

CITATION: Moonable Right Ltd. et al v. Canadian Ice Cream Company Inc. et al
2026 ONSC 3779
COURT FILE NO.: CV-23-00694616-0000
DATE: 20261002

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
MOONABLE RIGHT LTD. and MENG	)	<i>Idan Erez and Karine Bedard, for the</i>
HU	)	Plaintiffs/Defendants by Counterclaim
Plaintiffs/Defendants by Counterclaim	)	
	)	
– and –	)	
	)	
CAMERON KYLE INGLIS, CANADIAN	)	<i>Cameron Kyle Inglis, representing himself</i>
ICE CREAM COMPANY INC., and	)	and the interests of the Defendants/ Plaintiffs
CANADIAN ICE CREAM COMPANY	)	by Counterclaim, Canadian Ice Cream
DISTRIBUTION INC.,	)	Company Inc. and Canadian Ice Cream
	)	Company Distribution Inc.
Defendants	)	
	)	
	)	
	)	
	)	HEARD: March 30 to April 2, 2026, with
	)	written closing submissions provided April
	)	24, April 28, May 14, May 28, and June 3,
	)	2026

PARGHI J.

- [1] This trial arises from a franchise dispute. Moonable Right Ltd. (“Moonable”) and Meng Hu claim that their franchisor, Canadian Ice Cream Company Inc. (“CICC”), did not comply with its disclosure obligations to them under the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c 3. The plaintiffs allege that the defendants provided them with financial statements that did not comply with the requirements of the *Act*, and that this disclosure deficiency was so material that it amounted to no disclosure at all, entitling them to rescind their franchise agreement under s. 6 of the *Act*. They seek a declaration that their January 31, 2023 rescission of the franchise agreement was valid, together with compensation of \$482,043 from CICC, as franchisor, and Cameron Kyle Inglis and Canadian Ice Cream Company Distribution Inc., as “franchisor’s associates” of CICC under the *Act*.
- [2] The defendants counterclaim, alleging that the plaintiffs breached the franchise agreement by abandoning the business and owe them compensation for early termination of the

agreement, in an amount not specified in the pleaded counterclaim. They also request damages in their counterclaim for unpaid royalties, advertising fees, and other amounts, totalling \$1,046.11. The counterclaim also seeks indemnification for losses and expenses the defendants say they incurred as a result of the plaintiffs' breaches of the franchise agreement.

- [3] For the reasons below, I allow the plaintiffs' action and award them compensation in the amount of \$482,043. I dismiss the counterclaim.

Facts

- [4] The facts are generally not in dispute. They are as follows.
- [5] CICC is a franchisor. It holds the right to grant franchises for the operation of ice cream stores under the trade name Marble Slab Creamery.
- [6] On February 1, 2021, Mr. Hu contacted CICC. He completed a candidate questionnaire.
- [7] On February 4, 2021, CICC emailed Mr. Hu a document entitled "Marble Slab Creamery Canadian Franchise Disclosure Document", dated May 31, 2019 (the "Disclosure Document"). The Disclosure Document included CICC's financial statements for its fiscal year ending on January 31, 2019.
- [8] In March 2021, Mr. Hu incorporated Moonable, and Moonable and CICC entered into a franchise agreement with an effective date of March 11, 2021 (the "Franchise Agreement"). Mr. Hu personally guaranteed Moonable's obligations to CICC under the Franchise Agreement. He paid CICC an initial franchise fee of \$25,000 plus tax.
- [9] On April 28, 2021, CICC approved a location in Oakville for the plaintiffs' ice cream store.
- [10] On September 9, 2021, Moonable applied to CIBC for a \$210,000 loan. Mr. Hu personally guaranteed repayment of 25 percent of the loan to CIBC. CIBC advanced the loan funds early in 2022, when construction on the store started. The loan was secured against Moonable's assets.
- [11] On November 8, 2021, Moonable signed a lease agreement to rent the premises for the store, with a possession date of February 1, 2022.
- [12] On June 17, 2022, Moonable started operating the franchised Marble Slab ice cream store out of the premises. The business operated at a loss.
- [13] On or about January 27, 2023, Moonable delivered a "Notice of Rescission" of the Franchise Agreement to CICC, pursuant to s. 6(2) of the *Act*. On January 31, 2023, the plaintiffs stopped operating the franchised business.
- [14] In June 2023, Mr. Hu paid CIBC \$52,500 in exchange for a release of his personal obligation to CIBC as a guarantor of the loan. Moonable continued to make monthly payments on the CIBC loan until August 2023, after which CIBC issued a notice of default

in respect of the loan. CIBC obtained default judgment against Moonable in the amount of \$164,465.53. Moonable is inactive.

