CITATION: Ly Innovative Group Inc. v. Facilitate Settlement Corporation, 2023 ONSC 6932
COURT FILE NO.: CV-22-00675882-0000
DATE: 20231207

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
LY INNOVATIVE GROUP INC. and MEIZHANG ZHOU Plaintiffs	)	*Spencer F. Toole* and *Alexander Etkin* for the Plaintiffs
- and -	)	
FACILITATE SETTLEMENT CORPORATION, KAI WU and JANE DOE	)	***Stefan Juzkiw* for the Defendants**
Defendants	)	**HEARD: November 20, 2023**

PERELL, J.

REASONS FOR DECISION

> "Gaming the system" (also rigging, abusing, cheating, milking, playing, working, or breaking the system, or gaming or bending the rules) can be defined as using the rules and procedures meant to protect a system to, instead, manipulate the system for a desired outcome. [From *Wikipedia*, the free encyclopedia]

A. Introduction

[1] This landlord and tenant dispute is a *tour de farce* (not *force*) of gaming the system. The game is now over.

[2] The Defendant, Facilitate Settlement Corporation, is the tenant of leased residential premises in Toronto. The defendant Kai Wu is the alter ego of Facilitate Settlement Corporation. The defendant Jane Doe is a chameleon, a changeable person, whose real name has not been disclosed and who has been variously identified as tenant, occupant, visitor, spouse, mother, expectant mother, and girlfriend.

[3] For three years, the tenant, the alter ego, and the chameleon have illegally used residential premises for business purposes. Save for three months of prepaid rent, the Defendants have never paid the monthly rental of $9,500. The rent arrears are now $304,054.

[4] For the reasons that follow:

a. I validate service on Jane Doe and note her in default.

b. I dismiss the Defendants' motion to set aside their noting in default.

c. I order the tenancy at 29 Citation Drive, Toronto, Ontario terminated.

d. I order that the Defendants, Facilitate Settlement Corporation and Kai Wu, immediately vacate the premises and provide the Plaintiffs with vacant possession.

e. I order that the Plaintiffs be immediately issued a writ of possession.

f. I grant the Plaintiffs, Ly Innovative Group Inc. and Meizhang Zhou, who are the landlords of the premises, a default judgment against Facilitate Settlement Corporation and Mr. Wu of: (a) $304,054 jointly and severally; (b) prejudgment and postjudgment interest on $304,054; (c) $100,000 in punitive damages plus postjudgment interest; and (d) costs to be determined.

g. Facilitate Settlement Corporation and Kai Wu shall pay prejudgment and post judgment interest in accordance with the *Courts of Justice Act*.[1]

h. I dismiss the action against Jane Doe without costs.

i. Pursuant to rule 57.07 of the *Rules of Civil Procedure*,[2] I will entertain a motion to have the costs paid personally by **Stefan Juzkiw**, the Defendants' lawyer of record**.**

B. Procedural Rules Background

[5] As the description of the facts below will reveal, the *Rules of Civil Procedure* that are relevant to this matter and that have been gamed are rules 1.04, 15.02, 16.01, 16.02, 16.03, 16.04, 16.06, 16.07, 16.08, 16.09, 18.01, 19.01, 19.02, 19.03, 19.05, 19.06, 19.08 and 57.07, which state:

> *Interpretation*
> *General Principle*
>
> 1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. R.R.O. 1990, Reg. 194, r. 1.04 (1).
>
> *Proportionality*
>
> (1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.
>
> *Matters Not Provided For*
>
> (2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.
>
> […]
>
> *Notice of Authority to Commence Proceeding*
> *Request for Notice by Lawyer*
>
> 15.02 (1) A person who is served with an originating process may deliver a request that the lawyer who is named in the originating process as the lawyer for the plaintiff or applicant deliver a notice

[1] R.S.O. 1990, c. C.43.
[2] R.R.O. 1990, Reg. 194.

declaring whether he or she commenced or authorized the commencement of the proceeding or whether his or her client authorized the commencement of the proceeding.

Power of Court

(2) If the lawyer fails to deliver a notice in accordance with the request, the court may,

(a) order the lawyer to do so;

(b) stay the proceeding; and

(c) order the lawyer to pay the costs of the proceeding.

Proceeding Commenced without Lawyer's Authority

(3) If the lawyer declares that he or she did not commence or authorize the commencement of the proceeding, the court may, on motion without notice, stay or dismiss the proceeding.

Proceeding Commenced without Client's Authority

(4) If a lawyer has commenced a proceeding without the authority of his or her client, the court may, on motion, stay or dismiss the proceeding and order the lawyer to pay the costs of the proceeding.

Effect of Stay

(5) If a proceeding is stayed under this rule, no further step may be taken without leave of the court.

[…]

General Rules for Manner of Service
Originating Process

16.01 (1) An originating process shall be served personally as provided in rule 16.02 or by an alternative to personal service as provided in rule 16.03.

[…]

Personal Service

16.02 (1) Where a document is to be served personally, the service shall be made,

Individual

(a) on an individual, other than a person under disability, by leaving a copy of the document with the individual;

[…]

Corporation

(c) on any other corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business;

[…]

Alternatives to Personal Service

Where Available

16.03 (1) Where these rules or an order of the court permit service by an alternative to personal service, service shall be made in accordance with this rule.

Acceptance of Service by Lawyer

(2) Service on a party who has a lawyer may be made by leaving a copy of the document with the lawyer or an employee in the lawyer's office, but service under this subrule is effective only if the lawyer endorses on the document or a copy of it an acceptance of service and the date of the acceptance.

(3) By accepting service the lawyer shall be deemed to represent to the court that the lawyer has the authority of his or her client to accept service.

Service by Mail to Last Known Address

(4) Service of a document may be made by sending a copy of the document together with an acknowledgment of receipt card (Form 16A) by mail to the last known address of the person to be served, but service by mail under this subrule is only effective as of the date the sender receives the card.

Service at Place of Residence

(5) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

> (a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and
>
> (b) on the same day or the following day mailing another copy of the document to the person at the place of residence,

and service in this manner is effective on the fifth day after the document is mailed.

Service on a Corporation

(6) Where the head office, registered office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Public and Business Service Delivery, service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address.

[…]

Substituted Service or Dispensing with Service
Where Order May be Made

16.04 (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service.

Effective Date of Service

(2) In an order for substituted service, the court shall specify when service in accordance with the order is effective.

(3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

[…]

Service by Mail
Manner of Service

16.06 (1) Where a document is to be served by mail under these rules, a copy of the document shall be served by regular lettermail or by registered mail.

Effective Date

(2) Service of a document by mail, except under subrule 16.03 (4), is effective on the fifth day after the document is mailed but the document may be filed with proof of service before service becomes effective.

[…]

Where Document Does Not Reach Person Served

16.07 Even though a person has been served with a document in accordance with these rules, the person may show on a motion to set aside the consequences of default, for an extension of time or in support of a request for an adjournment, that the document,

(a) did not come to the person's notice; or

(b) came to the person's notice only at some time later than when it was served or is deemed to have been served.

Validating Service

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

(a) the document came to the notice of the person to be served; or

(b) the document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

Proof of Service

Affidavit of Service

16.09 (1) Service of a document may be proved by an affidavit of the person who served it (Form 16B).

[…]

Time for Delivery of Statement of Defence

18.01 Except as provided in rule 18.02 or subrule 19.01 (5) (late delivery of defence) or 27.04 (2) (counterclaim against plaintiff and non-party), a statement of defence (Form 18A) shall be delivered,

(a) within twenty days after service of the statement of claim, where the defendant is served in Ontario;

[…]

Noting Default
Where no Defence Delivered

19.01 (1) Where a defendant fails to deliver a statement of defence within the prescribed time, the plaintiff may, on filing proof of service of the statement of claim, or of deemed service under subrule 16.01 (2), require the registrar to note the defendant in default.

[…]

Late Delivery of Defence

(5) A defendant may deliver a statement of defence at any time before being noted in default under this rule.

Consequences of Noting Default

19.02 (1) A defendant who has been noted in default,

> (a) is deemed to admit the truth of all allegations of fact made in the statement of claim; and
>
> (b) shall not deliver a statement of defence or take any other step in the action, other than a motion to set aside the noting of default or any judgment obtained by reason of the default, except with leave of the court or the consent of the plaintiff.

(2) Despite any other rule, where a defendant has been noted in default, any step in the action that requires the consent of a defendant may be taken without the consent of the defendant in default.

(3) Despite any other rule, a defendant who has been noted in default is not entitled to notice of any step in the action and need not be served with any document in the action, except where the court orders otherwise or where a party requires the personal attendance of the defendant, and except as provided in,

> […]

Setting Aside the Noting of Default

19.03 (1) The noting of default may be set aside by the court on such terms as are just.

