CITATION: Foodies Curry & Shawarma Inc. v Royal Paan Leasing Ltd., 2025 ONSC 187
COURT FILE NO.: CV-23-2515-0000
DATE: 2025 01 08

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Foddies Curry & Shawarma Inc., Applicant
-and-
Royal Paan Leasing Ltd., Zolo Realty Brokerage, Everest Realty Ltd., and First Capital (Dundas & Prince Michael) Corporation, Respondents

BEFORE: C. Chang J.

COUNSEL: G. Ambwani, R. Ahmad, for the Applicant
H. Makkar, for the Respondent, Royal Paan Leasing Ltd.

HEARD: December 6, 2025 (in-person) and January 7, 2025 (via Zoom)

ENDORSEMENT

[1] The applicant brings this application for various orders, including specific performance and injunctive relief, respecting an aborted agreement for the purchase and sale of assets related to a restaurant business. Under that agreement, the applicant, Foodies Curry & Shawarma Inc.[1], was the seller, and the respondent, Royal Paan Leasing Ltd., was the purchaser.

[2] By the time that the application was heard on the merits, it had been dismissed as against the respondents, Everest Realty Ltd. and First Capital (Dundas & Prince Michael) Corporation. The respondent, Zolo Realty Brokerage, was only named in the application because it holds in trust the $15,000.00 deposit paid by Royal Paan toward the asset purchase, and has neither delivered any responding materials nor attended any of the various return dates in this matter.

[3] For the reasons set out below, I am dismissing the application respecting the claims for specific performance and declaratory and injunctive relief, but granting the application respecting the claim based on unjust enrichment.

FACTUAL BACKGROUND

[4] The material facts are uncomplex, uncontroversial, and uncontested.

[5] Foodies operated a restaurant business from leased premises on Prince Michael Drive in Oakville. On March 22, 2023, Foodies and Royal Paan entered into a written agreement under which Foodies would sell to Royal Paan the assets of that business for the purchase price of $260,000.00 (the "Agreement"). The Agreement provided for a closing

deadline of 6:00 p.m. on May 15, 2023, contained Foodies's warranty that all applicable chattels, equipment, and accessories were free of encumbrances, and expressly stipulated that time would be of the essence. The closing deadline was subsequently extended to 6:00 p.m. on May 31, 2023.

[6] By the closing deadline, the chattels to be purchased by Royal Paan remained encumbered by two personal property security registrations: one in favour of VendorLender and the other in favour of BMO. Royal Paan advised that it would close the transaction if Foodies provided it with payout statements for both security registrations and an undertaking to discharge the registrations after closing. Foodies discharged the VendorLender registration, but didn't provide the payout statement or the undertaking respecting the BMO security. Having not received what it asked for, Royal Paan advised Foodies that it would not proceed with the transaction and considered the Agreement "to be at an end".

[7] Other than paying the $15,000.00 deposit into trust with Zolo Realty, Royal Paan has not paid any of the $260,000.00 purchase price to Foodies. Notwithstanding this, Royal Paan took possession of the premises on June 1, 2023 and, with it, all of the assets under the Agreement. Since then, it has enjoyed, and continues to enjoy, the use and benefit of those assets without interference from anyone. The chattels remain encumbered by the BMO security and Foodies continues to service the underlying debt to BMO.

ISSUES

[8] As set out in my previous endorsements in this matter, there have been a plethora of issues with Foodies's application materials, as well as with its written and oral submissions. Unfortunately, those issues persisted during the hearing on the merits[2]. That said, based on what is in the record and what I can discern from the parties' submissions, the issues for determination on this application are:

a. Is Foodies entitled to specific performance of the Agreement?

b. Is Foodies entitled to damages based on unjust enrichment?

[9] Foodies's other claims as set out in the amended notice of application, including for declaratory and injunctive relief, are neither properly pleaded nor supported by the evidence. I am therefore dismissing those claims accordingly.

ANALYSIS

Issue: Is Foodies entitled to specific performance of the Agreement?

Parties' Positions

[10] Foodies does not dispute that the subject chattels remained encumbered when it came time to close the transaction; however, it submits that it did not breach the Agreement.

