CITATION: 2371143 Ontario Inc. v. Canaan Art Centre Inc., 2024 ONSC 1004
NEWMARKET COURT FILE NO.: CV-21-2699-00
DATE: 20240215

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
2371143 ONTARIO INC.	
Plaintiff	Sara Romeih, for the Plaintiff
– and –	
CANAAN ART CENTRE INC., CHUN MEI WU and LI XIU HUANG	
Defendants	Defendants, Self-Represented
	HEARD: February 13, 2024

REASONS FOR DECISION

HEALEY, J.:

Relief Sought

[1] The plaintiff ("237") moves under r. 20.04 of the *Rules of Civil Procedure* for judgment in the amount of $149,240.28 for amounts owing pursuant to a lease agreement between 237 and Canaan Art Centre Inc. ("Canaan"), plus prejudgment interest at a prime rate plus 2% per annum.

[2] The defendants obtained an order at the outset of the hearing permitting Chun Mei (May) Wu to represent the corporate defendant and removing their counsel of record. A Mandarin interpreter provided interpretation service to the defendants throughout the argument of the motion.

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Evidence

The Lease

[3] 237 was the owner of commercial premises located at 8545 McCowan Road, Markham (the “Premises”). Ka Wai (Vincent) Ho is 237’s sole director.

[4] Canaan entered into a commercial lease agreement for the Premises for a 7+-year term starting April 15, 2015 to July 14, 2023 (the “Lease”). Canaan carries on business as a children’s learning centre, operating after-school tutoring programs during both the school year and summer break.

[5] Canaan is owned and operated by Wu. Dennis Ken was Canaan’s financial controller and Wu’s former husband.

[6] Wu and the co-defendant, Li Xiu Huang, signed an Indemnity Agreement in their personal capacities, agreeing to indemnify 237 if Canaan failed to make payments or otherwise breached the Lease.

[7] Huang owned 20% of the shares of Canaan when the Lease was signed, but resigned from Canaan on April 28, 2016, and sold her shares to Wu. There were no amendments to the Lease or the Indemnity Agreement after the share transfer.

[8] Under the Lease, the parties agreed to the following terms:

(a) *Basic Rent*: the monthly base rent increased over the term of the Lease. From July 15, 2017 to July 14, 2020, the monthly base rent was $8,337.00 plus HST. As of July 15, 2020, the monthly base rent increased to $8,932.50 plus HST;

(b) *Additional Rent:* Pursuant to ss. 2(3) and (4), Canaan was responsible for paying utilities, maintenance, the Landlord’s reasonable management fees, insurance premiums, property taxes and other taxes defined in ss. 2(4)(a);

(c) *Removal of Fixtures*: Pursuant to subsection 7(6) of the Lease, the Tenant may remove Trade Fixtures at the end of the Term or other termination of the Lease if the Tenant has complied with his obligations according to the provisions of the Lease, and the Tenant agrees to make good and repair or replace as necessary any damage caused to the Premises by the removal of the Tenant’s Trade Fixtures.

Pursuant to subsection 7(7) of the Lease, the Tenant could not remove from the Premises any Trade Fixture or other goods and chattels of the Landlord unless: (a) the removal is in the ordinary course of business; (b) the Trade Fixture has become unnecessary for the Tenant’s business or is being replaced by a new or similar Trade Fixture; or (c) the Landlord has consented in writing to the removal. In the event removal is allowed, the Tenant is responsible to repair any damage to the Premises.

(d) *Alterations and Additions*: Section 7 of the Lease permits the Tenant to make alterations or additions to the Premises at its own expense, subject to the Landlord's approval, and s. 7(4) provides that all alterations and additions to the Premises made by or on behalf of the Tenant, other than the Tenant's Trade Fixtures, shall immediately become the property of the Landlord without compensation to the Tenant.

(e) *Repair and Maintenance*: Subsection 6(3) provides that upon the expiry of the Term or other determination of this Lease, the Tenant agrees to peacefully surrender the Premises, including any alterations and additions made thereto, to the Landlord "in a state of good repair, reasonable wear and tear…excepted".