[…]

By Motion for Judgment

19.05 (1) Where a defendant has been noted in default, the plaintiff may move before a judge for judgment against the defendant on the statement of claim in respect of any claim for which default judgment has not been signed.

(2) A motion for judgment under subrule (1) shall be supported by evidence given by affidavit if the claim is for unliquidated damages.

(3) On a motion for judgment under subrule (1), the judge may grant judgment, dismiss the action or order that the action proceed to trial and that oral evidence be presented.

[…]

Facts Must Entitle Plaintiff to Judgment

19.06 A plaintiff is not entitled to judgment on a motion for judgment or at trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[…]

Setting Aside Default Judgment

19.08 (1) A judgment against a defendant who has been noted in default that is signed by the registrar or granted by the court on motion under rule 19.04 may be set aside or varied by the court on such terms as are just.

(2) A judgment against a defendant who has been noted in default that is obtained on a motion for judgment on the statement of claim under rule 19.05 or that is obtained after trial may be set aside or varied by a judge on such terms as are just.

(3) On setting aside a judgment under subrule (1) or (2) the court or judge may also set aside the noting of default under rule 19.03.

[…]

Liability of Lawyer for Costs

57.07 (1) Where a lawyer for a party has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the court may make an order,

> (a) disallowing costs between the lawyer and client or directing the lawyer to repay to the client money paid on account of costs;
>
> (b) directing the lawyer to reimburse the client for any costs that the client has been ordered to pay to any other party; and
>
> (c) requiring the lawyer personally to pay the costs of any party.

(2) An order under subrule (1) may be made by the court on its own initiative or on the motion of any party to the proceeding, but no such order shall be made unless the lawyer is given a reasonable opportunity to make representations to the court.

(3) The court may direct that notice of an order against a lawyer under subrule (1) be given to the client in the manner specified in the order.

C. The Credibility of the Witnesses for the Plaintiffs and for the Defendants

[6] The Plaintiffs' evidence consisted of: (a) the affidavits of ***Jing Tang***, who is the property manager for the Plaintiffs; and (b) the affidavits of ***Alexander Etkin***, who is an associate lawyer for Horlick Levitt Di Lella LLP, the lawyers for the Plaintiffs.

[7] The Defendants' evidence consisted of: (a) the affidavits of the Defendant ***Kai Wu***, who is the sole officer and director of the Defendant Facilitate Settlement Corporation and who presented himself as the spouse of Jane Doe, whose real name is unknown to this court; (b) the affidavits of ***Mehdi Raza***, who is a friend and who was employed by Mr. Wu for several months; and (c) the affidavit of ***Karik Arora***, who is a law clerk at Juzkiw Law Professional Corporation, the lawyer of record for the Defendants.

[8] In the circumstances that will be described below only Mr. Raza was cross-examined on his affidavits.

[9] The Plaintiffs' witnesses were not cross-examined. The Plaintiffs' witnesses were credible and reliable witnesses. The Plaintiffs' evidence was corroborated by the documentary record and their evidence was far more plausible than the Defendants' evidence. Where there is a difference in the Plaintiffs' account of the events and the evidence of Mr. Wu and Mr. Raza, save as noted in my findings of fact, I believe the Plaintiffs' version to be true and the Defendants' version to be untrue.

[10] Apart from the fact that he managed to avoid being cross-examined, Mr. Wu's affidavit evidence is none of plausible, credible, or reliable. Typical of fabricators, he could not keep his story straight or consistent.

[11] Mr. Wu signed a lease that specified that the leased premises were to be exclusively used as a residence; yet he deposed that he, his spouse and family were not tenants and that they did not take occupancy of the premises, living elsewhere.

[12] I do believe that Mr. Wu was not a tenant, but he gave false and inconsistent instructions to his lawyer that he and his wife were tenants being harassed by the Plaintiff. Mr. Wu inconsistently complained about disturbing the being made use of the leased premises as a residential tenancy or as a commercial tenancy. Mr. Wu could not keep it straight whether or not he and his wife were tenants or just visiting the premises that were to be used for business purposes. I now understand, in any event, that it was Mr. Wu's girlfriend that was visiting the premises.

[13] Mr. Wu denied that he and his spouse were tenants of the premises leased by the Plaintiffs, yet his lawyer's threatening "govern yourself accordingly"- correspondence to the Plaintiffs' lawyers accused the Plaintiffs of harassing Mr. Wu and his wife as the tenants. In the lawyer's govern-yourself-accordingly letter, Mr. Wu accused the Plaintiffs of harassing Mr. Wu's spouse's quiet enjoyment of their tenancy to the extent that it was necessary to seek medical treatment and to call the police.

[14] Implausible to the point of entry into the Ripley's Believe it or Not, this action was commenced and continued for years without identifying the name of the party named as Jane Doe, whom Mr. Wu and his lawyers described as his wife. When I demanded disclosure of Jane Doe's name, startlingly, I was told by Stefan Juzkiw, Mr. Wu's lawyer that: (a) he was not the lawyer for Jane Doe; (b) all he was told by Mr. Wu was that Jane Doe's first name was Bianca and that she was Mr. Wu's girlfriend, not his spouse; and (c) he understood that Bianca had a Chinese last name.

[15] Mr. Juzkiw was unable to tell me whether Bianca [Chinese Last Name] was an ex-girlfriend or a current girlfriend and whether she was the mother of Mr. Wu's children.

[16] I pointed out to Mr. Juzkiw that he was on the record as being the lawyer for Jane Doe and therefore he must assuredly know that she is his client and that he was professionally obliged under the *Rules of Professional Conduct* to authenticate the client's identity. He replied that he only became lawyer of record pursuant to a notice of change of lawyer. And, I pointed out, as the description of the facts below will reveal, that from the outset of this outlandish history, Mr. Juzkiw had written several govern-yourself-accordingly letters on behalf of Bianca [Chinese Last Name]. Mr. Juzkiw had no response. It seems that Mr. Juzkiw received instructions only from Mr. Wu, the alter ego of Facilitate Settlement Corporation.

[17] Mr. Wu and the Defendants asserted that they did not learn about the Plaintiffs' action until after they had already been noted in default. This evidence is neither plausible nor credible.

[18] To believe that the Defendants were ignorant of the Plaintiffs' action until after they had been noted in default would implausibly mean that: (a) their lawyer, who had written govern-yourself-accordingly letters threatening court proceedings, and who was asked to accept service did not tell Mr. Wu about the significance of the Statement of Claim of which the Plaintiffs' lawyer had a copy sent to him on the day the claim was issued; (b) their friend, Mr. Raza, did not tell them about the personal service on him as an adult at the leased premises; (c) they did not read the mail delivered to them at the premises that they at least were visiting and using as business premises; (d) they did not read the mail or take delivery of the Statement of Claim mailed and left at the registered address of Facilitate Settlement Corporation or make arrangements that the mail be forwarded to them.

[19] Moreover, and in any event, Mr. Wu could not keep the story straight about when the Defendants knew about the Statement of Claim. Mr. Wu deposed (as did Mr. Raza in his most recent affidavit) that Mr. Wu's lawyer told him that he had received correspondence about the commencement of the action on the day that the action was commenced, and Mr. Wu admits in his own affidavits that Mr. Raza told him that he had been served with legal documents when he was at the premises on March 4, 2022. It is implausible that the nature of the legal documents was not disclosed.

[20] Mr. Raza is a credible or reliable witness about some things; however, he is not credible or reliable about other things.

[21] Mr. Raza's affidavit is comprised largely of hearsay evidence for which he does not provide the source of his information and belief other than attributing it to Mr. Wu. Mr. Raza's evidence is filled with conjecture, spin and argument and, as noted above, save as noted in my findings of fact, I believe the Plaintiffs' version of the events to be true and the Defendants' version to be untrue.

D. Findings of Fact

[22] Based on the evidentiary record, and not on the basis or rule 19.02 (1)(a), which provides that a defendant who has been noted in default is deemed to admit the truth of all allegations of fact made in the statement of claim, I make the following findings of fact.

[23] ***Meizhang Zhou*** is an officer and director of ***Ly Innovative Group Inc***., an Ontario corporation. Mr. Zhou and Ly Innovative Group together are the landlord of a rental premises municipally known as 29 Citation Drive, Toronto, Ontario. ***Jing Tang*** is the property manager for the premises.

[24] On **July 31, 2018**, the Defendant ***Kai Wu*** incorporated ***Facilitate Settlement Corporation***. The defendant corporation had and is supposed to have a registered head office at 5000 Yonge Street in Toronto.

[25] Mr. Wu is the sole director and officer of the corporation. Mr. Wu is the boyfriend of ***Jane Doe***, although in his evidence, he referred to her as his spouse, and he gave instructions to his lawyers to refer to her as his spouse.