- [15] Moonable paid rent under the lease agreement until the lease agreement was assigned on November 1, 2023 to a new Marble Slab franchisee.
- [16] CICC incorporated a numbered company to purchase title to Moonable's assets from CIBC, for \$40,000, and to then sell those assets to the successor franchisee for \$84,750. The successor franchisee has operated a Marble Slab franchise out of the plaintiffs' former premises since February 9, 2024.
- [17] It is common ground between the parties that Mr. Inglis and Canadian Ice Cream Company Distribution Inc. are "franchisor's associates" of CICC within the meaning of the *Act*. Section 1(1) of the *Act* defines a "franchisor's associate", in relevant part, as a person who directly or indirectly controls or is controlled by the franchisor, and who is "directly involved in the grant of the franchise" in one of various enumerated ways.

The liability and compensation framework under the *Act*

- [18] The *Act* is remedial in nature, designed to redress the inequality of power between franchisors and franchisees (*2355305 Ontario Inc. v. Savannah Wells Holdings Inc.*, 2025 ONCA 505, 61 B.L.R. (6th) 1, at para. 4; see also *Mendoza v. Active Tire & Auto Inc.*, 2017 ONCA 471, 414 D.L.R. (4th) 676, at para. 13, and cases cited therein). To that end, the *Act* imposes various information disclosure obligations on franchisors in relation to prospective franchisees. Those obligations are intended to "provide prospective (and often inexperienced) franchisees with sufficient information to make informed decisions" (*Savannah Wells*, at para. 4). Financial statements are among the information required to be disclosed, and form "an extremely significant component of the information a prospective franchisee requires in order to assess the viability of the franchisor's franchise operations and the safety and security of becoming a franchisee in that franchisor's system" (*Mendoza*, at para. 33).
- [19] Subsection 5(1) of the *Act* establishes that a franchisor is to "provide a prospective franchisee with a disclosure document" at least 14 days before the prospective franchisee signs any franchise agreement.
- [20] The substantive requirements for the franchisor's disclosure are set forth in s. 5(4), which requires the disclosure document to contain, among other things, "all material facts, including material facts as prescribed; [and] financial statements as prescribed". These prescribed contents are set forth in the General Regulation promulgated under the *Act*, O. Reg. 581/00. Subsection 3(1) of the General Regulation provides:

3. (1) Every disclosure document shall include,

- (a) an audited financial statement for the most recently completed fiscal year of the franchisor's operations ...;

- (b) a financial statement for the most recently completed fiscal year of the franchisor's operations ...; or
- (c) if a regulation has been made under subsection 13 (2) of the Act in respect of the franchisor, a declaration that franchisor is exempt from the requirement to provide the financial statement described in clause (a) or (b), and that the franchisor meets the criteria prescribed for the purpose of that exemption.

