



Amended pursuant to Supreme Court Civil Rule 6-1(1)(a)
Original filed on July 18, 2019

No.VLC-S-S-198150
Vancouver Registry

In the Supreme Court of British Columbia

Between

Samir Latifi

PLAINTIFF

and

The TDL Group Corp.

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. Tim Hortons has more restaurants in Canada than any other brand. The TDL Group Corp., which owns the Tim Hortons brand, through its corporate stores and alongside its franchisees, employs thousands of Canadian workers. In breach of the *Competition Act*, RSC 1985, c 34 and the common law, Tim Hortons and its franchisees have entered into anti-competitive “no poach” or “no hire” agreements. These secret arrangements prohibit one Tim Hortons restaurant owner from offering work to employees of another Tim Hortons restaurant owner. These agreements are prohibited by the *Competition Act* because Tim Hortons and its franchisees are competitors with each other in the market for hourly-wage labour.

2. The defendant harmed the employees of The TDL Group Corp. and the employees of its franchisees by suppressing those employees’ wages. By foreclosing competition in the market for hourly-wage labour, The TDL Group Corp. and its franchisees drove down wages for workers to improve their own bottom-lines. Through this suit, Canadian employees of The TDL Group Corp. and its franchisees seek to hold the defendant accountable for this unlawful conduct, and to recover damages and lost earnings.

The Parties

3. The TDL Group Corp. (“**TDL**”) is incorporated under the laws of British Columbia with an address for service at 1700 – 666 Burrard Street, Vancouver, BC and a head office in Oakville, Ontario. TDL is a wholly-owned subsidiary of Restaurant Brands International Inc. (“**RBI**”). TDL is the franchisor for Tim Hortons restaurants in Canada. In addition, TDL also operates corporate Tim Hortons restaurants. Because of these corporate restaurants, TDL is simultaneously a franchisor and a competitor of its franchisees, including in the market for hourly-wage labour.

4. The acts alleged against TDL in this action were authorised, ordered or conducted by TDL's officers, agents, and employees actively engaged in the management and operation of TDL's businesses and affairs. Various other corporations and persons that are not named defendants in this action, including all Tim Hortons franchisees in Canada, participated as co-conspirators in the violations alleged and performed acts and made statements in furtherance of the violations alleged.

5. The plaintiff, Samir Latifi ("Mr. Latifi"), is a resident of Surrey, British Columbia. He was employed as a baker at the Tim Hortons restaurant at 16811 96 Avenue, Surrey, British Columbia.

6. The plaintiff brings this claim on behalf of all employees of TDL and its Tim Hortons franchisees in Canada ("Class Members", to be refined in the plaintiff's application for certification).

The Canadian Fast-Food Market

7. The Tim Hortons brand dominates Canada's fast-food restaurant industry, known as the "Quick Service Restaurant" sector.

8. Tim Hortons' Canadian competitors include McDonald's, Burger King (also owned by RBI), Subway, A&W, White Spot and others.

9. The fast-food restaurant industry employs more than 400,000 people in Canada. TDL and its franchisees together employ more than 100,000 people in Canada.

The Tim Hortons Franchise System

10. The Tim Hortons brand is one of Canada's most well-known quick-service restaurant franchise systems with franchises all across Canada, ranging from small communities to large urban centres. The Tim Hortons franchise system has grown across Canada and elsewhere in the world with approximately 3,860 franchised locations in Canada. Tim Hortons restaurants sell coffee and other beverages, baked goods (doughnuts, Tim Bits, muffins, and bagels) and smaller meal items such as soups and sandwiches.

11. Tim Hortons franchisees operate their franchises pursuant to standard, non-negotiable franchise agreements with TDL.

12. In addition to being the franchisor of Tim Hortons restaurants, TDL operates Tim Hortons restaurants in the same markets as its franchisees. Thus, TDL has dual roles: it is the franchisor and also a competitor of its own franchisees - TDL competes with franchisees as a vendor of food and as a purchaser of labour.

The No-Hire Clause

13. To own and operate a Tim Hortons franchise, an aspiring franchisee must sign a franchise agreement with TDL, with a typical term of 10 years. In addition, a franchisee must pay a franchise fee, training and other fees, and a percentage of gross sales as a royalty.

14. Each version of the standard Tim Hortons franchise agreement in force during the period covered by this action incorporates a clause prohibiting the franchisees from soliciting or hiring existing employees of other Tim Hortons brand restaurants (the “**No-Hire Clause**”). Specifically, Tim Hortons and franchisees agree to the following, or a provision substantially similar to the following:

not to employ or seek to employ any person who is at the time employed by the Licensor [TDL] or by any other licensee of the Licensor [franchisees] operating the same or similar business, or otherwise directly or indirectly to induce such person to leave his or her employment thereat without the prior written consent of the Licensor

15. Each franchisee agrees to materially the same No-Hire Clause as every other franchisee. TDL enforces the same policy in its corporate-run locations.

