

CITATION: Valtrol v. 1373007 Ontario Ltd., 2024 ONSC 495
COURT FILE NO.: CV-22-00684586-0000
DATE: 20240123

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Valtrol Equipment Newfoundland Ltd., Applicant

-and-

1373007 Ontario Ltd., Respondent

BEFORE: Shin Doi J.

COUNSEL: *Douglas M. Cunningham*, for the Applicant

Christopher Stanek and Jenna Kara, for the Respondents

HEARD: August 8, 2023

ENDORSEMENT

[1] This is an Application for a declaration that the tenant Applicant provided a valid and enforceable notice of extension under a lease dated June 19, 2015 (the “2015 Lease”) with the Respondent landlord.

[2] The Application is dismissed because the Applicant and the Respondent entered into a new binding agreement on November 24, 2021 which superseded the original terms and conditions of the 2015 Lease. Therefore, the Applicant can not extend the 2015 Lease by a notice of extension. Accordingly, the Applicant shall pay rent past due to the Respondent in accordance with the new binding agreement.

I. Background Facts

[3] The Applicant is a company incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44. The Applicant is in the business of selling valves, actuators, and accessories for industrial use. The Applicant was formed from the amalgamation of Moffat Supply Edmonton Ltd. (“Moffat”) and Valtrol Equipment Limited on September 1, 2019.

[4] The Respondent is a corporation incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B. 16. The Respondent is the landlord of premises municipally known as 2305 Wycroft Road, Oakville, Ontario.

[5] The Respondent and Moffat entered into the 2015 Lease for the premises. John David Terry, President of Moffat, executed the 2015 Lease. Joe Hamadi, President of the Respondent executed the 2015 Lease.

[6] The 2015 Lease was for a term of seven years commencing on January 1, 2016 and expiring on December 31, 2022. Section 16.19 provided an Option to Extend the 2015 Lease.

[7] On November 24, 2021, Mr. Terry met with Mr. Hamadi and Sylvanna Tantsidis and negotiated unpaid management fees owing to the Respondent and the lease extension for the premises. Mr. Hamadi prepared a handwritten note, a copy of which is set out below, during the course of the meeting. Upon reviewing the note, Mr. Terry made some minor notations in terms of proposed dates. Before the end of the meeting, Mr. Hamadi and Mr. Terry signed the note:

Nov. 24/2021.

1. Base Rent year 1 \rightarrow 11.50/ft²
2. Escalation \rightarrow 0.50/ft² per year.
3. TERM \rightarrow 10 years
beginning Jan. 1, 2023
4. PAY Unpaid Management fees (As per letter Nov. 16/2021)
~~0.20/ft² per year~~
\$18,000 per year
beginning Jan. 1, 2023
5. ALL TERMS AS per original lease.

JOE HAMADI David Terry

[8] There is a dispute as to whether the handwritten note is a binding lease extension.

[9] When the Applicant sent a formalized version of the extension, Mr. Terry responded that he would have his counsel look at it but that there was nothing in it from his perspective that he had concerns about and acknowledged that the parties had come to an agreement regarding the unpaid management fees. Three weeks later, Mr. Terry denied that there was an agreement and sought to exercise the Option to Extend under the 2015 Lease.

II. Authority to Bind

[10] The Applicant argues that Mr. Terry and Mr. Hamadi met in their personal capacities and did not bind their respective corporations. The Applicant argues that their titles were missing under the signature lines. I disagree with the Applicant. The evidence indicates that Mr. Terry and Mr. Hamadi were officers and had the authority to bind their respective corporations during the meeting and through the handwritten note.

- [11] *Canada Business Corporations Act*, s. 18 and *Business Corporations Act (Ontario)*, s. 19 (e) set out the authority of an officer and the indoor management rule:

Authority of directors, officers and agents

18 (1) No corporation and no guarantor of an obligation of a corporation may assert against a person dealing with the corporation or against a person who acquired rights from the corporation that...

(e) a document issued by any director, officer, agent or mandatary of a corporation with actual or usual authority to issue the document is not valid or genuine...

Indoor management rule

19 A corporation or a guarantor of an obligation of a corporation may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation that...

(e) a document issued by any director, officer or agent of a corporation with actual or usual authority to issue the document is not valid or not genuine...

except where the person has or ought to have, by virtue of the person's position with or relationship to the corporation, knowledge to that effect. R.S.O. 1990, c. B.16, s. 19; 2006, c. 34, Sched. B, s. 3; 2011, c. 1, Sched. 2, s. 1 (4).

