ONTARIO
SUPERIOR COURT OF JUSTICE

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Central West Region

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TO:	Eunice Machado Counsel for thePlaintiffs	FAX NO. 416 644-9336
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FROM: Tammy Marinier, Judicial Assistant
DATE: August 26, 2008
RE: ***Allegra of North America and Allegra Corporation of Canada v. Russell Sugimura, Matsuko Sugimura, Stephen Chornook, Nathan Bryant and Abacus Design Print Mail***
Court File No. CV-08-21790-00

COMMENTS: Attached please find the Endorsement of Justice Murray in this matter, dated today. NO OF PAGES, including cover page: 25 pages

If all pages are not received, please call Tammy at (905) 878-7281 Ext 3411

COURT FILE NO.: CV-08-21790-00
DATE: 20080826

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
ALLEGRA OF NORTH AMERICA and ALLEGRA CORPORATION OF CANADA	Eunice Machado, for the Plaintiffs
Plaintiffs	
- and -	
RUSSELL SUGIMURA, MATSUKO SUGIMURA, STEPHEN CHORNOOK, NATHAN BRYANT and ABACUS DESIGN PRINT MAIL	D. Gordon Bent, for Russell Sugimura and Stephen Chornook Tanya C. Walker, for Nathan Bryant and Abacus Design Print Mail
Defendants	
	HEARD: July 4, 2008

ENDORSEMENT

Murray J.

[1] This is an application by the plaintiffs, Allegra of North America Inc. and Allegra Corporation of Canada (hereinafter collectively referred to as "Allegra") for an interlocutory injunction restraining the defendants Russell Sugimura and Steven Chornook, Nathan Bryant and Abacus Design Print Mail from carrying on

business at the same location where an Allegra franchise was operated for many years by Sugimura and Chornook.

The Claim for Injunctive Relief - To Restrain the Breach of the Non-Competition Provision

[2] The foundation of the request for injunctive relief is the plaintiff's assertion that the all the defendants are carrying on a business in contravention of a non-competition provision contained in the Franchise and License Agreement between the plaintiff and the defendants Sugimura and Chornook.

[3] The plaintiffs, among other things, seek an injunction to restrain the defendants Sugimura and Chornook from working for or being employed by Abacus at 2500 Meadowpine Blvd., Unit 4, Mississauga Ontario for a period of two years from April 8, 2008. April 8, 2008 was the date of expiration of the Franchise and License Agreement between Allegra, Sugimura and Chornook.

The Evidence

[4] The Allegra franchisees operate businesses very similar to their competitors such as Kinko's, Kwik Copy, Print Three, The Printing House and Staples. The services provided are described as commodity services (in contrast to specialized services).

[5] The plaintiffs seek to enforce the non-competition provisions of the written

Franchise and License Agreement dated April 8, 1988 originally between TGT Franchise Services Inc. and Sugimura and Chornook as franchisees. TGT Franchise Services Inc. is a predecessor of Allegra. The original Franchise and License Agreement between TGT Franchise Services Inc. and Sugimura and Chornook was assigned on November 1, 1993 to American Speedy Printer Centres Inc. indeed, the original name of the franchisees' operation was Speedy Printing Centre. The franchisor is now called Allegra.

[6] For 20 years, Sugimura and Chornook operated a printing franchise on behalf of the Allegra or its predecessors. Sugimura and Chornook decided not to renew their Franchise and License Agreement after its expiration on April 8, 2008. After expiration of the agreement, they sold their business to Abacus Design and Print Mail (hereinafter "Abacus") a sole proprietorship owned by Nathan Bryant.

[7] In 2005, Nathan Bryant commenced the business known as Abacus located at 7575 Danbro Crescent in Mississauga. Abacus describes its business as "providing mailing shop services and print brokering". In early 2008, Mr. Sugimura informed Mr. Bryant that he was interested in selling the assets of the Allegra franchise. Mr. Sugimura informed Mr. Bryant that he had made an unsuccessful attempt to sell Allegra several years ago through the network provided by the franchisor. Mr. Bryant believed Mr. Sugimura was authorized to

sell the assets.

