in the present case, and since the Franchisor knew that the Franchisee had a limited financial capacity to absorb losses given all the precontractual discussion about the level of risk, it was reasonably foreseeable at the time of the signing of the Franchise Agreement that the Franchisee would suffer damages in the form of a financial inability to continue operating beyond that first year, entailing loss of the investment amount.

[263] Article 14.1 of the Franchise Agreement imposes on the Franchisee the obligation to pay for construction of the restaurant. It is therefore reasonably foreseeable that if the Franchisor commits a breach that prevents the Franchisee from continuing to operate the restaurant, the Franchisee will lose the benefit of the amount it invested for construction. The same test of reasonable foreseeability of loss applies to the initial franchise fee imposed by Article 5.1 of the Franchise Agreement.

[264] The Franchisee has discharged its burden of proof on causation. The various elements of that burden are the following.

[265] First, the Franchisee has established that the Franchisor proposed the Gatineau location to the Franchisee. This means at a minimum that the Franchisor itself considered that the location was viable and that any ordinary business risk was reasonably surmountable. In fact, the Franchisor favourably compared the Gatineau location with a profitable suburban Quebec City location.

[266] Second, once the premise is established that the Franchisor itself considered the Gatineau location to have the reasonable potential to be profitable, the analysis turns to an examination of the conduct of the Franchisee in operating the Franchisee's Restaurant.

[267] The Franchisee has shown to the Court that it was diligent in the manner in which it operated the restaurant, and the Franchisor has not shown that the Franchisee did anything that was a negligent deviation from the Franchisor's stipulated know-how on running the franchise.

[268] While the Franchisor does point out that the Franchisee should not have purchased chocolate from other suppliers, given that chocolate is obviously a core product for Cacao 70 and identical products should be used across all the franchises, the Franchisor does not argue that this fact was somehow causally related to the Franchisee's difficulties.

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[77] In addition to the caselaw of the Court of Appeal cited in the section above on franchisors' obligation of support, see also *Au Vieux Duluth* (QCCS), *supra* at para 97, 111, 144.

[269] Third, there is nothing in the evidence, other than the arrival of the two competitors, that would show that the business climate changed since the signing of the Franchise Agreement.

[270] On this point, it was the burden of the Franchisor, should it have followed through on an affirmative defence, to show that it was the business climate distinct from its own breach of the Franchise Agreement that was the causal element in leading to the demise of the Franchisee's Restaurant.

[271] The Franchisor made no such proof on causation. On the one hand, the Court has the evidence of the faults of the Franchisor. On the other hand, the Court has no evidence of some kind of adverse business climate distinct from the adversity that flowed from the Franchisor's own three faults.

[272] Faced with this evidentiary imbalance, and applying the legal criteria set out at articles 1607 and 1613 CCQ, the Court must conclude on the balance of probabilities that it is the Franchisor's faults that caused the demise of the Franchisee's Restaurant.

[273] The Franchisor's inability to save the Franchisee's Restaurant is further evidence that the Franchisor itself realized in approximately one year that there was no profit to be made and that it would be throwing good money after bad.

[274] The Court considers that the period after which the Franchisor shut down the Franchisee's Restaurant, after taking it over from the Franchisee, confirms the Franchisor's fault and the causation between its fault and the injury of the Franchisee in not being able to continue the enterprise and suffering the loss of its investment. It also confirms that the Franchisee was justified in resiliating the Franchise Agreement at the end of the year.

[275] Fault, injury, and causation are highlighted by the fact that the Franchisor's takeover and failed attempt to save the Franchisee's Restaurant function like a controlled experiment that operationalized the counterfactual scenario: to the extent that it might be argued that the restaurant would have been successful but for the Franchisee's own miscalculations or incompetence, such an argument would be unfounded since it has been established that the Franchisor also could not run the restaurant profitably, within approximately the same number of months that the Franchisee had.

[276] The cumulative effect of the Franchisor's faults over the previous year was such that the Franchisee's Restaurant could not be saved, not even by the one who had the most knowledge about how to run it and who was in a position to reverse the effects of its own faults.

