

- [4] The Building was owned by the Respondents Vince Alati (“Vince”) and Iolanda Alati (“Iolanda”) as joint tenants. Vince and Iolanda were both officers and directors of Alati Auto Truck Services Ltd. (“Alati Auto Truck”). Vince and Iolanda operated Alati Auto Truck out of another unit in the Building until Vince died on December 1, 2023. Once Vince died, Iolanda became the sole owner of the Building through her right of survivorship.

Lease Agreement

- [5] On December 5, 2020, Tony, on behalf of MacGyver and Vince, on behalf of Alati Auto Truck, signed the Lease Agreement. The following terms of the lease agreement are relevant to the dispute in the Application:

- The Lease would run for 2 years from January 1, 2021 to December 31, 2022 (the “Lease Term”).
- The Tenant may install in, upon, or about the said premises any signs and advertising material (One billboard sign at the front of the building and one directional sign on the building front) which shall remain the property of the Tenant, which the Tenant may remove upon the expiration of the Lease, provided that all damage caused is repaired and the premises is left in good repair. All signs and location(s) are to be approved beforehand in writing by the Landlord (such consent not to be unreasonably withheld) and must conform with all applicable governmental bylaws and codes.
- Provided that the Tenant is not at any time in default of any covenant within the lease, the Tenant shall be entitled to renew this lease, for an additional term of three years, followed by an additional term of five (5) years, on written notice to the Landlord given not less than three (3) months prior to the expiry of the current term at 5% rental increase for the first term and at a rental rate to be negotiated for the second term. In the event that the Landlord and the Tenant cannot agree on the fixed minimum rent at least two months prior to expiry of the current lease, the fixed minimum rent for the renewal period shall be determined by arbitration in accordance with the Arbitration Act or any successor or replacement act.

- [6] On December 16, 2020, Samar asked Vince to sign a letter that she prepared requesting written approval from Alati Auto Truck to permit MacGyver to put up 5 signs at the Building. Vince signed the authorization, permitting MacGyver to place signs at:

- 1) Upper West Side of the Building;
- 2) Front west wall building area;
- 3) Pylon Sign;
- 4) Front building roof; and

5) Above our entrance door.

[7] On January 11, 2021, Samar prepared another letter for Vince’s signature to authorize the “movement of the Alati Truck Repair signs at the front of the building, to the left side of the front façade, and place the MacGyver sign on the right side, next to the current sign. Any costs associated with movement of signage, will be carried by MacGyver Collision, and will not be the responsibility of Vince Alati.” Once again, Vince signed this letter.

First Renewal

[8] On September 15, 2022, Samar gave Vince a handwritten letter indicating MacGyver’s intention to “renew the lease for the additional 3 years as agreed on the Lease agreement”.

[9] On November 1, 2022, Tony wrote to Vince, requesting that Alati not increase their rent by 5% on January 1, 2023 as set out in the lease agreement. Tony’s letter stated:

I would like to inform you that we would like to exercise the renewal option that we have on the lease.

I am really hoping that you can keep the same rate for the next term, and not increase our rent. Especially going into a recession and the effect that this will have on everyone.

[10] Samar’s affidavit alleges that sometime between September 15, 2022 and November 1, 2022, Iolanda told her that Alati would not be increasing MacGyver’s rent by 5% on January 1, 2023.

[11] This is denied by the Respondents in a very indirect way. The Respondents have filed the affidavit of Christina Corbo, the granddaughter of the Respondents Vince and Iolanda. Christina was the real estate agent who acted for Vince and Iolanda when the Lease was signed. She has personal knowledge of some matters in this Application, but most of her affidavit is based on information and belief. In her affidavit, she states that “Iolanda never said she would not raise the Applicant’s rent”. This is not something that Christina could personally know, since there is no allegation that she was present for this alleged statement.

[12] Iolanda has also sworn an affidavit. It is only three paragraphs, and states: “I have reviewed the Affidavit of my granddaughter, Christina Corbo, sworn November 12, 2024, with Christina and my lawyer, and agree with and confirm its contents and incorporate them by reference to my Affidavit”.

[13] The Applicant legitimately complains that Iolanda’s affidavit does not provide her own specific recollection and does not explicitly deny Samar’s allegation. Since Iolanda is the only person who could testify about any discussion she had with Samar, the denial should have come from Iolanda, not from Christina, and Iolanda’s general adoption of Christina’s affidavit is not sufficient for the purposes of testimony.

