CITATION: Raibex Canada Ltd. v. ASWR Franchising Corp., 2016 ONSC 5575
COURT FILE NO.: CV-14-518145
DATE: 20160907

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
RAIBEX CANADA LTD., ASHRAF HABASHY, IHAB LAWANDI and RAMY BASTAROS Plaintiffs	David S. Altshuller and Lara Di Genova, for the Plaintiffs (Defendants by Counterclaim)
– and –	
ASWR FRANCHISING CORP., ASWR DEVELOPMENTS INC., HELLENIC INTERNATIONAL HOLDINGS INC., LEONTIAN HOLDINGS INC., ATHANASIOS ANASTOPOULOS aka TOM ANASTOPOULOS AND J. PERRY MAISONNEUVE Defendants	Geoffrey B. Shaw and Christopher Horkins, for the Defendants (and for the Plaintiffs by Counterclaim)
AND BETWEEN:	
ASWR FRANCHISING CORP. and ASWR DEVELOPMENTS INC. Plaintiffs by Counterclaim	
– and –	
RAIBEX CANADA LTD., ASHRAF HABASHY, IHAB LAWANDI and RAMY BASTAROS Defendants by Counterclaim	Heard: March 29, 2016

REASONS FOR DECISION

JUSTICE W. MATHESON

[1] The plaintiffs move for partial summary judgment, seeking a declaration that they were entitled to rescind their Franchise Agreement for an AllStar Wings and Ribs ("ASWR") franchise, as well as other relief. The defendants have brought a cross-motion for summary judgment seeking the dismissal of the plaintiffs' claim in its entirety. The parties agree that the issues between them can be decided using the summary judgment process under Rule 20 of the *Rules of Civil Procedure,* other than in regard to damages.

[2] The main focus of the plaintiffs' claim is an alleged failure of disclosure in breach of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c. 3 ("*AWA*") and related regulations.

[3] Among other things, the plaintiffs submit that the defendants are not excused from their statutory mandatory disclosure obligations simply because the location of this proposed franchise was not identified before the Franchise Agreement was signed. I agree. Here, the form of lease included in the franchise disclosure document was materially incomplete and the disclosure document said that costs "vary dramatically from location to location" and "the Franchisor has no reasonable means of estimating or predicting those costs with any certainty." It is insufficient for a franchisor to simply say that required material information was not known at the time of disclosure. In the circumstances of this case, it was premature to purport to deliver the disclosure document under the *AWA* and enter into a franchise agreement.

The parties

[4] The plaintiff Raibex Canada Ltd. is the entity that entered into the franchise agreement with the franchisor dated November 21, 2012 (the "Franchisee"). The plaintiff Ramy Bastaros is the sole director and officer of that company. The remaining plaintiffs, Ashraf Habashy and Ihab Lawandi, are shareholders in Raibex. The three personal plaintiffs also acted as guarantors and covenantors in relation to certain agreements relating to the ASWR franchise.

[5] The defendant ASWR Franchising Corp. is the Franchisor of the AllStar Wings and Ribs franchise. The defendant ASWR Developments Inc. is a related company that carries on business as a lessor of properties for AllStar Wings & Ribs restaurants. It then subleases the premises to the franchisees. The defendant Leontian Holdings Inc. is the owner of the trademarks used in the ASWR franchises and licenses those marks to the Franchisor for the purpose of it sublicensing them to franchisees.

[6] The defendant Hellenic International Holdings Inc. was previously the sole shareholder of the Franchisor. However, the Franchisor is now wholly owned by a company that is not a party, ASWR Corp., and Hellenic is the controlling shareholder of ASWR Corp.

[7] All four corporate defendants are part of a group of companies that are ultimately controlled by the defendant Athanasios (Tom) Anastopoulos.

[8] The final defendant, J. Perry Maisonneuve, became a director and the Chief Financial Officer of the Franchisor and ASWR Developments in 2014. The plaintiffs allege that he was a *de facto* director earlier on, when the events giving rise to this action began. This is disputed.

Events giving rise to claim

[9] In September 2012, Mr. Bastaros contacted Mr. Anastopoulos and expressed an interest in obtaining an ASWR franchise. His call was returned by Mr. Maisonneuve, who indicated that he had been retained by Mr. Anastopoulos. On that call, Mr. Bastaros told Mr. Maisonneuve that his maximum budget was $400,000.

[10] By email dated September 27, 2012, Mr. Maisonneuve sent Mr. Bastaros a document entitled Franchise Information Package. The Franchise Information Package did not distinguish between the costs of constructing a restaurant from a shell and the potentially lower costs associated with converting a pre-existing restaurant into an ASWR franchise. However, in his cover email, Mr. Maisonneuve said the following about the potential for lower costs for a conversion:

> Notwithstanding the range in investment costs provided in the attachment, there are some exciting locations that have just come up that could potentially cut the investment number by as much as one-third (1/3rd) to one-half (1/2). These locations are existing restaurants (but not AllStar locations) that – for whatever reasons – are not or have not done well for their existing owners… Regardless of the cause, we believe the location works for our concept and presents an opportunity for the right AllStar franchisee to cut their initial investment significantly. We estimate that the total refurbishment cost will be between $500K to $600K – depending on the specific location. The unencumbered cash investment on your part will therefore be between $250K to $300K… We cannot get into any more specifics at this stage due to the confidentiality associated with this competitive information. [Emphasis added.]

[11] On his cross-examination in these proceedings, Mr. Maisonneuve admitted to a number of inaccuracies in this email. Among other things, no "exciting locations" had "just come up" that could potentially cut the required investment by as much as one third or one half. As well, his suggestion that the unencumbered cash investment on the plaintiff's part would be between $250K and $300K was inaccurate.

[12] Mr. Bastaros and his business partners decided to pursue a franchise provided that it could be obtained for $400,000. Mr. Maisonneuve offered to assist in finding additional financing in order to proceed with a $600,000 franchise.

[13] On October 12, 2012, Mr. Bastaros met with both Mr. Maisonneuve and Mr. Anastopoulos. Mr. Bastaros was accompanied by his then business partners, Mr. Habashy and Mr. Shared, who did not stay involved. Ultimately, Mr. Lawandi became involved instead.

[14] On October 16, 2012, Mr. Maisonneuve provided Messrs. Bastaros and Habashy with a Franchise Disclosure Document dated September 21, 2012. The Franchise Disclosure Document was later provided to Mr. Lawandi on December 2, 2012.