- [21] Subsection 3(2) of the General Regulation offers a “grace period” in respect of this obligation, whereby “if 180 days have not yet passed since the end of the most recently completed fiscal year and a financial statement has not been prepared and reported for that year, the disclosure document shall include a financial statement for the previous fiscal year”.
- [22] Additionally, s. 5(5) of the *Act* requires a franchisor to provide a prospective franchisee “with a written statement of any material change” before any franchise agreement is signed. The contents of the material change disclosure are prescribed in the General Regulation.
- [23] Where a franchisor does not meet the disclosure obligations set forth in the *Act*, the franchisee has the right to rescind the franchise agreement and seek compensation. Section 6 of the *Act*, which figures prominently in this action, establishes two avenues to rescission depending on the nature of the disclosure deficiency:
- 6 (1) A franchisee may rescind the franchise agreement, without penalty or obligation, no later than 60 days after receiving the disclosure document, if the franchisor failed to provide the disclosure document or a statement of material change within the time required by section 5 or if the contents of the disclosure document did not meet the requirements of section 5.
 - (2) A franchisee may rescind the franchise agreement, without penalty or obligation, no later than two years after entering into the franchise agreement if the franchisor never provided the disclosure document.
- [24] The parties agree that for Moonable's purported rescission of the Franchise Agreement to have been valid, s. 6(2) must be found to apply. The notice of rescission was dated January 23, 2023. That is well over 60 days after the February 4, 2021 disclosure to Mr. Hu, but within two years of it. As such, the rescission is only permitted under the *Act* under s. 6(2), and not s. 6(1).
- [25] The plaintiffs' claim for compensation is rooted in ss. 6 and 7 of the *Act*. Subsection 6(6) provides that within 60 days of the rescission of a franchise agreement, a franchisor or their associate must refund certain monies to, and purchase certain inventory and supplies from, the franchisee. It provides in full:

6(6) The franchisor, or franchisor's associate, as the case may be, shall, within 60 days of the effective date of the rescission,

- (a) refund to the franchisee any money received from or on behalf of the franchisee, other than money for inventory, supplies or equipment;
- (b) purchase from the franchisee any inventory that the franchisee had purchased pursuant to the franchise agreement and remaining at the effective date of rescission, at a price equal to the purchase price paid by the franchisee;
- (c) purchase from the franchisee any supplies and equipment that the franchisee had purchased pursuant to the franchise agreement, at a price equal to the purchase price paid by the franchisee; and
- (d) compensate the franchisee for any losses that the franchisee incurred in acquiring, setting up and operating the franchise, less the amounts set out in clauses (a) to (c).

[26] Subsection 7(1) provides in relevant part that "[i]f a franchisee suffers a loss because of a misrepresentation contained in the disclosure document or in a statement of a material change or as a result of the franchisor's failure to comply in any way with section 5, the franchisee has a right of action for damages against" the franchisor or the franchisor's associate.

The Action

Liability

Analysis

[27] On February 4, 2021, after Mr. Hu applied to become a franchisee, CICC provided him with a Disclosure Document that included financial statements for the fiscal year ending on January 31, 2019. The plaintiffs say those statements were not recent enough to comply with the requirements of the *Act*, and that CICC thus breached its disclosure obligation under s. 5(4) of the *Act* and the requirements of s. 3(2) of the General Regulation.

[28] I agree.

[29] CICC's fiscal year-end falls on January 31. As of the February 4, 2021 disclosure date, its most recently completed fiscal year was the year ending on January 31, 2021. Under s. 3(1)(a), CICC was therefore obligated to disclose to Mr. Hu its financial statements for the fiscal year ending on January 31, 2021. The 180-day grace period set forth in s. 3(2) of the General Regulation had not yet passed, with the result that CICC was permitted to instead disclose its financial statements for the prior fiscal year ending on January 31, 2020.

