

CITATION: KS SP Nominee Inc. v. I.A. Lawson Investment Holdings, 2023 ONSC 7068
COURT FILE NO.: CV-22-00689744
DATE: 20231214

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: KS SP Nominee Inc., KS SPI Nominee Inc., ARI SP Nominee Inc., Plaintiffs

AND:

I.A. Lawson Investment Holdings Inc., Defendant

BEFORE: Justice A.P. Ramsay

COUNSEL: *Nancy Roberts and Evan Barz*, for the Plaintiffs

HEARD: December 13, 2023

SUPPLEMENTARY ENDORSEMENT

[1] Following the release of my decision reported at *KS SP Nominee Inc. v. I.A. Lawson Investment Holdings*, 2023 ONSC 4968, in relation to a motion for default judgment that was heard in writing, counsel for the plaintiffs attended before me today, by videoconference, to make submissions with respect to H.S.T., pre-judgment interest and costs. Counsel for the plaintiffs has now provided a Costs Outline.

[2] With respect to the H.S.T., at paragraph 20 of my original endorsement, I indicated that I would be inclined to award the plaintiffs HST on the \$805,774.26. Counsel for the plaintiffs have now clarified that some of the damages awarded in paragraph 26 of my decision, also included in the figure above, are already inclusive of HST. In the result, after hearing submissions from counsel, only the amounts in paragraph 26.(ii) and (iii) of my decision are subject to HST.

[3] As for pre-judgment interest, at paragraph 30 of my decision I indicated that: “I would award pre-judgment interest on the amounts under the lease that attract interest at the contract rate as set out in paragraph 29.” After hearing submissions from counsel, I am satisfied that the plaintiffs are entitled to prejudgment interest at the contractual rate for the disposal and restoration costs. Support for the contractual interest rate for these expenses incurred by the plaintiffs under the lease is found in subparagraph 26(iv) and subparagraph 26(v) of the lease agreement, which state:

Section 16.2 of the Lease provides as follows: “All amounts of Rent shall bear interest from their respective due dates until the actual dates of payment at a rate which shall be three percent (3%) per annum in excess of the Prime Rate.”

“Rent” under the Lease consists of both “Basic Rent” and “Additional Rent” (s. 5.1 of the Lease). “Additional Rent” is expressly defined in section 5.2(b) of the Lease to include all amounts due and payable under the Lease, which includes the restoration and disposal costs incurred by the plaintiffs: “In addition to Basic Rent, Tenant will pay to Landlord as Additional Rent: (i) all other amounts as and when the same shall be due and payable pursuant to the provisions of this Lease (all of which shall be deemed to accrue on a per diem basis); (ii) all other amounts payable pursuant to any other agreement or obligation between Landlord and Tenant (whether or not related to the Premises) as and when the same shall be due and payable; and (iii) the Management Fee. Tenant will promptly deliver to Landlord upon request evidence of due payment of all payments of Additional Rent required to be paid by Tenant hereunder, to the extent same are payable to other than Landlord.”

[4] The plaintiffs are seeking substantial indemnity legal fees in the amount of \$27,002.25, HST of \$3,510.29, and disbursements in the amount of \$798.80, plus HST of \$74.07. I am satisfied that the plaintiffs are entitled to costs on a substantial indemnity basis based on the lease agreement. I am satisfied that the costs are fair, reasonable, and proportionate, having regard to the steps taken in the proceedings which resulted in judgment against the defendant. There is no apparent duplication of work between the two lawyers (Ms. Roberts, a 1996 call, and Mr. Barz, a 2017 call) who were responsible for the work completed on the file. The plaintiffs are entitled to recover \$31,385.41 from the defendant.

[5] The draft order submitted has been issued.

Justice A.P. Ramsay

Date: December 14, 2023