[15] The Franchise Disclosure Document provided an estimate of development costs, but only costs to build from a shell. It did not provide an estimate of costs of a conversion from a pre-existing restaurant location. The cost estimate in the Franchise Disclosure Document ranged from $805,500 to $1,153,286.

[16] The Franchise Disclosure Document provided no cost estimate for a conversion even though the other ASWR franchises were almost all conversions. The Franchise Disclosure Document suggested that conversion costs could be "significantly less" but indicated that the Franchisor had "no reasonable means of estimating or predicting those costs with any certainty":

> By its nature, the cost to convert a specific pre-existing restaurant to an AllStar Restaurant is highly site specific and can therefore vary dramatically from location to location. While in the Franchisor's experience conversion costs have been significantly less than the cost of building out a shell, Prospective Franchisees are cautioned that infrastructure deficiencies that remain undetectable until reconstruction commences can lead to significant cost overruns to any preliminary budget. Therefore, while Conversions may be available and offer certain savings to the Prospective Franchisee in development costs, the Franchisor has no reasonable means of estimating or predicting those costs with any certainty. Prospective Franchisees are cautioned to ensure they have a significant contingency reserve in the event they wish to pursue a Conversion opportunity. [Emphasis added.]

[17] The Franchise Disclosure Document attached certain draft agreements including a draft sublease said to be an ASWR "standard form". Among other things, this sublease provided that the franchisee accept all the terms, covenants, conditions and obligations in the head lease as negotiated by the Franchisor and the landlord. However, no draft head lease was included in the Franchise Disclosure Document. That Schedule to the sublease was blank.

[18] The Franchise Disclosure Document was signed by Mr. Anastopoulos only, and he did not separately sign for the Franchisor and personally. The plaintiffs submit that there was a second director, Stilianos Costidis, and that Mr. Maisonneuve was a *de facto* director. Neither of them signed the Franchise Disclosure Document.

[19] On October 30, 2012, Mr. Bastaros and Mr. Shared made a formal application for a franchise. Around that time, Mr. Bastaros also engaged Etzler Consulting to develop a preliminary business plan for the franchise. The preliminary business plan was submitted to ASWR on November 15, 2012. It specified a development budget of $600,000 with an additional $50,000 for working capital.

[20] The plaintiff Raibex Canada Ltd. was incorporated on November 7, 2012, to be the Franchisee.

[21] Mr. Bastaros had legal training and experience from Egypt before immigrating to Canada, and some franchise experience in Canada. By e-mail dated November 20, 2012, he wrote to Mr. Maisonneuve waiving the suggested independent legal advice.

[22] Messrs. Bastaros and Habashy completed and signed a questionnaire dated November 21, 2012, confirming, among other things, that they read and understood the Franchise Disclosure Document. In the course of this litigation, Mr. Bastaros agreed that he had only undertaken a quick review of the Franchise Disclosure Document.

[23] On November 21, 2012, Mr. Bastaros executed the Franchise Agreement and General Security Agreement ("GSA") on behalf of Raibex. Mr. Anastopoulos signed on behalf of the Franchisor. Messrs. Bastaros, Habashy and Lawandi also signed the Franchise Agreement as Guarantors and Messrs. Bastaros and Habashy executed a Covenant agreeing, among other things, to perform all terms and conditions of the Franchisee. Mr. Lawandi signed the Franchise Agreement (as Guarantor), GSA and Covenantor at a later stage, on February 8, 2013.

[24] In late November 2012, Raibex paid the initial franchise fee of $30,000 plus tax to Mr. Maisonneuve's company, Northern Lights Consultants Corp.

[25] The location for Raibex's franchise had not been determined at the time the Franchise Agreement was signed. Article 7 of the Franchise Agreement stated that if a location had not been obtained at the time of execution, the parties "will use their reasonable best efforts to find a suitable location…" Schedule A to the Franchise Agreement provided that the franchise would be located in Mississauga and the territory "shall be reasonably determined by the Franchisor" "upon execution of an Offer to Lease or a Lease".

[26] ASWR had an ongoing engagement with the Behar Group to find suitable locations for AllStar franchises. About six months later, in or about late May or June 2013, the Behar Group found an existing restaurant located at 6465 Millcreek Drive, Unit #110 in Mississauga, Ontario that was available for lease. ASWR Developments was to be the head tenant and was to sublease the property to Raibex.

[27] The landlord inserted a condition requiring an initial deposit of five months' rent, to be released one month per year for the first five years, together with a security deposit for the final month's rent. The initial amount due therefore became very substantial – about $120,000. Mr. Bastaros became aware of this when the head lease was being negotiated with ASWR Developments and participated to some degree in that process.

[28] Mr. Bastaros, on behalf of himself as Guarantor and Raibex, and Mr. Habashy in his personal capacity as Guarantor, signed the sublease on October 23, 2013 (the "Sublease"). The head lease was dated September 19, 2013 (the "Head Lease"), however, the plaintiffs did not receive a copy of the executed Head Lease until after the Sublease had been signed.

[29] The Sublease stipulated that the sub-tenant was responsible for all the terms, covenants, conditions and obligations in the Head Lease. According to the Head Lease, this incorporated the obligation to pay the prepaid rent and security deposit of about $120,000.

[30] Conversion of the franchised premises began in November 2013 and was substantially completed just prior to opening in March 2014. Approximately one month prior to opening, the Franchisor advised that the estimated cost for the franchise was over $1 million. It fell just within the costs range in the Franchise Disclosure Document for a "shell", but it was a conversion.

[31] On February 13, 2014, the Franchisor sent a requirement to comply letter notifying Raibex of its contractual requirement to pay the remaining development costs. The Franchisor also wrote to Raibex on February 14, 2014 demanding that a number of deficiencies be rectified, including a shortfall of the development cost budget of $197,000.

[32] The Franchise opened for business in March 2014. On July 3, 2014, ASWR Developments invoiced Raibex for the prepaid rent and security deposit due under the Head Lease, which had not been paid. Raibex refused to pay these amounts.

[33] On July 21, 2014, the Franchisor delivered a notice of default to Raibex for failing to pay the prepaid rent and deposit and outstanding construction amounts. Mr. Maisonneuve wrote Mr. Bastaros by email on the same day stating that the Franchisor would likely be taking control of the premises.

