IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hui 789 Development Ltd. v. Fraserway RV Limited Partnership*, 2023 BCSC 2367

Date: 20231120
Docket: S-216625
Registry: Vancouver

Between:

Hui 789 Development Ltd.

Plaintiff

And

Fraserway RV Limited Partnership

Defendant

Before: The Honourable Justice Schultes

Oral Reasons for Judgment

Counsel for the Plaintiff:	C. Rubinstein
Counsel for the Defendant:	H. Parsons V. Cheng
Place and Date of Hearing:	Vancouver, B.C. October 27, 2023
Place and Date of Judgment:	Vancouver, B.C. November 20, 2023

Introduction

[1] This is an application by the defendant to extend an injunction that was granted by Justice Majawa on June 23 of this year and that is set to expire on November 30. The defendant seeks to extend it until the scheduled trial dates, which are in November of 2024.

[2] The defendant leases a property in Delta on which it conducts its business of renting recreational vehicles to vacationers. The plaintiff is the owner of the property. The dispute between the parties has to do with the nature of the lease.

[3] The plaintiff's position is that there is a month-to-month tenancy in place that it is now entitled to terminate. The defendant's position is that the plaintiff had notice of the existing lease between it and the previous owner when the plaintiff bought the property, and so that lease was equitably assigned to the plaintiff. Such an assignment of the lease would provide the defendant with the protection of its terms, which include options to renew it for further periods, and to arbitrate rent increases for those additional periods.

[4] The current injunction restrains the plaintiff from excluding the defendant from possession of the property, or otherwise interfering with the defendant's tenancy.

[5] It is a *quia timet* injunction which was granted to prevent the anticipated harm of the plaintiff taking possession of the property. Its extension is sought on the same basis.

[6] It is common ground that the requirements for extending the injunction are the same ones that applied to granting it originally. The defendant must show that there is a high probability that if it is not extended, the anticipated activity will occur imminently or in the near future; that there is a serious question as to whether the applicant has a right that will be breached by this activity; and that the balance of convenience, weighing the likelihood of the irreparable harm to the defendant, favours granting the injunction: *XY, Inc. v. IND Lifetech, Inc.*, 2008 BCSC 1215 at paragraph 7.

[7] The defendant says that the factors that led to the injunction being granted continue to apply, and that in fact they have been aggravated in the intervening period by the conduct of Mr. Ma, the plaintiff's principal.

[8] The plaintiff on the other hand argues that the balance of convenience does not favor continuing the injunction, particularly in light of its more lucrative opportunities to lease the property to others, and the alternative properties that it says are reasonably available to the defendant to continue its business. It concedes that the defendant's claim for an equitable assignment of the lease meets the relatively low threshold for a serious question to be tried, but not that it goes any farther than that.

The Defendant's Position

[9] It entered into its lease with the previous owner in 2016.

[10] Some relevant terms of the lease for the present purposes were that the defendant agreed to become the tenant of any purchaser, and that the terms of the lease would continue to apply to it; that after the expiry of its initial five-year term, the defendant had options to renew it for two additional periods of the same length; and the parties would either negotiate fair market rent for those renewal periods or, failing agreement, would submit them for arbitration through an agreed process. Potentially relevant to the plaintiff's actions after the dispute arose, there was also a term entitling the defendant to quiet enjoyment of the property during the lease.

[11] In May 2018, that previous owner reached an agreement to sell the property to another company controlled by Mr. Ma. That company then assigned its side of the agreement to the plaintiff. The sale completed, with the plaintiff as purchaser, in September of that year.

[12] On the issue of equitable assignment, the defendant relies on affidavits from the defender's realtor in that purchase to show that Mr. Ma was informed of the defendant's existing tenancy at the end of the lease, both before and after the purchase was agreed to, and that he was also provided with a copy of the actual

lease after the agreement was signed. In fact, before closing, Mr. Ma is said to have asked the realtor for a page that was missing from that lease. Similarly, the vendor's principal deposes that he was told by both the realtor and his solicitor in the transaction that Mr. Ma was informed of the existence of the lease, and that the solicitor had given Mr. Ma a copy of it.