[277] This *de facto* controlled experiment, whereby the Franchisee ran the restaurant in the first year and the Franchisor ran it in the second year, also belies the Franchisor's

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argument that ordinary business risk, as opposed to its own failings in supporting the Franchisee, was the causal factor leading to the failure of the Franchisee's Restaurant.

[278] In light of the three faults proven by the Franchisee, the Franchisor bore the burden to prove its own assertion that ordinary business risk was the causal factor in the failure of the Franchisee's Restaurant. It had to prove the content of that ordinary business risk, distinct from its own faults, and it had to prove the causal link between that risk and the failure of the Franchisee's Restaurant. The Franchisor did not discharge its burden of proof in this regard.

[279] This is all the more so since the Franchisor had the actual experience of running the restaurant at this particular location and therefore had direct knowledge of the facts that might be relevant to the argument about ordinary business risk.

[280] In light of the above, the Franchisor's invocation of articles 1.6 and 1.7 of the Franchise Agreement does not serve to shield it from liability. Article 1.6 provides that the Franchisee "understands and fully agrees that the operation of the Business represents risk and that its success will depend largely on his skills and on his involvement".

[281] Article 1.7 provides that "the Franchisor has made no representation or warranty, expressed or implied, as to the chosen location for the Business, the sales, revenues or its profits or about its success."

[282] The Supreme Court of Canada has summarized the methodology to be applied in reading the words of contractual provisions: "If their words are clear, effect must be given to the clearly expressed intention of the parties. If, however, the agreements, read as a whole, are vague, ambiguous or incomplete, the common intention of the parties must be sought".[78]

[283] The Court has already concluded above that Ms. Lu and Mr. Geng could not be ignorant of the ordinary risk that goes with starting a business, which is the clear import of article 1.6. However, what is also clear is that the provision does not exclude the liability of the Franchisor where it commits distinct faults that have nothing to do with ordinary business risk. To do so would contradict another provision of the Franchise Agreement, namely article 7, which imposes on the Franchisor the obligation to support the Franchisee, a key legal feature of the franchise relationship.

[284] As for article 1.7, there is an ambiguity as to the meaning and scope of the words "no representation or warranty" since they can include or exclude the specific statements made by the Franchisor in advertising directed at potential franchisees. It is to be recalled that the Franchisor posted an ad about the Gatineau location, notably

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[78] *Hydro-Québec v Matta*, 2020 SCC 37 at para 57; see *Uniprix inc v Gestion Gosselin et Bérubé inc*, 2017 SCC 43 at paras 34-44 for the general methodology regarding the interpretation of contracts.

stating the following (reproduced as is from the English translation of the original Mandarin version):

> This location is quite similar as the cacao 70's successful store in the shopping mall of Quebec City. The estimated revenue of Quebec City store is $1.5 million. The head office of cacao 70 is very confident in this Gatineau location.[79]

[285] The question is whether article 1.7 excludes this ad. Given the ambiguity, recourse can be had to the rules of interpretation, which involve seeking the common intention of the parties[80] and taking into account the "circumstances in which [the contract] was formed".[81]

[286] The Franchisor did not engage in random selection of locations, nor would it want to be seen as doing so. Rather, it put some thought and analysis in its choices, as evidenced by the ad quoted above.

[287] Therefore, it is not convincing to argue based on article 1.7 that the Franchisor made no representation or warranty about the Gatineau location, when in fact the Franchisor said it was "very confident" about that location. Meaning must be given to the words used by the Franchisor to induce the Franchisee to sign the Franchise Agreement.

[288] The reasonable interpretation of article 1.7 is that the Franchisor was not making representations or warranties about specific levels of profitability regarding the location. It cannot mean that the Franchisor was saying nothing positive about the location. Necessarily, the Franchisor was saying something positive about the Gatineau location, otherwise it would not have advertised it.

