

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**LANDSBRIDGE AUTO CORP. and 405341 ONTARIO LIMITED**

Plaintiffs

- and -

**MIDAS CANADA INC. and  
MIDAS INTERNATIONAL CORPORATION**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**REPLY**

1. The plaintiffs admit the allegations contained in paragraphs 7, 8 (the first sentence thereof), 9, 11, 12 (the first sentence thereof), 13, 15, 16, 24, 28, 29, 33, 37, 38, 39 and 50 of the statement of defence.
2. The plaintiffs deny the allegations contained in paragraphs 3, 4, 5, 6, 8 (the second sentence thereof), 10, 12 (the balance thereof), 14, 17 to 23, 26, 27, 31, 32, 34, 35, 36, 40 to 44, 46 to 49 and 52 to 63 of the statement of defence.
3. The plaintiffs have no knowledge of the allegations contained in paragraphs 25, 30, 45 and 51 of the statement of defence.
4. The plaintiffs repeat and rely upon the allegations contained in their statement of claim as if pleaded below in their entirety.

5. In respect of the allegations contained in paragraphs 3-5, 20, 21 and 35 of the statement of defence, the paragraphs of the Franchise Agreement recited do not permit Midas to stop selling all products and do not permit Midas to change the “Midas System” which it granted to the plaintiffs through the change of prices. The Midas System is described in the recitals to the agreement as:

Midas [Canada Inc.] and Midas International Corporation have also developed a unique and **successful** system for the establishment and operation of [automotive speciality] shops ... which includes site selection, shop construction and layout, equipment selection and installation, purchasing and inventory control methods, accounting methods, merchandising, advertising, sales, and promotional techniques, installation techniques, personnel training, and other methods relating to the efficient and **successful** operation of said shops and the maintenance of high standards of quality.

6. The Midas System fundamentally included the 14.5% discount from and after 1981.

7. Section 10.9 of the Franchise Agreement has no application to the plaintiffs’ claims. The general nature of the Midas System is described by the Franchise Agreement. The particulars of the elements of the Midas System are not excluded by Section 10.9. The particulars of the Midas System were represented to every dealer before it entered into a Franchise Agreement.

8. With respect to paragraph 6 of the statement of defence, nothing in the Franchise Agreement permits Midas to fund its warranty program through supplier rebates. The Midas System included a feature by which Midas funded the warranty program at all material times. To the extent that the NASCC Charter may be found to permit the payment of rebates to Midas for funding warranty programs (which is denied), it also requires the payment of rebates to the Canadian dealers.

9. With respect to paragraph 10 of the statement of defence, the Franchise Agreement does not specify that the lifetime warranty is a significant feature of the franchise system. Midas requires franchisees to enter into agreements as part of the franchising arrangement which provide Midas with onerous land control rights over the franchisees which make the 30 day termination provision illusory.

10. With respect to paragraph 12 of the statement of defence, 405341 Ontario Limited does not advance any claims for the period 1981-1989 in any event.

11. With respect to the allegations contained in paragraphs 14 and 34 of the statement of defence, the Midas System as it existed in 2004 was not said to be different from the Midas System as described in the Franchise Agreements which otherwise existed at that time and which predated the agreement with Landsbridge Auto Corp. The Midas System was represented to all dealers continuously as being one system applicable to all dealers for the successful operation of a Midas shop.

12. With respect to the allegations contained in paragraph 17 of the statement of defence, Midas had never failed to renew any Franchise Agreement within the system prior to the introduction of the 1981 Franchise Agreement. Moreover, the franchisees were not given “rights” to renew. Article 9 of the Franchise Agreement contains provisions which permit Midas to extend the franchise relationship. Specifically, in section 9.1 of the Franchise Agreement, Midas retained for itself the right to notify franchisees in writing whether or not it would extend the franchise relationship, and under what special conditions, if any, such extension would be granted.

13. Prior to the introduction of the 1981 Franchise Agreement, the 5% royalty was a blended royalty. Half of the royalty was to be applied to advertising. The continued use of half of the royalties for advertising with the introduction of the 1981 agreement was also a benefit to Midas as it assisted Midas in the sale of franchisees.

14. With respect to the allegations contained in paragraphs 18 and 19 of the statement of defence, Midas advised the dealers that the 14.5% discount was being given in exchange for the increase in royalties from 5 to 10%. Moreover, the 14.5% discount became part of the Midas System at the time of the introduction of the 1981 Franchise Agreement and was therefore incorporated into the Franchise Agreement.

15. With respect to paragraph 25 of the statement of defence, the plaintiffs have no knowledge whether Midas in fact preserved the benefit of the 14.5% discount when it changed its invoicing practices.

16. With respect to the allegations contained in paragraphs 26 and 27 of the statement of defence, in addition to the statements already pleaded, the change to the Midas System in 2003 was represented by Midas to be neutral or, alternatively, more advantageous to the franchisees than the Midas distribution system. However, Midas changed the Midas System for all dealers but ceased to provide the benefit of the discount.

17. With respect to the allegations contained in paragraph 31 of the statement of defence, the Franchise Agreement does not permit Midas to cease selling all parts.

18. With respect to the allegations contained in paragraph 37 of the statement of defence, the fact that the lifetime warranty on genuine Midas products is a hallmark of the Midas System, is an additional feature of the Midas System which is not contained in the Franchise Agreement.

19. With respect to the allegations contained in paragraphs 40, 41 and 47 of the statement of defence, Midas received the benefit from Uni-Select of rebates to allow it to fund the warranty program while eliminating from the dealers the benefit they receive from the 14.5% discount.

20. With respect to the allegations contained in paragraphs 53 through 55 of the statement of defence, the Council was advised in respect of each of the supply agreements that the benefits of such agreements would match or exceed the benefits they had been receiving from the Midas distribution system. Unbeknownst to the Council and the dealers, the purpose of the new supply arrangements was to benefit Midas by providing it with a source of funds to fund warranty claims while depriving the dealers of a system that ensured their profitability.

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