[13] Among the documents that are relied on by the defendant is a due diligence report from Mr. Ma's own solicitor in relation to the purchase, which Mr. Ma sent to the vendor's realtor. It described the lease as being binding on the purchaser, as well as the existence of the renewal terms. Among the solicitor's comments about the lease were, "It should be noted that the property will likely be occupied anywhere from the next six to eight years, which may impact your short and long-term plans for the property." Majawa J. ruled that this letter was not protected by common interest privilege and could be relied on by the defendant.

[14] At the closing, Mr. Ma's solicitor provided the vendor's lawyer with a form for the assignment of the lease. The vendor's principal deposes it declined to complete the form because it was not a term of the purchase that it do so, and negotiations between the parties up to that point had been difficult. Mr. Ma's solicitor wrote again requesting the completed form, as well as a copy of the notice to tenant.

[15] The defendant also points to ongoing statements and conduct by Mr. Ma towards it after the purchase in which he referred to the existence of the lease and the defendant's duties under it. This included demanding payment for insurance that he had taken out pursuant to a specific provision of the lease, and referring to the expiration of its initial term. He also accused the defendant of attempting to "destroy" the lease when it requested to sublet some of its space during the pandemic. On the subletting issue, he had previously told the defendant that one option was to terminate the current lease, and that it should check the lease concerning its subletting rights under it. In addition, he threatened to sue the defendant and to terminate the lease if the defendant did not pay the legal fees he had incurred during the subletting discussions.

[16] The plaintiff's solicitor later also acknowledged in communications with the defendant that the lease provided for a five-year renewal, with market rent to be negotiated. The solicitor inquired whether the defendant intended to renew, and whether it would be willing to accept a surrender of the lease without penalty. Majawa J. ruled that this letter was not covered by settlement privilege.

[17] The defendant provided formal notice of its intention to exercise the first of its options to renew in May 2021.

[18] After repeated assertions by Mr. Ma of his right to lease the property to others, and the absence of an option to renew, the plaintiff began the present action in July of that year. The action seeks an order for possession of the premises, among the other remedies. One of its assertions is that the lease relied on by the defendant is a “fraud." The plaintiff took no further steps with respect to the action until the defendant sought the original injunction.

[19] As part of its counterclaim seeking declarations that the plaintiff was bound by the lease and that the defendant had renewed it, the defendant provided an appraisal of market rent for the renewal period along with post-dated payments to the plaintiff in that amount for the renewal period. Mr. Ma responded by obtaining his own appraisal, showing market rent in a considerably higher amount.

[20] As a further potential acknowledgement of the existence of the lease, in May 2022, the plaintiff's then-counsel wrote to the defendant alleging the defendant had breached the lease and had agreed to enter into a new lease with the plaintiff, which it then failed to do.

[21] According to the defendant, Mr. Ma then made several unannounced visits to the property, and had contractors go there to perform work or inspections without previously discussing it with the defendant. A particularly disruptive action was painting handicapped parking stalls in the areas that the defendant used for its customers' parking. In furtherance of his application to have the property rezoned for electric vehicle sales and research, which was potentially successful, Mr. Ma also

sought to plant trees and install a bicycle locker, both of which would have had the effect of restricting the amount of space available for the defendant to park its recreational rental vehicles.

[22] The first injunction application was in response to a notice of termination of the lease served by the plaintiff.

[23] The defendant alleges that since the injunction was granted, the plaintiff has engaged in additional acts in breach of it, such as delivering repeated demands for additional rent, asserting that the defendant still needs to leave the premises, serving a notice of termination effective December, and threatening to install cameras on the property and conduct repeated further inspections.

[24] From the defendant's perspective, the irreparable harm that would be caused by requiring it to leave the property pending the trial, and the balance of convenience as between those concerns and any advanced by the plaintiff, arise from the nature of its business and the particular attributes of this property.

[25] It has more than 500 recreational vehicles to rent, and its rental season, which runs from March to November, is likely to involve more than 4,000 individual bookings. Most of its customers fly in from elsewhere in North America or from other parts of the world, particularly Europe and Asia. The defendant arranges overnight accommodation for them by the airport after their flight, following which it transports them to its facility to pick up their rented vehicle. After the trip, they drop off the vehicle at the same facility and the defendant transports them back to the airport. As a result, the location of the facility in Delta, which is close to the airport in Richmond is vital to the success of their business model.