[289] On the issue of damages, article 1611 CCQ grants to the creditor the right to compensation "for the amount of the loss he has sustained and the profit of which he has been deprived".

[290] To put that provision within the context of the present case, if the wronged contractual party incurred expenses in reliance on the assumption that its counterparty would abide by its own contractual obligations, and if it was deprived of profits that it expected to receive as part of the contractual bargain, article 1611 CCQ allows in principle for the recovery of these two categories of damages.

[291] To borrow terminology from the common law, these two categories are reliance and expectation measures of damages, respectively: injury suffered in reliance on the

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79 Exhibit P-10A.
80 Article 1425 CCQ.
81 Article 1426 CCQ.

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counterparty, and injury suffered in connection with the thwarted expectation that the contract would put the wronged party in a position of receiving profits.[82]

[292] In the franchising context, it is possible for franchisees to be awarded damages for both the investment expenses incurred and the expected profits that were lost due to the breach by the franchisor. The Court of Appeal made such an award of damages in *Dunkin' Brands.*[83]

[293] However, a key concern in such an award of damages is double recovery, or "double dipping" as the expression goes. Normally, it is necessary to incur investment expenses to generate profits, the former leads to the latter, and therefore there can arise a double nature of recovery if damages are awarded for both categories.

[294] The Court of Appeal addressed this specific point in *Dunkin' Brands*,[84] and the Plaintiff relies on that authority in arguing that it is not engaging in double dipping by claiming for reimbursement of the amount spent on the initial franchise fee and construction costs, as well as claiming damages for lost profits. It argues that where a franchisee finds itself with an enterprise so diminished in value because of the breach of the franchisor, it is possible to recover both the investment amount and lost profits.

[295] However, the Court of Appeal subsequently explained in another case that *Dunkin' Brands* involved a situation where the entire franchise network had collapsed, thereby rendering it impossible for the franchisees to continue, given the loss of any hope in maintaining some residual value of the franchises.[85]

[296] Where a factual situation like that does not exist, as in the present case, it is unjustified to award damages covering both investment expenses and lost profits. Accordingly, the Court dismisses the claim for lost profits and considers only the claim for lost investment expenses.

[297] The Plaintiff's damages claim for its lost investment is a form of reliance damages since it is the loss sustained by it in reliance on the contractual undertakings of Cacao 70. In other words, in reliance on the assumption that the Franchisor would uphold its end of the contractual bargain in supporting the Franchisee, the latter invested money to start its business.

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82 The seminal doctrinal analysis of the reliance and expectation interests in the law of damages is found in the academic paper by Lon L Fuller & William R Perdue Jr, "The Reliance Interest in Contract Damages" (1936) 46:1 Yale LJ 52; see also Stephen M Waddams, *The Law of Damages*, 2nd ed (Toronto: Canadian Law Book) (loose-leaf updated December 2014), §5:3; Stephen M Waddams, *The Law of Contracts*, 6th ed (Toronto: Canadian Law Book, 2010) at 523-24, 534-36. Arguably, the franchise fee paid by the Franchisee falls under the third category analyzed by Fuller and Perdue, namely restitution interest, but this is in any event considered a "species of reliance loss", as described by Waddams in *The Law of Contracts, ibid* at 538.

83 *Dunkin' Brands, supra* at paras 214-225.

84 *Ibid* at paras 205, 219- 220.

85 *Au Vieux Duluth* (QCCA)*, supra* at para 24.

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[298] In contrast, the Plaintiff's damages claim for lost profits is a form of expectation damages since the Plaintiff expected to be in a future position whereby it would make a certain amount of profit. As concluded above, this claim is dismissed by the Court.

[299] In analyzing the issue of lost investments, the Court of Appeal in *Dunkin' Brands* drew a distinction between "the proof of the existence of damage, on the one hand, and proof of the quantum of damage for which the existence has been established, on the other".[86]

[300] In the present case, the Plaintiff has discharged its burden to establish proof of the existence of damage. It sustained a loss within the meaning of article 1611 CCQ in that it lost its investment amount, which was meant to serve it over the life of the Franchise Agreement. The latter had a term of 10 years,[87] and yet, the contract lasted only one year because the Franchisor breached its contractual obligations.