[8] Mr. Bryant was not interested in purchasing the Allegra brand or operating under the Allegra name. However, Mr. Bryant believed that purchasing the assets of the Allegra franchise would be an opportunity to move the services provided by the Abacus to a larger location and to expand the services formerly provided by Abacus. Mr. Bryant wanted to have Mr. Sugimura's temporary assistance as a production manager to focus on promoting the sales and growth of Abacus.

[9] Mr. Bryant was not privy to the Franchise and License Agreement between Mr. Sugimura and Mr. Chornook and the plaintiffs. Mr. Bryant was not provided with a copy of the Franchise and License Agreement prior to his purchase of the franchisees' assets. Mr. Bryant was not privy to the intellectual property belonging to Allegra. Mr. Sugimura did not relay to Mr. Bryant any trade secrets regarding the Allegra franchise. Since the purchase by Bryant, Sugimura has provided production assistance to Mr. Bryant and Abacus.

[10] The non-competition provision of the Franchise and License Agreement states as follows:

> Upon the termination or expiration of this agreement for any reason whatsoever,... then for a period of two years following such ... expiration... , franchise owners shall not, either directly or indirectly, individually or as a director, officer, employee, shareholder or member of any person, corporation or other entity, or in any other capacity whatsoever,

> engage in, be concerned with or interested in, advise, lend money to, guarantee the obligations of, or permit his name to be used in, any business which is in the same or similar to, or otherwise is operating in competition with the business of the franchise owner and which is operating anywhere either (1) within a 5 mile radius of the location of the franchise owner's business, or (2) within a 1 mile radius of any other location (whether operated by the franchise or another franchisee of the franchisor) which carries on business using the trademarks.

[11] Sugimura is employed by Abacus at the same location and, as a result, the plaintiffs assert that the franchisees have violated their post expiration non-competition obligation and that they are entitled to injunctive relief.

[12] The Franchise and License Agreement provided that upon expiration and non-renewal of the Franchise and License Agreement, the franchisor had an option for 30 days after expiry to purchase any of the products, equipment or other assets of the franchisees used by the franchisees in connection with the operation of the franchise. The franchisor did not exercise its contractual right to purchase the assets of the franchisees.

[13] Furthermore, there is no evidence suggesting that the franchisor had any interest in establishing an Allegra franchise in the "5 mile radius" around the location of the former franchise owner's business after the expiry of the Franchise and License Agreement.

Analysis

[14] In the main, I intend to deal with the claim of the plaintiffs for interlocutory

injunctive relief against the two franchisees, Sugimura and Chornook. For reasons set out briefly in the conclusion, there is no merit in the plaintiffs' motion for interlocutory injunctive relief against the defendants Bryant and Abacus.

The Restrictive Covenant contained in the Franchise and License Agreement

[15] The common law has never favoured enforcing restrictive covenants. In the employment context, the Court of Appeal in *H.L. Staebler Co. v. Allan* [2008] O.J. No. 3048 stated as follows at paragraphs 35-36:

> While an overly broad restraint on an individual's freedom to compete will generally be unenforceable, the courts must recognize and afford "reasonable protection to trade secrets, confidential information, and trade connections of the employer." In the present case, there is no suggestion that trade secrets or confidential information is involved. It is Staebler's "trade connections" that warrant protection.
>
> Reasonableness is the mechanism by which a court decides whether a covenant is "overly broad" or is only that which is reasonably required for the employer's protection. But how is a court to determine whether any given restrictive covenant is "reasonable"? *Elsley* (*Elsley Estate v. J.G. Collins Insurance Agencies Ltd.*, [1978] 2 S.C.R. 916) offers a framework for making such a determination. The starting point is "an overall assessment of the clause, the agreement within which it is found, and all of the surrounding circumstances". Thereafter, three factors must be considered. First, did the employer have a proprietary interest entitled to protection? Second, are the temporal or spatial features of the covenant too broad? And, third, is the covenant unenforceable as being against competition generally, and not limited to proscribing solicitation of clients of the former employer?