[26] Other essential features of the property are its capacity to store and allow for the servicing of that large number of vehicles (which are 20 to 30 feet long) in a secure manner and the capacity of the building on it to accommodate the large number of customer service workers, including workers who are fluent in the languages of many of the customers, in addition to the regular staff. This property

serves as the reservation centre for all of the defendant's five locations during the rental season.

[27] The defendant refers in particular to the necessity of the vehicle parking being paved, which I infer is in order to avoid dirtying the vehicles with gravel or dirt. The facility needs to be secure because these vehicles are a target for thieves, and the defendant has had to take elaborate methods to prevent theft in the present location.

[28] As a further indication of its suitability, the defendant points out that this facility was originally custom-built for a previous recreational vehicle business. Replacing it would require the construction of a new facility or a renovation of an existing one, either of which they expect would to take up to two years to complete.

[29] The defendant's principal deposed that as of the present application, there were no comparable facilities in Delta, or within 30 minutes of it that are currently available or will be available by the trial dates. Relocating when the current lease expires would be highly disruptive for the defendant, and it has already taken more than 700 reservations from customers for the coming season. Those customers have been instructed to return the rental vehicles to this location, and the defendant's "travel partners" have already printed brochures and catalogues featuring that location.

[30] More fundamentally, the defendant submits that if it has nowhere to store its vehicles and cannot provide them to arriving customers in the same manner as it has previously, its ability to fulfill its obligations would be put at risk, permanently damaging its reputation in the travel industry.

The Plaintiff's Position

[31] The plaintiff acknowledges that it had notice of the presence of the defendant as a tenant when it agreed to purchase the property, but asserts that both the vendor's and the defendant's principals told him that the tenancy was on a month to month basis (both deny having made such statements).

[32] The plaintiff also points out that the purchase and sale agreement specifically represents that there are no tenancies. This adds greater significance to the vendor's subsequent refusal to execute an assignment of lease. There was also no reference in the vendor's notice to tenant of the specific lease between the vendor and the defendant that is being alleged. Also significant from the plaintiff's perspective, the sales brochure prepared by the vendor to market this property did not refer to any lease agreement being in place.

[33] As an indication of the contemporaneous view that Mr. Ma held of the issue, he attaches his e-mail to the defendant in September 2018, in which he awaits a new lease agreement from the defendant in light of his view of the floor space of the building on the property - "as this is month by month rent."

[34] After the plaintiff's purchase was completed, the plaintiff and the defendant began to discuss the terms of the lease, which Mr. Ma suggests they would not have done if an existing one was already in place. He says that the initial version of the new lease, which he provided the defendant in September 2018, was "supported" by the vendor's realtor, who also had a close connection with the defendant.

[35] The defendants deny having received any of these communications.

[36] Mr. Ma deposes that the defendant's representative asked to meet with him about the lease in March 2019. He provided a draft month-to-month agreement in May of that year, and in September the defendant provided its own draft. He says that these negotiations are founded on a disagreement about the building's square footage.

[37] A key aspect of the plaintiff's position on the true nature of the lease are the defendant's actions in relation to the property during the pandemic. The defendant advised it in March 2020 that it was going to move out of the property and return to its main location in Abbotsford. Mr. Ma requested that they provide three months' notice to vacate, as had been contained in the draft lease that he provided in September 2018. The defendant then requested to sublease the property, which the

plaintiff refused. Instead, the plaintiff began to seek a replacement tenant itself based on the defendant's representation that it would be moving back to Abbotsford.

[38] Despite the plaintiff's refusal to consent to a sublease, the defendant arranged for one anyway. The plaintiff contends that the defendant then changed its position in early 2021 and claimed that it had a right to renew the lease. Mr. Ma contends that this was the first time that he was ever provided with a copy of the lease between the defendant and the previous owner, or that it suggested to him that that lease remained in force.

