

Back to Basics*

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The recent case of *Granborough Developments Limited v. TGCB Ltd. and The Great Canadian Bagel, Ltd.* contains a helpful review of some basic legal concepts in a commercial lease.

The Great Canadian Bagel, Ltd. ("Great Canadian") is an operating and franchising company of retail food stores. TGCB, Ltd. ("TGCB") is a holding company affiliated with Great Canadian and admittedly designed to shield Great Canadian from liability.

The Landlord and Great Canadian were parties to an existing lease. The Landlord entered into an offer to lease for new premises with TGCB.

A formal lease was never finalized. Possession of the premises was taken but the restaurant was eventually closed because of low sales. The premises were vacated prior to the expiry of the term. The Landlord sued both Great Canadian and TGCB for damages as a result of breach of contract.

A number of basic legal concepts were reviewed by the Court.

The Court found that the offer to lease should be given binding effect as if it were a lease, because the offer contained the six essential requirements of a lease. The offer identified the parties, the demised premises, the commencement date, duration of the term, the rent and all material terms of the contract not being matters incident to the relationship of landlord and tenant.

In addition, the Court found that the parties had conducted themselves as though the arrangements were binding. Possession was taken and business operations began. Rent was paid and accepted. A temporary variation of tenant's responsibilities had been negotiated at one point during the term.

Even though the offer to lease was executed by the Landlord and TGCB, the Landlord argued that it had contracted with Great Canadian. It assumed that TGCB was an abbreviated way of describing Great Canadian, and noted that the trade name of the restaurant was the same as customarily used by Great Canadian. The president of TGCB was the same person as the president of Great Canadian.

The Court did not accept the Landlord's position or evidence, and TGCB was declared the tenant.

In order to attach liability to Great Canadian, the Landlord, in alternative argument, maintained that TGCB effectively assigned the lease to Great Canadian when Great Canadian went into possession, assumed responsibility for the rent and started operating the restaurant.

On the evidence, it was found that the parties intended that a franchisee would eventually be put into place at the premises. Because TGCB did not intend to part with the whole term of the lease, the arrangement with Great Canadian was found not to be an assignment.

The Court found that it wasn't necessary to determine the nature of the relationship between TGCB and Great Canadian (re: Great Canadian's occupancy), because no privity of contract existed between Great Canadian and the Landlord. As a result, no contractual obligations or duties were owed by Great Canadian to the Landlord.

Further, the Court did not find any bad faith or misleading conduct on the part of TGCB or Great Canadian, and would not pierce the corporate veil to attach liability to the operating company.

The Court said that the Landlord, as an experienced and sophisticated party, "could have taken steps to protect itself, possibly by insisting on a guarantee from Great Canadian. By entering into a contract with a non-operating company, Granborough assumed a business risk that ultimately materialized. There is no basis for lifting the corporate veil Great Canadian set up through its subsidiary, TGCB."

In the end, damages for breach of contract were awarded to the Landlord, but only from TGCB, the party to the offer.