[16] Although the case at bar does not deal with a non-compete agreement in an employment context, the non-compete provisions of a Franchise and License Agreement should also be assessed in terms of reasonableness and should not be enforced automatically by a court without a consideration of the factors at

established in *Elsley*. In *J.G. Collins Insurance Agencies Ltd. v. Elsley*, (1977), 13 O.R. (2d) 177 the following excerpt from the Court of Appeal decision supports a conclusion that the a non-compete agreement, whether contained in an employment contract or a Franchise and License Agreement, should be scrutinized by the court to determine whether such a restraint of trade is reasonable. Evans J.A. stated as follows:

> The general rule is that clauses restricting the scope of a man's future business activities, whether contained in agreements of employment or of sale of a business, must be reasonable both as between the parties and with reference to the public interest. Otherwise such a clause is unenforceable as being in restraint of trade and contrary to public policy. Public policy is not a fixed and immutable standard but one which changes to remain compatible with changing economic and social conditions. The old doctrine that any restraint on trade was void as against public policy must be balanced against the principle that the honouring of contractual obligations, freely entered into by parties bargaining on equal footing, is also in the public interest. These competing principles of public policy are frequently in conflict in the commercial world and the question whether a particular noncompetition agreement is void and unenforceable is one of law to be determined on a consideration of the character and nature of the business, the relationship of the parties and the relevant circumstances existing at the time the agreement was entered into.

[17] The defendant franchisees argued that the 5 mile radius imposed by the non-compete provision in the Franchise and License Agreement was overly broad and as a result, the non-competition provision relied on by the plaintiffs is unreasonable and unenforceable. I am not in agreement with this argument. I do not think that the 5 mile radius imposed by the non-compete provision -without consideration of other factors - makes the non-complete unreasonable.

[18] However, I am of the opinion that there is another reason to conclude that

the non-compete provision of the Franchise and License Agreement is unenforceable. The non-competition agreement is not reasonably required for the franchisor's protection and is unenforceable for this reason. .

[19] As noted above, there is no evidence that Allegra had any interest in establishing another franchise in the geographic area covered by the non-compete clause. Consistent with this lack of interest, the plaintiff did not seek to exercise any of its rights to purchase the assets of the franchisees upon the expiry of the agreement. Furthermore, the evidence established that the closest Allegra franchise to the Meadowpine Blvd. location where Sugimura and Chornook carried on the Allegra franchise business is in Hamilton, Ontario and is 30.34 miles distant from that location.

[20] The underlying assumption of a non-competition clause is that the franchisor wishes to protect its legitimate business interests in a certain limited geographic area and the purpose of such a provision is to protect those legitimate business interests. In this case, the assumption is rebutted by the evidence.

[21] The evidence clearly and unequivocally supports a conclusion that, after the expiry of the Franchise and License Agreement, the franchisor had no business interests to protect in that geographic area. There is no evidence that

Allegra intended to establish or maintain a franchise in that geographic area after the expiry of the Franchise and License Agreement. There is no evidence that Sugimura or Chornook had the capacity to appropriate any valid trade connection established with customers that Allegra was willing or able to exploit after the expiry of the Franchise and License Agreement.

[22] In short, the purpose of the non-compete provisions of the Franchise and License Agreement cannot be served by enforcing the negative covenant agreed to by Sugimura or Chornook. There is no Allegra business to protect in the geographic area covered by the non-compete. In these circumstances, to enforce the non-compete would serve no valid purpose. The non-competition agreement is not reasonably required for the franchisor's protection and is unenforceable for that reason.

[23] At a minimum, even if I am in error that the non-compete is unenforceable because it is not reasonably required for the franchisor's protection, the fact that the non-compete provision serves no useful purpose in the circumstances of this case may be taken into account for purposes of determining whether injunctive relief should be granted based on the traditional test for injunctive relief set out in *R.J.R. Mac Donald Inc. v. Canada (A.G.)* [1994] 1 S.C.R. 311.

