

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Piquancy Enterprises Ltd. v. Centurion  
Apartment Properties (Scott Road 1) Inc.*,  
2024 BCSC 204

Date: 20240126  
Docket: S224387  
Registry: Vancouver

Between:

**Piquancy Enterprises Ltd.**

Plaintiff

And

**Centurion Apartment Properties (Scott Road 1) Inc.**

Defendant

Plaintiff by Way of Counterclaim

And

**Piquancy Enterprises Ltd., Harwinder Kaur Bannu,  
Rupinder Kaur Dhillon, and Gurnirvair Singh**

Defendants by Way  
of Counterclaim

Before: The Honourable Justice Basran

## **Oral Reasons for Judgment**

In Chambers

Counsel for the Plaintiff and Defendants by  
Way of Counterclaim:

A. Paranagama

Counsel for the Defendant and Plaintiff by  
Way of Counterclaim:

L.B.M. Rogers

Place and Date of Hearing:

New Westminster, B.C.  
January 16, 2024

Place and Date of Judgment:

New Westminster, B.C.  
January 26, 2024

**Introduction**

[1] On February 15, 2022, the plaintiff and defendant by way of counterclaim, Piquancy Enterprises Ltd. (“Piquancy”), entered into a commercial lease agreement with the defendant and plaintiff by way of counterclaim, Centurion Apartment Properties (Scott Road 1) Inc. (“Centurion”), to lease certain premises located at 108-11018 126A Street in Surrey, BC (the “premises”) in which Piquancy intended to operate a fast food restaurant (the “lease”).

[2] Prior to entering into the lease, Centurion advised Piquancy that the premises did not have venting and that an ecological device may be necessary to enable use of the premises as a restaurant.

[3] Piquancy entered into the lease without doing further due diligence in respect of the venting of the premises. The defendants by way of counterclaim, Harwinder Kaur Bannu, Rupinder Kaur Dhillon, and Gurnirvair Singh, directors of Piquancy, each signed the lease as indemnifiers.

[4] After signing the lease, Piquancy realized that the premises could not be used to operate a fast food restaurant. It did not take possession of the premises, nor did it make any payments to Centurion pursuant to the lease.

[5] Centurion seeks to enforce the terms of the lease. Piquancy asserts that Centurion improperly induced it into signing the lease. Alternatively, it argues that the lease is unenforceable because of mistake and/or frustration.

[6] For the reasons that follow, I have concluded that Piquancy and its directors are bound by the terms of the lease because Centurion advised them of a possible issue with the venting of the premises before they signed it. The directors are liable as indemnifiers of the lease. Centurion is entitled to damages of \$30,016.39.

**The Parties**

[7] Piquancy is a restaurant operator and franchisee of Boardwalk Fries Burgers and Shakes (“Boardwalk”).

[8] Centurion is a property developer and asset management company. It owns the subject premises.

[9] As noted, Ms. Bannu, Ms. Dhillon, and Mr. Singh were the directors of Piquancy.

**Offer to Lease**

[10] In January 2022, Piquancy and Centurion negotiated a lease of the premises. On January 24, 2022, they entered into an offer to lease the premises (the “offer to lease”), which included the following terms:

- a) Centurion and Piquancy would provide their respective condition waivers set out in Schedule C of the offer to lease (“Schedule C”) by February 14, 2022;
- b) any improvement work required in order to prepare the premises for use by Piquancy will be its sole responsibility;
- c) the clauses set out in Schedule D of the offer to lease are incorporated and form part of the offer to lease, as if they were set forth in the main body of the offer to lease (“Schedule D”); and
- d) the offer to lease and the lease will be construed according to and governed by the laws of British Columbia.

[11] Schedule C set out both Centurion's and Piquancy's conditions precedent. It included the following conditions precedent for the sole benefit of Piquancy:

- a) Piquancy being satisfied with Centurion's form of the lease;
- b) Piquancy being satisfied that the City of Surrey will approve Piquancy's proposed use of the premises;
- c) Piquancy being satisfied with the “as-is, where-is” conditions of the premises; and
- d) Piquancy being satisfied that the space and services available on the premises are suitable for its use.

