

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kingsway Holdings Ltd. v. New Coast Holdings Ltd.*,
2024 BCSC 1963

Date: 20241025
Docket: S235854
Registry: Vancouver

Between:

Kingsway Holdings Ltd.

Plaintiff

And

**New Coast Holdings Ltd., Joy Fortune Holding Limited,
and Minghan Ren**

Defendants

Before: The Honourable Madam Justice Wilkinson

Reasons for Judgment

In Chambers

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|-------------------------------------|-------------------------------------|
| Counsel for Plaintiff: | C. Bildfell |
| Counsel for Defendant Minghan Ren: | J. Liu |
| Agent for Joy Fortune Holding Ltd.: | L. Jin |
| Place and Date of Hearing: | Vancouver, B.C. October 1, 2024 |
| Place and Date of Judgment: | Vancouver, B.C. October 25, 2024 |

[1] The plaintiff (the “Landlord”) seeks judgment by way of summary trial under Rule 9-7, *Supreme Court Civil Rules*, B.C. Reg. 168/2009, against the defendants (the “Tenant”) and damages arising from the termination of a lease.

Background

[2] The facts are undisputed.

[3] On April 28, 2015, the Landlord entered into a lease agreement (the “Lease”) with New Coast Holdings Ltd. (“New Coast”), Joy Fortune Holding Limited (“Joy Fortune”), and Minghan Ren (together, the “Tenant”) in respect of premises located at 4737 Kingsway, B.C. (the “Premises”).

[4] The Lease included the following terms:

- a) The term of the Lease was 12 years starting August 1, 2015 (the “Term”).
- b) The Tenant was required to pay the Landlord minimum rent for each lease year by monthly installments in the amounts specified under the Lease. Monthly minimum rent installments were to be paid in advance on the first day of each month throughout the Term.
- c) The Tenant was required to pay the Landlord additional rent which would include, at minimum, a proportionate share of property taxes, common area costs, insurance premiums, GST, and other costs, all of which were to be paid with the minimum rent on the first day of each month during the Term. Pursuant to the Lease:
 - i. For the period from August 2022 to July 2023, the Tenant was required to pay \$8,710 per month in minimum rent, \$8,347.08 per month in additional rent, and \$852.85 per month in GST; and
 - ii. For the period from August 2023 until December 2023, the Tenant was required to pay \$9,072.92 per month in minimum rent, \$8,347.08 per month in additional rent, and \$871 per month in GST.

- d) If the Tenant were in default in the payment of any rent and that default continued for 10 days following any specific due date for making such payment or for 10 days following written notice of default by the Landlord, the Landlord could, at its option, terminate the Lease.
- e) If the Lease were terminated due to default by the Tenant, the Landlord could re-let the Premises for a term or terms that may be less or greater than the balance of the Lease Term and grant reasonable concessions in connection with re-letting the Premises.
- f) If the Lease were terminated due to default by the Tenant, the Tenant was required to pay to the Landlord on demand:
 - i. Rent and all other amounts payable up to the latter of termination or re-entry (“Outstanding Rent”);
 - ii. Reasonable expenses incurred by the Landlord in connection with re-entering the Premises, terminating the Lease, re-letting the Premises, and collecting sums due or payable by the Tenant, including brokerage fees, legal fees and disbursements, and the expenses of keeping the Premises in good order, repairing the same, and preparing the Premises for re-letting (“Reasonable Expenses”); and
 - iii. As liquidated damages for the loss of rental and other income of the Landlord expected to be derived from the Lease during the period which would have constituted the unexpired portion of the Term had it not been terminated, “an amount equal to all Minimum Rent and estimated Additional Rent (as determined by the Landlord) to become payable in the period which would have constituted the unexpired portion of the Term, less such net amounts as the Landlord may recover by reletting the Premises for the balance of the period which would have constituted the unexpired portion of the Term (“Loss of Future Rent”), (collectively, the “Amounts Due on Default”)”.

g) The parties agreed that the Tenant was “bound jointly and severally by the terms, covenants and agreements herein on the part of the Tenant”. The Lease also clarified that where the singular is used, it shall be construed to mean the plural where required.

[5] The Tenant started to default on its rent payments in 2020. From 2020 to 2022, the Tenant made periodic payments, but never caught up on its arrears.

[6] As of November 29, 2022, the Tenant was in default of its rent payments for July, August, September, October and November 2022, totalling \$89,549.65.

[7] On November 29, 2022, the Landlord delivered a notice of default to the Tenant, in accordance with Lease, demanding payment of the Tenant’s outstanding rent payments within 10 days.

[8] The Tenant failed to pay any of its arrears of rent as demanded. The Tenant did not make any further rent payments after November 29, 2022.

[9] On January 9, 2023, the Landlord delivered a notice of termination to the Tenant, in accordance with Lease, terminating the Lease effective immediately.

[10] The Tenant vacated the Premises on January 24, 2023.

[11] Effective March 1, 2023, the Landlord re-let the Premises to a new tenant for which the fixturing period ended in December 2023. The new tenant started paying rent to the Landlord in January 2024.

[12] The Landlord made multiple requests for payment of the amounts owing.

[13] The Tenant failed to pay.

Suitability for summary trial

[14] Under Rule 9-7(15)(a), this Court may grant judgment by way of summary trial unless:

- (i) “the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law”; or
- (ii) “the court is of the opinion that it would be unjust to decide the issues on the application”.

[15] Provided the court is able on the evidence to find the facts necessary to resolve the dispute, proceeding by summary trial is a discretionary decision guided by factors including the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of a conventional trial in relation to the amount involved, the course of the proceedings, and whether there are significant issues of credibility that cannot be resolved on the affidavit evidence. The court must also consider the objectives of proportionality and efficiency under Rule 1-3: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) [Inspiration Management], at paras. 42-44 and 49.