(f) *Acts of Default and Landlord's Remedies*: Section 10 of the Lease sets out the acts of default and the Landlord's remedies. It provides:

1. An Act of Default has occurred when:

a) the Tenant has failed to pay Rent for a period of fifteen (15) consecutive days, regardless of whether demand for payment has been made or not;

b) the Tenant has breached its covenants or failed to perform any of his obligations under this Lease; and

i. the Landlord has given notice specifying the nature of the default and the steps required to correct it; and

ii. the Tenant has failed to correct the default as required by the notice within ten (10) days after receipt of the notice of default…

(g) *Accelerated Rent*: Pursuant to ss. 10(2) of the Lease, the Landlord is entitled to the current months' rent plus three additional months' rent in case of default. The Landlord also has the right to terminate the Lease and re-enter the premises.

Section 10(3) of the Lease provides that if the Tenant defaults on its obligations and the Landlord terminates the Lease, the tenant is nevertheless liable for payment of rent and all other amounts payable by the Tenant under the provisions of the Lease until the Landlord has re-let the premises or otherwise "dealt with the premises in such manner that the cessation of payments by the Tenant will not result in loss to the Landlord…". In other words, the Landlord is entitled to obtain damages from the Tenant for all amounts which would have been payable for the balance of the Lease's term, until such time that the Premises has been re-let or sold.

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Default in Rent

[9] It is uncontroversial that because of the outbreak of Covid-19, the Ontario government made various emergency orders, including mandatory closure of schools and childcare centres from March 18, 2020, mandatory closure of all non-essential workplaces effective March 24, 2020, and two stay-at-home orders, effective January 14, 2021 and April 8, 2021.

[10] Because Canaan's business model was to take in children for after-school tutoring and run programming during the summer break, its business was severely restricted. In addition, many parents withdrew enrolment for their children due to health and safety concerns. Ken's affidavit states that they had about five students during the balance of spring 2020, as opposed to the former sixty, several of their summer programs were cancelled (although not all) and five students were enrolled for September 2020.

[11] On April 1, 2020, 237 attempted to deposit Canaan's cheque for April rent in the amount of $11,239.36. Canaan admits that it cancelled the rent cheque. Ken deposed that he contacted Ho in mid to late March and sought a rent abatement or reduction during the lockdown, and asked him to withhold attempting to deposit the rent cheque for April. Ken says that Ho agreed to do so verbally, but then tried to deposit the cheque. Canaan instructed the bank to cancel it.

[12] I do not have to resolve the issue of whether 237 orally represented that it would not negotiate the cheque for April, although it seems unlikely that any such conversation would have occurred when the parties' other communications all seem to have occurred through email. Subsection 2(9) of the Lease provides that the payment of Rent and Additional Rent shall be made without any deductions for any reason whatsoever unless expressly allowed by the terms of the Lease or *agreed to by the Landlord in writing* (emphasis added). There is no evidence of 237's written agreement.

[13] During the summer of 2020, 237 attempted to negotiate a resolution with Canaan through its property manager, Tobby Lam, but an agreement was never reached. The major sticking point seems to have been the accelerated rent, or "termination fee". Lam proposed a face-to-face meeting in September 2020 with Wu or Ken. The defendants failed to follow through with that invitation.

[14] On September 19, 2020, Ken informed Lam via email that Canaan would be moving out. In response, Lam informed Ken that the "lease is still in full effect and moving out without a mutual termination does not free you from the obligation of the lease". Canaan did not respond.

[15] On or about October 8, 2020, 237's former counsel prepared correspondence notifying Canaan that 237 had exercised its right of reentry and terminated the Lease on the basis of non-payment of rent. The letter indicated that rent arrears of $74,411.72 was owed to 237 at that time. The letter was delivered by Ho to Wu's home address and posted on the window at the leased Premises on the same day. The locks were then changed.

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[16] Canaan says that 237 did not provide a demand notice prior to repossession of the Premises, as required by subsection 1(b)(i) of the Lease. This argument fails, as the email exchange between Lam and Ken between April and September 2020 shows that Canaan knew exactly the nature of the default, when it had occurred, and was given far longer than 10 days to correct its default before 237 took steps to repossess.

Damage to the Premises

[17] On October 8, 2020, Ho drove by the leased premises and witnessed Wu, Ken, and a staff member of Canaan attempting to break the lock and entering without 237's permission. This is documented in a series of videos taken by Mr. Ho on his phone and included in the record.

