CITATION: Fyfe v. Stephens, 2018 ONSC 5066
NEWMARKET COURT FILE NO.: CV-16-127625-00
DATE: 20180827

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Jill Fyfe and Dan Arthur Stephens (a.k.a. Steven Daniels)	)	Colin A. Brown, for the Plaintiffs
Plaintiffs	)	
– and –	)	
	)	Satish Mandalagiri, for the Defendants
Glen Edward Vardy, carrying on business as Dial A Bottle		
Defendants		
	)	
	)	
	)	**HEARD:** August 3, 2018

REASONS FOR DECISION
ON MOTION FOR SUMMARY JUDGMENT

VALLEE J.:

Nature of the Motion

[1] The plaintiffs bring this motion for summary judgment. The plaintiffs and the defendant entered into a business agreement. They signed a document entitled "Exclusivity Agreement". The plaintiffs state that they had a franchise relationship with the defendant. According to the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000 c. 3 (*Act*), a franchisor must make significant disclosure prior to the parties' signing an agreement. The defendant did not make disclosure.

[2] The defendant does not contest this. He states that the Agreement was not a franchise agreement; therefore, he was not required to make disclosure.

[3] The plaintiffs further state that the defendant made certain representations about the business opportunity before they signed the Agreement. These representations were misleading. The plaintiffs' business failed. The defendant states that he made no promises. The business failed because the plaintiffs operated it for a limited time which was not an adequate to promote it.

[4] The plaintiffs claim rescission of the Agreement for the failure to make disclosure and damages for misrepresentation pursuant to the *Act*.

Issues to be Decided

(a) Is this an appropriate case for summary judgment?

(b) What is the relevance of the statement in the Exclusivity Agreement that the parties agree that "this is not a purchase of a franchise"?

(c) Were the plaintiffs required by contract to make a payment or continuing payments to the defendant…in the course of operating the business or as a condition of acquiring the franchise or commencing operations?

(d) Did the defendant grant the plaintiffs the right to sell, offer for sale or distribute goods or services that are substantially associated with the defendant's trademark?

(e) Did the defendant exercise significant control over, or offer significant assistance with the plaintiffs' method of operation including marketing techniques?

(f) Is the Exclusivity Agreement a franchise agreement?

(g) If the Exclusivity Agreement is a franchise agreement, given the fact that no disclosure was made by the defendant, is rescission the appropriate remedy?

(h) Have the plaintiffs suffered damages as a result of misrepresentation?

(i) Have the plaintiffs suffered damages as a result of a failure to disclose?

(j) Can the plaintiffs' damages be calculated?

(a) Is this case appropriate for summary judgment?

[5] In *Hyrniak v. Mauldin*, 2014 SCC 7 (CanLII), 2014 S.C.C. 7, the court provided guidance on the interpretation of Rule 20 of the *Rules of Civil Procedure*. The court noted in paragraph 49 that if the process allows a judge to make the necessary findings of fact, apply the law to the facts, is a proportionate, more expeditious and less expensive means to achieve a just result, and if the judge is able to reach a fair and just determination on the merits of the motion, there will be no genuine issue requiring a trial.

[6] This is an action based on the interpretation of a contract. Both parties swore affidavits on this motion. They were both cross-examined. It is unlikely that any better or more complete evidence regarding the Agreement would be provided if this matter were to proceed to trial.

[7] If the plaintiffs can demonstrate that the contract meets the requirements of a franchise agreement as set out in the *Act*, the court can apply the relevant legislation to determine whether it is a franchise agreement. If it is, and if the defendant did not provide the statutory disclosure, then the remedy specified by the *Act* can be applied. This will be a more expeditious and less expensive means to a just result. There will be no genuine issue for trial regarding the contract.

The Test for a Franchise Agreement or Relationship

[8] In order to determine whether a franchise agreement or relationship exists, one must consider whether the requirements set out in the *Act* are met.

[9] A number of definitions are set out in s. 1(1) of the *Act*. The relevant provisions are:

> "**franchise**" means a right to engage in a business where the franchisee is required by contract or otherwise to make a payment or continuing payments, whether direct or indirect, or a commitment to make such payment or payments, to the franchisor… in the course of operating the business or as a condition of acquiring the franchise or commencing operations and,
>
> (a) in which,
>
> (i) the franchisor grants the franchisee the right to sell, offer for sale or distribute goods or services that are substantially associated with the franchisor's… trademark, service mark, trade name, logo or advertising or other commercial symbol, and,

(ii) the franchisor… exercises significant control over, or offers significant assistance in, the franchisee's method of operation, including building design and furnishings, locations, business organization, marketing techniques or training.