[301] Within the meaning of article 1613 CCQ, it was foreseeable at the time of signing the Franchise Agreement that if the Franchisor did not provide the requisite level of support to the Franchisee, the latter would suffer an injury. That injury took the form of the lost investment in that the Franchisee was not able to utilize the investment for the term it was intended, namely 10 years.

[302] Due to the Franchisor's breach, the Franchise Agreement lasted only one year. The Franchisee was deprived of the utilization of its investment for the nine remaining years of the contract. The investment amount was thus deployed for one year rather than the 10 years over which it was contractually intended to be amortized.

[303] That being said, the Court does not consider that an award of damages amounting to nine-tenths of $627,487.50 would be consistent with the legal principles on damages, namely the requirement set out in article 1607 CCQ for damages to be direct and immediate if they are to be compensable.

[304] The better approach is to look at the time period for which there is actual evidence of the contractual faults and their continuing effects, namely the first two years. After the second year, the loss of the investment can no longer be said to be immediate and direct on a balance of probabilities.

[305] This is so because, after the second year, various other factors in the realm of ordinary business risk represent the potential for loss of the investment amount. For example, the Court takes judicial notice of the fact that the Covid-19 pandemic began in March 2020, around six months after the Franchisor closed the Franchisee's Restaurant. Therefore, it is possible to say that the investment amount was at risk of loss due to the pandemic. The damages are no longer direct and immediate after the second year.

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86 *Dunkin' Brands*, *supra* at para 207.

87 Exhibit P-11, Schedule A, item 5.

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[306] Additionally, the Court must consider the real possibility that, over time, the market can evolve in such a way that competition can be overwhelming for a business, as a function of ordinary business risk and despite all reasonable means to counter the effects of the competition. This is another factor that diminishes the directness and immediacy of the causal link between the Franchisor's fault and damages over time.

[307] In light of the above, the Plaintiff has a right to two-tenths of $627,487.50, namely $125,497.50, representing the loss of its investment as a function of the two years of operations of the Franchisee's Restaurant, divided by the denominator of 10 years during which the Franchisee intended to utilize the investment amount.

[308] The advantage of this approach to the calculation of damages is that it calculates damages based on the Plaintiff's actual out-of-pocket expenses, but commensurate with the level of utilization over the period of years those expenses can be said to have been undermined by the faults of the Franchisor.

[309] Since what is being awarded here are reliance damages and not expectation damages, the analysis does not run afoul of the prohibition on compensating mere loss of chance.[88]

[310] In other words, the analysis takes into account the fact that the Plaintiff incurred reliance damages in the form of the lost investment amount, and the final measure of damages is not any kind of projected profit.

[311] Rather, the measure of damages is the actual loss sustained, in the form of expenditure of the initial franchise fee and construction costs, albeit capped to two years because beyond that, the damages are no longer immediate and direct. The Plaintiff was deprived during those two years of what it bargained for when it agreed to make those payments. It has a right to be compensated for that loss, but within the limit of the legal criterion of requiring compensable damages to be immediate and direct.

2.6.2 Wages of $21,972.04 for Cheng Geng

[312] The Plaintiff claims from Cacao 70 the wages due to Mr. Geng. The first problem with this claim is one of standing: the Plaintiff does not have a sufficient interest in claiming the wages on behalf of Mr. Geng, he needed to claim them himself.[89]

[313] Moreover, there is no juridical basis to award damages against Cacao 70 for the unpaid wages of Mr. Geng. The unpaid wages were due by the Franchisee and not the Franchisor.

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88 *Lemieux c Aon Parizeau inc,* 2018 QCCA 1346 at paras 80-85; see also *Laferrière v Lawson*, [1991] 1 SCR 541 for the seminal analysis of the theory of loss of chance in Quebec civil law, albeit in relation to medical professional negligence.