- [30] But that is not what CICC did. CICC instead provided financial statements for the previous fiscal year, ending on January 31, 2019. This did not meet the timeliness requirement in the *Act*, which is clear that if the financial statements for the fiscal year ending January 31, 2021 were not available, CICC could go back one year, but not two.
- [31] The evidence discloses that, by the time the disclosure was provided to Mr. Hu on February 4, 2021, CICC's financial statements for its fiscal year ending January 31, 2020 had in fact already been created. Those statements had been provided by the accountant to CICC many months earlier, on May 21, 2020. CICC therefore could not properly avail itself of the 180-day grace period, which is only available when the most recent financial statements are not yet available. The financial statements CICC disclosed to Mr. Hu were accordingly two years older than they ought to have been.
- [32] The plaintiffs state that CICC's breach of its disclosure obligation under s. 5(4) of the *Act* resulted in a deficient disclosure. They say the disclosure was so materially deficient that, by law, it amounts to no disclosure at all, and thus engages s. 6(2), which entitles the plaintiffs to rescind the Franchise Agreement up to two years after they entered into it.
- [33] The two-year rescission deadline on which the plaintiffs rely is to be distinguished from the 60-day deadline for rescission in s. 6(1) of the *Act*, which applies if the franchisor provides either late disclosure or disclosure that does not meet the requirements under s. 5.
- [34] The Court of Appeal for Ontario, in *Raibex Canada Ltd. v. ASWR Franchising Corp.*, 2018 ONCA 62, 419 D.L.R. (4th) 53, commented on the circumstances in which ss. 6(1) and 6(2) will apply. It framed the issue as follows (at paras. 46-47):
- On one hand, a franchisor's failure to comply with s. 5 of the *AWA* does not always provide sufficient grounds for rescission under s. 6(2): ... A franchisee that receives imperfect disclosure does not necessarily stand in the same position as a franchisee that was "never provided [with a] disclosure document." ...
- On the other hand, a purported "disclosure document" may be so deficient as to *effectively* amount to a complete lack of disclosure, thereby permitting rescission under s. 6(2).
- [35] The court went on to hold that "[w]hether deficiencies in a disclosure document are so serious as to amount to no disclosure for the purposes of the *AWA* must be determined on the facts of each case" (at para. 48). The question is to be considered "with a view to all relevant circumstances bearing on whether the franchisee can make a properly informed decision about whether or not to invest" (at para. 52).
- [36] This "informed investor" test is an objective one: the franchisor's "obligations do not change depending on the actions or reactions of a particular franchisee" (*Mendoza*, at para. 26). The analysis "focuses on the disclosure itself, not its recipient, because the Act seeks to ensure that the franchisor provides the same disclosure to every potential franchisee" (*2611707 Ontario Inc. v. Freshly Squeezed Franchise*, 2022 ONCA 437, at paras. 12-14).

- [37] There is a suggestion in the case law that some categories of disclosure deficiencies are “categorically recognized to be ‘fatal flaws’” (2364562 *Ontario Ltd. v. Yogurtworld Enterprises Inc.*, 2021 ONSC 5112, at para. 37). These include financial statements that do not comply with regulatory requirements. In such cases, the policy objectives of the *Act* carry the day, and the court need not evaluate whether the disclosure deficiency inhibited the ability of the franchisee to make an informed investment decision (*Yogurtworld*, at para. 37; *Eazyfoods Inc. v. 615241 Ontario Ltd.*, 2026 ONSC 504, at paras. 19, 27, 30-31, 51).
- [38] A disclosure deficiency that is not a “fatal flaw,” by contrast, will engage the s. 6(2) rescission right only if it is found by the court, based on the “informed investor” test, to have prevented the prospective franchisee from making an informed decision about whether or not to invest in the franchise (*Eazyfoods*, at paras. 19, 34). The court must decide whether, based on the “nature and extent of the alleged deficiency and its alleged impairment of decision-making”, it would be “impossible” for a reader of the disclosure document to make an informed investment decision (*Yogurtworld*, at para. 38).
- [39] It is not clear to me how the categorical approach, which requires a determination of whether a particular disclosure deficiency is a “fatal flaw,” is properly reconciled with the case-by-case approach the Court of Appeal espouses in *Raibex*. I am nonetheless satisfied that, on either approach, the plaintiffs are entitled to rescind the Franchise Agreement under s. 6(2).
- [40] On the categorical approach, I am satisfied that the financial documents provided were too out of date to satisfy the *Act*’s requirements, and that this is a fatal flaw that entitles the plaintiffs to rescission under s. 6(2). The principle that financial statements must be compliant with the *Act*’s requirements is well-established (see, e.g., 6792341 *Canada Inc. v. Dollar It Limited*, 2009 ONCA 385, 310 D.L.R. (4th) 683, at para. 33; *Caffè Demetre Franchising Corp. v. 2249027 Ontario Inc.*, 2014 ONSC 2133, 25 B.L.R. (5th) 159, at para. 21, aff’d 2015 ONCA 258; *Mendoza*, at paras. 33-34) and is enough on its own to justify rescission under s. 6(2).
- [41] Even if this were not a “fatal flaw,” or if the categorical approach were not the correct one to take, I would nonetheless reach the same conclusion. In the circumstances before me, the out-of-date financial statements provided to the plaintiffs prevented them from obtaining a complete, accurate, and current financial picture. The undisclosed financial statements for the year ending January 31, 2020 showed that CICC had over \$200,000 less in assets in 2020 than in 2019; had almost \$150,000 less in revenue in 2020 than in 2019; had almost \$200,000 more in expenses in 2020 than in 2019; and experienced a net loss of around \$103,000 in 2020, compared with a net positive income of around \$170,000 in 2019. On cross-examination, Mr. Inglis did not dispute any of these suggestions. In my assessment, this information is squarely material, and the fact that it was not provided to the plaintiffs prevented them from making an informed decision about whether to invest in the franchise.
- [42] I accordingly find that the January 31, 2023 rescission of the Franchise Agreement was valid under s. 6(2) of the *Act*.

