

Québec Superior Court interprets exclusivity clause in shopping mall lease narrowly against franchisor

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In this Update

- In the recent decision of *Second Cup Ltd. c. 8702934 Canada inc. (Café Vasanti)*, 2018 QCCS 2064, the Superior Court of Québec narrowly interpreted an exclusivity clause in a commercial lease in favour of the mall owner and against franchisor Second Cup, allowing the operation of a second café restaurant business within the same mall
- Factual circumstances of the case and why it supports the proposition that franchisors should clearly specify the scope of exclusivity clauses in their agreements
- Reasons for this decision supporting the narrow interpretation of exclusivity provisions

In *Second Cup Ltd. c. 8702934 Canada inc. (Café Vasanti)*, 2018 QCCS 2064, the Superior Court of Québec narrowly interpreted an exclusivity clause in a commercial lease between the owner of a shopping mall and a franchisor. This case is a reminder of how important it is for franchisors to clearly specify the scope of any exclusivity clauses to prevent their competitors from moving in nearby.

Background

The Second Cup Ltd. operates a major network of specialty coffee retailers in Canada. In November 2012, Second Cup entered into a franchise agreement with Darmel Café inc. (the Franchisee) for the operation of a Second Cup franchise in a shopping mall. In September 2013, the owner of the shopping mall, 8407304 Canada inc. (the Mall Owner), leased space to Second Cup for the operation of a Second Cup franchise. The Second Cup then sublet the premises to the Franchisee.

The commercial lease between the Mall Owner and the Second Cup included an exclusivity clause which prohibited the Mall Owner from leasing space in the mall to any other business seeking to use the premises “for the principal business of a specialty coffee shop selling coffees, specialty coffees and espresso-based drinks such as, by way of example, a Starbucks, Tim Horton’s, Dunkin Donuts, Café Dépôt, and AL Van Houtte.”

A few months later, the Mall Owner leased space in the shopping mall to Café Vasanti, a cafeteria-style restaurant serving predominantly brewed coffee. The opening of Café Vasanti caused the Franchisee’s sales to drop significantly. Given their lost profit due to competition, the Franchisee insisted that Second Cup attempt to enforce the exclusivity clause in the lease

before taking any steps to terminate the franchise.

The Mall Owner brought an action against Second Cup for failing to pay rent pursuant to the terms of the lease, and Second Cup brought claims against the Mall Owner and Café Vasanti alleging breach of the exclusivity clause. Café Vasanti's commercial lease indeed referred explicitly to Second Cup's exclusivity clause.

Reasons and conclusions

The principal matter at issue in the case is whether or not the Mall Owner's lease of premises to Café Vasanti breached the exclusivity clause.

The Court held that whether or not the exclusivity clause applied to Café Vasanti depended on the interpretation of the term "specialty coffee shop." The lease did not provide a definition, and witness testimony on the subject was contradictory. For instance, Second Cup alleged that Café Vasanti is a coffee shop because it sells six different types of coffee and that it presents itself as such. On the other hand, Café Vasanti claimed that it's a cafeteria-style restaurant that serves mostly brewed coffee, and that the sale of coffee was therefore complementary to its other offerings.

The Court reaffirmed the existing law that exclusivity clauses should be interpreted narrowly in order to protect freedom of commerce, and that it falls to the party claiming the breach of such a clause to prove it. Where a clause is ambiguous, it must be interpreted in alignment with the true intention of the parties.

In this case, the Court held that interpreting the term "specialized coffee shop" required a contextual approach, and that the exclusivity clause targeted three factors, namely: 1) the type of establishment (a specialty coffee shop); 2) the type of products sold (specialty coffees vs. brewed coffee); and 3) a business model or food service concept (a Second Cup coffee shop). The Court further held that the provision also incorporated the idea that the targeted activities had to match the competitor's "principal activity." The fact that the terms "principal activity," "specialty coffee shop" and "specialty coffees" were not defined and were subject to different interpretations, combined with the clause's association of the term "specialty coffee shop" with establishments like Starbucks and Tim Horton's, suggested to the Court that the clause was predominantly targeting a type of establishment.

On the evidence presented, the Court found that Café Vasanti is predominantly a restaurant that also offers coffee, while Second Cup (like Starbucks and Tim Horton's), is truly a specialty coffee shop, and that the exclusivity clause therefore did not apply to it. Because the Court found that Café Vasanti fell outside of the scope of competitive business that the Second Cup had specifically sought to restrict, the Mall Owner and Café Vasanti were held not to be in breach of their lease terms.

Analysis

In its decision, the Superior Court reaffirmed the rule, founded in principle of freedom of commerce and the competitive market, that exclusivity provisions must be closely scrutinized and interpreted narrowly.

Any ambiguity as to the scope of an exclusivity clause will be interpreted in favour of the freedom of trade, and against economic protections sought by a particular business.

In order to effectively protect their rights, franchisors (or any businesses relying on

protections from competition in a commercial lease) must therefore clearly define the scope of any restrictive covenants in their agreements. Ambiguity will be construed against them.