"**franchise agreement**" means any agreement that relates to a franchise between a franchisor and franchisee

"**franchisee**" means a person to whom a franchise is granted

"**franchise system**" includes

(a) the marketing, marketing plan or business plan of the franchise,

(b) the use of or association with a trademark…

(c) the obligations of the franchisor and the franchisee with regard to the operation of the business operated by the franchisee under the franchise agreement

"**franchisor**" means one or more persons who grant or offer to grant a franchise

[10] If the elements of the Agreement meet these requirements, then the Agreement will be a franchise agreement.

(b) What is the relevance of the statement in the Exclusivity Agreement that the parties agree that "this is not a purchase of a franchise"?

[11] The defendant states that prior to the plaintiffs' signing the Exclusivity Agreement, the defendant sent them an email dated May 5, 2015, in which he pointed out that "Dial A Bottle is not a franchise". The defendant states that when the parties entered into the Agreement, they did not intend or mean for it to be a franchise agreement. They always called it an Exclusivity Agreement. Paragraph 9 of the Agreement, signed May 19, 2015, specifically states that the parties agreed that the plaintiffs were not purchasing a franchise. For various reasons unrelated to the defendant, such as competition or perhaps not operating the business for long enough, it was not profitable. This is a case of buyer's remorse. When the plaintiffs signed the Agreement, they clearly understood that it was not a franchise agreement. Because the business failed, it is now self-serving for the plaintiffs to state that in fact the Agreement was a franchise agreement because lack of disclosure entitles them to certain remedies under the *Act*.

[12] The defendant relies on *Raibex Canada Ltd. v. ASWR Franchising Corp.*, 2018 ONCA 62 (CanLII), in which the court concluded that failure to comply with s. 5 of the *Act* (disclosure) does not always provide sufficient grounds for rescission.

[13] The plaintiffs state that they had never heard of the *Act*. They did not know they were entitled to disclosure nor did they know about the remedies for failure to disclose. They state that *Raibex* can be distinguished from the matter at hand. In *Raibex*, the defendant provided a Certificate of Disclosure. Furthermore, in para 40, the court stated, "To justify rescission in these circumstances, the Franchisee must not only demonstrate that the FDD was deficient, but also show that it was so deficient that the Franchisor effectively "never provided [a] disclosure document."". The plaintiffs state that they were not provided with a disclosure document. The defendant does not dispute this.

[14] The plaintiffs rely on *Chavdarova v. The Staffing Exchange*, 2016 ONSC 1822 (CanLII), in which the court stated at para 33 that "…if the relationship between the parties meets the conditions set out in the definition of the word "franchise" in the *AWA* [Act], then the relationship between the parties is that of franchisor and franchisee, no matter what terminology the parties have used to describe the relationship." The court referred to *1706228 Ontario Ltd. v. Grill It Up Holdings Inc.*, 2011 ONSC 2735 (CanLII), para 31, in which that court stated, "The expansive definition of "franchise agreement" in the *Arthur Wishart Act* is clear: if the substance of the relationship is a franchise, it matters not whether the parties sign a document called a "franchise agreement"".

Analysis

[15] I am not persuaded by the defendant's position that the Exclusivity Agreement clearly states that "this is not a purchase of a franchise" and therefore, there is no franchise relationship or agreement. I am also not persuaded by the defendant's position that the parties never intended the agreement to be a franchise agreement. In both *Chavdorova* and *1706228*, the court clearly stated that the substance of the relationship has to be examined in order to determine whether it is a franchise relationship. The title given to the document that the parties signed is irrelevant.

(c) Were the plaintiffs required by contract to make a payment or continuing payments to the defendant… in the course of operating the business or as a condition of acquiring the business or commencing operations?

[16] Mr. Vardy operates Dial A Bottle (DAB) as a sole proprietorship. He has divided parts of the province into territories. Assuming that the facts relating to the plaintiffs' relationship with the defendant apply to the manner in which the defendant generally conducts business, the operation can be described as follows. The defendant sells territories to people who wish to deliver alcohol orders. He essentially provides a call service. For example, if a person were to own the "Richmond Hill territory", the owner would operate under the name Dial a Bottle Richmond Hill. It would not be entitled to have its own phone number or receive calls directly from customers. If the call centre received an alcohol order, DAB would refer that call to the territory owner. Upon receipt of a referred call from DAB, the territory owner would then purchase the requested alcohol and deliver it to the customer who would pay for the alcohol together with a delivery fee.