[16] The facts are undisputed. The responding defendants, Minghan Ren and Joy Fortune admit they signed the Lease and are bound by it. They also admit the facts set out above. No response to civil claim was filed by the defendant New Coast and it did not participate in this application.

[17] There are no credibility issues. The only issue before the court is the quantum of damages which is an issue of law based on an interpretation of the Lease and the uncontroverted affidavit evidence.

[18] No objection was made to the suitability of this matter to be determined under Rule 9-7.

[19] Based on the above considerations, this matter is suitable for determination by way of summary trial.

Liability

[20] The Lease required the Tenant to pay minimum rent to the Landlord on the first day of each month and to pay additional rent on the first day of each month.

[21] The Tenant failed to meet these requirements starting in July 2022. The Tenant failed to rectify these failures within 10 days. This resulted in default.

[22] Neither Joy Fortune nor Minghan Ren deny that the Tenant failed to pay rent. Joy Fortune argues that the partnership between the entities making up the Tenant was “broken up” and that “[t]he filing defendant was never a party using the office”. But this is no defence. Joy Fortune signed the Lease assuming joint and several obligations under the Lease just as the other parties did. Even if these parties had a falling out, this does not excuse Joy Fortune from its obligations under the Lease. Joy Fortune’s position confuses the duties owed between Tenant parties with the duties owed by the Tenant to the Landlord.

[23] In the face of the Tenant’s default, the Landlord validly elected to terminate the Lease effective January 9, 2023.

Damages

[24] The Landlord’s termination triggered the Tenant’s duty to pay the following amounts as Amounts Due on Default pursuant to Clause 16.07(d) of the Lease:

- a) Outstanding Rent;
- b) Reasonable Expenses; and
- c) Liquidated damages for Loss of Future Rent.

[25] It is clear from the record that the Tenant owes the Landlord \$125,369.51 for unpaid minimum rent and additional rent from July 2022, when the Tenant stopped paying rent to January 2023, when the Tenant vacated the Premises.

[26] On the evidence before me the record supports a claim for \$59,882.23 for reasonable expenses incurred by the Landlord in re-entering the Premises, terminating the Lease, re-letting the Premises, and collecting sums owed by the Tenant. This head of damages also includes an entitlement to recover legal costs on a solicitor-and-client basis. I will order that this amount be assessed separately.

[27] The real dispute between the parties is the assessment of damages for Loss of Future Rent.

[28] The Landlord seeks \$199,274.58 as future loss of rent for minimum rent and additional rent from February 2023, after the Tenant vacated the Premises, to December 2023, before the Landlord started receiving rent from a new tenant through mitigation efforts.

[29] However, as the respondent defendants point out, that amount is not calculated in accordance with the terms of the Lease. The calculation is to be the total of rent owing until the end of the Term of the Lease, less any rent received or which may be received from a new tenant up to the end of the original Term.

[30] That amount is therefore determined first by calculating the amount still owing from February 2023, to the end of the Term which is July 31, 2027. This amount is \$519,968.88.

[31] From that amount, rent received or which may be received under the new lease during that period is subtracted. That amount is \$676,839.64.

[32] This means that the landlord is not entitled to any damages for Loss of Future Rent because it fully mitigated those losses.

[33] The defendant Minghan Ren submits that the plaintiff failed to reasonably mitigate its losses by granting a long fixture period to the new tenant. The defendant has the burden to show that the mitigation efforts were unreasonable. The evidence I have before me from a very qualified commercial real estate licensee supports the reasonableness of the eight month fixture period. The much higher rent would also support such a long period. I have no evidence to contradict the reasonableness of the terms. I find the decision of this court regarding reasonableness of fixture periods in *Asara Holdings Inc. v. 1041085 B.C. Ltd.*, 2021 BCSC 2350, at paras. 81-82 and 84, much more persuasive than the comments of the Provincial Court in *577129 B.C. Ltd. v. Urban Life Enterprise Ltd.*, 2010 BCPC 299, at paras. 15-18 on the issue of mitigation and reasonableness of fixture

periods. In any event, the end result is that the amount under the new lease has fully mitigated any Loss of Future Rent as set out above.

[34] Mighan Ren further submits that since the Landlord received more in future rent than under the Lease, the overage should apply to reduce the damages under the other heads of damage in the Lease. However, the Lease does not contemplate that. Each category of damage is to be independently calculated.

[35] In addition to the amounts above, s. 16.05 of the Lease provides that the Landlord may recover “[a]ll expenses, costs and expenditures including, without limitation, solicitor-client costs and accounts, incurred by the Landlord as a result of any default by the Tenant ... as Additional Rent together with interest, at the rate specified in Section 4.05(e)”. That amount is 2% per month.

[36] Given the Tenant’s default, I will make an order for interest pursuant to the Lease.

Conclusion

[37] Based on my reasons as set out above, the plaintiff’s application is granted in part.

[38] The lease has been validly terminated as of January 9, 2023.

[39] The defendants are jointly and severally liable to the following damages in favour of the plaintiff under Clause 16.07(d) of the Lease:

- a) Outstanding Rent under Clause 16.07(d)(ii): \$125,369.51; and
- b) Reasonable Expenses under Clause 16.07(d)(ii): \$59,882.23; plus legal fees incurred to be assessed on a solicitor-client basis.

[40] The plaintiff has not incurred any damages under Clause 16.07(d)(iii).

[41] The plaintiff is entitled to interest from the defendants jointly and severally under clause 16.05 of the Lease at the rate of 2% per month, to be assessed.

Costs

[42] There has been mixed success. The parties will bear their own costs on this application.

“Wilkinson J.”