(the “tenant conditions”)

[12] Schedule D included the following material terms:

- a) for the purpose of planning and constructing Piquancy's improvement work, Piquancy will be entitled to access the premises 60 days prior to the commencement dates (the "fixturing period"). During this fixturing period, Piquancy will be bound by all provisions of the lease, except it is not obligated to pay rent during this period;
- b) Piquancy acknowledges there is no venting provision in the premises for grease-laden vapours and acknowledges that an ecologizer or similar equipment may be required to satisfy the City of Surrey's requirements (the "venting clause"), and
- c) Piquancy agrees that it shall cause the directors to execute and deliver to Centurion an indemnity agreement in its favour.

[13] On February 7, 2022, Piquancy and Centurion entered into a subject-removal agreement in which Piquancy waived the following tenant conditions:

- a) Piquancy being satisfied with Centurion's form of lease; and
- c) Piquancy being satisfied with the "as-is, where-is" conditions of the premises.

[14] On February 9, 2022, Piquancy and Centurion entered a second subject-removal agreement in which Piquancy waived the remaining tenant conditions:

- b) Piquancy being satisfied that the City of Surrey will approve Piquancy's use of the premises; and
- d) Piquancy being satisfied that the space and services available on the premises are suitable for its use.

[15] Following the second subject removal, the offer to lease became unconditional.

### **The Lease**

[16] As noted, on February 15, 2022, Piquancy and Centurion executed the lease for the premises. Each of the directors signed the lease as indemnifiers. The material terms of the lease include:

- a) Piquancy will pay a security deposit of \$17,992.02 to Centurion (the "security deposit"), and it will be held as security for the lease;

- b) Centurion may apply the security deposit at its sole discretion to remedy any default under the lease;
- c) the premises will be provided by Centurion to Piquancy on a ten-year lease commencing July 1, 2022;
- d) the two-month fixturing period commences May 1, 2022;
- e) rent for the first two years of the lease will be \$5,184.75 per month, calculated at \$31 per square foot of the premises;
- f) Piquancy will use the premises for the sole purpose of operating a Boardwalk Restaurant franchise (the “restaurant”); and
- g) the premises will be provided to Piquancy on an “as-is, where-is” basis and
- h) Piquancy will complete all work necessary to prepare the premises for its use at its own cost.

[17] The lease included the following material circumstances in which Piquancy shall be in default of the lease:

- a) Piquancy breaches any of its obligations in the lease and fails to remedy such breach within ten days of written notice; and
- b) Piquancy abandons the premises or leaves it vacant for more than seven days.

(the “default conditions”)

[18] If one of the default conditions are present, Centurion may, among other things, terminate the lease and/or seek damages.

### **Circumstances After Execution of the Lease**

[19] On or about March 25, 2022, Piquancy inquired with Centurion about the premises' capacity to vent grease-laden vapours through a kitchen exhaust shaft.

[20] In response, Centurion advised Piquancy that, as set out in Schedule D of the offer to lease, there were no venting provisions on the premises for grease-laden vapour, and that Piquancy may need to install an ecologizer or similar equipment to remove grease vapour from the restaurant's kitchen.

[21] Centurion further advised that it would be Piquancy's responsibility to investigate and, if possible, install a different ventilation system on the premises, and the cost of doing so would be Piquancy's obligation pursuant to the terms of the lease.

[22] On April 29, 2022, Centurion sent Piquancy a notice of possession confirming that it was prepared to provide possession of the premises to Piquancy effective May 1, 2022, the start of the fixturing period.

[23] Piquancy refused to take possession of the premises and did not pay rent as set out in the lease.

[24] On or about December 3, 2022, Centurion applied the security deposit towards some of Piquancy's overdue rents.

[25] On February 3, 2023, Centurion terminated the lease.

[26] As of April 1, 2023, the outstanding balance of rents owed under the lease is \$51,203.71.

[27] Centurion re-let the premises to a new tenant with a fixturing period starting May 1, 2023, and lease payments commencing September 1, 2023. The rent Centurion negotiated under the new lease is less than the amounts agreed to by Piquancy in the lease.

**Can the Court Find the Facts Necessary to Decide the Issues in Dispute in a Summary Trial?**

[28] Centurion seeks resolution of this matter by summary trial, pursuant to Rule 9-7 of the *Supreme Court Civil Rules*.

**Relevant Legal Principles**

[29] If it is possible to find the facts on the record before the court, the chambers judge must give judgment unless it would be unjust to do so: *Inspiration*

*Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) at para. 53.