The Test for Injunctive Relief

[24] Allegra asserts that the traditional injunction test set out in *R.J.R. Mac Donald Inc. v. Canada (A.G.)* [1994] 1 S.C.R. 311 is not the applicable test in the case of a franchisee who breaches non-compete covenant. It is asserted by Allegra that a court will compel a franchisee to comply with a non-competition obligation without the necessity of demonstrating that it will suffer irreparable harm or that such relief is justified on a balance of convenience.

[25] The proposition advanced by Allegra is succinctly stated in the case of the *Ontario Duct Cleaning V. Wiles* [2001] O.J. No. 5150 at para. 3 where Rivard J. stated:

> Normally, where injunctive relief is sought, the court must examine whether the moving party will suffer irreparable harm and whether the balance of convenience forms the granting of relief. Where there is a clear breach of a negative covenant, the elements of irreparable harm and balance of convenience are not required because unless special circumstances exist, the court will compel a contracting party to comply with non-competition obligations and will not give him a "holiday" from a clear promise.

[26] Rivard J. relied on the case of *Button v. Jones*, [2001] O.J. No. 1976 as authority for this proposition. It should be noted that Rivard J. also found that irreparable harm would result if injunctive relief was not granted because the plaintiff established that it lost market share as a result of the breach of the non-competition obligation.

[27] *Button v. Jones* (decided by Hambly J.) was a case where a defendant

dentist sold his practice and signed a non-competition and non-solicitation undertaking wherein he agreed not to carry on a dental practice in the same city or to solicit any patients of the practice for a period of four years following the date of sale. Hambly J. opined at para. 12 that "where a plaintiff seeks a prohibitory injunction to enforce a negative covenant it need not prove that it will suffer irreparable harm if the injunction is not granted or that the balance of convenience favours granting it an injunction." Justice Hambly relied on two cases both decided by the Ontario Court General Division, *Canadian Medical Laboratories Ltd. v. Windsor Drug Store Inc.*(1992) 99DLR (4^{th}) 559, a case decided by Granger J., and *Hardee Farms International Ltd. v. Cam & Crank Grinding Ltd.*, (1973) 33 DLR (3^{rd}) 266, a case decided by Pennell J. The two cases relied on by Justice Hambly where both decided before *RJR MacDonald Inc.* decision of the Supreme Court of Canada.

[28] I am of the view that a plaintiff who seeks injunctive relief seeking to enforce a non-competition clause in the context of a Franchise and License Agreement must establish that there is a serious issue to be tried, that it will suffer irreparable harm and that the balance of convenience favours the granting of an injunction. The proper test in a case where a franchisor seeks to restrain the on-going breach of a non-compete by franchisees is that expressed in *We Care Health Services Inc. v. Barter*, [2001] O.J. No. 5327, by Blair J. (now Blair

J.A.) who, in speaking for a panel of the Divisional Court, said: "The test for the granting of an interlocutory injunction is, and remains, the tripartite test set out in the decision of the S.C.C. in *RJR-Macdonald v. Canada (A.G.)* (1994), 111 D.L.R. (4th) 385."

[29] In my respectful opinion, Justice Blair's conclusion in *We Care Health Services Inc.* is consistent with that of Justice Robert J. Sharpe in his text *Injunctions and Specific Performance,* Canada Law Book (2nd ed.) Chap.9 at para. 9.40. In commenting on the availability of interlocutory injunctions based upon a breach of a negative covenant, Mr. Justice Sharpe says the following:

> For rather different reasons, neither does the *Doherty v. Allman* principle apply with quite the same force to interlocutory injunctions. There, the court does not have the advantage of a full review of the facts and law, and the validity or enforceability of the covenant may not be upheld at trial. When there is some doubt on the merits, the ordinary criteria determining the availability of interlocutory injunctions apply and the plaintiff who sues upon an express negative covenant will not be awarded interlocutory injunctive relief automatically. The stronger the plaintiff's case, however, the less emphasis should be placed on irreparable harm and balance of convenience and, in cases of a clear break of an express negative covenant, interlocutory relief will ordinarily be granted.