[17] DAB would be entitled to receive $3 for each referred call and $3 for each delivered order. It is important to note that DAB cannot grant a license to a territory owner to permit that owner to distribute alcohol. The owner must apply to the Alcohol and Gaming Commission of Ontario (AGCO) for the license.

The Plaintiffs' Position

[18] The plaintiffs state that they researched business opportunities. They read the information on the defendant's website which stated, "Our franchise-like opportunities can put you in the driver's seat by owning your own business in a growing opportunity. Be in business for yourself, but not by yourself. Our proven model is ready for motivated, hard-working and enthusiastic entrepreneurs."

[19] The plaintiffs state that they sent an email to the defendant on April 18, 2015 stating, "We are interested in a franchise with Dial a Bottle. Just wondering what the start-up costs, fees, etc. and what territories are available in Southern Ontario." The defendant responded on the same day and stated,

> …we have six Toronto areas, Newmarket, Vaughan, Richmond Hill, Kitchener/Waterloo still available. There is a one time purchase price of 30,000 and then 3 per delivered collected order which covers all expenses relating to the business. Areas outside of Toronto are 20,000 initial purchase. Very high profit margins. Toronto areas will generate over $70,000 plus for an owner operator in the first year.

[20] The plaintiffs and the defendant signed a document entitled Exclusivity Agreement (Beer and Liquor delivery territory), which is attached as Schedule A. In the Agreement, the defendant described himself as "seller and owner of Call Centre". The plaintiffs are described as "territory owner/operator, buyers".

[21] In the Agreement, the parties agreed to the following:

(a) The plaintiffs will pay a purchase price of $40,000[1] with $10,000 as a down payment and $30,000 on the closing date.

(b) The territorial rights will be transferred on or before June 1, 2015.

(c) The new business will operate as Dial a Bottle Richmond Hill[2].

(d) The owners will apply to the AGCO for a new license under Dial a Bottle Richmond Hill.

(e) A management charge for each delivered and collected order will be $3 based on an $11 delivery ("including tax, basic single stop order picked up, three dollars for debit, three dollars for credit card orders for every $50 purchased product").

Analysis

[22] The defendant does not dispute that the plaintiffs paid $40,000 to acquire the territories of Richmond Hill/Thornhill, Aurora and Newmarket. The $3 management charge for each delivered, collected order shows that the plaintiffs were required to make ongoing payments to the defendant in the course of operating the business. The test in this regard is met.

(d) Did the defendant grant the plaintiffs the right to sell, offer for sale or distribute goods or services that are substantially associated with the defendant's trademark?

[23] The defendant states that he did not have the authority to grant the plaintiffs' the right to sell, offer to sell or distribute goods. DAB does not have a license or anything from the government to deliver alcohol that it can in turn grant to anyone. The plaintiffs were required to apply for a license (which they received) from the AGCO in order to deliver alcohol. The defendant's call centre only received orders for alcohol delivery in the plaintiffs' territories and passed them along to the plaintiffs.

Analysis

[24] The defendant granted the plaintiffs the right to operate as Dial a Bottle Richmond Hill (and in the other territories), to receive orders for delivery of alcohol in those territories and to make the deliveries. The operation was substantially associated with the defendant's trademark. In fact, the defendant stated that if a stranger were to commence a business called Dial a Bottle Richmond Hill, the defendant's trademark would be infringed.

[25] While the plaintiffs were required to apply to the AGCO for a license to distribute, they would not have been able to distribute in the territories that they purchased from the defendant using the defendant's trademark unless they had entered into an agreement with the defendant that permitted them to do so. For this reason, I do not accept the defendant's argument that it merely granted the plaintiffs the right to have calls referred to them. I find that the test in this regard is met.

(e) Did the defendant exercise significant control over, or offer significant assistance in, the plaintiffs' method of operation, including building design and furnishings, locations, business organization, marketing techniques or training?

[26] The defendant states that it was not significantly involved in the plaintiffs' method of operation. It was not involved in the plaintiffs' bookkeeping or billing process.