- [30] Relevant factors in determining suitability for summary trial include:
- a) the cost of taking the case forward to a conventional trial in relation to the amount involved;
  - b) the complexity of the matter;
  - c) its urgency and any prejudice likely to arise by reasons of delay;
  - d) the cost of the litigation and the time of the summary trial;
  - e) whether credibility is a critical factor in the determination of the dispute;
  - f) whether a summary trial may create unnecessary complexity in the resolution of the dispute; and
  - g) whether the application would result in litigating in slices.

See: *Ahlwat v. Green*, 2014 BCSC 1865 at para. 8.

[31] A central question facing the court when hearing a summary trial under a Rule 9-7 application is whether the court can find the facts necessary to decide the disputed issues: *Direct Horizontal Drilling Inc. v. North American Pipeline Inc.*, 2018 BCSC 1769.

### **Positions of the Parties**

[32] Centurion submits that the court can interpret the lease to assess whether Piquancy failed to take possession of the premises and make the prescribed lease payments.

[33] Piquancy and the directors countered that this matter requires examinations for discovery and expert reports. However, Piquancy and the directors have not sought appointments for examinations for discovery, nor have they retained any experts to provide opinion evidence in this matter.

## **Discussion**

[34] I am satisfied that this matter should be resolved by summary trial. Credibility is not in issue. The court can make the necessary findings of fact by reviewing and interpreting the documentary evidence, including the offer to lease and the lease. Furthermore, this matter is not complex and does not justify the cost of a conventional trial given the amount involved. A summary trial will not result in litigating in slices, because it will entirely resolve the matter.

[35] I am also satisfied that this matter should be governed by the laws of British Columbia. This was a term in the offer to lease. Furthermore, Piquancy is a company registered in BC, the premises are located in BC, and Centurion is an Ontario company that is extra-provincially registered in BC. I reject the submission that the reference to the laws of Alberta in the unsigned indemnity agreement is determinative.

### **Did Piquancy Breach the Terms of the Lease?**

[36] Section 9 of the lease sets out that the permitted use of the premises was for the operation of a Boardwalk Fries Burgers Shakes restaurant (the “permitted use”). Clause 2.1 of the lease states:

[...] The Tenant acknowledges having inspected the Premises and accepts the same on an “as is” basis [...]

[37] Piquancy did not raise any issues with respect to the use of the premises with Centurion until after they (Piquancy and the directors) signed the lease.

[38] In May 2022, Boardwalk, on behalf of Piquancy, informed Centurion that there was an issue with the ventilation ducts that made the premises unfit for the permitted use.

## **Positions of the Parties**

[39] Piquancy asserts that the permitted use was an express (or implied) and fundamental term of the lease. It further asserts that Centurion made



representations to Piquancy that the premises could be used for the permitted purpose and, therefore, fraudulently induced Piquancy into entering the lease.

[40] Alternatively, Piquancy and the directors assert that defences of mistake and frustration—the former based on the assertion that the parties mutually and mistakenly thought the premises could be used as a restaurant, the latter on the basis that the City of Surrey would not approve the operation of a restaurant on the premises.

[41] Centurion maintains that it advised Piquancy before the execution of the lease that the premises lacked appropriate ventilation and that Piquancy had an opportunity to investigate this issue before the signing the lease and failed to do so. Accordingly, Centurion asserts that Piquancy breached the terms of the lease and is liable for damages.

### **Discussion**

[42] Prior to executing the lease on February 15, 2022, Piquancy waived the following tenant conditions:

- a) Piquancy being satisfied with Centurion's form of lease;
- b) Piquancy being satisfied that the City of Surrey will approve Piquancy's proposed use of the premises;
- c) Piquancy being satisfied with the as-is where-is conditions of the premises; and
- d) Piquancy being satisfied that the space and services available on the premises are suitable for its use.

[43] In interpreting the terms of the lease, the court may review the terms of the offer to lease, including the waiver of the tenant conditions by Piquancy and the reference to indemnifiers contained therein.

[44] Piquancy had an opportunity from January 24, 2022 to February 14, 2022 to satisfy itself regarding the condition of the premises, that it could be used as a restaurant, and that the City of Surrey would approve this proposed use of the

premises. The evidence reveals that Piquancy did not make any inquiries or undertake due diligence in respect of these matters until after the lease was executed.