[34] On July 25, 2014, the plaintiffs served a notice of rescission. That notice claimed $1.28 million from the defendants.

[35] On August 1, 2014, the Franchisor and ASWR Developments delivered a notice of termination of the Franchise Agreement and Sublease and assumed control of the franchise.

[36] In December 2014, the plaintiffs commenced this action seeking, among things, a declaration that the Franchise Agreement was validly rescinded by them as of July 25, 2014.

Franchisor directors

[37] The Franchise Disclosure Document was signed by Mr. Anastopoulos only. The plaintiffs submit that a former director of the Franchisor, Mr. Costidis, remained a director at the relevant time and that Mr. Maisonneuve was a *de facto* director. Additional evidence was put forward regarding those two individuals on this issue.

Mr. Costidis

[38] Mr. Costidis became an officer and director of the Franchisor when it was incorporated in December 2006, as well as of Hellenic. As of October 31, 2012, the Corporation Profile Report from the Ministry of Government Services still listed Mr. Costidis as an officer and director of the Franchisor. The Franchise Disclosure Document was signed and provided to the Franchisee before this date. The plaintiffs rely on that Corporation Profile Report.

[39] Mr. Costidis attests that in or around July 2007, he decided to end his business relationship with the ASWR group and with Mr. Anastopoulos. He entered into a Share Purchase Agreement and other agreements in July 2007 under which he agreed to sell his shares in Hellenic and AllStar Inc. The Share Purchase Agreement provided that at or before closing, Mr. Costidis "shall have resigned as director and officer" of Hellenic and AllStar Wings & Ribs Inc. It does not expressly mention ASWR Franchising, but Mr. Costidis attests that he agreed to resign as director and officer of any ASWR company in which he held such a position.

[40] Mr. Costidis attests that he resigned as director of the Franchisor on July 27, 2007, the day after the date of the Share Purchase Agreement, and has had no involvement with the ASWR group since that time. That is the date of his resignation as shown in the registers of corporate directors and officers for the company, although it is not clear when those entries were made. No form of letter of resignation has been located.

[41] Mr. Anastopoulos attests that in 2007 he instructed his corporate counsel to take the steps required to remove Mr. Costidis from the Corporation Profile Report for ASWR Franchising, but his corporate counsel failed to do so.

[42] In January 2009, Mr. Anastopoulos became aware that Mr. Costidis' name still appeared on the Corporation Profile Report for ASWR Franchising. By email dated January 30, 2009, he told his lawyer that Mr. Costidis "should not be in any of the companies". Counsel asked for information based upon which he would then prepare a formal resignation for signature and complete a Notice of Change to file with the Ministry. Through inadvertence, the law firm did not take the steps required to address the resignation and remove Mr. Costidis from the Corporation Profile Report by filing a Notice of Change at that time. That firm ceased acting for the Franchisor in 2010.

[43] In May 2014, Mr. Anastopoulos signed a regularizing resolution prepared by his new corporate solicitors. Among other things, the resolution listed Mr. Costidis as a director and

officer of the Franchisor until his resignation on July 27, 2007. A Notice of Change was filed on December 1, 2014.

[44] Mr. Costidis and Mr. Anastopoulos have not spoken for years and their relationship is now acrimonious. Although payments were made to Mr. Costidis for a period of time under the Share Purchase Agreement, all of the payments due under that agreement have not been made.

Mr. Maisonneuve

[45] Mr. Maisonneuve was the sole sales representative dealing with the plaintiffs on behalf of the Franchisor, and he was extensively involved in the dealings between these parties. In addition, the plaintiffs were asked to and did pay the initial franchise fee of $30,000 to Mr. Maisonneuve's consulting company, Northern Lights Franchise Consultants Corp.

[46] Mr. Maisonneuve established his consulting company in 1998 and provided consulting services to numerous franchisor clients including other food franchisors. The company had other employees as well as other clients. Consulting services were first provided to ASWR in 2008. By agreement dated September 1, 2009, that engagement was expanded to an exclusive marketing agreement under which Northern Lights became the exclusive sales and marketing agent for the Franchisor and agreed not to work for any competitor of the Franchisor. This was initially for an eighteen-month term, but was extended through the relevant period. The agreement required that the Franchisor pay both a monthly fee and a commission for successful transactions.

[47] Both Messrs. Anastopoulos and Maisonneuve attest that Mr. Maisonneuve had no managerial responsibilities or direct or indirect corporate control within the ASWR group at the relevant time, nor was he involved in the decision to grant the franchise. Mr. Maisonneuve did collect initial fees and deposits from new franchisees. He was permitted to offset amounts due under the consulting agreement against those amounts.

[48] Mr. Maisonneuve formally became a director and the Chief Financial Officer of the Franchisor and ASWR Developments on July 1, 2014, well after the time period relevant to this case. However, he signed and certified a franchise disclosure document for another prospective franchisee in early January 2014, indicating that he was a director and officer of the Franchisor as of that time. He had also previously become a director of the corporation that owns the flagship ASWR location, part of the ASWR group, in December 2013.

Analysis

Motions for judgment

[49] The plaintiffs move for partial summary judgment seeking relief that focuses on the claim for rescission. The defendants have brought a cross-motion for summary judgment, seeking an order dismissing the action in its entirety, among other relief.

[50] The core principles applicable to motions for summary judgment are not disputed. The relevant portion of subrule 20.04(2) of the *Rules of Civil Procedure* provides that the court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[51] As set out in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49, there will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits using the summary judgment process. This will be the case when the process: "(1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result."

[52] On a motion for summary judgment, the judge should first determine if there is a genuine issue requiring a trial based only on the evidence before him or her without using the fact-finding powers in subrule 20.04(2.1). If there appears to be a genuine issue requiring a trial, then the motion judge may, at his or her discretion: (1) weigh the evidence, (2) evaluate the credibility of a deponent, or (3) draw any reasonable inference from the evidence unless it is in the "interest of justice" for these powers to be exercised only at trial: *Hryniak,* at para. 66. The proportionality principle means that "the best forum for resolving a dispute is not always that with the most painstaking procedure:" *Hryniak,* at para. 28.

[53] To defeat the use of Rule 20, the responding party must show that there is a genuine issue that requires a trial. The responding party must put its best foot forward: *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200, at para. 26, aff'd, 2014 ONCA 878.