89 Article 85 CCP.

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2.6.3 Loan reimbursement of $17,478.01

[314] The Plaintiff has a right to two-tenths of the loan reimbursement instalments totaling $17,478.01, which is $3,495.60, on the same reasoning as above regarding the lost investment. The instalments paid by the Plaintiff were in the nature of expenses for investing in the business.

2.6.4 Taxes of $5,308.65

[315] The Plaintiff claims this amount on the grounds that it owed this to the two levels of government for GST and QST collected, tax amounts that were no longer in its accounts after the franchise was closed.

[316] It is difficult to see why Cacao 70 would be responsible for tax amounts that the Plaintiff was required to keep segregated and hand over to the two levels of government. The Court rejects this head of damages.

2.6.5 Lost profit of $14,143.23

[317] Based on the reasoning above regarding the right to two-tenths of the investment expenses, and no right to lost profits, the Court rejects this head of damages.

[318] Moreover, Ms. Lu was unable to explain the details of how this was calculated, stating instead that the figure came from the Franchisee's accountant.

2.6.6 Lawyers' fees of $161,319.32

[319] There is no basis to claim lawyers' fees as damages in the present case. The basic principle on costs is that each party bears its own lawyers' fees, subject to a special-costs award where the proceedings are abusive or the conduct of a party during the proceedings involves substantial breaches.[90]

[320] The Plaintiff claims lawyers' fees of $161,319.32 on the basis of its allegation that the conduct of the Franchisor was abusive and fraudulent. It argues that the caselaw supports its claim where the allegations of fraud and abuse in the relationship between the parties have been proven.

[321] In the present case, the allegations have not been proven. Moreover, even if they had been proven, the Plaintiff misreads the caselaw since the seminal case of *Viel c Entreprises immobilières du terroir ltée*, which it cites, is clear to the effect that it is abuse in the litigation, and not in the relationship on the merits, that attracts an award of lawyers' fees: "L'abus sur le fond ne conduit pas nécessairement à l'abus du droit d'ester en justice. Règle générale et sauf circonstances exceptionnelles, seul ce dernier

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[90] Articles 51, 342 CCP.

est susceptible d'être sanctionné par l'octroi de dommages (honoraires extrajudiciaires)" (underlining in original).[91]

2.7 Cross-application of Cacao 70

[322] By way of its cross-application, Cacao 70 is seeking $115,834.61 in damages for reimbursement of construction costs, indemnity for termination, and unpaid advertisement fee.

[323] The total amount claimed is broken down as follows: $35,215.35 for construction of the external access between the Franchisee's Restaurant and the outside of the Gatineau Mall, $76,376.20 for indemnity for termination, and $4,243.06 for the advertising fee under the Franchise Agreement for one year.

[324] The amount of $35,215.35 is not payable by the Franchisee since Tina Jiang, a representative of Cacao 70, admitted by way of an email to Mr. Geng that it is the landlord who must absorb that cost.[92]

[325] As for the amount of $76,376.20, Cacao 70 invokes Article 22.8 of the Franchise Agreement, which is a provision that contemplates an indemnity for the Franchisor in case the contract is terminated "due to a default on the part of the Franchisee". The indemnity is calculated based on the average monthly royalty and advertising fee of the 12 months prior to termination, and then multiplied by the lesser of 24 months or the remaining months of the term of the contract.

[326] The Court rejects the Franchisor's claim for $76,376.20 because Article 22.8 is inapplicable. The provision applies where the Franchise Agreement is terminated due to a default on the part of the Franchisee. In the present case, the termination was because of a default on the part of the Franchisor.

[327] Regarding the amount of $4,243.06, this is a justified claim since the Franchisee was contractually required to pay into an advertising fund administered by the Franchisor,[93] and it is not established that the Franchisor defaulted completely in its advertising obligations. This is especially so since the fund in question was dedicated to advertising at all levels, i.e. national, provincial, and regional, and so the Franchisee cannot argue that withholding payment is justified due to a failure to advertise for its benefit specifically.