[30] Mr. Justice Sharpe clearly states that where there is a breach of a negative covenant, interlocutory injunctions are not granted automatically. The conclusion that less emphasis should be placed on irreparable harm and balance of convenience in cases of clear breach of an express negative covenant does not mean that there is no obligation to deal with these factors.

[31] Undoubtedly there will always be cases where the breach is clear cut and interlocutory relief is clearly warranted. As was said by the Court of Appeal in *Elsley*:

> Courts recognize that some restraints must be imposed, otherwise the purchaser of a business could not with safety buy the goodwill of the business unless the vendor could be enjoined from setting up next door in competition. A similar problem would arise in certain employer and employee situations where, because of the confidential nature of the relationship, the employee has access to customer lists, trade secrets or other matters in which the purchaser or the employer has a proprietary interest.

[32] The case at bar is not a case where interlocutory relief is clearly warranted.

Serious Issue to Be Tried

[33] There is an issue to be tried in this case. If the non-competition agreement is reasonable and enforceable, then there is a question of whether Allegra is entitled to damages for breach. I question whether it will be possible for the plaintiffs to establish any damages as a result of the breach of the non-compete provision of the Franchise and License Agreement.

[34] Therefore while there may be an issue to try, the apparent absence of any sustainable claim for damages is reasonably taken into account by this court for purposes of determining whether the issue to be tried is serious. In the circumstances of this case, the plaintiff will not likely suffer any damages as a

result of the breach, it is therefore reasonable to conclude that there is no serious issue to be tried even if Allegra were to be successful in obtaining a determination that the non-competition provisions are reasonable and enforceable.

[35] The motion for injunctive relief fails for this reason.

Irreparable Harm

[36] As noted above, the franchisees are not - in any meaningful sense - in competition with the franchisor.

[37] Abacus had every right to purchase the assets and the business of the franchisees once Allegra had elected not to do so within 30 days after the expiry of the Franchise and License Agreement. The franchisees had the right to sell to Abacus.

[38] It is difficult if not impossible to understand how Allegra's situation after the expiry of the Franchise and License Agreement is any different than it would have been if Sugimura had not accepted employment with Abacus. Abacus would still be in business whether or not Sugimura agreed to accept employment. Abacus is not in competition with Allegra with Sugimura as an employee. Abacus would not have been in competition with Allegra after the expiry of the

Franchise and License Agreement if Sugimura had not accepted employment. In short, irreparable harm has not been established.

[39] In the alternative, if irreparable harm must be established, Allegra says that to allow the defendants to "appropriate the benefit of Allegra's franchise system, undermines the integrity of Allegra's franchise business". In other words, failure to restrain the defendant Sugimura from continuing employment with Abacus will send a message to other franchisees that they can disregard their non-compete obligations.

[40] I have a couple of observations to make about this assertion by Allegra. First, Allegra bases its argument of irreparable harm - not on the breach of contract by Sugimura - but on the premise that other franchisees will feel at liberty to disregard their covenant not to compete if Sugimura is not restrained from working for Abacus. This assertion of irreparable harm is not based on any irreparable harm flowing from the breach of the Franchise and License Agreement with the defendants but rather on the potential of irreparable harm flowing from potential breaches by other franchisees who, Allegra says, would be encouraged to disregard their contractual obligations if an injunction is not issued in this case.

[41] Allegra relies on two cases as support for this proposition. In one, an unreported case styled *Allegra of North America Inc. v. Wayne Zapfe et al.* decided in Milton, Ontario on October 1, 2001(01-CV-212994), Justice Brockenshire of this court made the following comment:

> If franchisees can carry on a shadow business within a franchise and then move the shadow business to a location within the 5 mile limit, without demonstrating any significant change in their work or customer base, the character of the franchisor's business will be changed. It will be carrying on a training business, not a franchise business. The core of the franchise system will be destroyed. Damages would not be an adequate remedy.

