

CITATION: Textile City Inc. v 10451029 Canada Inc. (o/a Reliable Logistics), 2024 ONSC 5824

COURT FILE NO.: CV-24-2942

DATE: 20241021

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TEXTILE CITY INC., Applicant

AND:

10451029 CANADA INC. (o/a RELIABLE LOGISTICS), Respondent

BEFORE: Justice Ranjan K. Agarwal

COUNSEL: John Russo and Sarah Rustomji, for the applicant

Jennifer Lee, for the respondent

HEARD: October 16, 2024

ENDORSEMENT

I. INTRODUCTION

[1] Reliable Logistics rents office space to Textile City Inc., a linen wholesaler. Over the last few months, Reliable has delivered two default notices and a notice of termination. It alleges that Textile City is operating a retail business—a non-permitted use under the lease. Reliable has also taken several steps to cause a nuisance to Textile City: charging additional rent for no legal reason, replacing Textile City’s signage with that of a company it owns, and taking Textile City’s garbage bins hostage.

[2] Textile City denies selling its products to consumers. But, in any event, it argues that Reliable has waived its right of forfeiture, or this court should grant it relief against forfeiture.

- [3] Thus, the issues to be determined are:
- (a) did Textile City breach the lease by utilizing the office space for a non-permitted use?
 - (b) did Reliable waive its right of forfeiture by invoicing for and accepting rent payments until August 2023?
 - (c) should Textile City be granted relief against forfeiture based on the parties' conduct?
- [4] For the reasons discussed below, I grant Textile City's application, in part. I find that Textile City breached the lease by utilizing the office space for retail use. Reliable didn't waive its right to forfeiture. But Reliable's conduct was in bad faith, especially compared to Textile City's modest breach, which has since stopped. As a result, I order relief against forfeiture. The parties have agreed on ancillary terms intended to revert to the status quo before their dispute. They've also agreed on the costs of this application.

II. BACKGROUND

A. The Sublease

[5] Melford Developments Inc. (now KS Park Portfolio No. 3 Inc.) has a lease with the applicant 10451029 Canada Inc. (o/a Reliable Logistics) for Units C, D, and E of 1575 South Gateway Road, Mississauga.

[6] The applicant Textile City Inc. has rented space at 1575 Gateway Road since 2015. In February 2023, Textile City subleased a warehouse and office space in Unit C from Reliable. The term of the sublease was from March 1, 2023, to August 31, 2023.

[7] In June 2023, Textile City exercised its contractual option to renew the sublease for only the office space until August 31, 2024 (it renewed again in February 2024 to August 31, 2025). The office space has both a 1st and 2nd floor.

B. Textile City's Business

[8] Textile City manufactures bed linens for the residential consumer market. Its clients are retailers, like Walmart and Winners. It designs the products in the office space. The products are then manufactured in Pakistan, and shipped to Canada. They are stored in Textile City's warehouse in Hagersville. Textile City has samples in the office space for its clients.

[9] Textile City says it doesn't sell products to "end users". As I discuss below, I find that Textile City was, in fact, selling linens directly to consumers from the office space.

C. Reliable Demands "Additional Rent" from Textile City

[10] Under the sublease, Textile City pays Base Rent for the office space. Starting in October 2023, Reliable asserted that Textile City had to pay "Additional Rent". Textile City disagreed.

[11] Though the sublease provides for "Additional Rent", section 2(d) of the sublease states that the "only Rent payable" by Textile City if it renews the sublease is the "Base Rent". When Textile City refused to pay the Additional Rent, Reliable asserted that Textile City breached the sublease. Though Reliable didn't evict Textile City, it sent invoices to Textile City for both the Base Rent and Additional Rent until July 2023.

D. Reliable Purports to Terminate the Sublease for Default

[12] In April 2024, Reliable alleged that Textile City was in default of the sublease on several grounds: (a) Textile City was using the office space for non-permissible uses—an unregistered business called Linens Factory; (b) Textile City's garbage was "left unorganized and/or exposed"; (c) the office space shouldn't be locked for "fire safety requirements"; and (d) Textile City was withholding deliveries from Reliable.

- [13] Reliable purported to terminate the sublease effective September 1, 2024. The default notice didn't comply with the *Commercial Tenancies Act*, RSO 1990, c L.7, s 19(2), because it didn't require Textile City to remedy the breach or make compensation for the breach.
- [14] On June 10, 2024, Reliable's lawyer emailed Textile City's lawyer, in reference to the termination notice: "The notice is withdrawn". On June 12th, Reliable emailed Textile City directly: "I have no idea what you are speaking about. I have not withdrawn anything." It's unclear whether this referred to the notice of termination, the Additional Rent, or both. Then, on June 14th, after Reliable replaced Textile City's signage on the building, Reliable emailed: "I would recommend that you don't waste your time or your energy. We are taking over the space after August 31st or sooner if you keep up this behaviour."
- [15] At the application hearing, Reliable conceded that the first default notice and termination notice were invalid.