[26] The purpose of Facilitate Settlement Corporation is to help landed immigrants settle in

Canada. Part of its business is to provide temporary housing for employees when they visit Canada and temporary housing for the landed immigrants. The corporation's LinkedIn page indicates that it has between 11 to 50 employees.

[27] In the fall of **2020**, Mr. Zhou and Ly Innovative Group listed 29 Citation Drive for lease. The premises were listed with Ferrow Real Estate Inc., Brokerage.

[28] On **November 17, 2020**, Mr. Zhou and Ly Innovative Group, as landlord, and Facilitate Settlement Corporation, as tenant, signed a lease to rent the premises municipally known as 29 Citation Drive, Toronto.

[29] More precisely, Ly Innovative Group and Mr. Zhou with the assistance of their real estate agent, whose leasing agent was Connie Truong, and Facilitate Settlement Corporation, which was represented by Mr. Wu, with the assistance of its real estate agent, JDL Realty Inc., Brokerage, signed an Ontario Real Estate Association (OREA) standard form Agreement to Lease: Residential (Form 400).

[30] For present purposes, the following provisions of the Agreement to Lease are pertinent:

a. The lease provided that the Tenant would pay $28,000 by way of a deposit. The deposit was prepayment of the first month and the last two months of the tenancy. The payment was to the landlord's real estate agent.

b. The lease was for a one-year term commencing on February 1, 2021.

c. The monthly rent was $9,500.00, payable in advance on the 1st day of each month.

d. Under the lease, the tenant agreed to pay an administration charge of $20.00 plus any amounts charged by the landlord's bank, if a cheque issued by the tenant was not honoured.

e. The lease agreement provided that: "The applicant and the other occupants of this premises will be as listed in the rental application attached. Any changes in the list of occupants have to be with the written consent of the Landlord." The attached rental application specified Facilitate Settlement Corporation as the only tenant or occupant.

f. The only permitted use of the premises was single family residential.

g. The lease agreement provided that the tenant acknowledges and agrees no business use is allowed on the property and only occupants stated on the rental application can use the property. (The only listed applicant was Facilitate Settlement Corporation.)

h. The lease agreement provided that: "The Tenant agrees not to sublet or license the premises or list or advertise or use all or any part of the premises for any short term or hotel, boarding, lodging house, time-sharing, commercial or travel website, including but not limited to AIRBNB, during the entire term of this tenancy."

i. The lease agreement provided that: "Landlord or his representative shall have the right to enter the premises from time to time and at reasonable hours provided at least twenty-four (24) hours' notice is given to the Tenant, for the purpose of inspection and determining the condition thereof."

j. The lease agreement provided that: "Landlord or his representative shall have the right to enter the premises for non-payment of rent or non-performance of the covenants."

[31] On **December 1, 2020**, Facilitate Settlement Corporation was given the keys to the premises. Within days, it entered and took possession of the rental unit in order to ready it for occupancy.

[32] The term of the lease was to commence on February 1, 2021. There was an oral agreement between the Plaintiffs and Facilitate Settlement Corporation that it could enter the premises and ready it for occupancy without payment of rent until the lease commenced.

[33] Technically and legally speaking, this oral agreement was a licence for Facilitate Settlement Corporation to enter the premises at no expense and without liability for trespass. During this period, up to the commencement of the lease proper, the Plaintiffs continued to have a right of possession and a right to enter the premises.

[34] The Plaintiffs submit, incorrectly in my view, that the obligation to pay rent commenced with the Defendants' entry to the property on December 1, 2020. That assertion is incorrect, and on this matter the Plaintiffs are mistaken. The commencement date for the tenancy was February 1, 2021 and until then the agreement between the parties was that no rent was payable and that Facilitate Settlement Corporation had a licence to prepare the premises.

[35] During this period, Facilitate Settlement Corporation arranged for the utilities for the property to be charged to it, and it arranged for insurance coverage. Those steps were required by the lease agreement. However, without the Landlord's consent, and contrary to the lease agreement, and contrary to s. 35 of the *Residential Tenancies Act, 2006*,[3] Facilitate Settlement Corporation changed the garage door entry code and the locks and keys for the premises.

[36] In addition to the deposit which prepaid three months' rent, on **December 2, 2020**, Mr. Wu provided the Landlord with nine postdated cheques dated for the first day of the month commencing from March 1, 2021 to November 1, 2021 inclusive, each in the amount of $9,500.00.

[37] I foreshadow to note that apart from the deposit, Facilitate Settlement Corporation did not pay rent, and it has been in possession of the premises rent-free for three years.

[38] In **December 2020**, a Landlord's representative attended at the premises. The Defendants complain about this attendance as a breach of the lease. There is no merit to this complaint. The term of the lease had not formally commenced, and the Landlord was within its right to attend and inspect the premises with or without notice. There is no evidence that there was an agreement to have December 1, 2020 become the effective start of the lease. The evidence is that Facilitate Settlement Corporation was given possession and the keys to ready the premises for occupancy. In any event, Facilitate Settlement Corporation had no authority to rekey the locks on the premises or to use the premises for other than a residence. The Plaintiffs were not harassing the non-tenants and they were not making any illegal entries.

[39] On **January 25, 2021**, a Landlord's representative again attended the premises. Once again, the Defendants complained about this attendance. And once again there is no merit to this complaint.

[40] On **January 26, 2021**, Stefan Juzkiw of Juzkiw Law Professional Corporation, the then and current lawyer for the Defendants, wrote Connie Truong, the Plaintiffs' real estate agent, the

[3] S.O. 2006, c. 17, s. 35. Section 35 states: "A tenant shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without the consent of the landlord."

following govern-yourself-accordingly letter complaining about the Plaintiffs' conduct.

> Re: 29 Citation Drive […] Illegal Entry on January 25, 2021
> Our Clients: The Tenants
>
> Be advised that I represent the tenants at 29 Citation Drive […] There has been two incidents of illegal entry. The first incident was in December 2020. The second illegal entry was on January 25, 2021.
>
> As the agent for the landlord, you had encouraged the landlord to not seek permission before entry to the house on the effective date of taking possession on December 1, 2020 and willfully insisted that the landlord to do illegal acts. Your mistake is that you ignored the effective date of December 1, 2020, and tell the landlord was wrong advice that he does not have to consider rights of tenants until after February 1, 2021 starting date of the term. The tenants reserve their rights to make a complaint to Real Estate Council of Ontario (RECO) for review of your conduct.
>
> The tenants had confirmed with the Landlord Tenant Board with a phone call yesterday that after receiving the keys and taking possession of the house and insurance and utilities changed to title on December 1, 2020, then the landlord must thereafter seek permission to enter the house, although the starting date is February 1, 2021, the occupancy date is December 1, 2020. The real estate agent, Connie Truong and the landlord, Meizhang Zhou, and you should seek advice from the landlord tenant board and/or your legal counsel in this regard.
>
> The tenant is very stressed due to this harassment from the landlord and the landlord's agent. Be advised that you are not welcome to come to the house on January 28, 2021, and if you or your agent attend, the police will be called and will be responsible for serious legal consequences of your actions. Because of illegal entry where the pregnant female tenants and infant have been frightened and during the covid-19 restrictions, no long will the tenants be willing to allow the landlord (or his agents) to gain entry into the home and/or the garage at this time. Govern yourself accordingly.

[41] This govern-yourself-accordingly letter was inappropriate and mistaken. Contrary to Mr. Juzkiw's letter, it is Mr. Wu's and Mr. Raza's evidence that Mr. Wu and Jane Doe and family did not live at the premises and that they were not tenants. However, Mr. Juzkiw's letter and his subsequent correspondence take the position that Mr. Wu and his family are the tenants living in the premises as their home since December 2020. The inconsistency as to whom was the tenant of the premises is revealed in the Defendants' affidavit evidence. To quote, from Mr. Wu's affidavit dated November 18, 2022, he deposes:

> […]
>
> 15. The purpose of the Fixturing Period was to move furniture into the Rental Unit and prepare for the Commencement Date.
>
> 16. The Rental Unit was not occupied during the Fixturing Period.
>
> 17. I have not resided in the Rental Unit at any time and have no intention of ever doing so.
>
> 18. I have attended the Rental Unit with my spouse to ensure cleaning is being done properly and that there are no maintenance or repair issues with the Rental Unit.
>
> […]
>
> 25. To my understanding, in his correspondence, Mr. Juzkiw referred to myself and my family as the "*tenants*" as a colloquial term to refer to the parties involved in the dispute.
>
> 26. I had explained to Mr. Juzkiw that [Facilitate Settlement Corporation] was the sole legal tenant of the Rental Unit and that my wife and I would only be visiting the Rental Unit from time to time.

[42] Moreover, Mr. Wu's evidence was that the Defendants rented the premises to business associates and partners from other countries. His evidence was that the Defendants sometimes used the premises as a business office. Thus, Mr. Juzkiw was mistaken in identifying Mr. Wu's spouse or wife as a tenant and an occupant; she was neither. It is a *non sequitur* for a non-tenant to assert that his or her tenant's rights have been violated.