[45] Paragraph 14 of the application response filed July 21, 2023 confirms this finding. It states:

After executing the Lease, Piquancy discovered that the Premises were unfit for use as, or for the operation of, the Restaurant Business. [...]

[46] I do not accept that Centurion misrepresented the state of the premises. It transparently advised Piquancy that the premises did not have appropriate ventilation and it suggested a solution, the ecologizer, that may address this issue, but it did not provide an assurance in this regard.

[47] The tenant conditions operated solely for the benefit of Piquancy. Piquancy failed to perform due diligence prior to waiving the tenant conditions and signing the lease. It is therefore liable for its breach of the terms of the lease.

[48] The defence of mistake does not apply in these circumstances. Centurion advised Piquancy that the premises did not have appropriate ventilation for the restaurant. The offer to lease provided Piquancy with an opportunity to satisfy itself that the premises could be used as a restaurant and that the City of Surrey would approve this use. Unfortunately, Piquancy does not appear to have taken any steps to satisfy itself on these issues prior to waiving the conditions and signing the lease. These circumstances are not the function of a mistake.

[49] Similarly, the lease was not frustrated by virtue of the City of Surrey's refusal to allow the premises to be used as a restaurant. This possibility was contemplated by the parties and formed one of the tenant conditions. Piquancy's failure to confirm that the premises could be used as a restaurant prior to waiving the relevant tenant condition and executing the lease is its failure and its responsibility.

[50] Piquancy breached the terms of the lease and is liable to pay damages to Centurion.

**Are the Directors Liable as Indemnifiers?**

[51] Section 9 of Schedule D in the offer to lease stipulates that Piquancy agrees to cause the directors to execute an indemnity agreement in favour of Centurion, whereby the directors agree to indemnify it for the performance of all the covenants and agreements of Piquancy under the offer to lease and the lease.

[52] Piquancy approved the form of the lease, which included an obligation that the directors would enter into an indemnity agreement. The directors did not sign an indemnity agreement. Each of the directors signed the lease as indemnifiers.

**Relevant Legal Principles**

[53] When interpreting agreements, the overarching principles to be considered include:

- a) the court must ask what the intentions of the parties were at the time the agreements were made;
- b) the words in the contract should be given their plain and ordinary meaning, while being construed in the context of the agreement as a whole;
- c) the words of the agreement must be considered in the context of the factual matrix of events preceding the making of the agreement;
- d) the parties' subjective intentions are not to be considered—the interpretation is based on the perspective of a reasonable person informed by an objective assessment of the surrounding circumstances known at the time; and
- e) the court looks to give words their plain and ordinary meaning, considering the context of the agreement as a whole and the surrounding circumstances to determine whether there is only one reasonable meaning of the words in question, or whether the meaning of the words is ambiguous in the sense of being reasonably capable of two different interpretations.

See: *Low v. Straiton Development Corporation*, 2022 BCSC 302 at para. 56.

[54] When the execution of several documents forms part of a larger composite whole and each agreement is entered into on the faith of the others being executed,

assistance in the interpretation of one agreement may be drawn from the related agreements: *Salah v. Timothy's Coffees of the World Inc.*, 2010 ONCA 673 at para. 16.

### **Position of the Parties**

[55] Centurion submits that the directors are liable as indemnifiers of the lease, notwithstanding their failure to sign the indemnity agreement. It maintains that Centurion would not have entered into the lease without the assurance that the directors would be indemnifiers.

[56] The directors submit that they did not intend to become liable as indemnifiers and this is why they did not execute the indemnity agreement. On this basis, they suggest that they are not personally liable for Piquancy's failure to adhere to the terms of the lease.

### **Discussion**

[57] I am satisfied that the directors are liable as indemnifiers of the lease for three reasons:

- a) Piquancy approved the form of the lease, which included the contemplated indemnity agreement. Ms. Bannu, Ms. Dhillon, and Mr. Singh were the directors of Piquancy, so they must have understood that the lease would require their personal commitment as indemnifiers;
- b) the directors signed the lease as indemnifiers. This demonstrates their intention at the relevant time; and
- c) I do not accept that Centurion would have agreed to lease the premises to Piquancy without the directors agreeing to an indemnification agreement.