[39] The upshot of all of this, the plaintiff submits, is that the defendant has not been forthright in describing the nature of the landlord/tenant relationship here, or its intentions from time to time with respect to the property.

[40] Because the defendant had not moved out despite its previous request to do so, the plaintiff served it with several notices to terminate. Later in 2021, it proposed a two-year lease to the defendant, which was rejected. (This followed a claim made by the plaintiff through its counsel that the defendant could not exercise its option to renew the lease because of various defaults that it was alleged to have committed.)

[41] In addition, the plaintiff submits the defendant's actions are understandable in the context of the parties' dispute about the correct square footage of the building, which ultimately prevented them from agreeing on a new lease at market rent rates. For example, the plaintiff suggests that emailed advice from the defendant's realtor that the defendant should “keep [its] options open” about other locations, after the plaintiff requested what the realtor described as “ridiculous rent” under the two-year proposed lease, shows that the defendant had no intention of paying market rent for the property at any point. The plaintiff invites me to characterize the defendant's actions as motivated principally by attempting to retain the benefits of the rent under the lease with the previous owner, even though there has never been any suggestion that the lease applied to the plaintiff.

[42] The plaintiff also argues that defendant is in breach of terms of the very lease that it seeks to uphold. It has refused to pay the additional amount of rent invoiced by the plaintiff, which is based on the square footage that the vendor provided to the plaintiff as part of the sale. It has also refused to provide proof of its required insurance policies under the lease, except for recently for its 2023/2024 coverage, and a review of that document suggests that it may be underinsured. The flip side of the defendant's allegation of numerous improper visits by Mr. Ma is the plaintiff's claim that the defendant has improperly barred him from his lawful access to the property.

[43] As to the availability of other premises for the defendant, the plaintiff has identified five sizable properties in the Fraser Valley, several of which are fenced and gated, plus the defendant's own three locations in Abbotsford. It suggests that any of these would readily allow the defendant to continue its business. (The defendant's realtor deposes that none of the proposed locations are actually comparable or would be suitable, although the plaintiff argues that this realtor is not at arm's length from the defendant.)

[44] Further, the plaintiff points out that the total footage of the defendant's Abbotsford locations is in the range of 20 acres, and questions why one of those facilities could not be retrofitted to be used for their rental pickups. On the issue of proximity to the airport, the plaintiff notes that from September 2019 the defendant leased an acre for vehicle storage from a 40-acre lot in Richmond that is even closer to the airport. (The defendant responds that this was a highly secure location that was used only for storage, and that would not be suitable for picking up rentals.)

[45] Despite the defendant's principal deposing, and Majawa J. accepting, that there is nowhere else suitable to store its more than 500 recreational vehicles, Mr. Ma says that during his multiple extensive inspections of the property he has never seen more than 50 to 70 of them present. Notably, in their conversations during the pandemic, the defendant's principal told him that he could move all of the vehicles back to Abbotsford without difficulty. During the 2021 discussions with the

plaintiff's realtor about the plaintiff's proposed two-year lease, the defendant's realtor represented that, despite the defendant's preference to stay, "there were several locations in Nordel alone that could accommodate" it.

[46] The plaintiff points out that wash bays for the recreational vehicles, which according to the defendant are an essential feature of the facility that would be difficult to replace on short notice, can actually be constructed quickly and relatively cheaply. In fact, one of the defendant's Abbotsford facilities has just such a makeshift structure. (The defendant explains that that location offers an "economy-level" rental product, very different from what is offered at the Delta facility, and that even so, those improvements took a year to design and build.)

[47] The plaintiff also denies the defendant's claim that it operates its call centre for all of its operations at the Delta facility, suggesting that those operations are actually located at its headquarters in Abbotsford. In any event, most of the bookings are likely to be carried out through the defendant's website. (The defendant responds that there is in fact a reservation center onsite, which provides support for its operations in other locations.)

[48] Further, the plaintiff argues unlike the situation that was before Majawa J., we are now in the off-season of the recreational vehicle rental business, so relocating the defendant's operations would not disrupt the service the defendant is able to provide to its valued customers.