[42] A review of the endorsement indicates very significant factual differences from the case at bar. During the currency of the Franchise and License Agreement, the defendant closed down its operation and secretly opened up under a different name in another location 1.5 km from the original location. The defendant franchisee took all the employees. The defendant had misrepresented the sales generated by the franchise on which royalties were based. The defendant misled the franchisor by falsely reporting to the franchisor that he was operating a different business. Justice Brockenshire's comments must be seen in the context of the facts of the case before him. The judgment of Justice Brockenshire is not authority for the proposition that the failure to grant an interlocutory injunction to enforce a non-competition clause will cause irreparable

damage in all circumstances and in all cases because it will be an inducement to other franchisees to disregard their contractual obligations.

[43] *CashMoney Express Inc. v. 1035216 Ontario Inc.* is an unreported (and undated) decision of Justice B. Wright (court file 03-CV-248970 CM1) which involved a franchisee unilaterally terminating a Franchise Agreement and operating a similar business at the same location contrary to a non-compete covenant. Justice Wright did find that irreparable harm would be suffered by the franchisor because other franchisees might feel that they could repudiate their Franchise and License Agreements and operate similar businesses from the same locations and jeopardize the whole franchise system.

[44] The case at bar does not involve a unilateral termination of the Franchise and License Agreement during its term and is distinguishable from the above two cases for this reason.

[45] It may be that a court is more likely to grant an interlocutory injunction to enforce a non-competition clause in circumstances where the franchisee unilaterally terminates a Franchise Agreement and competes contrary to a reasonable non-competition covenant. It certainly does not follow from the two cases referred to that in all cases of breach of a non-competition covenant,

interlocutory injunctive relief will be granted automatically based on the risk to the stability of the whole franchise system.

[46] In any event, I am of the opinion that the refusal of this court to grant interlocutory injunctive relief in the case at bar will not operate as an incentive to other franchisees to disregard non-competition provisions of their Franchise and License Agreements. The notion that the refusal to grant injunctive relief here will risk stability of the whole franchise system ignores the fact that franchisees who breach valid and enforceable non-compete provisions will normally face damage claims by the franchisor. Indeed, in most circumstances the failure to grant interlocutory injunctive relief will add to damages payable by the franchisee in the event the franchisor is successful at trial. Secondly, if injunctive relief is refused in this case, it is because the franchisor has not been able to meet the established legal test for interlocutory injunctive relief. The plaintiffs have not demonstrated irreparable harm will result from failure to enjoin the breach of the non-competition provision. I am also of the view that there is a serious question regarding the enforceability of the non-competition clause in the Allegra Franchise and License Agreement in the circumstances of this case.

[47] If injunctive relief is refused here, what message will there be for other franchisees? Will the refusal of injunctive relief induced other franchisees to repudiate non-competition covenants regardless of the facts of the case? I do not

believe so. The message to other franchisees could only be that interlocutory injunctive relief will be denied where there is no irreparable harm demonstrated and an issue has arisen with respect to the enforceability of the non-compete provision of the Franchise and License Agreement. In other words, the message to other franchisees will be that for Allegra to obtain an injunction, it must comply with the existing law. This cannot amount to irreparable harm. It is not reasonable to conclude that other franchisees will feel at liberty to disregard the provisions of their non-compete agreements. Each case will depend on its own facts. Other franchisees who misconstrue this decision as a licence to disregard the non-compete provisions of their Franchise and License Agreements will act at their peril.

[48] The plaintiffs have not established that irreparable harm will result from failure to grant injunctive relief. The plaintiffs' motion for injunctive relief against the defendant franchisees also fails for this reason.

Balance of Convenience

[49] Finally, it is my view that the balance of convenience favours the defendant franchisees. As I concluded above, the non-compete provision which restricts the franchisees from competing after expiration of the Franchise and License Agreement is not reasonably required for the franchisor's protection.

