

Vulnerable Creditors: should franchisees have rights as creditors on the insolvency or re-structuring of their franchisor?

Abstract

Franchisees are vulnerable. In New Zealand, legislation to address the inequality present in the relationship between franchisors and franchisees generally only applies to disputes between them and does not specifically address the situation where the franchisor becomes insolvent. On the occurrence of that event franchisees are merely creditors (usually unsecured ones) of the franchisor. Nor do the franchisees have any specific rights if the franchisor restructures its business model to move away from franchising or to reconfigure the range of products or services the franchisees may sell, to their detriment. Neither process recognises any sunken investment made by the franchisee as being compensable. Franchisees are licensees of the franchisor. Rights to use the franchisor's intellectual property are central to the operation of the franchisees' businesses. The franchisor's unencumbered intellectual property constitutes an asset which can be seized to satisfy creditors. Transferees of the franchisor's business may not be able to, or may not choose to afford franchisees the level of on-going support which is part and parcel of the franchise contract. This paper argues that legislative reform is needed to address these anomalies.

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