Foodies argues that its transactional lawyer undertook to discharge the encumbrances after closing, using the sale proceeds to pay out the applicable credit facilities. It further submits that Royal Paan was, in some way (which was not made clear to me by counsel), obligated to accept that undertaking *in lieu* of receiving free and clear title to those chattels, but refused to do so. Therefore, Foodies argues, it is entitled to specific performance because Royal Paan breached the Agreement.

[11] Royal Paan submits that it was Foodies that breached the Agreement by failing to deliver unencumbered chattels at the closing deadline for the transaction. Although Royal Paan was not obligated to close the transaction with the encumbered chattels, it was prepared to do so, but only if Foodies provided the requested two payout statements and undertaking. Foodies having failed to provide the requested documents, Royal Paan submits that it was entitled to, and did, treat the Agreement as terminated.

Decision

[12] I find that it was Foodies that breached the Agreement and it is therefore not entitled to specific performance.

[13] It is settled law that the court may order specific performance of a contract where damages may not, in the particular case, afford a complete remedy to the non-breaching party for its loss resultant from the other party's breach (see: *Lucas v 1858793 Ontario Inc. (Howard Park)*, 2021 ONCA 52, at paras. 68-69).

[14] In the case-at-bar, Foodies is the breaching party. At the closing deadline, it failed to proffer the subject chattels free and clear of the VendorLender and BMO encumbrances. Royal Paan offered to complete the transaction anyway if it received the requested two payout statements and undertaking, but Foodies didn't deliver any of them. Indeed, Foodies failed to provide any response whatsoever to those requests before Royal Paan advised at 11:30 a.m. on June 1, 2023 (the day after the closing deadline had passed) that the Agreement was at an end.

[15] I do not accept Foodies's argument that it provided the requested undertaking. What it submits is that undertaking is not, in fact, an undertaking at all, let alone one that accords with what Royal Paan requested.

[16] The purported undertaking is said to be the following from Foodies's transactional lawyer's email message to Royal Paan's transactional lawyer on May 29, 2023:

> *Any payment the seller's corporation owes to the Bank of Montreal shall be paid to the bank by the closing date, out of the sale proceeds. The shortfall, if any, will be paid by the sellers.*

[17] In my view, read as generously as possible, those statements cannot reasonably be interpreted to be an undertaking: they are factual, not promissory. Even if those statements

could reasonably be interpreted to be an undertaking, such an undertaking, as given, was non-responsive to the two specific conditions required by Royal Paan to close the transaction with encumbered chattels. As set out above, Foodies did not provide either of the two requested payout statements. In addition, Foodies failed to revise/update that undertaking to meet Royal Paan's requirements before the closing deadline or, for that matter, before Royal Paan communicated that the deal was at an end.

[18] Put another way, Royal Paan offered to close the transaction with encumbered chattels on the condition that Foodies provide payout statements respecting both encumbrances and an undertaking to discharge those encumbrances after closing. Foodies failed to accept or comply with that condition and failed to proffer unencumbered chattels by the closing deadline. Therefore, it was Foodies – not Royal Paan – that breached the Agreement.

[19] In the absence of a breach of the Agreement by Royal Paan, Foodies is not entitled to any remedy for breach of contract, let alone specific performance.

[20] Even if Royal Paan had breached the Agreement, I would still have refused to grant specific performance because, in my view, an award of damages would have afforded a complete remedy. The contractual performance sought by Foodies is Royal Paan's payment of the sale proceeds. I am unable to envision a circumstance in which those proceeds are "so unique to the extent that its substitute would not be readily available" (see: *Semelhago v Paramadevan*, 1996 CanLII 209 (SCC), at para. 22).

[21] I therefore find that Foodies is not entitled to the claimed remedy of specific performance, and that claim should be dismissed.

Issue: Is Foodies entitled to damages based on unjust enrichment?

Parties' Positions

[22] Foodies submits that it is entitled to payment under the Agreement, together with the monthly interest that it has been paying to service the loan from BMO. It argues that Royal Paan has been unjustly enriched in having received the assets under the Agreement without having paid the agreed-upon contract price. Foodies seeks a monetary (not a proprietary) remedy.

