IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Equirex Vehicle Leasing 2007 Inc. v. Walter,* 2025 BCSC 977

Date: 20250528
Docket: S186335
Registry: Vancouver

Between:

Equirex Vehicle Leasing 2007 Inc.

Plaintiff

And

Sergey Adereyko Walter

Defendant

Before: The Honourable Madam Justice Tucker

Reasons for Judgment

Counsel for the Plaintiff:	A. Spence
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. May 16, 2025
Place and Date of Judgment:	Vancouver, B.C. May 28, 2025

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I. Introduction

[1] The plaintiff applies to amend the style of cause to substitute “Bennington Financial Corp.” for “Equirex Vehicle Leasing 2007 Inc.” The plaintiff also seeks judgment against the Defendant Sergey Adereyko Walter in the amount of $830,556.25, as well as costs under a summary trial application in relation to its claim under a commercial lease agreement.

II. Application to Substitute Plaintiff

[2] On January 1, 2019, Equirex Vehicle Leasing 2007 Inc. was amalgamated with its parent company, Bennington Financial Services Corp. (the “Amalgamation”). The Amalgamation resulted in the formation of Bennington Financial Services Corp. Bennington Financial Services Corp. was extra-provincially registered in British Columbia on 8 January 2019. Subsequently, Bennington Financial Services Corp. changed its name to Bennington Financial Corp., and the new corporate name was extra-provincially registered in British Columbia on January 15, 2019.

[3] The application to amend the style of cause to substitute Bennington Financial Corp. as the plaintiff is allowed. For simplicity, I will simply refer to the plaintiff as the “Plaintiff” throughout these reasons.

III. Application for Summary Trial

A. The Lease Agreement

[4] On or about December 10, 2013, the Plaintiff as lessor, and Mr. Walter and New Future Enterprises Ltd. as lessees (“Lessees”), entered a standard form lease agreement (“Agreement”) for a tractor semi-truck (the “Equipment”). The Lessees were jointly and severally liable for the lessee obligations under the Agreement.

[5] The Agreement obliged the Lessees would make an initial rental payment, followed by rental payments of $4,635.32 together with applicable taxes (the “Rent”) for the remaining 59 months of the 60 month term (“Term”) of the Agreement. A failure to pay Rent by the due date would constitute a default (“Default”) under the Agreement.

[6] At the end of the Term, the Equipment was required to be returned to the Plaintiff and, if the Equipment was not returned in good condition or repair, the Plaintiff was entitled to, payable on demand as additional Rent, the amount required to place the Equipment in original condition, wear and tear excepted.

[7] The Plaintiff and Defendants also executed a Schedule B "Option to Purchase" in which they established a fair market value ("FMV") of the Equipment, agreed to be $21,158.80 plus applicable taxes, at the end of the Term.

[8] Under s. 21 of the Agreement, on Default, the Plaintiff was entitled to:

a) terminate the Agreement and issue a written notice requiring payment of all outstanding financial obligations under the Agreement in the sum of:

i. any unpaid Rent or other amounts payable; and

ii. liquidated damages in an amount equal to the present value of the aggregate of all Rent payable to the expiration of the Term, with such amounts being discounted at the rate of 6% per annum;

iii. interest at the rate of 26.82% per annum on any overdue Rent or other amounts payable; and

iv. The Plaintiff's legal fees and disbursements incurred with respect to the enforcement of the Agreement on a full substantial indemnity basis.

[9] The Defendants accepted delivery of the Equipment under the Agreement.

[10] On or about July 21, 2016, the Equipment caught fire and was rendered non-repairable.

[11] By letter dated February 21, 2017, the Plaintiff sent a demand letter asserting that the arrears owing under the Agreement had triggered a Default. The Plaintiff demanded payment owing under the Agreement. No payment was made in response to the demand or at any time since.

[12] As of June 26, 2017, the arrears owing under the Agreement amounted to $21,158.

[13] On or about November 20, 2017, New Future Enterprises Ltd. was dissolved as a corporation.

B. Notice of Civil Claim

[14] On June 4, 2018, the Plaintiff filed a notice of civil claim ("Claim") against Mr. Walter seeking damages for breach of contract based on Default under the Agreement.

[15] On or about August 28, 2018, the Insurance Corporation of British Columbia ("ICBC") denied insurance coverage with respect to Mr. Walter's claim regarding the Equipment on the basis that the fire was due to arson.

[16] On November 13, 2020, Mr. Walter filed a response ("Response") to the Claim. He denied liability and all alleged damage and loss. The Response referenced the existence of a dispute regarding the insurance policy and asserted that any damage had been caused or contributed to by the negligence of tortfeasors.

[17] The Response was filed on Mr. Walter's behalf by E. James McNeney, Q.C., as Mr. Walter's solicitor. It is Mr. McNeney's law office address as Mr. Walter's address for service.

[18] On August 13, 2019, Mr. McNeney wrote counsel for the Plaintiff, Mr. Spence, indicating that "we will not be opposing judgment", but he was having difficulties getting instructions.