- [12] Hence, the Applicant can not assert that the handwritten note issued by Mr. Terry who is an officer is not valid or not genuine.
- [13] Moreover, the evidence indicates that these circumstances were familiar to the two officers as they had previously come together to sign the 2015 Lease. There is also evidence that it was clear that the purpose of the meeting was to discuss unpaid management fees and amounts owed by the Applicant. Furthermore, there is evidence that Mr. Terry stepped out of the room and spoke to his business partner prior to signing the handwritten note. Mr. Terry reviewed what Mr. Hamadi had written and then added a provision in his own handwriting that provided that the payment schedule was to begin on January 1, 2023. There was no reason for the Respondent to doubt the validity or genuineness of the document issued by the Applicant. It was not necessary for the officers to include their corporate titles with their signatures.
- [14] There is evidence that Mr. Terry confirmed the binding nature of the document by stating on December 10, 2021, "I am having our lawyer review the lease extension but there is nothing in it from my perspective that I have concerns about." Mr. Terry then states in reference to the retroaction portion of the payment, "we agreed upon the amount and the payment schedule."

III. Essential Terms and Formalities

- [15] The Applicant argues that the handwritten notes contain no "key terms" or contractual language that the courts specifically look for where it is alleged that a document constitutes a binding agreement. The Applicant submits that there is no reference to the corporate

parties, the Applicant and the Respondent did not sign on behalf of the corporations, legal language such as “it is agreed”, “upon acceptance”, “this agreement”, is missing, and there are no recitals. The Applicant further submits that the draft lease extension agreement was prepared by the Respondent and delivered to the Applicant on December 7, 2021 for its review and consideration and the draft raised issues and terms that had not been the subject of the parties.

[16] I disagree with the Applicant. I find that the handwritten notes did contain essential terms and had the certainty necessary to bind the parties.

[17] As the Respondent argues, the handwritten notes outlined the essential terms as follows:

- a. Base rent for the first year was \$11.50 per square foot;
- b. Escalation \$.50 per square foot per year;
- c. Term ten years, beginning January 1, 2023;
- d. The Tenant would pay the Unpaid Management Fees that were described in the Respondent’s letter dated November 16, 2021 to be paid at \$18,000 per year for 10 years beginning on January 1, 2023; and
- e. All terms as per the original 2015 Lease.

[18] In *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, 1991 CanLII 2734 (ON CA), the Court of Appeal held at 12:

As a matter of normal business practice, parties planning to make a formal written document the expression of their agreement, necessarily discuss and negotiate the proposed terms of the agreement before they enter into it. They frequently agree upon all of the terms to be incorporated into the intended written document before it is prepared. Their agreement may be expressed orally or by way of memorandum, by exchange of correspondence, or other informal writings. The parties may "contract to make a contract", that is to say, they may bind themselves to execute at a future date a formal written agreement *containing* specific terms and conditions. When they agree on all of the essential provisions to be incorporated in a formal document with the intention that their agreement shall thereupon become binding, they will have fulfilled all the requisites for the formation of a contract. The fact that a formal written document to the same effect is to be thereafter prepared and signed does not alter the binding validity of the original contract.

[19] Also in *UBS Securities Canada, Inc. v. Sands Brothers Canada Ltd.*, (2009), 2009 ONCA 328 (CanLII), 95 O.R. (3d) 93 (CA) at para. 47, Gillese J.A., on behalf of the panel, summarized the principles of contract formation (as cited in *Bernier v. Kinzinger*, 2022 ONSC 1794):

..... For a contract to exist, there must be a meeting of the minds, commonly referred to as consensus ad idem. The test as to whether there has been a meeting of the minds is an objective one – would an objective, reasonable bystander conclude that, in all circumstances, the parties intended to contract? As intention alone is insufficient to create an enforceable agreement, it is necessary that the essential terms of the agreement are sufficiently certain. However, an agreement is not complete simply because it calls for the execution of further documents.

- [20] The evidence indicates that there was a meeting of the minds and the Applicant and the Respondent did intend to contract. The handwritten notes included the essential terms that were clear, and they formed an extension agreement that was binding and valid. The preparation of a formal extension agreement does not alter the binding nature and validity of the terms set out in the handwritten notes.
- [21] I agree with the Respondent that the terms of the extension as noted above were certain as to the parties, the premises, the commencement and duration of the term, the rent, and material terms incident to the relation of landlord and tenant, as required for a lease to be valid as held in *Canada Square Corp v. VS Services Ltd.* (1982), 34 O.R. (2d) 250. Given the factual matrix, it is not necessary for the handwritten notes to include additional language and legal words in order to form a binding agreement between the parties.

IV. Conclusion

- [22] Therefore, the Application is dismissed. I order that the extension terms as set out in the handwritten notes are binding on the parties and the past due rent of \$346, 226.49 is due and payable by the Applicant to the Respondent.
- [23] I order costs on a partial indemnity basis in the amount of \$33, 212.00 be payable by the Applicant to the Respondent.

Shin Doi J.

Released: January 23, 2024