16. Franchisees also agree that TDL has a unilateral right to terminate their franchises upon a franchisee’s default, which includes franchisees failing to comply with the No-Hire Clause. Franchisees ignore the No-Hire Clause at their peril and to their financial detriment.

Tim Hortons restaurants are independent businesses that compete with each other

17. Tim Hortons franchisees are operated as independently owned and managed businesses.

18. Tim Hortons franchisees are direct competitors of one another, including as buyers of hourly-wage labour.

19. Tim Hortons franchisees know the identity of other franchisees and know that they are all subject to the terms of the No-Hire Clause.

20. TDL, through its direct ownership of certain Tim Hortons restaurants, is a direct competitor of the franchisees' independently owned and managed restaurants. This competition includes competition for the hiring of employees.

The No-Hire Clause benefits TDL and its franchisees at the expense of employees

21. TDL had the No-Hire Clause in place for its corporate locations and among its franchisees for years in order to suppress employees' wages. This wage suppression was deliberate and was intended to increase profits for TDL and its franchisees at the expense of employees.

22. The No-Hire Clause would not be in the independent interest of Tim Hortons restaurant owners (TDL and its franchisees) if they were acting unilaterally. The profitability of each restaurant is dependent on the quality of the workers they employ. It is in the independent interest of Tim Hortons restaurant owners to compete for the most conscientious, talented and experienced employees.

23. The No-Hire Clause artificially restricts the ability of Tim Hortons restaurant owners to compete to hire employees in a manner consistent with their individual economic interests. But by acting in concert, they protect themselves from having their own employees poached by other Tim Hortons restaurants that may place a higher value on those employees for their training, experience or work ethic. This allows Tim Hortons restaurant owners to retain their best employees without having to pay market wages or provide them with attractive working conditions and opportunities for promotion.

24. The No-Hire Clause does not benefit consumers or the public because it does not help to ensure that Tim Hortons restaurants produce competitive working conditions or incentivise TDL or its franchisees to invest in training workers to improve the food, experience, and service they provide to customers.

25. Critically, the No-Hire Clause provides no benefit to employees of TDL or its franchisees, including the plaintiff and Class Members. The No-Hire Clause disincentivizes Tim Hortons restaurant owners from investing in higher wages, benefits, or improved working conditions to compete for their labour.

26. TDL and its franchisees have a shared anti-competitive motive to increase profits by keeping labour costs low. Franchisees pay Tim Hortons royalties based on a percentage of gross sales. Cost of labour therefore has a direct impact on franchisees' profitability. By agreeing not to compete for labour, they achieve monopsonistic profits that would otherwise be unattainable if they were acting in their unilateral self-interest.

27. But for the No-Hire Clause, each Tim Hortons franchise is its own economic decision-maker with respect to the hiring, firing, staffing, promotions and employees' wages. But for the No-Hire Clause, Tim Hortons restaurants would compete with each other for the best performing and qualified employees.

28. Employment categories, job descriptions, and career trajectories are rigidly standardised at Tim Hortons restaurants. If Tim Hortons restaurant owners had to either pay and promote good employees, or lose them to competitor locations, they would be forced to pay competitive wages and provide competitive promotion opportunities.

29. However, because of the No-Hire Clause – and because their workers' level of education, training and experience within Tim Hortons restaurants are not readily transferrable to non-Tim Hortons brand restaurants – franchisees do not compete with each other or TDL, and they do not have to compete with non-Tim Hortons businesses for their employees.

30. The No-Hire Clause is not contained in employees' contracts. The No-Hire Clause was deliberately concealed from employees by TDL and its franchisees. The No-Hire Clause runs expressly contrary to its own corporate Code of Conduct and Standards of Business Practices, which includes a public commitment and undertaking to be “fair and ethical in [its] dealings with its employees... [and] dealing with others with respect and fairness”.

31. The standard hiring practices used by TDL and its franchisees include a specific inquiry into whether the candidate has previously been employed at a Tim Hortons restaurant. The

potential Tim Hortons restaurant owner employer can use this information to quickly determine whether the No-Hire Clause is implicated for an applicant.

32. TDL-owned Tim Hortons restaurants compete with restaurants owned by its franchisees, and restaurants owned by franchisees also compete with each other. In a free, properly functioning and lawfully competitive labour market, TDL and its franchisees would openly compete for labour by soliciting current employees of one or more other Tim Hortons restaurants (i.e. attempting to hire other restaurants' employees). Wages, benefits and opportunities for current and prospective employees would increase.