This is a factor to be taken into account for purposes of determining whether the balance of convenience favours Allegra.

[50] In addition, not only has Allegra failed to show irreparable harm, it is also difficult to see how Allegra has suffered or will suffer any damages because of Sugimura's employment with Abacus.

[51] Forcing compliance with the non-compete would not benefit Allegra at all. On the other hand, injunctive relief would deprive Sugimura of employment income for the two-year period of the non-compete.

[52] For both of these reasons, balance of convenience favours the defendant franchisee.

Conclusion

[53] For reasons set out above, Allegra is not entitled to interlocutory injunctive relief against the defendant franchisees, Sugimura and Chornook.

[54] There is no evidence on which interlocutory injunction can be issued to restrain the defendants Bryant and Abacus. Before the return of the plaintiff's motion seeking injunctive relief, Bryant and Abacus assigned the telephone number used by the franchisees to the plaintiffs, returned all operations manuals, copyright materials, and training materials and removed all signage relating to

Allegra. This was in accordance with a consent order made by this court on July 4, 2008 when the plaintiffs' motion for a injunctive relief was adjourned. An injunction is therefore not necessary to prevent any of the defendants from using any confidential information belonging to Allegra or to prevent them from using the business telephone number formerly used by the Allegra franchisees.

[55] Initially Allegra sought an injunction to restrain all the defendants from marketing, promoting or advertising any aspect of their business in any way which might indicate to the public that the defendants are or ever were and Allegra franchise. The evidence is that the defendants have made all reasonable efforts to ensure that they do not promote themselves or advertise themselves as Allegra successors. An injunction to prevent the defendants from marketing themselves as Allegra or Allegra successors is unnecessary.

[56] The plaintiffs have not established any basis upon which to restrain the defendants and Abacus and Bryant from operating their business. Abacus and Bryant were not parties to the Franchise and License Agreement. The evidence is that they bought the business from the franchisees without knowledge of the non-compete provisions of the Franchise and License Agreement. They are innocent purchasers for value without notice and there is no basis to enjoin them from carrying on business at the former location of the Allegra franchise operated by the franchisees Sugimura and Chornook.

[57] Allegra's motion for interlocutory injunctive relief is dismissed as against all defendants.

Costs

[58] As I indicated at the hearing, the defendants Bryant and Abacus are entitled to costs.

[59] I made no such determination with respect to costs of the defendant franchisees.

[60] If the parties are unable to agree on costs, brief written submissions shall be sent to me and I will fix costs after receiving such submissions. The timetable for such brief written submissions shall be as follows:

1. Counsel for the defendants, Mr. Bent and Ms. Walker, shall provide their brief written costs submissions within two weeks of the date of receipt of this order.
2. Mr. Bent should make separate cost submissions for each of Sugimura and Chornook.
3. Ms. Machado, counsel for Allegra, shall be entitled to make brief written submissions with respect to costs for the defendants Abacus and Bryant.

Ms. Machado shall also make submissions with respect to the entitlement to costs of each of the franchisee defendants as well as to quantum. Submissions on behalf of the plaintiffs should be made within two weeks of receipt of the defendants' written submissions.

4. If Ms. Machado makes submissions with respect to the franchisees' entitlement to costs, Mr. Bent shall have an opportunity to make brief written reply on the issue of entitlement. Any reply submissions by Mr. Bent shall be made within two weeks of receipt by him of submissions from plaintiffs' counsel.

5. All submissions should be sent to my chambers in Milton Ontario.

Murray J.

Released: August 26, 2008.

COURT FILE NO.: CV-08-21790-00
DATE: 20080826

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

ALLEGRA OF NORTH AMERICA INC. and ALLEGRA CORPORATION OF CANADA

Plaintiffs

\- and –

RUSSELL SUGIMURA, MATSUKO SUGIMURA, STEPHEN CHORNOOK, NATHAN BRYANT and ABACUS DESIGN PRINT MAIL

Defendants

ENDORSEMENT

Murray J.

Released: August 26, 2008