[23] Royal Paan directed little of its written or oral submissions to the unjust enrichment issue other than to argue that Foodies "has come to the Court with unclean hands". It did candidly acknowledge that it took possession of the assets that it was to purchase under the Agreement and has been using them without having paid any of the purchase price to Foodies. Royal Paan submits however that Foodies's failure to complete the subject transaction renders its hands unclean such that the court should dismiss the claim in unjust enrichment.

Decision

[24] I find that Foodies is entitled to relief based on unjust enrichment, but limited to payment of the agreed-upon $260,000.00 purchase price for the subject assets.

[25] The test for unjust enrichment is settled. The applicant must establish on the evidence that: 1) the respondent has been enriched; 2) to the corresponding deprivation of the applicant; and 3) without juristic reason (*Garland v Consumer's Gas Co.*, 2004 SCC 25, at para. 30).

[26] As noted above, I have serious concerns about the manner in which Foodies has prosecuted this application. Among other things, its application materials are far from a model of proper drafting. However, I am mindful that pleadings are to be construed generously and, so long as they raise "the factual matrix of concern to the [applicant] and within which the [respondent's] possible liability is to be located", a cause of action has successfully been asserted (see: *Rausch v Pickering (City)*, 2013 ONCA 740, at paras. 94-95). With that in mind, I am satisfied that, based on the facts in the case-at-bar, Foodies has made out a claim in unjust enrichment.

[27] It is undisputed that, as of June 1, 2023[3], Royal Paan had acquired possession of all applicable assets and the premises in which those assets were situate, and has enjoyed the use and benefit of them ever since: it has been enriched. It is similarly undisputed that, as of that date, Foodies had lost the possession, use, and enjoyment of those same assets: it has been correspondingly deprived. The Agreement was terminated, and the evidence discloses no other basis for Royal Paan to have acquired, used, and enjoyed the benefit of those assets: there is no juristic reason for that enrichment.

[28] I do not accept Royal Paan's argument that Foodies's unjust enrichment claim should be dismissed based on the "clean hands" doctrine. That claim engages the court's equitable jurisdiction; therefore, in exercising the applicable discretion, I am entitled to consider and make findings based on Foodies's conduct (see: *790668 Ontario Inc. v D'Andrea Management Inc.*, 2017 ONCA 1019, at para. 14; *Buduchnist Credit Union Limited v 2321197 Ontario Inc.*, 2024 ONCA 57, at para. 47). Although I have found that Foodies breached the Agreement because the applicable chattels remained subject to the BMO security as of the closing deadline, I do not find that breach sufficient to deny the requested equitable relief.

[29] Indeed, the equities of the case-at-bar strongly favour Foodies, as leaving Foodies without a remedy in the circumstances would, in my view, beget a far greater inequity and injustice. Royal Paan would effectively have acquired virtually all that the Agreement provided for, without having paid the agreed-upon purchase price. Foodies would be forced to give up all that the Agreement provided for, without having received any of the agreed-upon purchase price, and would remain indebted to BMO with insufficient means to pay out that indebtedness.

[30] I therefore decline to dismiss Foodies's unjust enrichment claim based on the "clean hands" doctrine and, instead, find that Foodies is entitled to payment of the agreed-upon value of the subject assets, being $260,000.00.

[31] However, I am not prepared to simply direct payment of those moneys to Foodies. Based on the unique facts and circumstances of this case, such an order could bring with it, among other things, an unreasonable potential for mischief, inequity, and/or further costly litigation. In my view, application of the principle of *restitutio in integrum* should govern my determination of the appropriate remedy; specifically, that Foodies be, to the extent possible, put in as good (but not better) a position as it would have occupied but for the unjust enrichment (see: *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39, at para. 17; *Kew v Konarski*, 2024 ONSC 3553, at para. 91(a)). Moreover, that remedy must also balance the applicable equities as between Foodies and Royal Paan.

[32] An appropriate order would provide for, among other things, payment by Royal Paan for the assets it acquired and the removal of the remaining encumbrance (the BMO security) from the chattels that form part of those assets. In order to limit the risk of mischief, inequity, and/or further litigation, it would be appropriate to appoint an escrow agent to receive all applicable moneys and attend to the discharge of the BMO security.