[49] On the issue of irreparable harm, the plaintiff described having received offers to lease the property that conformed with its higher range of appraisal, but a more significant recent development has occurred. As I mentioned when summarizing the defendant's position, the plaintiff has had the property rezoned for electric vehicle sales and research, and in keeping with that, it has received an offer from Tesla to lease the property for about $1.35 million a year (the appraisal figures were in the $800,000 range).

[50] While Tesla remains interested in the property as of the date of this application, it will not be able to maintain that interest until the trial of this action, and will have to pursue alternative locations. (The plaintiff actually referred to the existence of this offer in the application before Majawa J. and its annual value, but the identity of the proposed tenant was then subject to a confidentiality agreement.)

[51] Mr. Ma has incorporated his own green energy company and will operate a research and sales facility on the property himself if Tesla is not able to occupy it. He projects that such a business could itself generate profits in the tens of millions of dollars in the near future, as well as generating significant social benefits.

[52] If, despite these various considerations, I do not identify the balance of convenience as allowing the plaintiff to reoccupy the property, the plaintiff submits that this is an appropriate case for the posting of security for costs.

[53] On any view of the facts, the defendant will owe substantial damages - between what it has been paying and the level of market rent that the plaintiff alleges - and it has not been forthcoming, says the plaintiff, in revealing its actual ability to pay those damages, even though it gave an undertaking to do so in the first injunction. Given the disparity between what has been paid and what will be owed, security for damages in the two-million-dollar range should be posted, it is argued. (The defendant responds that it directly owns its inventory, which has a value in the range of $300 million.)

Majawa J.'s Reasons

[54] This application was argued on the footing, which I agree with, that the defendant must make a fresh case for an injunction based on the present circumstances, and that Majawa J.'s findings may be informative but are not binding. Indeed, the plaintiff disagrees with a number of those findings, although it made a practical decision to raise them in this extension application rather than appealing the original injunction.

[55] Nevertheless, to the extent that I may agree with them based on my own analysis, Majawa J.'s findings on the evidence as it stood in June provide a useful context for understanding the extent to which the present circumstances may or may not meet the requirements for an extension.

[56] His reasons have been transcribed but not published.

[57] There was no dispute on the evidence before Majawa J. that if the injunction was not granted, the plaintiff would take steps to remove the defendant from the property in the near future. Thus, the first element of the test for an injunction was met.

[58] On the existence of a serious question to be tried, he noted that this element sets a relatively low bar - simply that the applicant's grounds are not frivolous or vexatious. Nevertheless, he found on the evidence that the defendant had established "more than a mere *prima facie* case" that the plaintiff had notice of the lease when it purchased the property. However, it was "not such a strong *prima facie* case that it approached a plain and uncontested breach of a negative covenant", which would have reduced the importance of irreparable harm and the balance of convenience in the analysis.

[59] In reaching this conclusion, Majawa J. considered what appears to have been essentially the same arguments and evidence that have been placed before me on the issue of the equitable assignment. In particular, he did not consider the evidence provided by the plaintiffs in support of the existence of a month-to-month tenancy detracted from the existence of more than a *prima facie* case in favor of the defendant's position on that issue.

[60] On the analysis of irreparable harm and the balance of convenience, Majawa J.'s analysis does indeed provide a useful context, and is worth quoting directly:

> [65] If the Plaintiff forces [the defendant] to vacate the Premises, as it indicates it will in the notice of termination, the effect on [the defendant]'s business and reputation will be significant.

[66] I accept that there is no facility available in the Delta area in which [the defendant] could store the tens of millions of dollars of recreational vehicles currently stored on the Premises, including those locations identified by the Plaintiff, and that they would be unable to operate the rental operation, in the short term at the least.

[67] The evidence before me is that the other premises occupied by [the defendant] are carrying on their own businesses at those locations and cannot accommodate the operation of the rental business operated at the Premises, at least not on short notice. Moreover, the building on the Premises was specifically designed to service recreational vehicles, and renovations or new construction would likely be required to service those vehicles at another location. Thus, a requirement to move on short notice would have a significant effect on [the defendant]'s business.