E. Reliable Asserts that Textile City is Breaching the Sublease by Operating a Retail Business

- [16] On June 25th, Reliable sent Textile City another notice of default. Now, it specifically alleged that Textile City was operating a retail business, in breach of the sublease. The sublease states the permissible use of the office space: "the Office Space may only be

used for the purpose of general office uses”. Reliable demanded that Textile City cure the default within seven days and pay \$2500 for the breach.

[17] Textile City denied that it was operating a retail business from the office space. In response, Reliable exercised its right to inspect the office space on July 3rd.

F. Textile City Seeks Urgent Relief

[18] Textile City started this application on June 28th. It sought an urgent hearing on July 2nd.

[19] At the application hearing, the parties consented to an order adjourning the application and an interlocutory order that Textile City will remain in the office space, and Reliable won’t interfere with Textile City’s business operations.

III. ANALYSIS AND DISPOSITION

A. Issue #1: did Textile City breach the sublease by utilizing the office space for a non-permitted use?

[20] Reliable argues that Textile City is or was using the office space for retail use, which it says isn’t permitted by the sublease. Textile City responds that Reliable hasn’t proven that Textile City made any “actual retail sales” at the premises.

[21] To decide this issue, I must first determine the scope of the permitted use of the office space based on the parties' intention. Then, I must determine whether Textile City utilized the office space for a non-permitted use.

1. The Scope of the Permitted Use

[22] The “overriding concern” of contractual interpretation is to determine “the parties’ intention and the scope of their understanding”. See *Earthco Soil Mixtures Inc. v Pine Valley Enterprises Inc.*, 2024 SCC 20, at para 63. Decision-makers “must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract”. See *Earthco*, at para 63. The meaning of the words of a contract can derive from reference to “various contextual factors, which include the purpose of the agreement and the nature of the relationship created by the agreement”. See *Earthco*, at para 65.

[23] The term “general office uses” isn’t defined in the sublease.

[24] I find that the meaning of the words “general office uses” in the sublease is non-retail uses. See, e.g., *Affluence Properties Inc. v The Owners, Strata Plan LMS 2765*, 2020 BCCRT 175, at para 20.

[25] There are no other retailers in the adjacent premises. It’s common sense that retail use can impact a rented space: it can affect property values, there may be nuisances to

the neighbours, and the landlord may be marketing the building to other tenants as only office space.

[26] Textile City is a wholesale distributor of linens. For years, it used the warehouse and office space as a showroom for its retail clients, which are buying in bulk. The permitted use of both spaces, together, was “general office uses and the storage, warehousing and distribution of textiles and fabrics”. It makes sense that Reliable intended to rent office space to Textile City, to support Textile City’s use of the warehouse space as a showroom.

[27] When Textile City stopped renting the warehouse, it used the office space as a showroom for its wholesale clients (which Reliable agrees is a permitted use). But that didn’t change the parties’ intention that the office space would be used only for non-retail uses: a showroom for wholesale clients and offices to support the administration of Textile City’s business. As a result, Textile City has breached the sublease if it uses the office space as something other than a showroom and office.

2. Textile City’s Use of the Office Space

[28] Reliable argues that Textile City has been operating a retail business from the office space by selling linens to consumers, not just wholesale clients. It submits that “retail” means “selling in small quantities” , or to “deal with consumers”. See *Buchman & Son Lumber Co. Ltd. v Ontario (Regional Assessment)*, 1982 CanLII 3239 (Ont Div Ct), at paras 7-9.

[29] Textile City doesn't dispute this definition. But, again, it says that Reliable hasn't proven that Textile City was making retail sales from the office space.

[30] I agree with Reliable. The overwhelming evidence is that Textile City was selling linens to consumers from the office space:

- its Facebook page promoted a “Bedding Outlet Sale!” and “Samples and Overstock Blowouts!” up to “60% off”
- its Instagram page advertises “Weekly SALES open every Thursday Friday and Saturday” of “Premium Bedding at UNBEATABLE PRICES!”
- in April 2024, Textile City’s Facebook account had a video advertising a sale the following weekend—the ad said “So, why not transform your bedroom into a haven of luxury?”, and included hashtags like #internationalstudents, #bramptonmoms, #etobicokemoms, and #torontomoms
- an influencer posted a video to their Instagram account promoting a “Warehouse Sale” of factory samples and overstocked products at Textile City’s location
- the front door to the 1st floor of the premises has a payment methods decal (i.e., American Express, MasterCard, Visa, and Interac)

- as of July 2024, Textile City was displaying items for sale on shelves and the walls that look like how a retailer might display products (e.g., there is a wall display of assorted brands and sizes of pillows)
- in contrast, the showroom on the 2nd floor has products displayed in a haphazard manners, with items strewn on beds or the floor
- items were marked “CLEARANCE!!! CLEARANCE!!!”, with the sale price
- there was a sign encouraging customers to follow Textile City on social media (“Follow Us LIKE US and Tag Us”)

[31] I found Textile City’s explanation of this evidence to be lacking in credibility. First, Textile City tried to explain away the social media posts by saying they’re outdated. But it admitted that one of them was from April 2024. It also doesn’t make clear what it means by “outdated”—it suggested that the April 2024 ad was “outdated”, which leaves the strong impression that the other ads are from around then or at least since it subleased the office space.