The Plaintiff and Class Members' Losses

33. The plaintiff, Mr. Latifi, was employed at the Tim Hortons location at 16811 96 Avenue, Surrey, BC between May 2012 and September 2012. He worked as a baker during the 'graveyard' shift, typically working between the hours of 1:00am and 7:00am. Mr. Latifi did not work at any other Tim Hortons locations.

34. As a direct result of TDL's actions, the plaintiff and Class Members have suffered reduced wages, reduced employment benefits, loss of professional growth opportunities, and worsened working conditions (collectively, "**wage suppression**") because of the express unlawful agreement among TDL and its franchisees in the No-Hire Clause.

35. The No-Hire Clause significantly restricts employment opportunities for low-wage workers at all Tim Hortons restaurants, including those who have not sought employment with a competitor restaurant and those who have not been contacted by a competitor restaurant. Such an unlawful restriction causes a broad effect on all Tim Hortons employees of TDL and its franchisees.

Government action against No-Hire Clauses

36. The United States Department of Justice has taken antitrust enforcement action in the United States against no-hire agreements made among employers.

37. In 2018, attorneys general of 11 American states announced an investigation into no-poach hiring practices at a number of fast-food chains. As a consequence of that investigation, some fast-

food chains, including Tim Hortons USA Inc., a US subsidiary of RBI, entered into assurance of discontinuation agreements relating to its substantially-similar no-hire provisions in its US franchise agreements.

38. To date, the harm caused by No-Hire Clauses continues in Canada.

Part 2: RELIEF SOUGHT

39. An order certifying this action as a class proceeding;
40. Damages under the *Competition Act*, s 36;
41. General damages for the torts of conspiracy;
42. General damages for the tort of unlawful means;
43. An accounting and restitution of the benefits received by TDL and its franchisees;
44. In the alternative, disgorgement of the benefits received by TDL and its franchisees;
45. Punitive damages;
46. Interest under the *Court Order Interest Act*, RSBC 1996, c 79; and
47. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Breach of the Competition Act

48. TDL has breached the *Competition Act* through their ~~buyers~~² customer cartel on the supply of labour in the fast-food restaurant industry. TDL and its franchisees are monopsonist ~~buyers~~ customers in the hourly-wage labour markets in Canada.
49. TDL and the franchisees are “competitors” within the meaning of the *Competition Act*, s. 45. They would be likely to compete with respect to labour in the absence of the conspiracy, agreement and arrangement detailed above.

50. Labour is a “service” within the meaning of the *Competition Act*, ss 2 and 45.

51. Canada, and subsidiarily its provinces, are “territories” or “markets” within the meaning of the *Competition Act*, s 45. In addition or in the alternative, the Tim Hortons chain of restaurants are a “territory” or “market” within the broader labour and fast-food restaurant industry markets. Furthermore, the regional labour markets in which Tim Hortons restaurants operate are “territories” or “markets” within the meaning of the *Competition Act*, s 45.

52. As set out above, by means of the No-Hire Clause, TDL has conspired, agreed and arranged with its franchisees to:

- a. fix or control the price for the supply of labour;
- b. allocate territories, customers, or markets for the supply of labour; and
- c. fix or control the supply of labour.

52.1 The No-Hire Clause is an allocation of customers, markets and territories for the supply of labour. The No-Hire Clause prevents current employees from securing employment with a different Tim Hortons operator. Workers cannot leave a current labour customer to sell their labour to another customer. With less workers leaving their employment, there are fewer job openings, preventing new workers from entering the labour market and selling labour. Further, current employees cannot moonlight or otherwise work for multiple Tim Hortons operators. The defendant and franchisees have distorted the labour supply with the result that wages are lower than they would be in a competitive market. The No-Hire Clause limits worker mobility thereby fixing or controlling the supply of labour and the price of that labour.

53. As a result of TDL’s breaches of the *Competition Act*, s 45, the plaintiff and Class Members have suffered loss and damage in the form of wage suppression.

54. The plaintiff and Class Members are entitled to recover from TDL an amount equal to the loss or damage suffered by them in the full amount of the wage suppression, under the *Competition Act*, s 36(1)(a), as well as the costs of investigation.

Civil Conspiracy

55. As set out above, by means of the No-Hire Clause, TDL has conspired with its franchisees to:

- a. fix or control the price for the supply of labour;
- b. allocate territories, customers, or markets for the supply of labour; and
- c. fix or control the supply of labour.

56. TDL and its co-conspirators had the predominant purpose of causing injury to the plaintiff and Class Members by suppressing wages. By their acts, TDL and its co-conspirators the franchisees intended to cause damage to the plaintiff and Class Members in order to benefit themselves.