[68] Even if suitable premises were available and they were required to move on short notice, the effect on [the defendant]'s customers would be significant. The vast majority of their rental customers come from out of the country. As [the defendant]'s owner states, over the next six months, [the defendant] will have hundreds of customers on the road at any given time who will expect to return their rental to the Premises before flying home to their destination. Furthermore, [the defendant]'s customers are mainly from outside of Canada. Many have arranged their vacation on the basis of their RV booking with [the defendant] and expect to pick up their vehicle from the agreed-upon location and the agreed-upon date, not from a location many, many kilometres away with little to no notice.

[69] I do not accept that [the defendant] can eliminate the risks it faces with these customers simply by contacting them through its website or servicing them from another location. This is a markedly different situation than in 2020, when [the defendant] considered consolidating its operations to mitigate its losses arising from the COVID-19 pandemic. At that time, there were very little business operations owing to the pandemic, and therefore such changes would not have had such a significant impact.

[70] While [the defendant]'s rental operations are only but a part of the defendant's business operations, it is nonetheless a significant part. On the evidence before me, I am satisfied that there is a significant likelihood that [the defendant]'s rental business operations will be lost, for this season at least, should it be required to vacate the Premises on short notice. Should [the defendant] be unable to fulfil what I understand to be approximately 4,000 reservations, it may lose that rental part of its business, at least for this season, and it could have a long-lasting and significant effect on the reputation that [the defendant] has built in its 54 years of operations. The potential for [the defendant] to face litigation for breaches of these contracts as a result is real.

…

[72] Weighing the irreparable harm to [the defendant] leads me to conclude that the balance of convenience is in its favour. In my view, it is significant that the relief sought by [the defendant] in this application seeks to maintain the *status quo.* On the other hand, if the Plaintiff can terminate [the defendant]'s's occupancy on the basis asserted in the notice of termination,

> it will effectively have determined the entirety of the matters at issue in the litigation which the Plaintiff commenced nearly two years ago and took no steps to proceed with.
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> …
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> [74] While the Plaintiff submits that it stands to lose millions of dollars in the form of a loss of an opportunity to lease the property to the EV manufacturer, I am not persuaded that this tips the balance in its favour. While the financial evidence from [the defendant] was limited, I am satisfied that [the defendant] has the ability to pay a damages award in respect of this injunction if the Plaintiff is successful at trial, including on the evidence before me of the tens of millions of dollars of assets that are stored on the Premises. Furthermore, [the defendant] has undertaken to pay those damages.

[61] On the question of the duration of the injunction, which has a bearing on the present application, Majawa J. made the following comments:

> [77] Although I am satisfied that the injunction sought should issue, I am not satisfied at this time that it should be in place until the trial of this action. The parties are at the very early stages of the litigation. It is conceivable that the trial could not happen before the end of the 2016 Lease renewal term in 2026, given the scheduling constraints that this court currently faces. Moreover, many of the factors that I have considered in respect of irreparable harm are premised, at least in part, on the effect of [the defendant] having to move its business on short notice. As I understand it, the busy season for [the defendant]'s rental operations is through the summer and into mid-November. In my view, it would be appropriate to have the injunction in place until the conclusion of this year's busy rental season. It seems to me the lease itself contemplated those circumstances as its terms expire on November 30.
>
> [78] [The defendant] can apply to extend the injunction upon further evidence showing that its continuation remains necessary to ameliorate any irreparable harm and that the balance of convenience still remains in its favour.

Discussion

[62] The plaintiff's concession that there is at least a *prima facie* case on the defendant's position that the plaintiff had notice of the lease is a sensible one.

[63] In my opinion, while there are some inconsistencies in the defendant's position, most notably the absence of any reference to the lease in the purchase and sale agreement and the refusal of the vendor to execute an assignment of tenancy (which would seem to be essential no matter how difficult the sale process had been), the rest of the evidence that the plaintiff relies on Mr. Ma's unsupported

assertions of conversations that the defendant's principal and witnesses deny having or e-mails they deny receiving, and a fairly tortured analysis of the events after the purchase.

[64] In particular, I do not think the decisions made by the defendant during the pandemic to consolidate its operations in light of a declining business reveal anything meaningful about the parties' knowledge of the lease or understanding of its terms. Nor do the defendant's ongoing discussions with Mr. Ma reveal any clear disavowal of the application of that lease.

