Print Three offers glimpse of a post-Raibex world

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The request for summary judgment in *1680960 Ontario Inc v Print Three Franchising Corp,* 2018 ONSC 1192 stems from the sale of an existing Print Three franchised business from one franchisee to another. The franchisees completed the transaction on May 2, 2016. The purchaser had been disclosed on March 2, 2016. The franchisees alleged that the disclosure document they received was generic and did not contain information specific to the franchise being sold. Specifically, they alleged that it did not contain copies of the head lease, an amendment to the head lease, the agreement of purchase and sale, nor some historical financial information.

After the franchisees took over operations, a large number of clients left and revenue declined substantially. On June 24, 2016, the franchisees rescinded and brought a motion for summary judgment requesting (i) a declaration that the franchise agreement entered into was validly rescinded, and (ii) payment from the franchisor for rescission damages.

The franchisees argued that the franchisor did not comply with its disclosure obligations. The franchisor argued that an adequate disclosure document was provided and submitted that the case could not be resolved on the motion because it was very fact-specific, and much of the evidence about what was provided and when was in dispute.

Decision of the Ontario Superior Court

In dismissing the motion for summary judgment, the court held that it was not possible to arrive at a fair and just decision because too much of the critical evidence was in dispute. Indeed, the decision describes numerous issues that were in dispute, including whether all "material facts" known to the franchisor were included in the disclosure document. The court stated that credibility assessments would be required to resolve the matter.

Following the ruling in *Raibex Canada Ltd v ASWR Franchising Corp*, 2018 ONCA 62 (*Raibex*), the court determined that a trial was required. Justice Pollack said that the Court of Appeal gave her "…a framework of analysis that is of great assistance to the determination of this Action." The key issue was whether the disclosure provided was deficient to the point of depriving the plaintiffs of an opportunity to make an informed decision on their purchase. The court found that this was a genuine issue that required a full trial.

Conclusion

If this one summary judgment decision is any indication, it may be that courts will be less likely to find disclosure documents to be "fatally deficient" on summary judgment motions, particularly where there is a genuine evidentiary dispute about what was actually provided to the franchisee. The lower court will be eagerly applying the *Raibex* decision going forward.

We will be following this matter in subsequent issues of the Osler Franchise Review.