Defendants' submissions

- [43] The defendants submit that in *Raibex*, the court took the view that if some disclosure is provided, no matter how defective, it cannot be said that there was “no” disclosure under s. 6(2). The defendants state that based on this holding, the fact that some form of disclosure was provided to Mr. Hu is enough to render s. 6(2) inapplicable.
- [44] I am unable to agree. The court in *Raibex* was clear that a purported disclosure document “may be so deficient as to *effectively* amount to a complete lack of disclosure, thereby permitting rescission under s. 6(2)” (at para. 47). The court’s holding underscores that a disclosure that is so deficient that it is, in effect, no disclosure at all will engage s. 6(2).
- [45] The defendants further state that CICC was exempt from having to disclose financial statements as prescribed by the *Act* by virtue of s. 13(2), which states that a franchisor that meets prescribed criteria may be exempted “from the requirement to include specified financial information in a disclosure document”.
- [46] I do not give effect to this submission, for several reasons.
- [47] First, the defendants have not pleaded that they are entitled to the exemption under s. 13(2). Indeed, they were invited to seek to amend their defence to plead the exemption and declined to do so. It is settled law that the pleadings must govern the trial process (*Rodaro v. Royal Bank of Canada* (2002), 59 O.R. (3d) 74, 157 O.A.C. 203 (C.A.), at para. 60). In my view, because the exemption has not been pleaded, it is not properly advanced at trial.
- [48] Second, s. 11(1) of the General Regulation imposes two distinct capitalization requirements that must be met for the s. 13(2) exemption to be available. Neither requirement is satisfied, on the evidence before me. The first requirement is that CICC itself have a capitalization of at least \$1 million. There is no evidence before me to establish that that is the case. The second requirement is that CICC’s owner have a net worth of at least \$5 million. There is scant evidence before me as to the net worth of CICC’s ultimate majority owner, Gainridge Management Ltd. Mr. Inglis offered testimony that he knew Gainridge’s net worth at the time “to be at least \$8 million on the most conservative approach.” He declined on cross-examination to say what Gainridge’s precise net worth was, even after I cautioned him that if he did not give that evidence, it would not be before the court. He did not tender any corroborating evidence in support of his testimony, such as documentation from his accountant, or evidence about the real estate holdings that, on his own evidence, formed the basis of his assessment of Gainridge’s net worth. I am therefore not persuaded, on the balance of probabilities, that either capitalization requirement for the application of the exemption is satisfied.
- [49] Third, if a franchisor is in fact exempt from the requirement to provide financial disclosure, they must disclose the fact of that exemption. It is uncontested that the disclosure document provided by CICC contains no such disclosure.
- [50] Finally, the defendants say that the plaintiffs were not entitled to rescind because they did not behave as if they were harmed by the inadequate disclosure. The defendants assert, for

instance, that the plaintiffs did not identify any particular aspect of the financial statements that they relied on in their decision to invest in the franchise. They say Mr. Hu must have been content with the disclosure provided and could not have felt deceived by it, given that he built the restaurant, negotiated the lease, personally guaranteed the CIBC loan, and indicated a wish to expand to a second location in August 2022.

- [51] I do not give effect to this argument. It is entirely at odds with the objective nature of the “informed investor” test under s. 6, discussed above, which requires me to focus the rescission analysis on the disclosure, and not its recipients or their conduct.