[54] With the exception of the quantification of damages, the parties agree that the issues advanced here can be decided using the summary judgment process. As both sides have noted in this case, courts have repeatedly recognized that franchise rescission claims may properly be decided on a motion for partial summary judgment: e.g., *Caffé Demetre Franchising Corp. v. 2249027 Ontario Inc.*, 2015 ONCA 258, 125 O.R. (3d) 498, at para. 46; *2240802 Ontario Inc. v. Springdale Pizza Depot Ltd.*, 2015 ONCA 236, 331 O.A.C. 282, at paras. 31-35; *2189205 Ontario Inc. v. Springdale Pizza Depot Ltd.*, 2010 ONSC 3695 at para 20; *2147191 Ontario Inc. v. Springdale Pizza Depot Ltd.*, 2014 ONSC 3442.

Issues

[55] These motions give rise to the following issues:

(i) whether the Franchisor failed to meet its disclosure obligations under s. 5 of the *AWA*;

(ii) if so, whether the deficiencies were so egregious that the Franchisee was entitled to rescission within a two-year period under s. 6(2) of the *AWA;*

(iii) whether certain defendants are franchisor's associates under the *AWA*;

(iv) what remedies the plaintiffs are entitled to under s. 6(6) and s. 7 of the *AWA* and against whom; and,

(v) related issues arising from the cross-motion by the defendants.

[56] The analysis must proceed in accordance with the well-accepted general principles regarding the purpose of this legislation. The purpose of the *AWA* is clear: it is intended to address the imbalance of power as between franchisor and franchisee and provide a remedy for abuses stemming from this imbalance: *2147191 Ontario Inc. v. Springdale Pizza Depot Ltd.,* at para. 11, citing *Salah v. Timothy's Coffees of the World Inc.* (2010), 268 O.A.C. 279 (C.A.), at para. 26.

[57] In turn, the focus of the *AWA* is on protecting the interests of franchisees. The mechanism for doing so is the imposition of rigorous disclosure requirements and strict penalties for noncompliance: *6792341 Canada Inc. v. Dollar It Ltd.*, 2009 ONCA 385, 95 O.R. (3d) 291, at paras. 13 and 72, citing *Personal Service Coffee Corp. v. Beer* (2005), 256 D.L.R. (4th) 466 (Ont. C.A.), at para. 28.

(i) Disclosure obligations

[58] The issues raised regarding the adequacy of the Franchise Disclosure Document fall into two categories:

(1) issues regarding its content; and,

(2) issues regarding its certificate.

Content of the Franchise Disclosure Document

[59] The main alleged failure of disclosure relates to location. The plaintiffs submit that the Franchise Disclosure Document should have and did not specify a location or exclusive territory for the franchise, a draft of the sublease including the head lease that formed part of the obligations under the sublease and information about and an estimate of development costs for the refurbished franchise location. The defendants' position, in short, is that the location had not been identified and it was therefore not possible to make this disclosure.

[60] Section 5 of the *AWA* requires that a franchisor provide a prospective franchisee with a disclosure document at least fourteen days before the prospective franchisee signs the franchise agreement. Section 5 sets out in some detail the required contents of the disclosure document. Part II of O. Reg. 581/00 expands on those requirements.

[61] Subsection 5(4) provides as follows:

> (4) The disclosure document shall contain,
>
> (a) all material facts, including material facts as prescribed;
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> (b) financial statements as prescribed;
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> (c) copies of all proposed franchise agreements and other agreements relating to the franchise to be signed by the prospective franchisee;
>
> (d) statements as prescribed for the purposes of assisting the prospective franchisee in making informed investment decisions; and
>
> (e) other information and copies of documents as prescribed. [Emphasis added.]

[62] Material facts are defined in s. 1 of the *AWA*, as follows:

> "material fact" includes any information about the business, operations, capital or control of the franchisor or franchisor's associate, or about the franchise system, that would reasonably be expected to have a significant effect on the value or price of the franchise to be granted or the decision to acquire the franchise; [Emphasis added.]

[63] These disclosure requirements are mandatory: *6792341 Canada Inc. v. Dollar It Ltd.*, at para. 16. The *AWA* does not allow for either waiver of or contracting out of these statutory disclosure obligations.

[64] One of the prime purposes of the *AWA* is to obligate a franchisor to make full and accurate disclosure to a potential franchisee so that the franchisee can make a properly informed decision: *1490664 Ontario Ltd. v. Dig This Garden Retailers Ltd*. (2005), 256 D.L.R. (4th) 451 (Ont. C.A.), at para. 16.

[65] When key information is missing, a properly informed decision is not possible: *6792341 Canada Inc. v. Dollar It Ltd.*, at para. 17.

[66] All information contained in a disclosure document must be "accurately, clearly and concisely set out" as required by s. 5(6) of the *AWA*.

[67] This statutory disclosure must be made in a single document: *1490664 Ontario Ltd. v. Dig This Garden Retailers Ltd.*, at paras. 15, 16, 18 and 19. In this case, that document is the

Franchise Disclosure Document. The plaintiffs do not contend that the earlier Franchise Information Package or its cover email form part of the statutorily-required disclosure document.

[68] In this case, in the absence of known location, the two main problems relied upon by the plaintiffs are the lack of a materially complete form of lease and proper costs disclosure.

[69] Beginning with the lease issue, the Franchise Disclosure Document included a form of sublease that incorporated by reference obligations under a head lease, to be included as a schedule to the sublease. But the head lease was not included. That schedule was left blank.

[70] To borrow a phrase from the Ontario Court of Appeal in *6792341 Canada Inc. v. Dollar It Ltd.*, at para. 39, to suggest that the head lease is not material is absurd. The terms of the lease (in this case, comprised of both the Sublease and the Head Lease) are a critical component of franchise disclosure.

[71] However, in *6792341 Canada Inc. v. Dollar It Ltd.*, the franchisor had the head lease and had not disclosed it. Here, the defendants submit that they could not disclose what they did not have. Since no location had been determined, they did not have a head lease. The defendants submitted that "[i]t would be impossible to disclose the Lease where, as here, the location for the franchise was not determined until well after the Franchise Agreement was signed."

