

## No More Coffee “Time” for Former Coffee Time Franchisee

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In *Coffee Time Donuts Incorporated v. 2197938 Ontario Inc. and Tirtath Singh Gill*, 2021 ONSC 3109 (“Coffee Time”), Coffee Time Donuts Incorporated (the “Franchisor”) sought summary judgment against the defendants 2197938 Ontario Inc. and Tirtath Singh Gill (collectively the “Franchisee”) for unpaid royalties and advertising contributions. The decision essentially addresses the issue of the enforceability of contractual obligations on parties to a franchise agreement who continue to abide by the terms of the franchise agreement or maintain the benefits of certain parts of the franchise agreement.

### FACTS

The Franchisor and Franchisee executed a franchise agreement dated July 31, 2009, for a term of five years. The Franchisee continued making payments under the franchise agreement until February 16, 2016 but continued to use the Franchisor’s name and suppliers until January 25, 2021, which was the date that the franchise agreement was terminated by the parties on consent. The Franchisor commenced the claim on August 9, 2019.

### ISSUES

The court was asked to determine the following issues:

1. Did the terms of the franchise agreement continue to bind the parties notwithstanding that it expired on July 31, 2014?
2. Were the Franchisor’s claims for royalties or advertising contributions for the period prior to August 9, 2017, statute barred?

### DECISION

In respect of the first issue, although neither party presented any case law to support their respective positions, the Franchisee’s argument was that it was entitled to the benefits under the franchise agreement—*i.e.*, the right to use the name and the suppliers, etc.—without any obligation on its part to remit monies to the Franchisor, and that the payments made by the Franchisee from July 31, 2014, to February 16, 2016 were gratuitous.

After concluding that the entirety of the franchise agreement was being followed by the parties to January 25, 2021, and that the Franchisee’s agreement flies in the face of “commercial realities”, the court had no trouble adopting all the terms of the expired franchise agreement as binding on the parties to that date.

In respect of the second issue, the Franchisor argued that the claims for the period from February 16, 2016, to August 9, 2017, should be included because the Franchisor did not yet form the belief that the Franchisee would not pay until a later date. Ultimately, although the Franchisor seemingly resiled from this position, the court held that since:

- a) the franchise agreement defined a default as a failure “to pay, when due, any monies required to be paid”; and
- b) the Franchisor had discovered its claim shortly after non-payments began to i.e., after February 16, 2016;

that the claims between February 16, 2016 to August 9, 2017 were beyond the applicable two year limitation period and were dismissed.

### **TAKE-AWAY**

Coffee Time provides guidance to both franchisors and franchisees that even absent specific language in a franchise agreement which governs the rights and obligations of the parties after the expiry or termination of the franchise agreement (often referred to as overholding clauses), the terms of the franchise agreement may continue to govern if the parties continue to rely upon, or enjoy, the benefits of that agreement.