### **What Damages is Centurion Entitled To?**

[58] On March 25, 2022, Danny Fu, an engineer retained by Piquancy, inquired with Centurion regarding the possible use of a kitchen exhaust shaft in the premises. A representative of Centurion, Jason Kucharski, responded on that day:

My understanding is the duct cannot be utilized for any commercial kitchen equipment, hence we have opted to instal a Ecology Unit as per specs

provided from Pizza general contractor. So at this point I would say the ducts [sic] cannot to be utilized.

[59] On May 12, 2022, Mr. Fu advised Mr. Kucharski and Craig Jacobson, a Boardwalk representative acting on behalf of Piquancy, that the aforementioned ecology system will not meet the City of Surrey's relevant code requirements and a roof-mounted fan with associated ducting was the only feasible solution to facilitate the necessary ventilation for the restaurant.

[60] The multi-storey building in which the premises is located consists of a commercial space on the ground floor and residential space above. Installation of a roof-mounted fan with associated ducting would have involved construction throughout the height of the building, including in the presumably occupied residential space.

[61] In December 2022, Centurion applied the security deposit against the unpaid rents. Centurion terminated the lease on February 3, 2023. Pursuant to the lease, the unpaid rent on the premises from July 1, 2022 to April 1, 2023 was \$51,203.71.

[62] Centurion re-let the premises with payments commencing pursuant to the new lease on September 1, 2023. The anticipated lease payments on the new lease are lower than on the subject lease by \$54,475.68 over the period from September 1, 2023 to June 30, 2032. This latter date is the end date of the subject lease.

### **Position of the Parties**

[63] Piquancy denies that it and/or the directors are liable for damages.

[64] Centurion asserts that it is entitled to damages of \$105,679 based on the unpaid rents by Piquancy and the rent it lost by virtue of signing the second lease agreement at lower monthly lease payments.

### **Discussion**

[65] Piquancy did not at any time take possession of the premises. On May 11, 2022, Piquancy's representative, Mr. Jacobson, sought some form of

accommodation from Centurion to enable Piquancy to avoid its obligations under the lease.

[66] By May 12, 2022, the date on which Mr. Fu wrote to Mr. Jacobson and Mr. Kucharski reporting his findings, the parties knew that, without major structural changes, the premises could not be used for the purpose of operating a restaurant.

[67] The necessary structural changes would have required substantial expenditure on the part of Piquancy and significant inconvenience to the other occupants of the building in which the premises is located. There is no evidence to suggest that either party seriously considered the possibility of installing a roof-mounted fan with associated ducting throughout the height of the building in order to provide the venting required to operate a fast food restaurant in the premises.

[68] In my view, it was unreasonable in these circumstances for Centurion to wait until February 2023 to terminate the lease. It should have taken this step no later than October 1, 2022, three months after the date on which Piquancy was required to make its first lease payment and five months after the fixturing period commenced. This is because as of May 12, 2022, Centurion knew that Piquancy could not use the premises for the restaurant.

[69] Centurion did not lead any evidence on its efforts to mitigate its losses, aside from providing a second lease agreement. Specifically, it did not provide evidence of its efforts to re-let the premises to other parties, the lease terms available at the relevant time, or the general market conditions. It relies solely on the second lease agreement as evidence of its mitigation efforts.

[70] In my view, this is insufficient to support its claim for \$54,475.68 in damages arising from the purported difference in the lease payments it expected to receive pursuant to the lease and those contemplated in the second lease agreement.

[71] Had Centurion terminated the lease by October 1, 2022, and made efforts to mitigate its losses accordingly, its losses probably would have been lower. I am

satisfied that Piquancy is liable for its failure to pay rent for July, August, and September 2022. Based on Centurion's records, Piquancy owed Centurion \$20,770.57 as of October 1, 2023. Applying the security deposit of \$17,992.02 to this amount yields net rent owing by Piquancy for this period of \$2,778.55.

[72] I am not satisfied, based on the evidence adduced by Centurion, that it adequately mitigated its losses in respect of the difference between the lease payments it expected under the lease and the payments it expects to receive pursuant to the second lease agreement. I am therefore discounting the claimed amount, \$54,475.68 by 50 percent.

**Disposition**

[73] Centurion is entitled to damages of \$2,778.55 plus \$27,237.84, for a total of \$30,016.39. These damages are payable by Piquancy and the directors.

[74] Are there any submissions on costs?

[SUBMISSIONS ON COSTS]

[75] THE COURT: Centurion is entitled to its costs at Scale B.

“Basran J.”