[72] This argument was made in *2337310 Ontario Inc. v. 2264145 Ontario Inc*., 2014 ONSC 4370 – a case where the lease had been signed between the delivery of the franchise disclosure document and the signing of the franchise agreement. The franchisor argued that because the lease did not exist when disclosure was made, the disclosure was not deficient. Stinson J. rejected this argument, noting its significant negative ramifications, at para. 37:

> In my view, in the context of franchise disclosure requirements, it is no answer for a franchisor to explain non-compliance on the basis that a document or information did not exist or was unavailable at the time the disclosure statement was prepared. To accept that submission, would be to create a potentially large lacuna in the disclosure system: it would be easy for a franchisor to pare down its disclosure obligations on the basis that certain material or information was simply not available at the time the disclosure statement was prepared; this excuse could be used to respond to a broad range of complaints about non-disclosure. I therefore reject this approach. [Emphasis added.]

[73] The problem identified by Stinson J. applies with equal force in this case. The focus of the *AWA* is on protecting the interests of franchisees. The mechanism for doing so is the imposition of rigorous disclosure requirements on franchisors and strict penalties for noncompliance. If a franchisor can make disclosure at a premature stage and avoid those rigorous disclosure requirements, the purpose of the legislation is defeated.

[74] In *2337310 Ontario Inc. v. 2264145 Ontario Inc*., Stinson J. held that the problem could have been addressed by giving an updated disclosure document or a written statement of material change under subsection 5(5) of the *AWA*, disclosing the lease, since the lease was entered into before the ultimate franchise agreement was signed. That route was not available here because there was no location identified before the Franchise Agreement was signed, let alone a lease.

[75] The facts before me illustrate the materiality of the Head Lease in this particular case. It imposed a very substantial additional upfront cost of about $120,000. The Franchise Disclosure Document left blank the Schedule that was intended to include the terms of the Head Lease that were incorporated by reference into the Sublease. By failing to disclose all the material terms of the sublease this way, the Franchisor failed to meet its obligation to make disclosure of all material facts and agreements as required by s. 5 of the *AWA*.

[76] I do not suggest that this Franchisor set out to abuse this prospective franchisee. However, the position taken by the Franchisor would allow for substantial abuse. A franchisor could simply give disclosure at a premature stage, when material matters were not yet known, encourage the signing of the franchise agreement at that stage, and avoid its statutory disclosure obligations. I reject that approach.

[77] The Franchisor submits that the practice of making disclosure before a location has been determined is not unusual in practice. That may be so, but it does not change the statutory requirements. I leave open the possibility that proper disclosure could be made in those circumstances even though it was not made here. Presumably, a materially complete form of sublease including the provisions said to be incorporated from the head lease could have been included and, provided it was materially accurate, that problem would be addressed.

[78] If it is simply impossible to make proper disclosure because material facts are not yet known, then the franchisor is not yet ready to deliver the statutorily required disclosure document. The franchisor must wait – it does not get excused from its statutory obligations.

[79] There is another disclosure issue here with similar problems. The *AWA* and Regulation require disclosure of cost information, as elaborated on in s. 6(1)(ii) of O. Reg 581/00, disclosure must include the following:

> 1. A list of all of the franchisee's costs associated with the establishment of the franchise, including,
>
> > i. the amount of any deposits or franchise fees, whether the deposits or fees are refundable, and if so, under what conditions,
> >
> > ii. an estimate of the costs for inventory, leasehold improvements, equipment, leases, rentals and all other tangible and intangible property necessary to establish the

> franchise and an explanation of any assumptions underlying the estimate, and
>
> iii. any other costs associated with the establishment of the franchise not listed in subparagraph i or ii, including any payment to the franchisor, whether direct or indirect, required by the franchise agreement, the nature and amount of the payment, and when the payment is due. [Emphasis added.]

[80] Financial disclosure is of the utmost importance: *6792341 Canada Inc. v. Dollar It Ltd.*, at para. 35. The Franchise Disclosure Document failed to disclose the substantial additional deposit under the head lease as required by this section. As well, the costs disclosure that was made was materially inadequate.

[81] The Franchisor did provide some disclosure about costs, most significantly for this case in the "Estimate of Development Costs" in the Franchise Disclosure Document. However, that cost estimate was based upon a shell, not a conversion, and all franchises as of then, other than the original restaurant, were conversions.

[82] Even more problematic is the statement made in the Franchise Disclosure Document about conversions. The Franchise Disclosure Document opened up the possibility of significantly lower costs for a conversion but still stated that the Franchisor had "no reasonable means of estimating or predicting those costs with any certainty." It also stated that conversion costs were highly site-specific and could "therefore vary dramatically from location to location."

[83] If it is necessary to state in a franchise disclosure document that the franchisor has "no reasonable means of estimating or predicting those costs with any certainty" that is as much as admitting that the costs disclosure obligation cannot be met as of then. A broad disclaimer is also no answer to the mandatory statutory disclosure obligations. Again, if a location had been determined, these broad caveats based upon costs being "highly site-specific" would be unnecessary and proper disclosure would be made.

[84] The defendants submit that it is sufficient that the actual costs came just under the high end of the range of the cost estimate based on a shell provided in the Franchise Disclosure Document. While I have taken this into account in considering the adequacy of the disclosure under s. 6, it is not a satisfactory answer to the disclosure obligation. The costs disclosure must be provided in some detail as is illustrated by the cost estimate for shell. It is insufficient to say that it happens to be the case that the high-end of the shell estimate is slightly higher than the actual costs of this conversion.

[85] Again, this failure of disclosure suggests that the Franchise Disclosure Document was delivered prematurely, before the Franchisor was in a position to properly estimate costs.

[86] The defendants place emphasis on the fact that obviously the proposed franchisee knew there was no location yet selected and was involved in the process through which the location was selected at a later stage as well as in the lease arrangements. This is in the nature of a waiver argument, suggesting that the Franchisee agreed to what eventually transpired.

[87] A waiver argument is no answer to the statutory disclosure obligations of the franchisor. The plain words of the *AWA* do not allow for the introduction of concepts of waiver or contracting out of these obligations, and the purpose of the legislation is inconsistent with that approach. These concepts conflict with the need to address the power imbalance between franchisors and franchisees, and substantially derogate from the rigorous disclosure requirements that are intended to be imposed on franchisors.

[88] The defendants also place emphasis on Mr. Bastaros' purported expertise based on his prior legal experience in Egypt and his experience with another franchise in Canada. However, franchisor disclosure obligations are not reduced based upon the sophistication of prospective franchisee.