- [14] Samar's affidavit further states that she handed Vince the letter of November 1, 2022 on November 1, 2022. Based on the wording of that letter, there was clearly no prior agreement that Vince and Iolanda would not increase the rent. If there had been such an agreement or understanding, the November 1, 2022 letter would not have stated: "I am really hoping that you can keep the same rate for the next term, and not increase our rent."
- [15] Thus, whatever conversations Iolanda and Samar had prior to November 1, 2022, I find that there was no agreement or promise not to increase the rent.
- [16] Samar's affidavit then states that on November 22, 2022 "Iolanda told me that Alati would leave the price as is but that the Lease would go month to month." Samar states that she told Iolanda that MacGyver had the right to renew, and that Alati did not have the right to go month-to-month.
- [17] On January 13, 2023, Samar emailed Christina and copied Vince with a document called Lease Extension Agreement, which was prepared by her real estate lawyer. This was sent because MacGyver had not received a confirmation from Christina or Vince about the lease extension. The email stated:
- I wanted to follow up with you about our lease extension. As you know, we require something in writing about the lease extension. Here is a document that our lawyer prepared that requires your signature...Could you please sign and return at your earliest convenience?
- [18] Clause C of the Lease Extension Agreement provided that the rent would remain \$7,500 per month. It stated:
- Pursuant to subsequent verbal discussions and agreements between the Landlord and the Tenant, the Landlord agreed that the gross rent for the Extension Term shall remain the same as the gross rent paid during the first two (2) years of the Term;
- [19] On January 15, 2023, Christina responded by email:
- As per our last conversation, the landlords are exercising their right to not renew this agreement upon its two year expiry. We will move into a month-to-month lease based on the SAME TERMS as previous with the current rent being unchanged. No rental increase is to be applied for the duration of the tenancy. This has been agreed upon and understood by all signing parties for Alati Auto Truck Services Ltd.
- [20] On January 18, 2023, the lawyer for MacGyver replied to Christina's email, referencing the clause of the December 2, 2020 Lease Agreement that stated "the Tenant shall be entitled to renew this lease, for an additional term of three years, followed by an additional term of five (5) years, on written notice to the Landlord given not less than three (3) months prior to the expiry of the current term at 5% rental increase for the first term and at a rental rate to be negotiated for the second term". Her email stated:

Not only is our Client entitled to this three (3) year extension but an additional five (5) years after the expiry of this extension term.

The Landlord simply does not have the right to elect to not extend the term and convert to a month-to-month lease. My client will pay the 5% increase in gross rent bringing the total gross rent to \$94,500 per annum or \$7,875 per month. The request to keep the gross rent at the existing rate was merely a request for an indulgence and not a waiver of our Client's right to extend the Lease...Absent written confirmation from the Landlord that they will honour the extension provision in the Lease, we will be left no choice but to bring an action in court seeking an order that the Lease terms must be enforced.

- [21] On January 19, 2023, Christina replied to the lawyer's email, complaining that Tony and Samar had been harassing Vince to take advantage of his "declining health and memory issues". Christina then advised that MacGyver could not extend the lease because it was in breach of the terms of the lease by installing "3 additional signs without authorization or consent". She stated:

Your client chose to breach this covenant, putting them in default of this covenant within the lease agreement. Because of this the tenants are no longer entitled to renew the lease for an additional 3 year term. The landlords are now exercising their right to not renew the lease at the expiry of the two year term and they are choosing to move into a month-to-month agreement based on the same terms as previous.

- [22] On January 19, 2023, MacGyver's lawyer responded, enclosing the letters signed by Vince on December 16, 2020 and January 11, 2021 authorizing the additional signs.

- [23] On January 23, 2023, Christina emailed MacGyver's lawyer with an offer to extend the lease term by 3 years on the condition that:

The tenants must acknowledge that they are currently in default of the three year term by not complying with the rental increase structure as agreed. Prior to the expiry of the first two year term they provided cheques up to the end of March that do not include the agreed upon 5% increase...Because of this default, at the end of the three year term the tenants will automatically go into a month-to-month agreement.

- [24] On January 24, 2023, MacGyver's lawyer responded, rejecting this condition. She stated:

In short, the Landlord's offer to allow the Tenant to extend for three years followed by a month-to-month lease is rejected. My Clients are not negotiating a settlement here. They are simply asking that the Lease terms, which you helped negotiate and draft, are honoured.

- [25] Christina did not respond to the January 24, 2023 email, and on January 30, 2023, MacGyver’s lawyer emailed Christina to advise that her client had forwarded updated cheques with the 5% rent increase and the additional \$375 for January’s rent. She reasserted MacGyver’s position that they remained entitled to a further 5 year lease extension at the end of the 3 year lease extension.
- [26] On June 12, 2023, the lawyer for Alati Auto Truck wrote to the lawyer for MacGyver to inform him that Vince Alati has no authority to bind Alati Auto Truck and that if MacGyver needed to speak to the Landlord, he should communicate with Iolanda. He also advised MacGyver’s lawyer that there would be no extension of the lease.
- [27] On June 15, 2023, the lawyer for Alati Auto Truck wrote to the lawyer for MacGyver to advise that her clients “do not dispute the present lease (expiry Dec 2025). Your clients asked for an extension and that is what they are denying.”
- [28] The lawyers exchanged further emails, but were not able to resolve the dispute regarding a further 5 year lease commencing January 2026. As such, the Applicant issued this Application on November 10, 2023.
- [29] Vince passed away on December 1, 2023.