[43] It is informative and inculpatory that in the Defendants' draft proposed Statement of Defence and Counterclaim, they plead that Mr. Wu and Ms. Doe were not tenants. Mr. Raza deposed that the draft pleading contains the Defendants' position and defence and counterclaim to the Plaintiffs' Statement of Claim. The Defendants' pleading contains the following allegations of material fact:

> […]
>
> 14. The Rental Unit was not occupied during the Fixturing Period.
>
> […]
>
> 27. Wu and Doe are not parties to the Lease.
>
> […]
>
> 31. FSC is not a shell corporation and entered into this Lease as a viable corporation:
>
> > […]
> >
> > c. FSC sought to use the Rental Unit as a residential space for staff members and affiliates, as part of its business consultancy services for new immigrants;
> >
> > d. FSC was incapable of fulfilling its obligations to its clients due to the behaviour of the Landlord;
>
> […]
>
> 35. Wu and Doe are not, and have never been the primary residents at the Rental Unit.

[44] Mr. Juzkiw was wrong to threaten Ms. Truong with the double hearsay of the advice of the Landlord or Tenant Board, which appears to have been misinformed about the reasons that the Plaintiff/Landlord was at the premises. Mr. Wu was misinforming Mr. Juzkiw when he gave him instructions to write the govern-yourself-accordingly letter.

[45] I emphasize that Mr. Wu's admission on behalf of the Defendants about the use being made of the premises means that from the outset of the tenancy there was a fundamental breach of the lease agreement, which specified an exclusive residential use by the tenant and precluded business operations or the rental of the premises for transient occupants.

[46] In the weeks that followed, Mr. Juzkiw exchanged his intemperate lawyer's letters with the Plaintiffs' lawyer, Aziza Hirsi of Phoenix Law LLP. Mr. Juzkiw's govern-yourself-accordingly letter of **February 22, 2021**, stated:

> […] As per the lease agreement, the tenant has the right to move in and/or live in from December 1, 2021 [sic 2020]. Your client has illegally taken two months deposit. A rent deposit cannot be more than one month's rent. […] When the landlord (or the landlord's representative) has repeatedly showed [sic] up at the rental unit seeking entry, this is substantial interference with the tenants reasonable enjoyment, and/or harassment. […] The landlord twice had done [sic] attempt to illegal

> entry of the rental unit. The third time the landlord attempted to enter with improper excuses, which was again refused by the tenants. During each time, the landlord had threatened and/or harassed the tenants. After two attempts they threatened to evict the pregnant women during winter when it's cold outside. The tenant will continue to prevent illegal entry by calling the Toronto Police to prevent unwanted hostility, harassment, and interference with enjoyment of the unit. The landlord has gone so far as to give 10 days' notice for the family to move out because refused two illegal entries. The pregnant women forced in the cold winter is inhuman treatment and harassment. The landlord by filing N6 without reasonable basis is threatening to evict the tenants for enforcing their rights. There is no evidence of an illegal business being carried out at the residential complex, so there is no basis for N6. […] Once the tenants belongings are being storage [sic stored] at the house and utilities and insurance paid by the tenants, the landlord has lost the right to enter the unit, without proper notice or consent of the tenant, otherwise it is illegal to enter. […] Be advised that the tenant has reported to the police twice to inform the police that the landlords (or their agents) are not welcome to enter the home, even if given notice with fake excuses […] Your clients may face being arrested with criminal charges. The illegal entry and harassing behaviours of your client may be dealt with through the Landlord Tenant Board and/or Superior Court of Justice as a lawsuit later. The tenants have the right to lawsuit for damages for illegal entry, emotional distress, personal injury to the female pregnant women and their one year old baby, and others. Please advise your client to refrain from illegal entry, as he may face consequences as a result. Govern yourself accordingly.

[47] Given Mr. Wu's sworn evidence that he and Jane Doe were not tenants, not living at the premises, and were contrary to the lease renting the premises to persons not noted as tenants and using the premises for business purposes, need I say that Mr. Juzkiw ought not to have taken instructions to write this preposterous threatening letter.

[48] On **March 4, 2021**, Mr. Tang deposited the $9,500 cheque dated March 1, 2021 in respect of the rent for March 2021. As noted above, the first month's rent (February) was pre-paid in November 2020.

[49] On **March 8, 2021**, Mr. Tang was notified by the Plaintiffs' bank that the cheque was returned because of a stop payment order. No replacement cheque was ever provided. Save for one additional cheque for which there was also a stop-payment order, the Plaintiffs gave up attempting to deposit rent cheques.

[50] On **March 26, 2021**, the Plaintiffs served the Defendants with a notice to enter the premises. Immediately, Mr. Juzkiw responded with an email message and letter stating that entry will be refused because the Plaintiffs were harassing the tenants. Mr. Juzkiw sent Aziza Hirsi the following email message, which attached the following govern-yourself-accordingly letter:

> Further to your correspondence March 26, 2021, be advised that the tenants' refuse the landlord (or agent of landlord) entry based upon a fake excuse of inspection. The tenant's history with the landlord has been that he uses excuses to gain access to the property in order to interfere, harass, and intimidate the tenants. Please note the female pregnant woman is due to deliver the baby soon. The tenants do not want to be harassed or bothered with illegal entry without consent. The tenants will continue to call the police and the landlord (or his agent) may face criminal and civil liabilities and your client will build a history of illegal entry by ignoring the police warning messages. If the unborn is affected by this matter, they will claim additional damages and distress in the Superior Court action. The new agent you add in today, Jing Tang […], will be provided with the same warnings from the tenants that they refuse entry to this house. Enclosed is attached a detailed response on behalf of the tenants.

[51] The attached letter stated:

> Further to your correspondence dated March 26, 2021, be advised that the tenants refuse to allow entry by the landlord for inspection. […] this is just fake excuse like before to interfere, intimidate,

> and harass the tenants. Once again, this is substantial interference with the tenants reasonable enjoyment, security and/or harassment. **Be advised that the tenants will continue to prevent illegal entry by calling the Toronto Police to prevent unwanted hostility, harassment, and interference with enjoyment and security of the unit.** […] The tenants do not wish for the landlord to enter the house without their permission, especially during the COVID-19 pandemic to protect the pregnant woman, her unborn child, and one-year old child from the virus. […] **If your client tries to enter the house, be advised that the tenants will continue to report the issues to the Toronto Police for the third time.** Your clients may face being arrested with criminal charges due to ignoring police warning messages. The almost due to deliver pregnant women and her one year old baby were scared and distressed by the past harassment, which required them to seek medical care. […] if the unborn infant is affected the landlord will face serious liability. Certainly, the tenants will 100% go to Superior Court to recover damages from the illegal entries and harassing behaviours of the landlord. The tenants have the rights to a lawsuit for damages for illegal entry, emotional distress, personal injury to the female pregnant woman, unborn infant, and their one year old baby and others. Please advise your client to refrain from illegal entry, as he may face serious consequences as a result. Govern Yourself Accordingly. [emphasis in the original]

[52] On **March 29, 2021**, pursuant to the *Residential Tenancies Act,2006,* the Plaintiffs served a Form N4 Notice to End a Tenancy for Nonpayment of Rent.

[53] On **April 29, 2021**, Ly Innovative Group and Mr. Zhou brought an application with the Landlord and Tenant Board seeking an order for termination of the Tenant's tenancy, payment of rental arrears and eviction.

[54] Ten months passed without activity by the Landlord and Tenant Board, which notoriously has been plagued by a backlog because of its suspension of operations during the Covid-19 pandemic. The Plaintiffs eventually abandoned their proceedings before the Landlord and Tenant Board.

[55] Given the amount of the monthly payments, it was foolish even to have commenced the Landlord and Tenant Board proceedings.

[56] The Plaintiffs changed lawyers from Aziza Hirsi, and on **January 27, 2022**, Ly Innovative and Mr. Zhou commenced an action against Facilitate Settlement Corporation, Mr. Wu and Jane Doe. The Plaintiffs' lawyer of record was Horlick Levitt Di Lella LLP.

[57] The Plaintiffs claimed damages of $133,054 or such greater amounts as may be proved for breach of the residential tenancy agreement for 29 Citation Drive, Toronto. The Plaintiffs also sought an eviction of the Defendants from the residence and vacant possession of the premises. The action was commenced in the Superior Court because the amount of the landlord's claim exceeded the $35,000 monetary jurisdiction of the Landlord and Tenant Board.

[58] The *Residential Tenancies Act, 2006* provides that: (a) if a landlord's claim exceeds the Board's monetary jurisdiction, the landlord may commence a proceeding in any court of competent jurisdiction for an order requiring payment; and (b) the court may exercise any powers that the Board could have exercised. For present purposes, the relevant provisions of the *Residential Tenancies Act, 2006* are set out below.