[19] On January 15, 2020, Mr. Spence wrote Mr. McNeney, attaching a consent judgment for signature. In it, Mr. Spence set out the amount sought (including contractual interest) and noted:

> … In the event that we are required to proceed to an assessment of damages or a trial, further contractual interest will accumulate and my client will be relying upon the provisions of the lease agreement that entitle it to solicitor-client costs.

[20] Mr. Spence followed up regarding the possibility of a consent judgment and advancing this proceeding on numerous occasions over the following years. Mr. McNeney sent a number of responses updating Mr. Spence on the status of Mr. Walter's insurance litigation against ICBC. Mr. McNeney advised that he had not seen or heard from McNeney, but that he was in contact with Mr. McNeney's wife. Generally, Mr. McNeney responded to Mr. Spence's inquiries by updating Mr. Spence on the status of Mr. Walter's ongoing ICBC litigation.

[21] On October 19, 2021, Mr. McNeney wrote Mr. Spence, saying he understood the Plaintiff's claim was being "held in abeyance" awaiting an outcome in the ICBC litigation. In that email, Mr. McNeney indicated that he had not seen or heard from Mr. Walters since November 20, 2020, but was in communication with his wife. He advised that he would keep Mr. Spence informed regarding a possible payout in relation to the ICBC litigation.

[22] In October 2022, Mr. Spence wrote advising Mr. McNeney that he anticipated getting instructions from the Plaintiff to proceed with this litigation. On August 18, 2023, Mr. McNeney responded again, saying that he had not spoken with Mr. Walter, but was in communication with Mrs. Walter. He updated the status of the ICBC litigation and advised that he would keep Mr. Spence "in the loop".

[23] On December 12, 2023, Mr. Spence wrote Mr. McNeney, saying he had instructions to proceed, that the ICBC litigation was a collateral issue, attaching a list of documents, and demanding a list of documents.

[24] The next correspondence identified in the affidavit, is Mr. Spence's January 10, 2025, service on Mr. McNeney of a notice of intention to proceed in this litigation.

[25] On January 29, 2025, Mr. McNeney emailed Mr. Spence. The email solely provided an update on the status of Mr. Walter's ongoing ICBC litigation.

[26] On February 10, 2025, Mr. Spence wrote Mr. McNeney, again saying that the ICBC litigation was a collateral matter. He advised that the Plaintiff had instructed him to proceed in this action.

C. Summary Trial

[27] The notice of application for summary trial ("Application") was filed on April 2, 2025, and served on Mr. Walter by service to Mr. McNeney's office in accordance with the Response.

[28] No response to the Application was filed on behalf of Mr. Walter.

[29] Mr. McNeney appeared at the outset of the hearing on the Application to advise the Court that he had no instructions to appear on the Application. Mr. McNeney did not dispute the service of the Application and did not dispute that he remains counsel of record in this proceeding.

[30] I am satisfied that the matter is appropriate for summary trial. While the Response sets out broad denials with respect to the Claim, there is no factual disputes arising on the evidence on the Application.

[31] Mr. Spence has provided the Court with the decision of Mr. Justice Voith in *Equirex Vehicle Leasing 2007 Inc. v. Verhage*, 2013 BCSC 1142 [*Verhage*]. While s. 21 of the lease agreement at issue in *Verhage* is not reproduced in the reasons, it is evident that the default term was materially similar to s. 21 of the Agreement.

[32] With respect to the default clause in the *Verhage* agreement, Mr. Justice Voith found as follows:

> [31] The analysis and comments of Justice Gropper [in *AMT Finance Inc. v. Gonabady*, 2010 BCSC 278 [*AMT*]] are apposite. The Lease Agreement contemplates, throughout its various provisions, multiple potential breaches. As in the *AMT* decision, Equirex can, either individually or collectively, enforce the full spectrum of remedies available to it in clause 21 of the Lease Agreement. According to clause 21, Equirex was entitled to do so if the lessee failed to observe any term under the Lease Agreement or, for example, if it failed to maintain the insurance it was required to. This spectrum of possible breaches would clearly result in varying levels of damage to Equirex or, potentially, no actual financial damage. Applying the principles expressed in *Dunlop Pneumatic Tyre Co. Ltd. v. New Garage and Motor Co. Ltd*., [1915] A.C. 79 and quoted in *AMT* at para. 41, I am satisfied that clause 21, the remedy clause in the Lease Agreement, is a penalty.
>
> [32] At the same time, I do not consider that it is oppressive or extravagant in relation to what the plaintiff would be entitled to at common

> law. As in *AMT*, the Lease Agreement provides for accelerated payment of the remaining rental payments due under the agreement. However, the Lease Agreement provides that such accelerated payments are to be discounted for their present value (as was the case in AMT).
>
> [33] The Lease Agreement also provides for a 15% "Administration Fee". While this percentage is fixed, it is an amount that will vary with the Plaintiff's loss. In addition, the common law does allow parties, in given instances, to claim their overhead or internal administrative expenses.
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> [34] The lease agreement also enables the plaintiff to seek, on a "full indemnity basis", the legal costs it incurred "as a result of the default" (Lease Agreement at clause 21(d)(vi)). Absent special circumstances, a court will enforce such a clause; *AMT* at para. 101; *Kittirath v. Doan*, 2009 BCSC 702 at para. 37.