[32] In any event, Textile City doesn’t deny that it has been holding sample sales. Though Textile City says that these sales are for wholesale customers, the hashtags and words on its April 2024 ad suggest that it’s marketing to consumers (i.e., students and moms, with bedrooms). It’s also hard to see how an Instagram influencer is

marketing to wholesalers given the content of the video—the more plausible explanation is that these ads are targeting consumers.

[33] Second, Textile City says that the 1st floor of the office space is a showroom for its wholesale customers, and the products are to allow those clients to “view, feel, and inspect” the quality of the samples. But there would be no reason to advertise sale prices or describe the items as “clearance” if they were solely samples for retailers to inspect.

[34] Finally, Textile City says the payment decal is for its wholesale customers. I don’t find this explanation believable—wholesale customers don’t need to be persuaded by a door sticker that the company they’re dealing with takes various forms of payment. In my experience, wholesale customers usually pay an invoice by cheque or bank-to-bank transfer, not point of sale. This sticker is often seen on the door of retailers.

[35] As a result, I find that Textile City breached the sublease: it utilized the premises for a non-permitted use.

B. Issue #2: did Reliable waive its right of forfeiture by invoicing for and accepting rent payments until August 2023

[36] Textile City argues that Reliable’s acceptance of the Base Rent for May, June, and July 2024 waives its right of forfeiture. Reliable argues that it only accepted the rent due and owing to it until the sublease ended.

- [37] After the first default notice in late April, Textile City paid the Base Rent for May 2024. Reliable accepted the payment, though it suggested that the payment was being used to set-off arrears for the Additional Rent that it was invoicing for since October 2023.
- [38] On May 30, 2024, Reliable delivered an invoice for the June 2024 rent. Textile City paid the Base Rent. The next day, Reliable advised Textile City that “no rent accepted for the month of August according to the agreement for the last month of the contract between Textile Cith [sic] and Reliable Logistics.” It also said it required Textile City to vacate the office space by August 31st.
- [39] On June 26, 2024, Reliable delivered an invoice for the July rent. Again, Textile City paid the Base Rent. Again, Reliable accepted the payment but warned Textile City not to pay for August.
- [40] A landlord who has the right to forfeit a lease because of the tenant’s default may waive the exercise of this right when, after the act or omission giving rise to the right of forfeiture has come to its knowledge, it does any act in which it recognizes the relationship of landlord and tenant as still continuing. See *Malva Enterprises Inc. v Rosgate Holdings Ltd.*, 1993 CanLII 8675 (Ont CA), at para 27.
- [41] Reliable responds that it needed to continue subletting the office space to Textile City as the notice of termination was effective on August 31st. As a result, its

acceptance of the Base Rent for that period wasn't recognition of a continuing relationship beyond the termination date.

- [42] I agree with Reliable. It's delivery of the invoices for the interim period, and its acceptance of the Base Rent, didn't signify that the sublease would continue past September. Reliable's repeated warnings to Textile City not to pay the August rent support that view.

C. Issue #3: should Textile City be granted relief against forfeiture based on the parties' conduct?

- [43] When a landlord is trying to enforce a right of forfeiture, the tenant may apply to the court for relief, and the court may grant such relief the court thinks fit. See *Commercial Tenancies Act*, s 20(1). See also *Courts of Justice Act*, RSO 1990, c C.43, s 98. The court has tended to exercise its discretion against forfeiture provided the landlord does not suffer serious financial loss or prejudice. See *York Condominium Corp. No. 26 v Becker Milk Co. Ltd.*, (1982) 37 OR (2d) 679 (Sup Ct); *Shah v Southdown Towns Ltd.*, 2017 ONSC 5391, at para 67.

- [44] There are three criteria for the remedy of relief against forfeiture:

- (a) conduct of the applicant and gravity of the breaches;
- (b) whether the object of the right of forfeiture in the lease was essentially to secure the payment of money (this factor isn't at issue); and

- (c) the disparity or disproportion between the value of the property forfeited and the damage caused by the breach.

See *Saskatchewan River Bungalows Ltd. v Maritime Life Assurance Co.*, [1994] 2 SCR 490 at 504.