> *Application by landlord*
>
> 69 (1) A landlord may apply to the Board for an order terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under this Act or the *Tenant Protection Act, 1997*.
>
> […]

Non-payment of rent

74 (1) A landlord may not apply to the Board under section 69 for an order terminating a tenancy and evicting the tenant based on a notice of termination under section 59 before the day following the termination date specified in the notice.

[…]

Order of Board

(3) An order of the Board terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 59 shall,

(a) specify the following amounts:

(i) the amount of rent that is in arrears under the tenancy agreement,

(ii) the daily amount of compensation that must be paid under section 86, and

(iii) any costs ordered by the Board;

[…]

[…]

Monetary jurisdiction of Board

207. (1) The Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of $10,000 and the monetary jurisdiction of the Small Claims Court.

Same

(2) A person entitled to apply under this Act but whose claim exceeds the Board's monetary jurisdiction may commence a proceeding in any court of competent jurisdiction for an order requiring the payment of that sum and, if such a proceeding is commenced, the court may exercise any powers that the Board could have exercised if the proceeding had been before the Board and within its monetary jurisdiction.

[…]

[59] Pausing here, it shall be important to note that pursuant to s. 207 (1) of the *Residential Tenancies Act, 2006*, in addition to its ordinary jurisdiction to grant relief in an action, the Superior Court has the jurisdiction to grant any and all of the relief available under the Act without monetary limitations.[4]

[60] On **January 27, 2022** and again on **February 18, 2022**, the Plaintiffs' lawyers provided Mr. Juzkiw with a copy of the Statement of Claim and asked whether he would accept service of the Statement of Claim on behalf of the Defendants. Mr. Juzkiw declined to accept service.

[61] I find as a fact that Mr. Juzkiw told Mr. Wu that he, his corporation, and Jane Doe were being sued for rent arrears and for possession of the premises. I find as a fact that the Defendants knew about the claims being advanced against them on January 27, 2022 and again on February

[4] *Letestu Estate v. Ritlyn Investments Limited*, 2017 ONCA 442; *Vallee v. Trudel*, 2012 ONSC 3560; *Kaiman v. Graham*, 2009 ONCA 77.

18, 2022. Pursuant to rule 16.08, I validate service on all of the Defendants as of January 27, 2022 and again as of February 18, 2022.

[62] Although not direct personal service, on **March 4, 2022**, Mr. Wu along with his wife were again served with a copy of the Statement of Claim. ***Michael Chau*** who is a co-worker of Mr. Tang, the property manager, left a copy of the Statement of Claim with an apparent adult member of the household at the premises and, that same day, Mr. Chau mailed a copy of the pleading to the premises. Although Mr. Chau did not know whom he had served, it was Mr. Raza, Mr. Wu's friend, and subsequently employee of Facilitate Settlement Corporation. I find as a fact that service was effected on Mr. Wu and Jane Doe pursuant to rules 16.01 (1) and 16.03 (5) (a).

[63] If necessary, I validate service on all of the Defendants as of March 4, 2022.

[64] Mr. Wu and Jane Doe did not file or serve a Statement of Defence within the timelines prescribed by the *Rules of Civil Procedure*. Mr. Wu was noted in default on or about **June 27, 2022**.

[65] Jane Doe has never been noted in default. In the circumstances of the immediate case, however, I deem her to have been noted in default as of June 27, 2022, the same day that Mr. Wu, her now professed boyfriend and formerly professed spouse was noted in default. Along with the procedural jurisdiction provided by the *Rules of Civil Procedure*, the court has an inherent jurisdiction to control its process and a jurisdiction to control abuses of process. The Defendants, including Jane Doe, also known as Bianca [Chinese last name] have abused the process of the court.

[66] On **July 6, 2022**, the Landlord's process server, ***Darryl Nixon***, served Facilitate Settlement Corporation by mailing a copy of the Statement of Claim to 5000 Yonge Street, Suite 1806, Toronto, Ontario, M2N 7E9, which is its registered address in its Corporate Profile Report. I find as a fact that Facilitate Settlement Corporation was served pursuant to rules 16.01 and 16.03 (6).

[67] Mr. Wu deposed that Facilitate Settlement Corporation moved from its head office and is no longer operating out of 5000 Yonge Street, Suite 1806. He, however, does not say that it changed its head office or that it changed the registration of its office. There is no evidence as to whether arrangements were made for the forwarding of mail.

[68] Although the Defendants dispute it, on **July 13, 2022**, Facilitate Settlement Corporation was served the Statement of Claim. I find as a fact that there was personal service on Facilitate Settlement Corporation in accordance with rules 16.01 (1) and 16.03 (6) of the *Rules of Civil Procedure.* If necessary, I validate service pursuant to rule 16.08 as of July 13, 2022.

[69] Facilitate Settlement Corporation did not file or serve a Statement of Defence within the timelines prescribed by the *Rules of Civil Procedure*, and it was noted in default on **August 17, 2022**.

[70] I find as a fact that the defendants never had a *bona fide* intention to defend the claim and there was nothing preventing them from defending the claim within the time permitted. Their intent was to use the premises without paying rent as long as possible and to delay judgment as long as possible.

[71] On **September 1, 2022**, Facilitate Settlement Corporation received notice that the Landlord and Tenant Board had scheduled September 29, 2022 for a hearing of Ly Innovative Group's rent arrears and eviction application. Mr. Raza does not explain how it is that Mr. Wu or Facilitate

Settlement Corporation came to be served with notice given that Mr. Wu denies residing at the premises and given his evidence that Facilitate Settlement Corporation had moved from its head office.

[72] In early **September 2022**, the Plaintiffs brought a motion for a default judgment, and by endorsement dated **September 15, 2022**, Justice Myers ordered the Plaintiffs to serve their motion for a default judgement on the Defendants by September 23, 2022, after which the Defendants had until October 14, 2022 to advise the Plaintiffs if they intended to respond.

[73] On **September 21, 2022**, the Defendants retained SM Legal Professional Corporation as their lawyer. It was Mr. Raza's evidence that the Defendants were not aware of the commencement of the immediate action and that the retainer was just for the Landlord and Tenant Board hearing and not the court proceedings. As I have already indicated above, I do not believe that the Defendants did not know about the court action. I find as a fact that SM Legal Professional Corporation was retained to respond to this action and accepted service of the Plaintiffs' motion materials for a default judgment.

[74] On **September 22, 2022**, the Plaintiffs brought their motion for a default judgment of $209,054 and, among other things, for possession of the premises. The motion was supported by: (a) the affidavit dated August 19, 2022 of Mr. Tang; and (b) the affidavit dated September 22, 2022 of Mr. Etkin. Also on September 22, 2022, the Plaintiffs delivered their factum for the motion for a default judgment.

[75] The Plaintiffs' lawyers brought their clients' motion for a default judgment to the attention of SM Legal Professional Corporation.

[76] On **October 13, 2022**, the Defendants' counsel Samuel Michaels of SM Legal Professional Corporation advised the Plaintiffs' Counsel that the Defendants would be defending the action.

[77] Although the Defendants had only been noted in default, in **November 2022**, the Defendants brought a motion to set aside the default judgment. The Defendants responded to the Plaintiffs' motion for a default judgment. The Defendants delivered the following evidence: (a) the affidavits dated November 18, 2022 and November 23, 2022 of Mr. Wu; and (b) the affidavit dated November 10, 2022 of Mr. Raza.

[78] On **November 18, 2022**, there was a case management scheduling conference, and Justice Akbarali set the following timetable:

> Motion record to set aside the noting in default - by November 25, 2022.
> Responding record for the default judgment motion - by December 9, 2022.
> Responding record for motion to set aside noting in default, and reply record - by Jan. 20, 2023.
> Reply record on the set aside motion - by February 10, 2023.
> Cross-examinations on the motions to be completed by March 17, 2023.
> Moving party factum on the motion to set aside default judgment - by April 7, 2023.
> Responding factum on mtn to set aside, and moving party factum on default judgment mtn - by April 28, 2023.
> Responding factum on the default judgment motion, including reply on the set aside motion - by May 19, 2023.
> Reply factum on the default judgment motion - by June 2, 2023.
> Motions to be heard together for a half day inclusive on November 14, 2023.

[79] On **January 20, 2023**, the Plaintiffs delivered the additional evidence of an affidavit dated

January 20, 2023 of Mr. Tang.

[80] On **March 6, 2023**, Mr. Wu slipped and fell on the ice. He hit his head. He suffered a serious concussion. He was hospitalized and released the same day. The Plaintiffs were unaware of these events.

[81] On **March 9, 2023**, the Plaintiffs' lawyers corresponded with Samuel Michaels of the Defendants' lawyers and requested dates for the cross-examinations.