Conclusion on liability and declaratory relief

- [52] For the reasons above, I find that the rescission was indeed lawful under s. 6(2) of the *Act*.
- [53] I grant the plaintiffs a declaration that CICC is a franchisor and Mr. Inglis and Canadian Ice Cream Company Distribution Inc. are “franchisor’s associates” of CICC, within the meaning of the *Act*; and a declaration that the Franchise Agreement was lawfully rescinded on January 31, 2023 by Moonable’s notice of rescission dated January 23, 2023.

Compensation

Analysis

- [54] The plaintiffs seek monetary remedies for the deficiencies in the financial disclosure, under ss. 6 and 7 of the *Act*. They say the stale disclosure was contrary to the financial disclosure requirements in s. 5(4), and they are therefore entitled to the remedies available upon rescission set forth in s. 6(6). The plaintiffs further assert that the stale disclosure amounted to a failure to disclose a “material change” (namely, CICC’s significantly deteriorating financial position) under s. 5(5), as well as a failure to disclose a “material fact” under s. 5(4). They say these failures entitle them to damages under s. 7.
- [55] In *1490664 Ontario Ltd. v. Dig this Garden Retailers Ltd.* ((2005), 256 D.L.R. (4th) 451, 201 O.A.C. 95 (C.A.)), the Court of Appeal held that the objective of the *Act* is to put the franchisee “back in its pre-franchise position where there has been non-disclosure” (at para. 31). To this end, as discussed above, s. 6(6) entitles a franchisee to various categories of payments and purchases from the franchisor upon rescission of the franchise agreement due to non-disclosure.
- [56] Both parties tendered expert evidence in support of their respective compensation claims under the various provisions in s. 6(6).
- [57] The plaintiffs’ expert, Efraim Stulberg, is a chartered accountant and chartered professional accountant who has written and taught on the topic of monetary remedies upon rescission in the franchise context. Mr. Stulberg was qualified as an expert on damages quantification in franchise disputes.

- [58] The defence damages expert, Robert Doran, is also a chartered accountant and chartered professional accountant, but does not have expertise in franchise disputes as Mr. Stulberg does. He acknowledged this candidly in cross-examination.
- [59] I found both experts to be credible and thoughtful, but where their evidence differed, I generally preferred that of Mr. Stulberg, because his expertise extends more squarely to the arena of franchise disputes. Presumably for that reason, his approach to the compensation assessment was generally consistent with the case law, at times unlike the one taken by Mr. Doran.
- [60] Subsection 6(6)(a) allows the franchisee to recover fees it paid to the franchisor. Both parties' experts agree that this amount consists of the initial franchise fee remitted by Moonable to CICC and the subsequent monthly royal fees. These total \$33,193.
- [61] Subsection 6(6)(b) allows the plaintiffs to recover costs incurred in accumulating inventory. The plaintiffs' expert, Mr. Stulberg, calculated this claim at \$18,023, based on an inventory of goods that Mr. Hu took close to the rescission date. The defendants' expert, Mr. Doran, took the view that that amount should be reduced by "about \$10,000" because some of the inventory had perished and therefore could not be "purchased" by the franchisor. The case law does not support Mr. Doran's position (see, e.g., *2189205 Ontario Inc. v. Springdale Pizza Depot Ltd.*, 2012 ONSC 3344, at paras. 9-12; *Eazyfoods*, at paras. 49-50, 53-54).
- [62] In my view, it is appropriate to include perishable inventory in the s. 6(6)(b) damages calculation. Such an approach rightly maintains the focus on whether the franchisee had paid for the inventory and is entitled to be reimbursed for it. The competing approach, of excluding perishable inventory, is concerned with whether the franchisor has the benefit of the expired inventory. Such an approach is not consistent with the case law or with the *Act*'s underlying concern with returning the franchisee to its pre-franchise position.
- [63] Subsection 6(6)(c) entitles the plaintiffs to recover supplies and equipment. Mr. Stulberg calculated this claim at \$267,253. He grounded his analysis in a review of the invoices and receipts Mr. Hu gave him. I find his analysis clear and consistent with the case law, and I accept it in its entirety.
- [64] Mr. Doran mused that perhaps the cost of leasehold improvements should not be included in the s. 6(6)(c) claim. This view is inconsistent with the case law, which includes such costs in compensation under this provision (see, e.g., *2611707 Ontario Inc. v. Freshly Squeezed Franchise Juice Corp.*, 2021 ONSC 2323, 155 O.R. (3d) 359, at para. 10).
- [65] Mr. Doran discounted the equipment claim advanced under s. 6(6)(c), but this, too, is at odd with the jurisprudence (see, e.g., *Springdale Pizza Depot*, at paras. 4, 13-16). The equipment was paid for by the franchisee, and therefore properly recovered.
- [66] Finally, under s. 6(6)(d), the plaintiffs are entitled to recover their losses in acquiring, setting up, and operating the franchise.