2.8 Legal costs and costs related to new evidence

[328] Since the Plaintiff has partially succeeded in its monetary claims, and since there is a disparity of resources between the Franchisee and the Franchisor, the Court will

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91 *Viel c Entreprises immobilières du terroir ltée,* 2002 CanLII 41120 (QCCA) at para 83.
92 Exhibit P-29.
93 Exhibit P-11, Article 11.1.

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award the Plaintiff its legal costs, except its costs in connection with Exhibit P-43C, as explained below.

[329] During the Plaintiff's counter-proof, Ms. Lu sought to produce recordings of the meetings on 22 February 2016 and 29 March 2016, found in the USB key marked as Exhibit P-43C.

[330] These recordings were always in the possession of Ms. Lu and Mr. Geng, but she testified that she had forgotten about their existence until she heard the testimony of Mr. Tang during the trial. She wanted to produce translated extracts of the recordings in order to rebut Mr. Tang's testimony about risk and return on investment.

[331] The Defendants objected to the presentation of the evidence because of its tardiness, the fact that it consisted only of extracts, and the fact that it took place during counter-proof.

[332] The Court allowed for the presentation of the evidence under reserve of the Defendants' objection and declared that, in any event, they would have the right to claim costs arising from this unplanned step in the trial. The Defendants withdrew their objection during closing arguments.

[333] Due to this additional evidence, the Court had to suspend the trial from 16 February to 15 April 2025, so that the Defendants could obtain a translation of the rest of the recordings of the two meetings, filed as Exhibits D-13 and D-14, and decide on next steps as far as their responding evidence was concerned.

[334] The Defendants claim $1,149.75 in lawyers' professional fees[94] as costs arising from having to deal with Exhibit P-43C. The Plaintiff does not contest this claim. Accordingly, this amount will be taken into account in the calculation of the net amount owed by Cacao 70 to the Plaintiff.

[335] Additionally, the Court will award to the Defendants their legal costs in connection with the translation of the rest of the recordings of the two meetings on 22 February 2016 and 29 March 2016.

DISPOSITION

FOR THESE REASONS, THE COURT:

[336] **GRANTS** in part the *Re-Re-Amended Originating Application*;

[337] **GRANTS** in part the cross-application of the Defendant Cacao 70 Inc. (**Cacao 70**) contained within the pleading titled *Defense of Defendants Cacao 70 Inc., Bing Tang, Guang Liang Xu and Ying Zhi Wang and Cross-Application of Cacao 70 Inc.*;

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94 Exhibit D-15.

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[338] **CONDEMNS** the Defendant Cacao 70 to pay to the Plaintiff a net amount of $123,600.29, arrived at through addition and set-off by compensation, which the Court **DECLARES** as follows:

338.1. The Defendant Cacao 70 owes to the Plaintiff an amount of $125,497.50 for investment expenses;

338.2. The Defendant Cacao 70 owes to the Plaintiff an amount of $3,495.60 in connection with the loan reimbursement made by the latter;

338.3. The Plaintiff owes to the Defendant Cacao 70 an amount of $4,243.06 for advertising fees owed under the Franchise Agreement;

338.4. The Plaintiff owes to the Defendant Cacao 70 an amount of $1,149.75 for lawyers' fees in relation to Exhibit P-43C;

[339] **WITH** legal costs owed by the Defendant Cacao 70 to the Plaintiff, excluding the costs in connection with the translation of the recordings of the two meetings contained within Exhibit P-43C;

[340] **WITH** legal costs in favour of the Defendant Cacao 70 in connection with the translation of the recordings of the two meetings, Exhibits D-13 and D-14.

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AZIMUDDIN HUSSAIN, J.S.C.

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Hearing dates: 10-16 February 2025
15-16 April 2025

Note : Vu le délai important annoncé pour la livraison de la traduction, le Tribunal estime que de retarder la signature du présent jugement dans l'attente de la version traduite causerait une injustice aux parties au litige et entraînerait un retard préjudiciable à l'intérêt public. La traduction suivra.

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