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Why a Franchisor Wants to be an ‘Owner’

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Most franchise agreements contain a provision stating that the parties are independent contractors, and that the franchisee is operating its business for its own account. Although there is no dispute that the franchisor owns the “franchise system”, ownership of the franchised business is always vested in the franchisee. However, in respect of expropriations, there is a benefit to a franchisor being deemed to be an “owner” for it to claim compensation. To the author’s knowledge, this is the first time that a court has addressed this issue.

In fact, this is the result of a recent decision in *AW Holdings Corp. v 1* [2022 ABLPR 1365](#) (“AW”). In AW, the Tribunal held that a franchisor was an “owner” entitled to compensation under the Alberta *Expropriations Act* arising from the expropriation of a franchise location, despite that the franchisor: (i) did not own the property, and (b) was not a party to the lease.

FACTS

The franchisor, AW Holdings Corp. (the “**Franchisor**”) granted its franchisee (the “**Franchisee**”) the right to operate a Booster Juice franchise (the “**Franchised Business**”) at certain premises (the “**Premises**”) in the City of Edmonton (the “**City**”). Typical of many franchise structures, the lease for the Franchised Business was between a corporation which was affiliated with the Franchisor (the “**Sublandlord**”) as tenant, and the landlord. In conjunction with the grant of the Franchise:

- A) the Franchisor and the Franchisee executed the Franchisor’s standard-form franchise agreement (the “**FA**”); and
- B) the Sublandlord and the Franchisee executed the Sublandlord’s standard-form sublease agreement (the “**Sublease**”).

The City commenced an expropriation of the Premises, and it was left to the Tribunal to determine the compensation payable to the various parties. The City accepted the claims of the landlord, the Franchisee and the Sublandlord but rejected the claim of the Franchisor on the basis that it did not meet the definition of “owner” under the *Expropriations Act*, RSA 2000, c. E-13 (the “**Act**”).

ANALYSIS AND DECISION

Under the Act, the definition of owner includes, *inter alia*, any person who:

- a) is in possession or occupation of the land; or
- b) is known by the expropriating authority to have an interest in the land.

The City argued that the Franchisor did not have “possession” of the Premises urging the Tribunal to interpret the word “possession” very narrowly. However, the Tribunal held that since the Franchisor had a certain amount of control over the Premises (land) arising from the terms of the Sublease and FA, it enjoyed ‘possession’ of the Premises, through this control.

The Tribunal acknowledged the broad, remedial purpose of the Act. As a result of this acknowledgement, the Tribunal accepted that there are interests in land that are not tied to property ownership. The degree of control exercised by the Franchisor over the Premises and Franchisee, through the Sublease and the FA, and the fact that the Franchisor had a continuing interest in the Franchised Business, meant that it also had an interest in the land being expropriated. Since the City was aware of the FA, the Franchisor was eligible to claim compensation under the Act because of it meeting the definition of “owner”.

WOULD THIS APPLY IN ONTARIO

The definition of “owner” under the *Expropriations Act*, RSO 1990, c E.26 (the “Ontario Act”) is as follows:

“owner” includes a mortgagee, tenant, execution creditor, a person entitled to a limited estate or interest in land, a guardian of property, and a guardian, executor, administrator, or trustee in whom land is vested;

The definition of owner under the Ontario Act does not include either of the phrases “possession or occupation of the land” or “is known by the expropriating authority to have an interest in the land”. However, it does include the phrase “a person entitled to a limited estate or interest in land”. An interest in land involves rights which do not rise to the level of “ownership”, but which give meaningful, and often valuable, rights or entitlements to the holder thereof, which includes a right to possess or occupy. Further, under the Ontario Act, the definition is not stated to be exclusive or exhaustive since it defines “owner” as including persons holding various interests.¹

¹ The author is in the process of claiming compensation from the City of Toronto on behalf of a franchisor with respect to the expropriation of a franchised business. To date, there has been no argument from the City of Toronto that the franchisor is not entitled to compensation.

CONCLUSION

Franchisors have a clear business interest in the continued operations of franchises. Provided that franchisors have the proper supporting documentation, this interest can be used by a franchisor to claim compensation as an “owner” arising from the expropriation of a franchised business. Given the various infrastructure projects throughout Ontario, franchisors should be cognizant of their right to claim compensation and the documentation required to support such claim.