[65] On the other hand, I do not see how the plaintiff can get around his own counsel having informed him of the nature of the lease and its terms before the purchase, or his counsel's communications with the defendants, conceding its terms and validity on his behalf. Assuming that the decisions on the admissibility of those documents are maintained at trial, and I cannot see why they would not be, there is strong evidence on the issue of knowledge.

[66] Thus, I think Majawa J.'s conclusion that more than a *prima facie* case had been established remains accurate, and I make that finding myself.

[67] To the extent that the finding of irreparable harm to the defendants originally rested on the beneficial attributes of this particular facility and location, and the difficulty of finding another suitable one, in my opinion that evidence also remains convincing.

[68] The affidavits by the defendant's principal that postdate the first injunction do not rest the need for an extension on the requirement to vacate the premises occurring during high season. The defendant's position is based on the highly favorable location and setup, including its custom-built origins, that the property provides for conducting this particular type of business for the particular type of clientele involved, and the lack of suitable alternatives that can be expected to be available before trial.

[69] There is evidence, in addition to the defendant's own assertions, that the alternatives proposed by the plaintiff are not comparable or suitable. It draws too long a bow, in my estimation, to say that the ongoing association of that realtor with the defendant in itself deprives his evidence of any weight.

[70] In my estimation, even when one removes the acute seasonal issue that so concerned Majawa J. (although the remaining four months between now to the start of that season would still require quite an urgent relocation), a persuasive case of a major business disruption remains on the present as evidence - especially the loss of proximity to the airport in furtherance of the defendant's business model and the particular suitability of this facility.

[71] There is also no basis on which to reject the evidence that it would take at least two years to develop a comparable facility.

[72] Thus, I am satisfied that the sort of business loss and reputational damage that was helpfully summarized in the decision of *Church & Dwight Limited v. Sifto Canada*, [1994] O.J. No. 2139, at paras. 18 to 19 (loss of actual and potential customers and goodwill, and potential diminution of the applicant's business reputation) would occur in any part of the year. A damage control operation might be slightly less hopeless if undertaken in the off-season, but would still be incapable of recovering the core vulnerable aspects of the business that I have identified in the evidence.

[73] As to the balance of convenience, the first key point is that the extensive delay that Majawa J. feared has not materialized. The situation to be preserved if the injunction is granted will persist for one further year plus whatever time the trial judge needs to reach a decision, which I would estimate to be in the range of a further three to six months at the outset.

[74] As previously noted, Majawa J. had the existence and the value of the Tesla offer before him, just not the name of the prospective purchaser. In his view, that did

not supersede the harm that would be caused to the defendant's business by losing the premises. In my opinion, that continues to be the correct analysis.

[75] Without minimizing the value of such a lease, or the prestige of being associated with a leading manufacturer of electric vehicles, it is still a loss within the context of the plaintiff's ongoing role as the owner of a valuable and sought-after property, rather than of a seriously disrupted enterprise, as I have found the defendant would be if the injunction is not granted.

[76] It is also significant in my view that the plaintiff has gone to some lengths to describe how valuable its own research and sales facility will be if its green energy company occupies the facility instead - $900 million in sales and $95 million in profit by 2026. Even if it loses Tesla as a tenant, a loss that can readily be quantified if it succeeds at trial, it can set about making those astronomical numbers, assuming they are accurate, within at most 18 months. I concluded that this is a loss the plaintiff is in a much better position to bear.

[77] While the maintenance of the status quo also favours the defendant, since an injunction will allow it to continue in its existing tenancy, in my view the disparity between the effects of granting or not granting the injunction are already sufficiently stark that the application of that further factor is not a major one here.

[78] This conclusion also makes it unnecessary to consider the alternative request for security for damages. Had it been necessary to do so, I would have said that the defendant's direct ownership of its extremely valuable inventory should allay any reasonable fears that the defendant might have about being able to execute on a judgment if it succeeds at trial.

[79] Accordingly, the injunction ordered by Majawa J. will be extended until the trial of this action, and costs will be to the defendant in the cause at the ordinary scale of difficulty.

"Schultes, J."