[82] A series of fruitless exchanges followed. On **April 12, 2023**, the Plaintiffs served the Defendants' lawyers with a Notice of Examination of Mr. Wu returnable on June 14, 2023. As already mentioned, the Plaintiffs' lawyers were unaware of Mr. Wu's head injury.

[83] On **April 26, 2023**, the Defendants changed lawyers and appointed Mr. Juzkiw as their lawyer of record.

[84] On **June 13, 2023**, the Plaintiffs' lawyers sent Mr. Juzkiw an email requesting confirmation of Mr. Wu's cross-examination scheduled for the following day.

[85] On **June 14, 2023**, Mr. Juzkiw advised that he was unaware of the appointment and that Mr. Wu would not be attending. The Plaintiffs obtained a certificate of non-attendance. Mr. Juzkiw did not advise that Mr. Wu was unable to attend because he was recovering from a concussion having slipped and fallen in March 2023.

[86] On **July 21, 2023**, the Plaintiffs' lawyers asked Mr. Juzkiw to make Mr. Wu available for cross-examination in August 2023.

[87] When there was no response from Mr. Juzkiw on **September 13, 2023**, the Plaintiffs' lawyers asked Mr. Juzkiw to make Mr. Wu available before September 15, 2023. Mr. Juzkiw responded and advised for the first time that Mr. Wu had suffered a brain injury and was not available to be cross-examined for medical reasons.

[88] On **September 14, 2023** and again on **September 29, 2023**, the Plaintiffs' lawyers requested medical records to substantiate Mr. Wu's medical condition.

[89] On **October 22, 2023**, Mr. Juzkiw responded that Mr. Wu had suffered a concussion on March 6, 2023. He advised that the Defendants would be requesting an adjournment. His email message was:

> Enclosed please find the medical records confirming that Mr Wu is not able to be cross-examined at this time due to a suffered brain injury. His family doctor note indicates that since March 6, 2023 Mr Wu cannot perform any work duties and deal with any stress until after November 30, 2023 due to concussion symptoms. He has been in treatment and unable to deal with any work duties due to his severe brain injuries majority of the time this year. We are requesting an adjournment of the motion to a date after November 30, 2023 to do the cross-examination. Let me know your availability in December 2023, January 2024, and February 2024. Be advised that we will reply upon this email and attachments at the motion. […]

[90] On **October 24, 2023**, the Plaintiffs' lawyers advised Mr. Juzkiw that the Plaintiffs would not agree to an adjournment unless Mr. Juzkiw's clients paid the full arrears and agreed to an order that they pay the ongoing rent, failing which the Plaintiffs would seek leave to issue a writ of possession for the premises.

[91] On **October 27, 2023**, the Defendants delivered the additional evidence of an affidavit dated October 27, 2023 of Mr. Raza.

[92] On **October 28, 2023**, Mr. Juzkiw advised that if the Plaintiffs did not agree to an adjournment, the Defendants proposed to replace Mr. Wu with Mr. Raza and the Plaintiffs delivered Mr. Raza's affidavit dated October 27, 2023.

[93] On **November 3, 2023**, the Plaintiffs delivered the additional evidence of an affidavit dated November 3, 2023 of Mr. Etkin.

[94] Also on November 3, 2023, Mr. Raza was cross-examined.

[95] On **November 7, 2023**, the Defendants delivered their factum for the motions.

[96] On **November 8, 2023**, the Defendants delivered the additional evidence of an affidavit dated November 8, 2023 of ***Karik Arora***. Ms. Arora is a law clerk at Juzkiw Law PC.

[97] On **November 9, 2023**, I made the following File Direction:

> 1. I have been assigned to hear the Plaintiffs' motion for a default judgment and the Defendants' motion to set aside the noting in default scheduled for November 14, 2023.
>
> 2. I have reviewed the materials posted to ontariocourts.caselines.com. There does not appear to have been compliance with the Endorsement of Justice Akbarali dated November 18, 2022.
>
> 3. None of the Defendants' motion materials for the motion to set aside the noting in default have been filed. Only one factum has been posted. (Plaintiffs' Factum for a default judgment dated September 22, 2022.) No factums have been posted in the Defendants' motion to set aside the noting in default. There are no Authorities Casebooks. There is no draft order, etc.
>
> 4. I direct the parties: (a) to comply forthwith with the filing requirements of Justice Akbarali's Endorsement; and (b) to provide electronic copies of their respective motion materials to my judicial assistant […]
>
> 5. The parties shall also file their motion materials in accordance with the *Rules of Civil Procedure*.

[98] On November 9, 2023, the Plaintiffs delivered their supplementary factum.

[99] On November 14, 2023, I issued the following File Direction:

> 1. I have been assigned to hear the Plaintiffs' motion for a default judgment and the Defendants' motion to set aside the noting in default scheduled for November 14, 2023.
>
> 2. Further to my file direction of November 9, 2023, I have reviewed the materials posted to ontariocourts.caselines.com, and it now appears that has been compliance with the Endorsement of Justice Akbarali dated November 18, 2022. Several matters remain outstanding.
>
> 3. First, I direct the Defendants to file the answer to the undertaking given on Mr. Raza's cross-examination and to advise with respect to the question taken under advisement.
>
> 4. Second, I direct the Defendants' lawyer of record to verify the identity of the client named as "Jane Doe" in the style of cause by producing a photocopy of a government-issued photo identification setting out her full name, business address, home address and occupation.
>
> 5. Third, I direct the Defendants' lawyer of record to verify the identity of the client named as "Kai Wu" in the style of cause by producing a photocopy of a government-issued photo identification setting out his full name, business address, home address, and occupation.
>
> 6. Fourth, I direct the Plaintiffs' lawyer of record to verify the identity of the client named as "Meizhang Zhou" in the style of cause by producing a photocopy of a government-issued photo identification setting out his full name, business address, home address, and occupation.

[100] The motions were to be argued on November 14, 2023, but were adjourned because of new developments and the prospect of a settlement. On November 14, 2023, I made the following Endorsement:

> 1. This is a landlord and tenant dispute. It arises because save for three months of prepaid rent, for three years, the monthly rent of $9,500 has not been paid while the tenant has remained in possession. The rent arrears now approach $300,000.
>
> 2.The Defendant Facilitate Settlement Corporation is the tenant of leased residential premises in Toronto. There is a dispute about whether the Defendants Kai Wu and Jane Doe are also tenants.
>
> 3. In January 2022, the Plaintiffs, Ly Innovative Group Inc. and Meizhang Zhou sued for possession and for payment of the arrears of rent. They noted Facilitate Settlement Corporation and Mr. Wu in default, and the Plaintiffs moved for a default judgment.
>
> 4.The Plaintiffs, however, omitted to note in default Jane Doe, which is not the correct name of Ms. Wu's wife.
>
> 5. The Defendants including Jane Doe resisted the motion for a default judgment, and they moved for an Order setting aside the noting of default.
>
> 6. On November 18, 2022, when there was a case management scheduling conference. Justice Akbarali set a timetable scheduling the motions to be heard today.
>
> 7. I was advised this morning that the parties had reached a settlement. I was asked to grant the following Order:
>
> ORDER
>
> THIS MOTION made by the Plaintiffs, Ly Innovative Group Inc. and Meizhang Zhou, for, *inter alia*, judgment in accordance with the Statement of Claim was heard this day at Toronto, Ontario.
>
> ON READING the Consent of the parties, the Statement of Claim in this action, the Affidavit of Jing Tang sworn August 19, 2022, the Supplementary Affidavit of Alexander Etkin sworn September 22, 2022, the Further Supplementary Affidavit of Alexander Etkin sworn November 3, 2023, the Transcript of the Cross-Examination for Mehdi Raza held on November 3, 2023, the Plaintiffs' Factum and the Plaintiffs' Responding Supplementary Factum, and the proofs of service of the Statement of Claim on Facilitate Settlement Corporation, Kai Wu and Jane Doe, the Affidavit of Mehdi Raza sworn October 27, 2023, the Factum of the Defendants, filed, and Facilitate Settlement Corporation, Kai Wu and Jane Doe having been noted in default,
>
> 1. THIS COURT ORDERS that the tenancy between the Landlord and the Defendants is terminated. The Defendants must move out of the rental unit that is municipally known as 29 Citation Drive, Toronto, Ontario M2K 1S5 (the "Rental Unit") on or before the 17th day of November 2023 (the "Termination Date").
>
> 2. THIS COURT ORDERS that, if the Rental Unit is not vacated on or before the Termination Date, then starting on November 18, 2023 (the "Enforcement Date"), the Landlord may file this Order and the Writ of Possession described in paragraph 4 below with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
>
> 3. THIS COURT DECLARES AND ORDERS that the Landlords are entitled to possession of the Rental Unit as of November 17, 2023.