- [67] Mr. Stulberg calculated this claim, based on Moonable's profit and loss statements and other materials, to be \$163,574. The claim encompasses both pre-rescission losses, like Mr. Hu and his wife's unpaid labour, and post-rescission losses, such as the rent Moonable continued to pay, as well as the costs associated with its continued servicing of the CIBC loan.
- [68] Mr. Doran offers a different opinion on compensation under s. 6(6)(d), predicated on the view that post-rescission losses cannot be recovered. This aligns with the defendants' submission that post-rescission rent and CIBC payments "are not losses in establishing the franchise" but rather are "post-rescission costs, properly addressed by the franchisee's own mitigation efforts".
- [69] In my view, Mr. Doran's approach is not correct at law. Mr. Stulberg's is.
- [70] Post-rescission loan payments are clearly recoverable under s. 6(6)(d) (*Springdale Pizza Depot*, at para. 22).
- [71] I conclude that post-rescission rent payments are likewise recoverable.
- [72] The only provision in s. 6(6) of the *Act* to limit recovery to pre-rescission losses is s. 6(6)(b) ("[t]he franchisor ... shall ... purchase from the franchisee any inventory ... remaining at the effective date of rescission"). The remaining categories of recovery listed in s. 6(6) contain no such express limit. Based on the clear and express language of the statutory provisions, therefore, I conclude that those provisions in s. 6(6) other than s. 6(6)(b) are not intended to impose any such limit on recovery.
- [73] This understanding is consistent with the Court of Appeal's views that the *Act* merits "a broad and generous interpretation" and that its purpose is "to redress the imbalance of power as between franchisor and franchisee" and "provide a remedy for abuses stemming from this imbalance" (*Salah v. Timothy's Coffees of the World Inc.*, 2010 ONCA 673, 268 O.A.C. 279, at para. 26).
- [74] I note, moreover, that the Franchise Agreement required the plaintiffs to incur the rent-related post-rescission losses that they now seek to recover. This underscores that they should be properly recoverable. The Franchise Agreement required the plaintiffs to operate exclusively from a location approved by CICC and to possess that location for the entirety of the Franchise Agreement's duration, failing which CICC would be able to unilaterally terminate the franchise at will. The plaintiffs therefore had to secure the store for the duration of the Franchise Agreement, as originally contemplated, by incurring the obligation to pay rent for that entire time period, regardless of whether the Franchise Agreement might be rescinded. As such, I find that the costs associated with paying and winding up a continuous lease that lasted for the entirety of the Franchise Agreement were "incurred in acquiring, setting up and operating the franchise" for the purposes of s. 6(6)(d).
- [75] Based on the above, I calculate the plaintiffs' compensation as follows: \$33,193 under s. 6(6)(a), \$18,023 under s. 6(6)(b), \$267,253 under s. 6(6)(c), and \$163,574 under s. 6(6)(d), for a total award of \$482,043. This amount is recoverable against all of the

defendants jointly and severally, together with pre-judgment interest from January 31, 2023, the date of rescission, to today.