[27] The plaintiffs refer to paragraph 1 of the Exclusivity Agreement, which states that,

> Call centre agrees to manage territory owner operator's business including doing all the order taking, customer service transfers, logo design, marketing material design, web design, phone line billing, telemarketing, telephone book advertising and rental of their toll-free line … and local lines in the following described territories; Richmond Hill/Thornhill, Aurora and Newmarket, Ontario.

[28] The Agreement also stated that, "the owner is prohibited from advertising or promoting to any customers in the territory with a phone number, website or email other than managed by the Dial A Bottle call centre."

Analysis

[29] The defendant did not have control over everything. Items such as the location where the plaintiffs received the referred calls, the vehicles that the plaintiffs used to make the deliveries or the number of employees that the plaintiffs might have hired to drive the vehicles presumably were not within the control of the defendant. They are not mentioned in the Exclusivity Agreement.

[30] The fact that the defendant did not have control over the location where the plaintiffs received the calls is not significant. Customers did not come to the plaintiffs' place of business. There was no need for the place of business to conform to any particular standards in order to ensure quality of product. Similarly, the types of vehicles that the plaintiffs used to deliver the alcohol were not particularly important. The volume of deliveries and the profit margin would determine whether the plaintiffs could afford to hire employees.

[31] I find that the defendant did have significant control over the important aspects of the plaintiffs' business. The Exclusivity Agreement states that the defendant will manage the territory owner/operator's business. It controlled taking orders, referring those orders to the plaintiffs, the logo, marketing material and web design. Further, it controlled phone line billing, telemarketing and telephone book advertising. It charged a $3 *management fee* on each delivered order.

[32] Based on this evidence, I find that defendant exercised significant control over the important aspects of the plaintiffs' business. I find that the test has been met in this regard.

(f) Is the Exclusivity Agreement a franchise agreement?

[33] Given my findings that:

(a) the plaintiffs were required to make a payment and continuing payments in the course of operating the business;

(b) the defendant granted the plaintiffs the right to distribute alcohol delivery services in their territories under the defendant's trademark, contingent on the plaintiffs' obtaining a licence; and,

(c) the defendant exercised significant control over the plaintiffs' method of operation,

I conclude that the parties had a franchise relationship and the agreement between them was a franchise agreement.

(g) Given the fact that the defendant provided no disclosure to the plaintiffs before they entered into the franchise agreement, is rescission the appropriate remedy?

Applicable Legislation

[34] Section 6(2) of the *Act* states, "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."

The Plaintiffs' Position

[35] The defendant never provided a disclosure document. This is undisputed.

[36] The parties signed the Agreement on May 19, 2015. The statement of claim was issued on August 9, 2016. In it, the plaintiffs claim rescission. There does not appear to be any issue about the limitation period.

[37] The plaintiffs state that rescission entitles them to a refund. With respect to the franchisor's obligations on rescission, the relevant parts of section 6(6) of the *Act* state

> …the franchisor…shall, within 60 days of the effective date of the rescission,
>
> (a) refund to the franchisee any money received from the franchisee other than money for inventory, supplies or equipment; and,
>
> ….
>
> (d) compensate the franchisee for any losses that the franchisee incurred in acquiring, setting up and operating the franchise, less the amount set out in clause (a)...

[38] The plaintiffs claim that they are entitled to a refund of the $40,000 that they paid for two territories as well as the $3 fee that they paid to the defendant for each delivered and collected order. The defendant did not make submissions on rescission because his position was that the agreement was not a franchise agreement.

Analysis

[39] The *Act* is clear that in the absence of disclosure, plaintiffs are entitled to be paid these amounts. Nevertheless, the plaintiffs have not provided any calculations regarding the $3 fee paid to the defendant for each delivery.

(h) Have the plaintiffs suffered damages as a result of misrepresentation?

The Plaintiffs' Position

[40] Section 3 of the *Act*, states that,

> 3(1) Every franchise agreement imposes on each party a duty of fair dealing in its performance and enforcement.
>
> 3(2) A party to a franchise agreement has a right of action for damages against another party to the franchise agreement who breaches the duty of fair dealing in the performance or enforcement of the franchise agreement.
>
> 3(3) For the purpose of this section, the duty of fair dealing includes the duty to act in good faith and in accordance with reasonable commercial standards.
>
> 4(5) If a franchisor contravenes this section, the franchisee has a right of action for damages against the franchisor.