[33] The agreed-upon statement of adjustments from the aborted asset purchase transaction shows a net payment from Royal Paan to Foodies in the total amount of $237,130.27, comprising the $15,000.00 deposit moneys held in trust by Zolo Realty and a balance payable by Royal Paan in the amount of $222,130.27. The agreed-upon updated discharge statement from BMO shows an all-inclusive payout amount of $240,358.43 as of December 12, 2024, with *per diem* interest of $51.46. As a result, there would be a shortfall on the payout of the BMO loan, which shortfall Foodies would have to make up.

[34] Foodies and Royal Paan have agreed upon an escrow agent, Razi Ahmad, who has consented to such appointment and undertaken to comply with the court's directions in this matter. Foodies has agreed to pay Mr. Ahmad's applicable fees and disbursements.

[35] Respecting Foodies's claim for reimbursement from Royal Paan for its payments to service the BMO loan, I find no sufficient basis for such a claim, which should therefore be dismissed.

COSTS

[36] On my inquiry after the completion of the hearing on the merits, counsel for both parties advised that there are operative offers to settle that have been exchanged. I therefore advised that I would receive their respective costs submissions in writing after I had released my decision on the merits.

[37] Given the manner in which this application has been prosecuted and the findings set out above, I strongly recommend that the parties resolve the issue of costs. Failing that,

they shall deliver their respective written submissions in accordance with the directions set out below.

DISPOSITION

[38] I therefore make the following orders:

a. the application seeking damages for unjust enrichment is granted, to wit:

i. Razi Ahmad is hereby appointed as escrow agent for the purposes of completing the transactions set out below,

ii. Foodies shall be responsible for the payment of Mr. Ahmad's applicable fees & disbursements,

iii. Zolo Realty shall release the $15,000.00 deposit moneys to Mr. Ahmad, in trust, by no later than January 17, 2025,

iv. Royal Paan shall pay to Mr. Ahmad, in trust, the sum of $222,130.27 also by no later than January 17, 2025,

v. Foodies shall pay to Mr. Ahmad, in trust, the balance required to pay out the BMO loan (account# ending in 597) and discharge the BMO security registration (registration #20220419 1450 1530 7446),

vi. Mr. Ahmad shall, forthwith upon receipt of all the above moneys, pay out the BMO loan, discharge BMO security registration, and provide proof of such discharge to both Foodies and Royal Paan, and

vii. the parties shall, with the utmost good faith, undertake any and all tasks required to give effect to the above orders, and they may schedule a case conference before me to address any unresolvable impasse;

b. if the parties are able to resolve the issue of costs, then counsel shall, by no later than 2:00 p.m. on January 24, 2025, jointly send an email message to me through the Milton Administration Office advising of that resolution and its particulars;

c. if the parties are unable to resolve the issue of costs, then they shall deliver their respective written submissions (limited to two pages each plus bills of costs and offers to settle) to me through the Milton Administration Office as follows:

i. the applicant: by no later than 4:00 p.m. on January 31, 2025,

ii. the respondent: by no later than 4:00 p.m. on February 7, 2025,

iii. there shall be no reply, and

iv. should the parties fail to deliver their submissions in accordance with the above, I will presume that failure to be the result of an informed choice and will determine the issue of costs accordingly; and

d. the application is otherwise dismissed.

C. Chang J.

Date: January 8, 2025

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[1] The applicant is incorrectly named in both the notice of application and the amended notice of application as "Foddies Curry & Shawarma Inc."; however, it is undisputed that the applicant's correct name is "Foodies Curry & Shawarma Inc.".

[2] Despite my numerous and repeated directions at previous court attendances, the applicant persisted in its non-compliance with the court's procedural law (e.g., the *Rules of Civil Procedure*, the Central West Region *Notice to the Profession and Parties*, and the provincewide *Notice to the Profession, Parties, Public, and the Media*) and its failure to adhere to best practices.

[3] Based on the undisputed facts that Foodies's lease of the subject premises ended on May 31, 2023 and Royal Paan's lease commenced June 1, 2023, I do not accept Royal Paan's argument that it did not acquire possession until months later. In any event, the months' difference in the timing of Royal Paan's acquisition of possession is not relevant to my finding of unjust enrichment.