[18] Ho later entered the Premises and took pictures. It is alleged by 237 that Canaan damaged the Premises by removing ceiling tiles, doors, the front desk and other fixtures.

[19] Canaan admits that it broke the lock to retrieve its possessions, citing 237's failure to give it notice in advance. Advance notice by 237 that it is exercising its right of possession is not required by the Lease. Canaan had no rights under the Lease or otherwise provided by law to remove the lock and go into the Premises.

[20] Canaan admits that it took the ceiling tiles which had been installed by Canaan during initial renovations, and a wooden door from a classroom. Ken's affidavit says that they did not remove any steel doors or light fixtures, damage drywall, windows or other parts of the Premises. He also takes the position that the front desk was movable office furniture. Wu stated in her submissions that no doors were removed, particularly not heavy steel doors.

[21] In order to mitigate its damages, 237 listed the Premises for sale on the Multiple Listing Service on October 27, 2020. It signed an Agreement of Purchase and Sale on February 8, 2021, with the sale closing on August 27, 2021.

Test for Summary Judgment

[22] Summary judgment is appropriate whenever there is no genuine issue requiring a trial: r. 20.04(2)(a).

[23] The purpose of the change from "no genuine issue for trial" to "no genuine issue requiring a trial" in the test for summary judgment was to make summary judgment more readily available. It was also to recognize that with the court's expanded forensic powers, although there may be issues appropriate for trial, these issues may not require a trial because the court has the power to weigh evidence on a motion for summary judgment. As noted in *Healey v. Lakeridge Health Corp.* 2010 ONSC 725, 72 C.C.L.T. (3d) 261, at para. 22, aff'd 2011 ONCA 55, 103 O.R. (3d) 401, "Rule 20.04(2.1) is a statutory reversal of the case law that held that a judge cannot assess credibility, weigh evidence, or find facts on a motion for summary judgment."

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[24] The leading case, *Hryniak v. Mauldin*, 204 SCC 7, sets out the approach to be taken by the motion judge. With respect to when summary judgment may be granted, Karakatsanis J. stated at para. 49:

> There will be no genuine issue requiring trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process 1) allows the judge to make the necessary findings of fact, 2) allows the judge to apply the law to the facts, and 3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[25] At para. 50, the Court defined the overarching issue to be "whether summary judgment will provide a fair and just adjudication." Karakatsanis J. went on to say that "the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute."

[26] In terms of the approach to a motion for summary judgment, *Hryniak* directs at para. 66 that the judge should first determine if there is a genuine issue requiring a trial based only on the evidence before her, without using the new fact-finding powers. If there appears to be a genuine issue requiring a trial, she should then decide if the need for a trial can be avoided by using the new powers under rules 20.04(2.1) and (2.2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. These powers may be used by the motion judge in her discretion provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability, and proportionality in light of the litigation as a whole.

[27] The court must take a hard look at the evidence on a motion for summary judgment to determine whether there is a genuine issue requiring a trial and may freely canvas the facts and law in doing so. No party is entitled to rely on the prospect of additional evidence that may be tendered at trial; all parties have an obligation to put their best foot forward on a summary judgment motion: *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, at para. 9; *Chernet v. RBC General Insurance Co*., 2017 ONCA 337, [2017] O.J. No. 2094, at para. 12; *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200, [2014] O.J. No. 851, at para. 26, aff'd 2014 ONCA 878, [2014] O.J. No. 5815, leave to appeal to SCC refused, [2015] SCCA No. 97. As stated in *Dawson v. Rexcraft Storage and Warehouse Inc*., [1998] O.J. No. 3240 (Ont. C.A.), at para. 17, "[t]he motions judge is entitled to assume that the record contains all the evidence which the parties will present if there is a trial."

[28] The requirement to put one's best foot forward means that although the onus is on the moving party to establish the absence of a genuine issue requiring a trial, there is an evidentiary burden on the responding party, who may not rest on the allegations or denials in the party's pleadings, but must present specific facts showing that there is a genuine issue for trial: *Cuthbert v. TD Canada Trust*, 2010 ONSC 830, [2010] O.J. No. 630, at para. 12; *Sanzone v. Schechter*, 2016 ONCA 566, [2016] O.J. No. 3760, at para. 30. These

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principles were affirmed once again in *Broadgrain Commodities Inc. v. Continental Casualty Company (CNA Canada)*, 2018 ONCA 438, at para.7.