[89] I therefore find that the Franchisor failed to make the required disclosure in these respects.

[90] The plaintiff also argued that the Franchise Disclosure Document was deficient in that it did not contain information about the "exciting locations" referred to in Mr. Maisonneuve's email dated September 27, 2012. These were described as conversions and, to the extent that the Franchisor had information about the cost of conversions, that information could have contributed to a more compliant Franchise Disclosure Document. However, I am not prepared to consider this email as part of the franchise disclosure document mandated by the *AWA*. The plaintiffs signed various documents acknowledging that the Franchise Disclosure Document was the sole relevant document from the standpoint of Franchisor disclosure, and did not seriously argue otherwise at the hearing of these motions.

Certificate

[91] The remaining issues regarding the adequacy of the Franchise Disclosure Document relate to its certificate.

[92] Section 7 of O. Reg. 581/00, Part II, requires that every disclosure document include a certificate certifying that the document: (a) contains no untrue information, representations or statements; and, (b) includes every material fact, financial statement, statement and other information required by the *AWA* and this Regulation.

[93] Where the franchisor is a corporation with only one director or officer, subsection 7(2) requires that the certificate be signed by that person. Otherwise, at least two persons who are officers or directors must sign.

[94] The certificate is an important requirement: *6792341 Canada Inc. v. Dollar It Ltd.*, at paras. 22 and 32. Its purpose is to bring home to the directors the need to make disclosure as required by the *AWA* and the Regulation. The certificate may also provide an avenue for franchisees to pursue a remedy against the corporate directors who signed the certificate personally: *2337310 Ontario Inc. v. 2264145 Ontario Inc*., at para. 49; *Burnett Management Inc. v. Cuts Fitness for Men*, 2012 ONSC 3358, 4 B.L.R. (5th) 234, at paras. 41-43.

[95] The mere absence of a signed and dated certificate is enough to permit the franchisee to rescind the franchise agreement: *6792341 Canada Inc. v. Dollar It Ltd.*, at paras. 22 and 32.

[96] The plaintiffs submit that the Franchise Disclosure Document certificate was deficient for three reasons:

(1) Mr. Costidis remained a director of the Franchisor, and did not sign the Franchise Disclosure Document;

(2) Mr. Maisonneuve was a *de facto* director of the Franchisor, and did not sign the Franchise Disclosure Document; and

(3) Mr. Anastopoulos signed for the Franchisor only, and also failed to sign personally.

[97] **Mr. Costidis**: The issue with Mr. Costidis is when his resignation was effective. There is no issue that he began as a director of the Franchisor from the time of incorporation. The plaintiffs submit that he did not effectively resign until 2014 and therefore should have signed the certificate. The defendants submit that he resigned in 2007, well before this transaction.

[98] The *AWA* and Regulation do not define "director" or otherwise prescribe the necessary approach to a determination of who is a director. Both sides submit that in the circumstances, it is appropriate to invoke the law under the relevant corporate statute, in this case, the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 ("*OBCA*"). I agree with this approach.

[99] Subsection 262(3) of the *OBCA* contains a presumption relevant to this case. A director named in the articles or the most recent notice filed under the *Corporations Information Act* is presumed to be a director of the corporation. Thus, as a result of the listing of Mr. Costidis as a director of the Franchisor in the October 31, 2012 Corporation Profile Report, he is presumed to be a director as of that time. The issue is whether or not that presumption has been rebutted.

[100] The plaintiffs have provided various tax cases illustrating circumstances where evidence demonstrated when a director's resignation became effective even though certain formalities had not been observed: *Gariepy v. The Queen*, 2014 TCC 254, 2014 D.T.C. 1188; *Arevian v. R.*, 2008 TCC 327, 2008 G.T.C. 703; *Marra v. Canada*, 2016 TCC 24, 2016 D.T.C. 1028. The defendants have provided labour relations decisions that similarly demonstrate situations where a presumption of directorship may be rebutted by evidence: *Efford v. Bernique*, 2012 CarswellOnt 4627 (OLRB); *Navas v. Blakemore*, [2005] O.L.R.B. Rep. 127.

[101] There is ample evidence before me that rebuts the presumption that Mr. Costidis remained a director in 2012. I have not only have evidence from Mr. Anastopoulos and Mr. Costidis, but also from corporate counsel who has attested that due to inadvertence, counsel did not take the requisite steps to formalize the resignation when asked to do so well before the relevant time period. The 2009 emails are especially significant, being well before any dealings with the plaintiffs. Before the events relevant to this proceeding even arose, Mr. Anastopoulos wrote to his lawyer that Mr. Costidis "should not be in any of the companies."

[102] I conclude that Mr. Costidis' resignation was effective in 2009 at the latest. Mr. Costidis was therefore not a director as of the date of the Franchise Disclosure Document and was not obliged to sign it.

[103] The plaintiffs also seek to rely upon what they describe as an admission by Mr. Costidis on his cross-examination, to the effect that he remained liable as a director for as long as he was listed on the corporate documents. Having reviewed the transcript, I find the answer relied upon falls short of the hoped-for admission. Even if it did not, this gentleman is not a party to this litigation and his expression of his belief on cross-examination about a matter of law does not amount to a binding admission in this litigation.

[104] **Mr. Maisonneuve**: The plaintiffs submit that Mr. Maisonneuve acted in the capacity of director and is therefore a *de facto* director and ought to have signed the certificate. The plaintiffs have put forward no jurisprudence supporting the proposition that the certificate obligation under the *AWA* is intended to extend to *de facto* directors, but even if it is, I am not persuaded that Mr. Maisonneuve was a *de facto* director of the Franchisor at the relevant time.

[105] This is not a case where an individual represented himself as a director at the relevant time – the evidence does not support that basis for a finding against Mr. Maisonneuve. Representations made years later, in 2014, are insufficient. Nor has it been established that Mr. Maisonneuve exercised control over the Franchisor.

[106] The plaintiffs rely upon *Hartrell v. R.*, 2006 TCC 480, [2007] 1 C.T.C. 2109. This tax case involved a soccer club where an individual stepped up to keep the operation going when it was in substantial disarray. As put by the Court at para. 27, where a corporation operates without having been properly organized and the only director of record plays no part in running the corporation, a person who takes it upon him or herself to direct the affairs of the company may be held to be a *de facto* director, whether or not that person has explicitly represented themselves as a director to any third party. That is simply not the situation with respect to the Franchisor.