[41] The plaintiffs state that before they signed the Agreement, the defendant made certain representations to them regarding the amount that they could expect to earn, among other things. For example, they state that the defendant provided them with a page entitled Financial Model[3] which, according to the document, "assumes the worst case of considerable existing competition and no concentrated efforts are placed on marketing to the territory". The model forecast sales of 500 deliveries per month for a territory with a population of 150,000. The defendant sent the plaintiffs an email, dated April 18, 2015, which stated, "Very high profit margins. Toronto areas will generate over $70,000 plus for an owner operator in the first year". The plaintiffs also state that the defendant promised extensive training and support, which never materialized.

[42] The plaintiffs state that they relied on these representations when they decided to enter into the Agreement. The plaintiffs state the business did not generate enough profit to continue operations. They had to close it. The plaintiffs state that the representations were misrepresentations and that the defendant made them intentionally with no regard for their truth. The *Act* imposes on parties to a franchise agreement a duty of fair dealing.

The Defendant's Position

[43] The defendant states that his email clearly refers to Toronto areas. The plaintiffs' territories were not Toronto areas. With respect to the chart, it is only a financial model. It clearly states, "DAB makes no guarantees in income since each owner is in control of their own business." It was not a promise or guarantee.

Analysis

[44] I accept the defendant's position that the chart was not a promise or guarantee of the income that the plaintiffs would earn if they bought the territories. The chart states that it is not a guarantee and that it represents a "potential business." The email that states "very high profits does appear to relate to Toronto territories. There are simply too many variables to expect that an income from a business could be

accurately predicted. Accordingly, I find that the plaintiffs do not have a claim for damages for misrepresentation based on the email and the chart.

(i) Have the plaintiffs suffered damages as a result of a failure to disclose?

[45] The plaintiffs state that they suffered damages because the defendant failed to comply with his disclosure obligation.

[46] Section 5(4) of the *Act* sets out the contents of the required disclosure document. It states,

> The disclosure document shall contain,
>
> (a) all material facts including material facts as prescribed;
>
> (b) financial statements as prescribed;
>
> (c) copies of all proposed franchise agreements and any 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.

[47] Ontario Regulation 581/00 of the *Act* sets out the details of what shall be included in the disclosure document. Sections 3 and 4 state,

> (3) a statement, including a description of details, indicating whether, during the ten years immediately preceding the date of the disclosure document, the franchisor…has been convicted of fraud, unfair or deceptive business practices, or a violation of a law that regulates franchises or business or if there is a charge pending against the person involving such a matter.
>
> (4) A statement, including a description of details, indicating whether the franchisor … has been subject to an administrative order or penalty imposed under a law of any jurisdiction regulating franchises or business or if the person is the subject of any pending administrative actions to be heard under such a law.

[48] Section 7, of the *Act*, states,

> If a franchisee suffers a loss because of a misrepresentation contained in the disclosure document… or as a result of the franchisor's failure to comply in any way with section 5 [the obligation to disclose], the franchisee has a right of action for damages against … the franchisor. [emphasis added]

[49] The plaintiffs state that defendant was required to disclose the fact that he was being investigated by the Canadian Radio-television and Telecommunication Commission (CRTC). In fact, according to the Compliance and Enforcement Decision CRTC 2015-253 dated June 12, 2015, the CRTC had determined that the defendant had violated the Telecommunications Act (S.C. 1993, c.38), by,

> …initiating telemarketing telecommunications [relating to Dial A Bottle] via an Automatic Dialing-Announcing Device to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), and for doing so while he was not registered with the National DNCL operator and was not a registered subscriber of the National DNCL, in violation of the Unsolicited Telecommunications Rules.

[50] The decision states that the defendant was issued a Notice of Violation, dated February 10, 2015, for 24 violations and was given until March 13, 2015, two months before the parties signed the Agreement, to pay a fine of $18,000 or make representations. He did neither.

[51] The plaintiffs state that had they known this, they would have been better informed and would not have entered into the Agreement with the defendant.

[52] The defendant submits that the CRTC matter is irrelevant. It related to telemarketing activities that he was carrying on. It had nothing to do with referring calls from the Call Center to owner/operators of territories.

Analysis

[53] The CRTC decision states that there were 24 violations. It sent the defendant a notice of the violations and allowed him until March 13, 2015 to pay the fine or make representations. He did neither. His affidavit on this motion does not address the matter at all.

[54] Paragraph 3 of the Regulation requires a franchisor, as part of disclosure, to provide a statement, including a description of details, indicating whether the franchisor is the subject of any pending administrative actions to be heard under a law that regulates businesses.