[29] The evidence adduced on a summary judgment motion need not be equivalent to that at trial. A documentary record may be enough, if it allows the motion judge to have confidence that she can fairly resolve the issues: *Hryniak*, at para. 57.

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Is Summary Judgment Appropriate in this Case?

Liability

[30] The material facts in this case are largely uncontentious. Where there is some conflict in the evidence that impacts on liability, these conflicts are able to be resolved on the basis of the Lease or the evidence in the record. As the Lease governs the contractual rights and obligations of the parties, there is nothing unfair about resorting to the terms of the lease to resolve the issues brought forward by Canaan.

[31] Canaan defaulted under the Lease by failing to make any payments to 237 following March 2020. By April 15, Canaan was in default for failing to pay rent for a period of fifteen consecutive days. Canaan then stated its intention to move out of the Premises without paying rent or coming to an agreement about the early termination of the Lease.

[32] Canaan never corrected its default within the requisite ten days. Once Canaan understood that there was a dispute between the parties about whether Canaan would be required to pay the accelerated rent, Canaan simply stopped communicating with 237's property manager.

[33] The termination of the Lease by 237 following default and after the lapse of the 10-day rectification period was permitted by the Lease's terms.

[34] Canaan's re-entry of the Premises was contrary to the terms of the Lease, and amounted to trespass. Even removal of Trade Fixtures was prohibited by the Lease, as Canaan was in default and did not have 237's permission.

[35] The only other issue impacting liability is Canaan's argument that the terms of the Lease were frustrated by the Covid-19 lockdowns. This was an issue addressed by the Mew J. in *Braebury Development Corporation v. Gap (Canada) Inc*., 2021 ONSC 6210 (CanLII). Applying the test set out by the SCC in *Naylor Group Inc. v. Ellis-Don Construction Ltd*., 2001 SCC 58 (CanLII), Mew J. considered whether the government's shut-down of non-essential retail businesses radically altered the terms of the lease.

[36] Mew J. found that while the restrictions prohibited Gap from operating its retail store temporarily between March and May 2020, and then at reduced capacity until September 2020, this was not enough to frustrate the agreement. Further, because Gap was not required to operate as a retail store under the terms of its lease, its inability to do so could not be said to have radically altered the lease's terms.

[37] In this case, s. 5(1) the Lease requires that the Premises not be used for any purpose other than a Learning Centre without the express consent of the Landlord given in writing. Canaan's business was arguably more flexible than Gap's retail outlet, because it offered the potential for virtual contact with students. That is in fact exactly the model that Wu moved to once she left the Premises.

[38] Further, the profit and loss statement of Canaan for 2020 shows that it had $170,512 in revenue during 2020. Wu has provided evidence that Ken inaccurately characterized this total amount as "revenue", as part of it was loans. Through the Canada Emergency Business Account, Canaan obtained $40,000 in April 2020 and another $20,000 in December 2020. A further amount of $17,650 were funds borrowed from a friend in April 2020. Wu indicated that these loans were obtained to keep the business going, and in her submissions stated that the $17,650 was borrowed specifically for the purpose of paying the rent. The bank account statement for Canaan indicates that it had $38,008.75 in its bank account on April 30, 2020.

[39] This evidence of loans is inconsistent with earlier answers given by Wu to an undertaking. She indicated that Canaan had not made an application to a government program for rental or business assistance and was unaware of any non-governmental and/or private programs to apply to for financial assistance.

[40] Wu's evidence in her affidavit sworn January 30, 2024 is that Canaan completely closed its operations from March 17 to June 12, 2020. This contradicts her earlier answer given in response to an undertaking, which was that Canaan had at least three students taking classes between March 2020 and October 2020, and continued to employ at least three employees.

[41] Even subtracting the loans, Canaan's 2020 revenue was $92,852.

[42] Additionally, 237 had agreed to apply for subsidy under the Canada Emergency Commercial Rent Assistance, which would have permitted Canaan to pay 25% of the rent. The evidence shows that 237 proceeded with that application, as Lam asked for necessary information such as business number and number of employees. In an email sent on August 19, Lam indicated that "the CECRA portion is already confirmed". Still, Canaan did not even pay its reduced share, presumably because it decided to vacate and the parties were never able to reach mutually acceptable terms.