> 4. THIS COURT ORDERS that the Landlords are granted leave to issue a writ of possession for the Rental Unit municipally known as 29 Citation Drive, Toronto, Ontario M2K 1S5 and legally described as PARCEL 12342, SECTION EY LOT 199, PLAN 66M676, LOT 199 ON PL M676; SUBJ TO EASE IN FAVOUR OF THE BELL TELEPHONE COMPANY OF CANADA OVER THE REAR 4' AS IN LT585458. PL BA1614 (PL D611) CONFIRMS PT OF THE BOUNDARIES OF THIS LAND; SEE A817837 SUBJECT TO LT585458 TWP OF YORK/NORTH YORK, CITY OF TORONTO to be enforced on an immediate and expedited basis.
>
> 5. Upon completion of the terms of the settlement, the Plaintiffs will obtain an order dismissing the action against the Defendants on consent of the Parties on a without costs basis.

8. I am not prepared to issue this Order. The preamble mistakenly indicates that Jane Doe has been noted in default, which is not the case. Further, as noted above, Jane Doe has not been properly identified.

9. I have not been provided with sufficient details of the settlement to exercise my discretion with respect to issuing a writ of possession. The Order does not address the outstanding counterclaim of at least Jane Doe. The Order does not finally resolve the matter.

10. In these circumstances, at the hearing of the motions, I gave the parties a choice of either: (a) arguing the motion on its merits; or (b) adjourning the motion until Monday next at which time it could be determined whether the Plaintiff actually needed a writ of possession.

11. The parties elected to adjourn the motion. In the meantime, I repeated my direction to the Defendants to properly identify Jane Doe.

12. I remain seized of this matter. It is adjourned to Monday November 20, 2023. It shall be a virtual hearing. On Monday, the parties shall report and be prepared to argue the motion on its merits if the matter has not properly resolved itself in the interim.

13. Adjournment accordingly.

[101] At the commencement of the hearing on November 20, 2023, I asked about Jane Doe's identify, and I was provided with the paucity of information described above, which I need not repeat.

[102] At the commencement of the hearing, I was told that the Defendants had not provided the Plaintiffs with possession of the premises. The Plaintiffs said they wished to proceed with the motions. The Plaintiffs said that the gamesmanship needed to stop.

[103] I was told by the Defendants' lawyer that the court could not proceed with the motions because the matter had been settled and that the Defendants had only delayed releasing the premises because they wished to ensure that the motions would not go forward. I rejected this submission. I concluded that the Defendants were simply continuing their efforts to game the administration of justice. If the Defendants genuinely did not want the motions to go forward, all they had to do was name Jane Doe and honour the terms of the settlement by vacating the premises before the hearing started.

[104] Then the Defendants asked for an adjournment based on Mr. Wu's alleged brain injury. I was told that fairness and due process necessitated a month or so adjournment.

[105] I told Mr. Juzkiw that I would not adjourn the motions. There is no proper evidence that

Mr. Wu has been incapacitated beyond perhaps a month or so after his slip and fall. The medical evidence is incomplete, inadequate, and all I have is a law clerk's hearsay evidence of Mr. Wu's incapacity to testify.

[106] Mr. Wu is not a credible witness for the reasons expressed above. The Defendants lost their right to cross-examine the Plaintiffs' witness when they did not exercise that right over the last ten months. This request for an adjournment was beyond a farce. The Defendants have been abusing the administration of justice. I declined to exercise my discretion to adjourn the matter.

E. Discussion and Analysis

1. Legal Background: Default Judgments

[107] The two motions now before the court concern the default judgment procedure under the *Rules of Civil Procedure*.

[108] When a defendant has been noted in default, the plaintiff may make a motion for judgment. The party in default is not entitled to notice of the motion for a default judgment but, as a matter of practice, to avoid the prospect that the defaulting party may subsequently seek to have the default judgment set aside, the moving party may bring the motion on notice or the court may order that notice be given.[5]

[109] On a motion for a default judgment, the court undertakes a three-step inquiry; namely: (a) what deemed admissions of fact flow from the Statement of Claim? (b) do the deemed admissions of fact entitle the plaintiff as a matter of law to judgment? and (c) if the deemed admissions are insufficient for judgment, has the plaintiff adduced admissible evidence that when combined with the deemed admissions entitles it to judgment on the pleaded claim?[6] Where the pleaded facts are not sufficient to establish liability, the court may consider the affidavit evidence to determine whether the plaintiff is entitled to judgment or whether the evidence disentitles the plaintiff to judgment.[7]

[110] For setting aside a noting in default, the major relevant factors are whether the defendant brought his or her motion without undue delay and whether he or she explains why there was a default. Where there is no default judgment, satisfying just these two factors is usually sufficient to justify setting aside the noting of a defendant in default.[8] A third relevant factor is whether the defendant can show a defence on the merits. In general, without being exhaustive, the following factors are relevant in considering whether to set aside a defendant being noted in default: (a) the parties' behaviour, (b) the length of the delay; (c) the reasons for the delay; (d) the complexity and value of the claim; (e) whether a party relying on the notice of default would be prejudiced; (f) the

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[5] *828343 Ontario Inc. v. Demshe Forge Inc*., 2022 ONSC 350 (Div. Ct.); *Casa Manila Inc. v. Iannuccilli*, 2018 ONSC 7083 (S.C.J.); *1705371 Ontario Ltd. (c.o.b. B & A Masonry) v. Leeds Contracting Restoration Inc.*, [2018] O.J. No. 6551 (S.C.J.); *Canada Mortgage and Housing Corporation v. CMC Medical Centre Inc.*, 2017 ONSC 7551; *Ott v. Canadian Standard Home Services*, 2017 ONSC 7114; *Western Steel and Tube Ltd. v. Technoflange Inc.*, 2017 ONSC 2697; *Elekta Ltd. v. Rodkin*, 2012 ONSC 2062 at para. 10.

[6] *Gillespie v. Fraser*, 2023 ONSC 537; *Kaur v Virk*, 2022 ONSC 6697; *Elekta Ltd. v Rodkin*, 2012 ONSC 2062.

[7] *Martin v. Hurst*, 2023 ONSC 2606 (Div. Ct.); *Salimijazi v. Pakjou*, [2009] O.J. No. 1538.

[8] *CLE Capital Inc. v. 2593485 Ontario Ltd.*, 2022 ONSC 4299 (Assoc. J.); *Black v. Hutton*, 2019 ONSC 6230; *Intact v Kisel*, 2015 ONCA 205; *Bank of Montreal v. Rich*, [1985] O.J. No. 1848 (Dist. Ct.); *Wieder v. Williams* (1976), 13 O.R. (2d) 528 (Master).

balance of prejudice as between the parties; (g) and whether the defendant has an arguable defence on the merits.[9]

[111] However, to set aside just the noting in default, only in extreme circumstances of default and delay is a defendant required to show a defence on the merits.[10] Thus, the test that the defendant must meet to set aside the noting in default is lower than the test for setting aside a properly obtained default judgment, which test includes the element that the defendant show a defence on the merits.[11] Motions to set aside a noting of default are frequently granted because it is typically not in the interest of justice to grant judgments based solely on technical defaults, and courts prefer to dispose of proceedings on their merits whenever possible.[12]

2. The Motions and Jane Doe

[112] As I have explained above, Jane Doe, now partially identified as Bianca [Chinese last name], is a represented party to this litigation. Through her lawyers and co-Defendants, I find that she has from the outset been aware of the litigation. For the reasons set out above, I validate service of the Statement of Claim on her and in the circumstances of the immediate case, I deem her to have been noted in default.

[113] Since Jane Doe, also known as Bianca [Chinese last name] has been noted in default, she has no counterclaim to consider.

[114] There is, however, no default judgment as against Jane Doe, also known as Bianca [Chinese last name].

[115] The evidence is that she is not a tenant nor an occupant of the premises. There is no basis to make her liable for the arrears of rent. She did not sign the lease. She was not an occupant of the premises.

[116] Jane Doe was a chameleon stooge of Mr. Wu's gaming of the administration of justice. The Plaintiffs' action as against her should be and is dismissed without costs.

3. The Motion to Set Aside the Noting in Default of the Defendants

[117] It follows from the description above of my findings of fact that all the Defendants knew about the Plaintiffs' Statement of Claim from January 27, 2022, the date that the claim was issued. They knew about the pleading on March 4, 2022. They knew about it or ought to have known about the Statement of Claim in the summer of 2022, when the pleading was delivered to Facilitate Settlement Corporation's registered office.