[33] As already noted, s. 21 of the Agreement is at least materially similar to the term of the *Verhage* agreement considered by Mr. Justice Voith. I reach the same conclusion here with regard to the Agreement. That is, although s. 21 of the Agreement is a penalty provision, I find that it is not oppressive or extravagant in relation to the Plaintiff's entitlement under the common law. As in *Verhage*, it includes a discount for present value. Further, in this case, the Plaintiff has not claimed an administration fee.

[34] Accordingly, the Plaintiff has proven: the existence of the Agreement, a Default for purposes of s. 21 of the Agreement, and an entitlement to advance its claim for damages in accordance with s. 21 of the Agreement.

[35] The Application is supported by the affidavit of Stephanie Wurthman.

[36] In her affidavit, Ms. Wurthman sets out and explains a number of calculations. At para. 20, she sets out a calculation of the total amount owing under the Agreement as of June 26, 2017. The calculation includes the balance of Rent payable from June 26, 2017 through to the end of the Term and the agreed FMV of the Equipment at the close of the Term (with a 6% discount, as provided for under s. 21 of the Agreement, to calculate the present value), as well as the arrears outstanding as of June 26, 2017).

[37] The total amount as calculated under para. 20 amounts to $124,672. I accept that calculation as the amount owing as of June 26, 2017. In doing so, I am

specifically agreeing that the FMV fairly represents the amount payable as additional Rent in light of the fact that the fire rendered the Equipment unrecoverable. That is, I accept that the FMV represents the amount that the Plaintiff would have had to spend to obtain equivalent equipment (i.e., in the condition the Equipment would have been, accounting for wear and tear) at the end of the Agreement.

[38] At para. 22, Ms. Wurthman has set out, on a calendar year by calendar year basis, the additional contractual interest (at the stipulated rate of 26.82%) payable in respect of that $124,672.15. This calculates out to $830,556.25 owing as of March 31, 2025. She calculates the per diem interest after March 31, 2025 at $572.43.

[39] As was forthrightly flagged by Mr. Spence, there is a possible mitigation issue, notwithstanding the destruction of the Equipment. The mitigation issue relates to the accrued contractual interest. This too was the subject of comment by Mr. Justice Voith in *Verhage*:

> [25] A further aspect of taking reasonable steps to mitigate a party's loss consequent on a breach is the requirement to commence and prosecute an action with reasonable dispatch; *Rohde v. Lamontagne*, [1977] S.J. No. 34 at paras. 4 and 8 (Q.B.); *Appliance Service Co. v. Sarco Canada Ltd*., [1974] F.C.J. No. 201 at para. 35 (T.D.). This obligation, and its importance, becomes self-evident when a plaintiff has the contractual right to charge almost 27% interest on the outstanding balances it claims.
>
> [26] The application of these two considerations establishes that a certain amount of the interest which Equirex now claims should not have accrued. First, the proceeds from the sale of the Equipment should have been applied to the amount the defendants owed the plaintiffs approximately five months earlier that it was. Second, the whole of this action, assuming it proceeded at the same pace as it did would have been determined about five months earlier than it was.

[40] Here, there is no question but that the Plaintiff filed the Claim in a timely fashion and sought a consent judgment in a timely fashion.

[41] I am also satisfied that Mr. Walter is the party that sought to have the Claim held in abeyance by the Plaintiff while the ICBC litigation was pursued. This is consistent with Mr. McNeney's October 19, 2021 email and with the fact that Mr. McNeney's general response to Mr. Spence's correspondence regarding the status

of this proceeding was to provide Mr. Spence with an update regarding the status of Mr. Walter's ICBC litigation.

[42] Further, on January 15, 2020, Mr. Spence specifically drew Mr. McNeney's attention to the fact that contractual interest was accumulating while the Claim sat.

[43] Nonetheless, I am of the view that the Plaintiff's duty to mitigate its loss under the Agreement was such that the Claim ought to have proceeded in keeping with Mr. Spence's December 12, 2023 letter (stating that he had instructions to proceed and demanding a list of documents). The correspondence before me does not explain the basis for the further delay after that point.

[44] Ms. Wurthman's calculations indicate that the amount owing (inclusive of interest) under the Agreement as of December 31, 2023 was $613,930.16. In the circumstances, I conclude that the amount of interest that the Plaintiff claims for the period following December 31, 2023, ought not to have been allowed to accrue.

IV. Disposition

[45] Accordingly, the notice of application is allowed, and the Plaintiff is found to be entitled to the following:

a) An order amending the style of the cause to substitute "Bennington Financial Corp." for "Equirex Vehicle Leasing 2007 Inc." as plaintiff;

b) Judgment against Mr. Walter in the amount of $613,930.16; and

c) Judgment against Mr. Walter for the Plaintiff's legal costs on a full substantial indemnity basis (as assessed by the Registrar).

"Tucker J."