[43] While revenue for the business changed dramatically due to the pandemic, the facts in this case do not support a finding that the Lease was frustrated. Canaan's business was interrupted, but the evidence also shows that Wu continued to operate it out of her home from October onward by operating online classes. At that time Canaan had five students and by February 2023 it had ten students.

Calculation of Damages

[44] The only aspect that is contentious concerns damages. Again, this issue can be resolved on the basis of the record, including the necessary findings of credibility.

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[45] No argument was raised about 237's mitigation of its damages. In any event, I find its mitigation efforts were reasonable, having listed the Premises for sale as soon as it had exercised its right of re-entry.

[46] 237 calculates rental arrears (both basic rent and additional rent) from April 2020 to October 2020 at $81,030.66 for rent amounts inclusive of administrative and management fees, plus HST in accordance with the Lease. This is supported by the invoices filed in the record.

[47] 237 is owed Accelerated Rent pursuant to s.10(2) the Lease in the amount of $33,718.08.

[48] To prepare the Premises for sale, 237 says that it had to carry out repairs to the Premises because of damage alleged to be done by Canaan's owner and agents. 237 has provided an invoice from JY Excellent Renovation Inc. ("JY") dated April 28, 2021 for various repairs, with further explanation in a letter from the contractor about the scope of the repairs.

[49] Canaan disputes the repair costs because they were incurred after the Agreement of Purchase and Sale ("APS") was made between 237 and the Premise's new owner. Under that APS, there is no requirement for 237 to perform any repair work.

[50] 237 concedes that there are no provisions in the APS that require this work. However, counsel for 237 submits that it is illogical to believe that her client would voluntarily incur unnecessary costs that it may have no hope of recovering. I agree.

[51] The repairs detailed by the contractor, JY Excellent Renovation Inc., were: replacement of ceiling tiles and bent ceiling tile frames, replacement of electrical wires that were damaged or cut upon removal of the frames, ceiling tiles and light fixtures, the replacement of three missing steel doors and removal of business signage and decals from several windows, which required rental of a skylift, and refinishing and painting all walls damaged by decals that had been adhered to the walls.

[52] With respect to the steel doors, photographs were submitted by 237 which allow me to conclude that at least two, if not three, green steel doors were missing from the classrooms, while others remained. Ken admits that a single wooden door was taken, although denies that it was steel. Wu denies the removal of any doors. On this point, I make a credibility finding against Wu. If Wu and Ken and their employee were motivated to remove ceiling tiles, I have no reason to readily accept her evidence that the doors were not taken. Wu has been inconsistent in several aspects of her evidence. For these reasons, I prefer and accept 237's evidence that three doors had to be replaced. These are not Trade Fixtures and under the Lease were to remain on the Premises.

[53] With respect to the electrical wires, the invoice states "install and repair electrical wires", for $2,390. There is a letter that accompanies the invoice, which explains that the electrical wires were damaged or cut upon the removal of the frames, ceiling tiles and light fixtures. The photographs on their face do not show missing light fixtures, and there is no evidence provided by 237 to explain the photos. I am not satisfied that the damaged electrical wires

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resulted from something done by Canaan or its agents, as opposed to being a pre-existing problem.

[54] Nor am I satisfied that the drywall repair and repainting is damage beyond normal wear and tear that could be expected in a children's learning centre.

[55] Accordingly, from the invoice from JY, I find that 237 has proven that the cost of the ceiling tile replacement, the replacement of three steel doors and the cost to remove signage and window stickers from the Premises, are captured by subsection 6(3) of the Lease. These costs were $26,760 plus HST of $3,478.80 for a total of $30,238.80.

[56] 237 also seeks to recover the cost to clean the Premises. It has provided an invoice dated March 30, 2021 for cleaning services of $452 and proof of payment by e-transfer. Wu states that she had cleaned the Premises thoroughly after re-entering, but this contention is not part of her sworn evidence. Although she told the court that she took photos that were posted on Facebook, the court is not able to take into account photographs that are not an exhibit to an affidavit.

[57] Canaan's cheque for the April 2020 rent was returned. Schedule A of the Lease provides that any arrears of amounts due under the Lease bear an interest rate of prime plus 2% in addition to a fee of $60 for the returned cheque. 237 seeks NSF charges of $420, but after questioning from the court indicated that it would limit this claim to the NSF fee for April 2020 only.