Defendants' submissions

- [76] The defendants challenge the plaintiffs' compensation claim on various bases. One is that the plaintiffs fail to consider the issue of mitigation. Where the obligation to mitigate arises, it is for the defendant to show that the plaintiff failed to mitigate; there is no onus on the plaintiff to show that it did mitigate (see, e.g., *Lake v. La Presse*, 2022 ONCA 742, 83 C.C.E.L. (4th) 315, at para. 11, citing *Red Deer College v. Michaels*, [1976] 2 S.C.R. 324, 57 D.L.R. (3d) 386, at pp. 331-332). In any event, the language of s. 6 of the *Act* does not establish a duty to mitigate (see *Dig this Garden Retailers*, at paras. 29-30), and it is difficult to see how the compensation recoverable under s. 6(6) lends itself to mitigation. Most s. 6(6) claims entail previously-incurred costs incurred by the franchisee to establish and run the franchise, including the costs associated with such things as supplies, equipment, and inventory. I am unable to see how costs incurred pre-rescission could reasonably be mitigated in anticipation of a rescission that has not yet taken place. The remaining compensation claims consist of contractually fixed costs to third parties, such as loan financing costs and rent, which payment obligations the plaintiffs were obligated to honour and uphold to achieve "an orderly winding down of the business" (*Dig this Garden Retailers*, at para. 31; see also paras. 29-32).
- [77] The defendants submit that "salvage value" should be deducted from the compensation awarded under s. 6(6). The suggestion appears to be that an incoming franchisee should assume, to the extent possible, whatever costs the original franchisee incurs in respect of inventory, equipment, and so on, and that the original franchisee's compensation under this provision should be decreased accordingly.
- [78] There is no basis for this position, either in the express language of s. 6(6) or the case law interpreting it. The principle of returning the franchisee to their pre-franchise position is consistent with making them whole for these expenses in their entirety.

The Counterclaim

- [79] The counterclaim asserts that the plaintiffs breached the franchise agreement by abandoning the business. It seeks damages for early termination of the agreement and for unpaid royalties, advertising fees, and other amounts, together with indemnification for the losses and expenses the defendants say they experienced as a result of the plaintiffs' breaches of the franchise agreement.
- [80] The defendants observe that the effective date of the Franchise Agreement was March 11, 2021, and that its initial term was to continue to either the earlier of the tenth anniversary of the June 17, 2022 opening date, or the expiration of termination of Moonable's right to possess the premises. They submit that when Moonable ceased operations, on January 31, 2023, only seven months had passed since the opening date, with the result that the term of the Franchise Agreement had not yet expired.

- [81] While I do not disagree with the defendants on the term of the Franchise Agreement, I am unable to accept their argument that the Franchise Agreement was abandoned, because the Franchise Agreement was in fact rescinded. The legal effect of the rescission of a contract is to put an end to the existence of the contract. As such, the rescission of the Franchise Agreement means that by law, the Franchise Agreement is deemed to not have existed as at the time the plaintiffs rescinded it. There was no contract for the defendants to have terminated, on the basis of abandonment or for any other reason.
- [82] Franchisor counterclaims have, for these reasons, been consistently dismissed when a franchisee's rescission is upheld as lawful (see, e.g., *2483038 Ontario Inc. v. 2082100 Ontario Inc.*, 2020 ONSC 475, 10 B.L.R. (6th) 298, at paras. 77, 80-81, aff'd 2022 ONCA 435, 33 B.L.R. (6th); *Premium Host Inc. v. Paramount Franchise Group*, 2023 ONSC 1507, at para 472, aff'd 2024 ONCA 577 (*sub nom. Royal Bank of Canada v. Everest Group Inc.*)).
- [83] The counterclaim must therefore be dismissed, as a matter of law.

Conclusion

- [84] For the reasons above, I grant the plaintiffs the declaratory relief they seek, together with compensation in the amount of \$482,043, and dismiss the counterclaim.
- [85] The parties are strongly encouraged to work together to resolve the issue of costs. If they are unable to do so within 30 days, they may advise my judicial assistant and I will establish a timetable for the exchange of brief costs submissions.



Parghi J.

CITATION: Moonable Right Ltd. et al v. Canadian Ice Cream Company Inc. et al
2026 ONSC 3779

COURT FILE NO.: CV-23-00694616-0000

DATE: 20261002

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SUPERIOR COURT OF JUSTICE

BETWEEN:

MOONABLE RIGHT LTD. and MENG HU

Plaintiffs

– and –

CAMERON KYLE INGLIS, CANADIAN ICE
CREAM COMPANY INC., and CANADIAN ICE
CREAM COMPANY DISTRIBUTION INC.,

Defendants

REASONS FOR JUDGMENT

Parghi, J.

Released: October 2, 2026