[55] The defendant received the CRTC's Notice of Violation three months before he signed the Agreement with the plaintiffs. He was required to disclose this. Had he done so, the plaintiffs would have had this information. I accept their evidence that had they known this, they would not have entered into an agreement with the defendant. They no doubt incurred expenses to set up and operate the business.

(j) Can the plaintiffs' damages be calculated?

[56] The plaintiffs state that the damages claimed are uncontested; however, with respect to certain items claimed, the evidence is inadequate.

[57] The plaintiffs state that they lived in Burlington when they entered into the Agreement. Mr. Stephens had a job as a property manager in which he earned approximately $50,000 per year. He provided income tax documents to confirm this. The plaintiffs state that Mr. Stephens gave up his job to spend a year pursuing the business. They had to move in order to operate the business and make deliveries.

[58] The defendant states that no promises were made. In his affidavit, he states,

> …it was not part of the business deal and at no point of time did I induce them to move nor did I ask them to make decisions about their career. It was their choice and not an obligation under the contract for them to move or quit their jobs or cease to look for jobs.

[59] The defendant did not challenge the quantum of the moving expenses, $4,874.27, for which receipt and proof of payment were provided nor the assertion that Mr. Stephens gave up a job in which he was paid $50,000. The defendant challenged only the entitlement. I find that Mr. Stephens' giving up his job to devote his full efforts to the business was not unreasonable. Personally operating the business in Richmond Hill would not have been feasible for the plaintiffs if they lived in Burlington.

[60] The plaintiffs claim $4,260 for temporary accommodation at Burlington Towers and $2,020.39 at the Richmond Hill Travel Lodge for the weeks of August 17 and 24, 2015. The plaintiffs lived in Burlington when they entered into the Agreement. They state, "After we left our employment with an included residence in April, 2015, we moved into temporary accommodations in Burlington while [we were] looking for a place to live in Burlington." At this point, they thought that they could operate the business remotely. The plaintiffs did not explain why they did not find a place to live in Burlington while they were still in the "included residence". No explanation was provided for why the plaintiffs had to stay at the Richmond Hill Travel Lodge for two weeks.

[61] The plaintiffs claim $23,600 for start-up capital and cash injections into the business. They provided a bank statement showing $8,600 being transferred out of an account. There is no indication that it was deposited into a business account. They provided another bank statement showing $10,000 being transferred out of an account. Again, there is no indication that it was deposited into a business account. The plaintiffs have not proved that these amounts, which total $18,600, were used for the business. The difference between $23,600 claimed and $18,600 is not explained.

[62] The plaintiffs claim,

> $24,130.61 for business expenses including accounting, liquor licence, promotion and advertising, home office rent and supplies, bank charges/debit/credit machine charges and terminal, internet connection, cell phone charges necessary for delivery business which includes June and July 2016 and the delivery vehicle.

[63] Many of the amounts claimed are unspecific or do not include proof of payment. For example, the plaintiffs provided a receipts for payment for tires[4], $650.07 for a Canada Post charge which is unspecified, yard signs and advertising. The plaintiffs also include pages of Costco Mastercard statements with a number of payments highlighted to stores such as Staples, Canadian Tire, Costco, Petrocan, CPC Ottawa, 407 ETR, 2016535 Ontario Inc., Equifax, Virgin Mobile, Residence Inn Markham, Jiffy Lube, Home Depot and Quickbooks. The total of these payments claimed is $14,356.07. There are no receipts providing details of the purchases nor are there explanations of their connection to the business.

[64] Based on the evidence before me, I find that part of the plaintiffs' claim for damages cannot be calculated. If the plaintiffs wish to pursue these claims for damages, a trial of the issue of damages is required. A documents brief including receipts for purchases, a detailed description of each one, proof of payment and an explanation of how each one is related to the business is expected.

Conclusion

[65] The plaintiffs are granted partial summary judgment. The defendant shall pay to the plaintiffs $40,000 regarding rescission of the contract, $50,000 for Mr. Stephens' loss of income and $4,874.27 for moving expenses.

Costs

[66] If the parties cannot agree on costs, they may provide written submissions, limited to three pages using 1.5 line spacing, together with a costs outline, receipts for disbursements and any relevant offers. The plaintiffs shall serve and file submissions within 15 days of the release date of these Reasons. The defendant shall serve and file submissions within a further 10 days.

The Honourable Madam Justice M.E. Vallee

Released: August 27, 2018