- [45] That said, relief from forfeiture is granted sparingly. See *Hudson's Bay Company ULC Compagnie de la Baie D'Hudson SRI v Oxford Properties Retail Holdings II Inc.*, 2022 ONCA 585, at para 35.

1. Reasonable Conduct

- [46] Textile City argues that its breach of the sublease was minor. It adds that it has ceased any sample sales and social media advertising, and will abide by any court order that it continue to do so. It also argues that Reliable acted in bad faith, which favours granting this relief.

- [47] Reliable responds that the non-permitted use of the premises were so grave that the court shouldn't grant this discretionary remedy. It also argues that Textile City didn't cure its default within seven days.

- [48] I find that Textile City's breach was modest. And, since at least June 2024, it has stopped all non-permitted uses of the premises. There's no evidence that it continued retail sales after the second default notice.

- [49] Reliable has introduced no evidence of any financial loss or prejudice. There's almost no evidence, for example, that Textile City's retail customers have interfered with other tenants' use of the premises or that the sales have increased Reliable's costs in any way. Even though the sales were going on at least until April, there's no evidence that Reliable even knew about them until mid-June 2024. Though Reliable deposes that Textile City's sales interfered with its employees' ability to park during a shift change, it has introduced no evidence of any delay in production or lost income other than baldly asserting this conclusion.
- [50] Reliable argues that the breach of a use clause in a lease is a "fundamental provision" and, as a result, any breach is, prima facie, grave. See *Metro 1 Development Corporation Ltd. v Michael Garron Hospital*, 2023 ONSC 2853, at para 59, aff'd 2024 ONCA 60. First, this case doesn't hold that all breaches of a "use" provision will lead to denial of relief from forfeiture.
- [51] Second, the facts of that case make it distinguishable. The lease in that case required the plaintiff to operate a Tim Hortons restaurant. The plaintiff's agreement with Tim's ended. The defendant sought to terminate the lease. The plaintiff unsuccessfully sued for relief from forfeiture on the grounds that the defendant had negotiated a new tenancy directly with Tim's. The facts are too different to be applicable. In denying relief against forfeiture, the motion judge found that the defendants hadn't acted dishonestly or in bad faith.

[52] In contrast, I find that Reliable acted in bad faith. Since October 2023, it appears to have been on a campaign to irritate Textile City to the point that Textile City would vacate the premises voluntarily:

- Reliable tried to charge Textile City additional rent, even though there was no basis to do so in the sublease
- in April 2024, Reliable confiscated Textile City’s garbage bins (which it rents) even though KS Park has consented since 2015, under the head lease, to Textile City using the building’s common area to store the bins
- Reliable sent Textile City a notice of default that didn’t comply with section 19(2) of the *Commercial Tenancies Act*
- the notice of default raised issues that Reliable never pursued, such as alleged breaches of fire safety regulations or package delivery issues
- Reliable purported to terminate the lease based on this defective notice—it then withdrew the notice of termination through its lawyer, but Reliable then ambiguously denied having “withdrawn anything”
- in June 2024, Reliable removed Textile City’s signage from outside the building even though KS Park consented to Textile City’s signs under the head lease

- the sign was replaced by a sign for ShippingChimp, whose representative told Textile City that ShippingChimp was taking over the office space on September 1st—in response to Textile City’s inquiry, Reliable said, “We are taking over the space after August 31st or sooner if you keep up this behaviour.”

[53] Before all this started, Reliable disclosed its motive. In June 2023, Reliable notified Textile City that intended to use the premises for ShippingChimp, which it has an ownership interest in. When Textile City said it might renew the lease for the office space, Reliable emailed: “We will be exercising our right for the whole building. We are not good as landlords.” To this day, ShippingChimp is using Textile City’s mailing address.

2. Proportion

[54] Textile City argues that it’s been operating from this premises for 15 years. It submits that ordering it to vacate now for an otherwise modest breach that has since been cured would be disproportionate. The property has value to it.

[55] I agree. There’s no evidence of damage caused by the breach. So, regardless of the value, Reliable hasn’t suffered anything.

[56] As a result, it’s equitable that Textile City is granted relief from forfeiture of the sublease.

[57] There are three ancillary issues raised by Textile City that Reliable has conceded. First, I declare that Textile City need not pay Reliable any Additional Rent under section 4 of the sublease.

[58] Second, I order that Reliable shall return Textile City's garbage bins to Textile City within seven days, and declare that Textile City may place its garbage bins in the building's common area.

[59] Third, I order that Reliable shall pay \$8000 to Textile City for reinstallation of Textile City's signage within 30 days of being provided evidence of Textile City's costs.

IV. COSTS

[60] Further to the parties' agreement, I endorse an order that Reliable shall pay Textile City's costs of this proceeding, fixed in the amount of \$25,000 inclusive of fees, disbursements, and taxes.

Agarwal J

Date: October 21, 2024