[107] The evidence before me does not establish that the Franchisor was in substantial disarray or that Mr. Maisonneuve began to take either a governance or managerial role at the relevant time. On the contrary, in this case, Mr. Anastopoulos was involved in the dealings in regard to the plaintiff's franchise in a manner consistent with his directorship of the Franchisor.

[108] **Mr. Anastopoulos**: The plaintiffs submit that Mr. Anastopoulos ought to have signed the certificate twice – once for the Franchisor company and a second time on his own behalf. The defendants submit that once was enough.

[109] The *AWA* and the applicable Regulation do not prescribe the form of the certificate. Subsection 7(2) of the Regulation requires the signature of one or more directors or officers of a franchisor. It does not expressly state that the franchisor and the one or two directors or officers must certify separately. Given the objective of personal responsibility, the signatories should sign on their own behalf rather than just on behalf of the corporation. However, in this case, Mr. Anastopoulos is not suggesting that any personal responsibility is removed because his signature appears for the company and not again separately. In these circumstances, there is no disadvantage that must be addressed.

(ii) Rescission

[110] Subsections 6(1) and (2) of the *AWA* provide for the remedy of rescission in certain circumstances. In this case, s. 6(2) is the relevant provision. It provides as follows:

> 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.

[111] The notice of rescission was given within the two-year period.

[112] The plaintiffs submit that the Franchise Disclosure Document was so deficient that it amounted to a failure to provide a disclosure document. As a result, the plaintiffs submit that they were entitled to exercise a right of rescission under s. 6(2).

[113] It has repeatedly been recognized that a flawed franchise disclosure document may be so inadequate that it amounts to no disclosure: *2240802 Ontario Inc. v. Springdale Pizza Depot Ltd.*; *1490664 Ontario Ltd. v. Dig This Garden Retailers Ltd*.; *Apblouin Imports Ltd. v. Global Diaper Services Inc.*, 2013 ONSC 2592; *2337310 Ontario Inc. v. 2264145 Ontario Inc*., 2014 ONSC 4370; *Sovereignty Investment Holdings, Inc. v. 917-6907 Quebec Inc.,* 303 D.L.R. (4th) 515; *2147191 Ontario Inc. v. Springdale Pizza Depot Ltd*. Thus, inadequate disclosure might amount to non-disclosure sufficient to preserve an ongoing right of rescission for up to two years after the franchise agreement is signed.

[114] I conclude that this is not a case of disclosure that was simply deficient. The lack of disclosure was egregious. The Franchise Disclosure Document had "stark and material deficiencies" with respect to the lease and costs obligations, such that it amounted to no disclosure: *Caffé Demetre Franchising Corp. v. 2249027 Ontario Inc.*, at paras. 29 and 48. I therefore conclude that the Franchisee's notice of rescission was timely and effective.

(iii) Franchisor's associates

[115] Both a franchisor and its associates have significant financial obligations to a franchisee after rescission: ss. 6(6) and 7 of the *AWA*. The plaintiffs submit that the following four defendants are the Franchisor's associates within the meaning of the *AWA*: ASWR Developments, Hellenic, Leontian and Mr. Maisonneuve. The defendants disagree. Only Mr. Anastopoulos is accepted as a franchisor's associate.

[116] Section 1 of the *AWA* defines "franchisor's associate" as follows:

> "franchisor's associate" means a person,
>
> (a) who, directly or indirectly,
>
> (i) controls or is controlled by the franchisor, or
>
> (ii) is controlled by another person who also controls, directly or indirectly, the franchisor, and
>
> (b) who,
>
> (i) is directly involved in the grant of the franchise,
>
> (A) by being involved in reviewing or approving the grant of the franchise, or
>
> (B) by making representations to the prospective franchisee on behalf of the franchisor for the purpose of granting the franchise, marketing the franchise or otherwise offering to grant the franchise, or
>
> (ii) exercises significant operational control over the franchisee and to whom the franchisee has a continuing financial obligation in respect of the franchise;

[117] The definition is conjunctive – the party must satisfy both (a) and (b). The first part of the definition imposes a control test while the second part focuses on actions taken by the alleged franchisor's associate in relation to the franchise in question: *Addison Chevrolet Buick GMC Ltd. v. General Motors of Canada Ltd.*, 2015 ONSC 3404, 45 B.L.R. (5th) 135, at para. 61.

[118] Beginning with the three corporate entities at issue, ASWR Developments, Hellenic and Leontian, they are all controlled, directly or indirectly, by Mr. Anastopoulos, who also indirectly controls the Franchisor. They therefore meet the first part of the definition.

[119] ASWR Developments also meets the second part of the definition. It is the company that acts as lessor of properties for the Franchisor. It then subleases the premises to franchisees. It was this company that entered into the Sublease with the Franchisee. This was an important aspect of the franchise relationship, including significant franchisee financial obligations: *6792341 Canada Inc. v. Dollar It Ltd.*, at para. 42. Although not expressly admitted, the defendants do not seriously challenge this company as a franchisor's associate.

[120] The defendants submit, however, that neither Leontian nor Hellenic fulfills the second part of the definition. Leontian is the owner of the trademarks used in the ASWR franchises. However, it does not license those marks directly to franchisees. It licenses the marks to the Franchisor for the purpose of it sublicensing them to franchisees. At the relevant time, Hellenic owned the Franchisor. The record before me does not demonstrate any direct involvement between these companies and this franchise or Franchisee sufficient to meet the requirements of the definition. I therefore conclude that neither Hellenic nor Leontian were the Franchisor's associates at the relevant time.

[121] Moving to Mr. Maisonneuve, he readily meets the second part of the definition. He was very involved in making representations to the prospective franchisee on behalf of the Franchisor for the purpose of marketing the franchise. The issue with this party is whether or not the first part of the test is met, regarding control.

[122] The plaintiffs submit that even if Mr. Maisonneuve was not a *de facto* director at the relevant time, the first part of the definition is satisfied. There is no requirement under the *AWA* for a "franchisor's associate" to be a director or officer of a company. The focus of the definition is on the nature of the parties' involvement in the franchise relationship: *WP (33 Sheppard) Gourmet Express Restaurant Corp. v. WP Canada Bistro & Express Co.*, 2010 ONSC 2644, at para. 162.