[118] In short, I do not believe Mr. Wu's and Facilitate Settlement Corporation 's evidence that

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[9] *Franchetti v. Huggins*, 2022 ONCA 111.
[10] *Franchetti v. Huggins*, 2022 ONCA 111; *Intact v. Kisel*, 2015 ONCA 205; *Benlolo v. Barzakay*, [2003] O.J. No. 602 (Div. Ct.); *Metropolitan Toronto Condominium Corporation No. 706 v. Bardmore Developments Ltd.* (1991), 3 O.R. (3d) 278 (C.A.).
[11] *Metropolitan Toronto Condominium Corporation No. 706 v. Bardmore Developments Ltd.* (1991) 3 O.R. (3d) 278 (C.A.); *Axton v. Kent* (1991) 2 O.R. (3d) 797 (Div. Ct.).
[12] *Czuczman Estate v. St. Demetrius (Ukrainian Catholic) Development Corporation*, 2016 ONSC 964 at para. 20 (Master); *Speck v. Alma Mater Society of Queen's University Inc.*, 2015 ONSC 137 at para. 14; *Garten v. Kruk*, [2009] O.J. No. 4438 at para. 16 (Div. Ct.); *Nobosoft Corporation v. No Borders Inc.*, 2007 ONCA 444 at para. 7.

they did not know about the Statement of Claim until after they were noted in default.

[119] It was Mr. Raza's evidence that there were ongoing settlement negotiations and if this is true then there is yet another reason to believe that the Defendants knew they had been sued in the Superior Court.

[120] Thus, Mr. Wu and Facilitate Settlement Corporation have no explanation for why they did not defend within the time provided by the *Rules of Civil Procedure*. If they had not been gaming the system, they should have instructed their lawyer to accept service of the Statement of Claim and immediately countered with their purported Defence and Counterclaim.

[121] Mr. Wu and Facilitate Settlement Corporation have no explanation for their default in pleading. All they have is their false evidence that they brought their motion to have the noting in default promptly after they learned about the Plaintiffs' motion for a default judgment in September 2023. The truth is that they should have been defending the action by March 2023.

[122] If as a factor in weighing whether to reopen the pleadings, I consider the merits of the Defendants' defence and their counterclaim, there are no merits to consider.

[123] Without regard to the deemed material facts of the Statement of Claim default, the evidence of the motions before the court establishes that Mr. Wu is the *alter ego* of Facilitate Settlement Corporation and it and he were the tenants of 29 Citation Drive, who save for three months of pre-paid rent have illegally been using the premises for business and rental purposes from the outset of the lease.

[124] There is no merit to the counterclaim. The notion that Jane Doe, who it pleaded to be a visitor to the premises, has a claim for breach of the covenant for quiet enjoyment is risible.

[125] Thus, I dismiss the Defendants' motion to have the noting in default set aside and even without relying on the facts deemed to be true in the Statement of Claim, I find Mr. Wu and Facilitate Settlement Corporation jointly and severally liable for breach of the lease for failure to pay rent.

[126] I come to the same result based on the facts deemed to be true.

[127] Based on the evidence submitted on the motions before the court and then confirmed by the facts in the Statement of Claim deemed to be true, Facilitate Settlement Corporation was the tenant and it is in default of payment of rent without any lawful excuse.

[128] Based on the evidence submitted on the motions before the court and then confirmed by the facts deemed to be true in the Statement of Claim, this is an appropriate case to pierce the corporate veil.

[129] To successfully sue the shareholder for the faults of his or her corporation, the plaintiff must "pierce the corporate veil". The corporate veil may be pierced when the corporation is incorporated for an illegal, fraudulent, or improper purpose, or where respecting the separate legal personality of the corporation would be flagrantly unjust.[13] As revealed by my findings of fact,

[13] *Mitchell v. Lewis*, 2016 ONCA 903; *Shoppers Drug Mart Inc. v. 6470360 Canada Inc. (c.o.b. Energyshop Consulting Inc./Powerhouse Energy Management Inc.)*, 2014 ONCA 85, rev'g 2012 ONSC 5167; *Parkland Plumbing & Heating Ltd. v. Minaki Lodge Resort 2002 Inc.*, 2009 ONCA 256 at paras. 49–54; *642947 Ontario Ltd. v. Fleischer* (2001), 56 O.R. (3d) 417 (C.A.); *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.), aff'd [1997] O.J. 3754 (C.A.); *Kosmopoulos v. Constitution Insurance Co. of Canada*, [1987] 1 S.C.R. 2.

those criteria are satisfied in the immediate case.

[130] The separate existence of a corporation may be ignored when the corporation is under the complete control of the shareholder and its existence is being used as a means to insulate the shareholder from responsibility from fraudulent or illegal conduct.[14] That criterion is established on the facts of the immediate case.

[131] In order to pierce the corporate veil, two factors must be established: (1) the alter ego must exercise complete control over the corporation or corporations whose separate legal identity is to be ignored; and (2) the corporation or corporations whose separate legal identity is to be ignored must be instruments of fraud or a mechanism to shield the alter ego from its liability for illegal activity.[15] That criterion is satisfied in the immediate case.

[132] I make no finding on the Plaintiffs' claim for unjust enrichment or for occupation rent. If these causes of action exist or have any merit, about which I make no determinations, the causes of action merge with the judgment on the claim for breach of the lease for failure to pay rent.

4. Calculation of Arrears of Rent

[133] I calculate the arrears of rent as follows.

[134] Facilitate Settlement Corporation was obliged to pay $9,500 per month commencing February 1, 2021 and since the commencement of the term of the lease until December 1, 2023, there are 35 months.

[135] Facilitate Settlement Corporation should be credited for three months rent, which was pre-paid in November 2020 when the lease was signed. Therefore, there are 32 months of unpaid rent. The amount of the unpaid rent is $304,000.

[136] In addition, Facilitate Settlement Corporation is liable for $54 in administrative charges for the two cheques that were countermanded.

5. The Claim for Punitive Damages

[137] The Plaintiffs claim punitive damages.

[138] In my opinion, this case is an appropriate one to award punitive damages. I have already concluded that the case is one in which it is appropriate to pierce the corporate veil.

[139] Further, I find as fact that Mr. Wu has not been forthcoming and it seems that he hoped that the exasperated Plaintiffs would settle and reduce the rental payments or forgo them to at least regain the leased premises, which practically speaking, were being held hostage. Mr. Wu was

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[14] *FNF Enterprises Inc. v. Wag and Train Inc*., 2023 ONCA 92; *Yaiguaje v. Chevron Corporation*, 2018 ONCA 472; *Mitchell v. Lewis*, 2016 ONCA 903; *Shoppers Drug Mart Inc. v. 6470360 Canada Inc. (c.o.b. Energyshop Consulting Inc./Powerhouse Energy Management Inc.)*, 2014 ONCA 85, rev'g 2012 ONSC 5167; *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.), aff'd [1997] O.J. 3754 (C.A.); *Alumimun Co. of Canada v. Toronto (City)*, [1944] S.C.R. 267.

[15] *FNF Enterprises Inc. v. Wag and Train Inc*., 2023 ONCA 92; *Parkland Plumbing & Heating Ltd. v. Minaki Lodge Resort 2002 Inc.*, 2009 ONCA 256; *Haskett v. Equifax Canada Inc.*, [2003] O.J. No. 771(C.A.); *Transamerica Life Insurance Co. v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.), aff'd [1997] O.J. No. 3754 (C.A.); *Gregorio v. Intrans-Corporation* (1994), 18 O.R. (3d) 527 (C.A.).

gaming the administration of justice.

[140] The Plaintiffs abided by the rules of practice and gave the Defendants fair warning about the issuance of the Statement of Claim. The Plaintiffs were entitled to note Mr. Wu and his corporation in default, and I am not going to blame the victim in the immediate case for the gaming of the administration of justice. The system was abused and it is appropriate to award punitive damages, which I fix at $100,000.

6. Ancillary Remedies and Possession of the Premises

[141] It remains to be seen whether or not Mr. Wu and Facilitate Settlement Corporation are judgment proof. If so, they have indeed gamed the system and they have had use of the premises rent-free. That free ride must certainly end. I immediately grant the Plaintiffs a writ of possession and order Mr. Wu and Facilitate Settlement Corporation to provide vacant possession forthwith.

F. Conclusion

[142] For the above reasons, I make the Orders set out in the introduction to these Reasons for Decision.

[143] If the parties cannot agree about the calculation of interest or the matter of costs, they may make submissions in writing beginning with the Plaintiffs' submissions within twenty days of the release of these Reasons for Decision followed by the Defendants' submissions within a further twenty days. I will consider whether this is a case appropriate to Order that Mr. J be personally liable to pay the costs.

Perell, J.

Released: December 7, 2023

CITATION: Ly Innovative Group Inc. v. Facilitate Settlement Corporation, 2023 ONSC 6932
COURT FILE NO.: CV-22-00675882-0000
DATE: 20231207

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

LY INNOVATIVE GROUP INC. and MEIZHANG ZHOU

Plaintiffs

- and –

FACILITATE SETTLEMENT CORPORATION, KAI WU and JANE DOE

Defendants

REASONS FOR DECISION

PERELL J.

Released: December 7, 2023