57. The conduct of TDL was an unlawful restraint of trade. The No-Hire Clause is an unreasonable restrictive covenant precluding the plaintiff and Class Members from supplying their labour to competitors. Compounding the egregiousness of this conduct is the fact that the restraint was kept secret from employees. Furthermore, and in the alternative, the conduct and breaches the Competition Act, ss 45. In addition, the imposition of the No-Hire Clause on franchisees that required compliance or termination breaches of the Criminal Code of Canada, RSC 1985, c 46, s 346. TDL knew or ought to have known that these actions would injure the plaintiff and Class Members.

58. The plaintiff and Class Members have suffered loss through the wage suppression.

59. The plaintiff and Class Members seek compensation for their losses.

Unjust Enrichment

60. TDL has been enriched by the suppression of wages to the plaintiff and Class Members on account of the No-Hire Clause.

61. The plaintiff and Class Members have been deprived through the suppression of their wages on account of the No-Hire Clause.

62. There is no juristic reason why TDL should have received or should retain this benefit. The breaches of the *Competition Act*, ~~the imposition of the No-Hire Clause on franchisees that required compliance or termination in breach of the *Criminal Code of Canada*, RSC 1985, c 46, s 346,~~ the breaches of Tim Hortons' own Code of Conduct and Standards of Business Practices, and the unlawful restraint on trade, negate any juristic reason why TDL should have received or should retain the benefit.

63. As a result, TDL has been unjustly enriched by the benefits received from the plaintiff and the Class Members.

64. The plaintiff and Class Members are entitled to restitution of the benefits received by TDL from them in the full amount of the wage suppression on account of the No-Hire Clause.

65. In the alternative, justice and good conscience require that TDL disgorge to the plaintiff and Class Members an amount attributable to the No-Hire Clause.

Unlawful Means

66. Through the use of the No-Hire Clause, TDL has breached of the *Competition Act*, s 45 and this conduct is otherwise actionable under the common law through civil conspiracy and unjust enrichment.

67. TDL enforced the civil conspiracy through the No-Hire Clause. TDL abused its negotiating power with franchisees by including the No-Hire Clause as a standard term in Tim Hortons franchise agreements. A breach of the No-Hire Clause constituted default of the franchise agreement. This unlawful act obliged Tim Hortons franchisees to participate in an anti-competitive conspiracy. Franchisees breached the No-Hire Clause at their own economic peril.

68. The plaintiff and Class Members are not parties to the Tim Hortons franchise agreements; the franchise agreements are between TDL and its franchisees. However, the plaintiff and Class Members were injured as a result of the No-Hire Clause.

69. If franchisees had been injured as a result of the No-Hire Clause, they would have civil remedies for civil conspiracy and unjust enrichment. In other words, TDL's conduct was directed

at franchisees and is a civil wrong which would be actionable if franchisees were injured as a result.

70. TDL intentionally injured the plaintiff and Class Members by use of unlawful means. The No-Hire Clause was intended to suppress wages in order to lower the costs of running a Tim Hortons restaurant. The plaintiff and Class Members have been deprived through the suppression of their wages.

71. TDL intended to lower labour costs through the use of unlawful means. The plaintiff and Class Members were injured as a necessary means of achieving lower labour costs. TDL knew the plaintiff and Class Members would be injured as a result of the No-Hire Clause.

Punitive Damages

72. TDL's misconduct, as described above, was oppressive and high-handed, and departed to a marked degree from ordinary standards of decent behaviour. The defendant's actions are part of a pattern of willful disregard for employees' rights. Hourly-wage employees in the quick-service restaurant industry are a particularly vulnerable group. TDL's actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made against them.

Joint and Several Liability

73. TDL is jointly and severally liable with the franchisees. The plaintiff pleads and relies on the *Negligence Act*, RSBC 1996, c 333.

Limitation Period

74. TDL willfully concealed the existence of the No-Hire Clause from the plaintiff and Class Members, and the fact that the wage suppression was caused or contributed to by TDL's acts or omissions.

75. The plaintiff and Class Members rely on the doctrines of postponement and discoverability to postpone the running of the limitation period until 2019. The plaintiff and Class Members plead

and rely on and the *Limitation Act*, SBC 2012, c 13, s 21(3) and the *Limitation Act*, RSBC 1996, c 266, s 6.

76. In the alternative, or in addition, the plaintiff and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266.

Plaintiff's address for service:

Klein Lawyers LLP
1385 W 8th Ave #400
Vancouver, BC V6H 3V9

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: ~~July 18, 2019~~ January 13, 2021



Signature of lawyer for plaintiff

David A. Klein
Counsel for the Plaintiff
Klein Lawyers LLP

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for damages arising out of the Defendant's abusive franchise employment clauses.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Competition Act, RSC 1985, c C-34

Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28

Court Order Interest Act, RSBC 1996, c 79