[123] I agree that it is not necessary to establish that Mr. Maisonneuve was an officer or director of either the Franchisor or a related entity.

[124] The Franchisor contracted with Mr. Maisonneuve's company, Northern Lights, for sales and marketing services. The Franchise Disclosure Document describes Northern Lights as "the Franchisor's development group", which is some evidence of a close relationship. However, on its face, the terms of the agreement between Northern Lights and the Franchisor do not describe a relationship that fulfills the "control" part of the definition of franchisor's associate.

[125] It is certainly possible to advance evidence to prove a control relationship above and beyond the terms of an agreement with a purported independent contractor. However, the evidence before me does not establish that Northern Lights had such a relationship with the Franchisor, let alone Mr. Maisonneuve personally.

[126] I therefore conclude that Mr. Maisonneuve was not a franchisor's associate at the relevant time. He remains potentially liable under s. 7(1) (b) and (c), which the defendants agree applies to him.

(iv) Remedies

[127] Section 6 of the *AWA* provides for certain consequences of rescission, as follows:

> 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).

[128] The Franchisee also seeks damages under s. 7 of the *AWA*, which provides as follows:

> 7. (1) If 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,
>
> (a) the franchisor;
>
> (b) the franchisor's agent;
>
> (c) the franchisor's broker, being a person other than the franchisor, franchisor's associate, franchisor's agent or franchisee, who grants, markets or otherwise offers to grant a franchise, or who arranges for the grant of a franchise;

> (d) the franchisor's associate; and
>
> (e) every person who signed the disclosure document or statement of material change. [Emphasis added.]

[129] These remedies are only available to the Franchisee – the plaintiff Raibex Canada Inc. The other plaintiffs are not entitled to any relief under these provisions.

[130] Initially, Raibex submitted that damages incurred under s. 6 of the *AWA* could be properly quantified on this motion, but that its damages under s. 7 should be referred to a Master for determination. However, in oral argument, plaintiffs' counsel acknowledged that the claims under subsections 6(6)(b) and (d) should also be referred to a Master for determination, recognizing the possibilty of overlap with claims under s. 7. The defendants submit that all damages issues should be referred to a Master for determination.

[131] The above findings regarding disclosure, rescission and franchisor's associates are largely based upon undisputed facts and I am confident that I can fairly and justly decide those issues on the plaintiffs' motion for summary judgment. That is not the case for damages. The parties agree that most damages issues should be referred to a Master. Given the risk of inconsistent findings on damages that arises from referring some damages issues and not the others, I conclude that it is both fair and efficient to refer all damages issues to a Master.

(v) Cross-motion

[132] Most of the relief sought on the cross-motion is no longer relevant given that the plaintiffs succeeded on rescission. However, there remain some issues to address.

[133] On the cross-motion, the defendants seek to dismiss two claims made by the plaintiffs that were not the subject of the plaintiffs' motion for partial summary judgment. Specifically, the defendants seek to dismiss the claim for misrepresentation under s. 7 of the *AWA* and a claim for breach of the duty of good faith under s. 3 of the *AWA*. The defendants seek to dismiss these claims under Rule 20. As such, the plaintiffs must put their best foot forward.

[134] These two claims were not the subject of any significant attention in the plaintiffs' oral argument before me, and no attention in the written argument. This is consistent with the plaintiffs' position that the claims under s. 5 of the *AWA* and their consequences were the central focus of this proceeding.

[135] Similarly, the statement of claim contains only a brief reference to misrepresentation under s. 7 that makes it clear that the alleged misrepresentations are limited to the alleged breaches of s. 5 in regard to the disclosure in the Franchise Disclosure Document. There is also a very brief reference to the alleged breach of s. 3 in the statement of claim suggesting that the Franchisor was not candid, without any particulars.

[136] In the absence of any focused argument by the plaintiffs seeking to demonstrate that either of these claims have been proved by them, or require a trial, I conclude that it is appropriate that they be dismissed at this time. Similarly, the cross-motion sought relief in the counterclaim that was not pursued in argument.

Summary and costs

[137] I have found that the Franchise Disclosure Document failed to meet the disclosure requirements of s. 5 of the *AWA* and O. Reg 581/00, and that the right of rescission was properly exercised under s. 6(2) of the *AWA*, among other findings.

[138] Bearing in mind that neither of the proposed lengthy forms of order I have been provided with are suitable to the outcome, I conclude that it would be appropriate to permit the parties an opportunity to prepare a proposed draft order to be submitted to me for consideration.

[139] If the form of order cannot be agreed upon, the parties are permitted to make brief written submissions in support of any points of contention. In this context, I invite the parties to address any consequential orders that they submit are appropriate arising from this decision including the many potential orders sought in their motions. Similarly, if the parties are unable to agree on costs, they shall make written submissions.

[140] The schedule for written submissions is as follows: the plaintiffs shall make their submissions by delivering brief written submissions together with any supporting material by September 30, 2016. The defendants shall respond by delivering brief written submissions and any supporting material by October 21, 2016. A brief written reply may be delivered by October 31, 2016. This timetable may be modified on agreement between the parties provided that I am notified of the new timetable by September 30, 2016.

Justice W. Matheson

Released: September 7, 2016

CITATION: Raibex Canada Ltd. v. ASWR Franchising Corp., 2016 ONSC 5575
COURT FILE NO.: CV-14-518145
DATE: 20160907

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

RAIBEX CANADA LTD., ASHRAF HABASHY, IHAB LAWANDI and RAMY BASTAROS

Plaintiffs

– and –

ASWR FRANCHISING CORP., ASWR DEVELOPMENTS INC., HELLENIC INTERNATIONAL HOLDINGS INC., LEONTIAN HOLDINGS INC., ATHANASIOS ANASTOPOULOS aka TOM ANASTOPOULOS AND J. PERRY MAISONNEUVE

Defendants

AND BETWEEN:

ASWR FRANCHISING CORP. and ASWR DEVELOPMENTS INC.

Plaintiffs by Counterclaim

– and –

RAIBEX CANADA LTD., ASHRAF HABASHY, IHAB LAWANDI and RAMY BASTAROS

Defendants by Counterclaim

REASONS FOR DECISION

Justice W. Matheson

Released: September 7, 2016