

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Mr. Justice David J. Kroft
Madam Justice Anne M. E. Turner

BETWEEN:

<i>10145668 MANITOBA LTD.</i>	)	
	)	<i>C. Stewart</i>
	)	<i>for the Appellant</i>
<i>(Applicant) Appellant</i>	)	
	)	<i>J. G. Aiello and</i>
<i>- and -</i>	)	<i>F. Aiello</i>
	)	<i>for the Respondents</i>
<i>STROBEL HOLDINGS INC., JM FOOD</i>	)	
<i>SERVICES LTD., RF FRANCHISING INC.,</i>	)	<i>Appeal heard:</i>
<i>and RFSP EQUIPMENT & OPERATING INC.</i>	)	<i>January 21, 2026</i>
	)	
<i>(Respondents) Respondents</i>	)	<i>Judgment delivered:</i>
	)	<i>July 23, 2026</i>

On appeal from *10145668 Manitoba Ltd v Strobel Holdings Inc et al*, 2025 MBKB 46 [the reasons]

KROFT JA

[1] This appeal concerns competing interests in, and access to, restaurant equipment (the equipment) allegedly used by a failed Za Pizza Bistro franchise (Za) at premises owned by the respondent, Strobel Holdings Inc. (Strobel), and located on Osborne Street in Winnipeg (the premises). The appellant is the franchisor of Za.

[2] The appellant appeals the judgment of the application judge dismissing its application for an order: (a) that, pursuant to a general security

agreement (the GSA) assigned to it when it became franchisor, it had priority over the respondents with respect to the equipment; (b) granting it access to the premises to seize the equipment; and (c) awarding it general damages for any diminution in the value of the equipment.

[3] The principal parties are the appellant and Strobel. The remaining respondents, JM Food Services Ltd., RF Franchising Inc. and RFSP Equipment & Operating Inc. (together, the Freshslice respondents), are the franchisors of Freshslice Pizza, whose franchisee is the successor and current tenant of the premises.

[4] The Freshslice respondents were never tenants or franchisees and never had possession of the equipment. In this appeal, they adopt the position advanced by Strobel.

[5] In addition to the assignment of the GSA to the appellant referred to above, during the period of time in question, at least two lease agreements were entered into between Strobel and Za. Due to continued arrears of rent under the leases and other alleged defaults, Strobel purported to exercise rights of distraint over the equipment, re-enter the premises and, ultimately, changed the locks. A comprehensive review of events can be found in the *reasons* at para 6.

[6] The issues raised by the notice of application and argued before the application judge concerned: the application and interpretation of sections 58, 63 and 66 of *The Personal Property Security Act*, CCSM c P35 [*PPSA*]; the validity and extent of the distraint exercised by Strobel against the equipment pursuant to its leases with Za and/or Za's controlling minds; limitation periods

related to distraint; what equipment remained on the premises; and the value of the equipment.

[7] After carefully reviewing the submissions of the parties and the evidence before her, the application judge concluded there was an absence of “foundational and complete evidence to support an application of this nature” (the *reasons* at para 23) and dismissed it.

[8] Briefly, she was not satisfied there was sufficient evidence put forward by the appellant to support any of the relief sought. In particular, she found there were issues as to whether the equipment actually existed on the premises and, if it did, its value. She indicated that it was unclear if the alleged property was ever purchased or delivered to the premises and there was no information as to whether the purchases of the alleged property were financed and subject to other creditors’ claims. She also noted there were issues pertaining to notice and whether some of the property had become fixtures. Similarly, she found the evidence surrounding the alleged expiry of the limitation period for distraint was insufficient. The application judge was satisfied the factual and credibility disputes required a trial but, because of the insufficient evidentiary record before her, she declined to direct one at that time.

[9] The main thrust of the appellant’s argument is that the application judge failed to apply the legal principles as set out in the *PPSA*, which it maintains constitutes a legal error reviewable on a standard of correctness (see *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*]). The appellant also submits the application judge erred in law by finding Strobel’s distress was valid without there being a sufficient evidentiary basis.

[10] In response to both issues, Strobel submits the appellant's application was dismissed on one "fundamental but correct basis", that being that the appellant failed to adduce the evidence required to entitle it to the relief sought in its notice of application. Strobel argues that this discretionary decision is entitled to deference unless a palpable and overriding error of fact has been established or the decision is so clearly wrong as to amount to an injustice (see *Grant v Manitoba (AG)*, 2025 MBCA 7 at para 13; *Housen*). Strobel submits that no such error has been demonstrated.

[11] I agree with Strobel.

[12] The appellant's application required multiple interconnected determinations. Even if a different judge might have ruled on some or all of these issues, it was not unreasonable for the application judge in the present case to find the evidentiary record was insufficient to determine the matters placed before her. Deference is owed to the application judge's discretionary decision. No palpable and overriding error has been established, nor is her decision so clearly wrong as to amount to an injustice. There are no grounds for appellate intervention.

[13] For the foregoing reasons, I would dismiss the appeal with costs.

Kroft JA

I agree: _____
Cameron JA

I agree: _____
Turner JA