

SUPREME COURT OF NOVA SCOTIA

Citation: B.B.J. Enterprises Ltd. v. Wendy's Restaurants of Canada Inc. ,
2004 NSSC 37

Date: 20040218

Docket: 102025

Registry: Sydney

Between:

B.B.J. Enterprises Limited, B. Yazer Holdings Limited,
Brendon Yazer and Beverly Niven Yazer

Plaintiff / Respondent

v.

Wendy's Restaurants of Canada Inc. and Wendy's
International Inc.

Defendant / Applicant

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Judge: The Honourable Justice Frank Edwards

Heard: February 16, 2004 in Sydney

Written Decision: February 18, 2004

Subject: contracts; validity of release; unconscionability

Summary: Purchaser presents Vendor with Release moments before closing knowing that Vendor in financial distress and would have little option but to sign. Vendor thereby gave up potential claim Purchaser knew Vendor might make in the future. Release had formed no part of negotiation or content of Asset Purchase Agreement – a complete surprise to Vendor.

Issue: Whether Release bar to subsequent action by Vendor.

Result: Release unconscionable – no bar to subsequent action.

Case Cited: *Stephenson v. Hilti* (Canada) Ltd. [1989] N.S.J. No. 346

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