[58] Canaan also failed to remit full payment for property taxes owed under the Lease. Property taxes from the City of Markham were $25,301.05 for 2020. Canaan paid only $12,651.05 of this amount and 237 paid the remainder of $12,650.00. Canaan was required to pay property taxes as part of Additional Rent.

[59] 237 also incurred additional costs for insurance for the Premises, which were to be paid by Canaan as Additional Rent. Included in the record is an invoice from Economic Mutual Insurance Company for $2,656, paid by 237.

[60] Also, between January 2021 and July 2021, 237 continued to incur hydro expenses for the Premises, in the total amount of $1,470.15. Canaan disputes that it should be liable for utility charges for this period, because of a provision in the APS that permits the new owner to enter the Premises after firming the deal to allow a contractor to take measurements and apply for a permit for renovations. The defendants submit that the new owner could have been using hydro to perform renovations before closing. This is speculative and an unlikely scenario in the context of a commercial building of this value.

[61] Wu questions why the defendants should be liable to pay for hydro, insurance and property taxes after vacating the Premises. The answer is that these costs had to be paid by someone. The costs did not stop just because Canaan left. None of Canaan, Wu or Huang were paying the costs. 237 did not have another tenant waiting to take over the Lease. That left 237 to pay these ongoing costs. Under the terms of the Lease, specifically subsection 10(3), "the Tenant is liable for payment of rent and all other amounts payable by the Tenant under the

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provisions of the Lease until the Landlord has either re-let the Premises or taken other steps to end these costs". In this case, those costs were incurred up to the time that the Premises was transferred from 237 to the new owner on August 27, 2021.

[62] 237 was holding a deposit paid by Canaan in the amount of $27,623.16, which it applied against its damages.

[63] Accordingly, the calculation of damages owed by Canaan, inclusive of HST, as follows:

Damages	**Amount**
Monthly rent from April 1, 2020, to July 14, 2020 (basic rent and additional rent as defined in s. 2 (4) of the Lease)	$39,337.76
Monthly rent from July 15, 2020, to October 31, 2020 (basic rent and additional rent as defined in s. 2 (4) of the Lease)	$41,692.90
Insurance fees	$2,656.00
Remainder of Premises taxes for 2020	$12,650.00
Accelerated Rent (three months' rent as per s. 10(2) of the Lease)	$33,718.08
Non-sufficient fund charges	$60.00
Repairs for damages	$30,238.80
Cleaning services	$452.00
Carrying costs (utilities) from January 2021 to July 2021	$1,470.15
Credit applied for deposit paid by Canaan under the Lease	(-) $27,623.16
Sub Total	**$134,652.53**

Indemnity Agreement

[64] Huang contests her liability because she is no longer a shareholder of Canaan, a position supported by Wu. Wu began her submissions by requesting that Huang be released from the action.

[65] Unfortunately, while Huang may have altered her relationship with Canaan, no written modification was ever made to the Lease or the Indemnity Agreement. Paragraph 7 of the

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Indemnity Agreement requires any modification to that Agreement be in writing and signed by all parties to be effective.

[66] Without the consent of 237, the court cannot now re-write this Agreement for the parties.

[67] Despite their proportionate share holdings at the time that they signed the Indemnity Agreement, paragraph 9 of the Agreement provides that the liability of each indemnifier is joint and several.

Order

[68] This court orders that Judgment is granted in favour of the plaintiff against all three defendants in the amount of $134,652.53, plus prejudgment interest at a prime rate plus 2% per annum in accordance with Schedule A of the Lease Agreement.

[69] Plaintiff's counsel may submit a draft Judgment with the prejudgment interest calculated to today's date.

[70] This court orders that approval of the draft Judgment by the defendants is hereby dispensed with.

Costs

[71] If the parties are unable to agree on costs, they may submit written submissions to the court, no longer than 5 pages, double spaced, plus a Bill of Costs and any authorities relied on. The applicants' submissions are due by February 21, 2024, the respondents by February 28, 2024, and reply, if any, by March 4, 2024. All submissions are to be delivered directly to my judicial assistant at the email from which this endorsement will have been sent, as well as being required to be filed in the Civil JSO portal.

The Honourable Madam Justice S.E. Healey

Released: February 15, 2024

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