Analysis

- [30] The Applicant contends that it is entitled to a further 5 year lease extension commencing January 2026 in accordance with the clear wording of the original December 5, 2020 Lease Agreement.
- [31] The Respondent contends that the Applicant was in breach of the terms of the December 5, 2020 Lease Agreement, and is therefore no longer entitled to the Lease extension.
- [32] The Respondent contends that the Applicant has breached the Lease Agreement in two ways:
- a. By installing more than the two signs permitted by the Lease Agreement; and
 - b. By not paying the 5% rent increase in the January 2023 rent payment.
- [33] In support of their respective positions, each party has filed affidavit evidence relating to the negotiations that led up to the signing of the December 5, 2020 Lease Agreement. Each party has indicated why a particular term was of significance to them, and why they wanted certain terms included in the agreement. None of this is admissible or relevant.
- [34] When interpreting any contract, the “overriding concern is to determine the intent of the parties and the scope of their understanding”: by reading “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.”: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, at para. 47. The primary object of contract

interpretation is to give effect to the intention of the parties at the time of contract formation: *Bhasin v. Hrynew*, 2014 SCC 71, at para. 45.

- [35] In *Plan Group v. Bell Canada*, 2009 ONCA 548, 96 O.R. (3d) 81, at para. 37, the Court of Appeal for Ontario held that a commercial contract should be interpreted: (i) as a whole, by giving meaning to all the terms of a contract to avoid an interpretation that would render any term ineffective; (ii) by determining the intention of the parties with reference to the words used in the contract; (iii) with regard to objective evidence of the factual matrix underlying the negotiation of the contract, but without reference to subjective intention; and (iv) to the extent that there is any ambiguity in the contract, in a fashion that accords with sound commercial principles and good business sense and that avoids a commercial absurdity.
- [36] The Court of Appeal has cautioned against looking to negotiations to interpret a contract. The basic principles of commercial contract interpretation were summarized in *Salah v. Timothy's Coffees of the World Inc.*, 2010 ONCA 673, 268 O.A.C. 279, at para. 16:

When interpreting a contract, the court aims to determine the intentions of the parties in accordance with the language used in the written document and presumes that the parties have intended what they have said. The court construes the contract as a whole, in a manner that gives meaning to all of its terms, and avoids an interpretation that would render one or more of its terms ineffective. In interpreting the contract, the court must have regard to the objective evidence of the “factual matrix” or context underlying the negotiation of the contract, but not the subjective evidence of the intention of the parties.

- [37] See also: *Eli Lilly & Co. v. Novopharm Ltd.*, 1998 CanLII 791 (SCC), [1998] 2 SCR 129, at paras. 54-55; *The Canada Trust Company v. Browne*, 2012 ONCA 862, 115 O.R. (3d) 287, at para. 71.
- [38] In *Weyerhaeuser Company Limited v. Ontario (Attorney General)*, 2017 ONCA 1007, the Court stated, at para. 112:

Canadian common law generally treats evidence of the parties’ specific negotiations as inadmissible for purposes of interpreting a contract ... evidence of the factual matrix cannot operate as a kind of alternate means by which an adjudicator constructs a narrative about what the parties *must have* discussed or intended in their negotiations. In other words, evidence of the factual matrix cannot be used to do indirectly that which the principles of contract interpretation do not permit doing directly. [Emphasis in original; citations omitted.]

- [39] This principle was also affirmed by the Supreme Court of Canada in *Sattva Capital Corp.*, at paras. 57 and 59, where the Court explained the limitation of “surrounding circumstances” as an aid to contractual interpretation:

While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement... The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract... While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement. [Citations omitted.]

- [40] In the present case, the “words used their ordinary and grammatical meaning” are clear and unambiguous. The first issue is whether MacGyver was “at any time in default of any covenant within the lease”, thus disentitling MacGyver to the extensions expressly contemplated by the Lease.

Number of Signs

- [41] The Respondent argues that the Lease Agreement is clear: MacGyver was permitted only two signs: “One billboard sign at the front of the building and one directional sign on the building front”. MacGyver installed five signs on the building.
- [42] MacGyver points to the agreement signed by Vince on December 16, 2020, permitting MacGyver to install five signs on the building. There is no dispute that these authorizations are authentic.
- [43] Having expressly authorized the additional signs, the Respondent cannot now rely on the additional signs to argue that MacGyver breached the December 5, 2020 Lease Agreement.
- [44] In this regard, I note that the Respondents made no complaint about the signs until January 19, 2023, when Christina relied on the additional signs as a basis for denying the 3 year lease extension. It is clear that, at the time that she wrote the email, she was not aware that the signs had been authorized by Vince.
- [45] Christina's affidavit states that Vince complained about the additional signs because of the damage they did to the bricks. Even if this were true, and Vince regretted authorizing the additional signs after they were installed, it does not change the fact that they were authorized by Vince. Moreover, the Lease Agreement provides that all damage caused by the signs is to be repaired by the Tenant at the expiration of the lease, and the premises left in good repair. The Lease Agreement clearly contemplated that the installation of the signs would cause some damage, and this is not a violation of the Lease Agreement.
- [46] Christina's affidavit also states:

At this point, Vince's health was also rapidly deteriorating. Several specialists and family doctors heavily documented his health and

confirmed that his memory and general competency were significantly impaired.

- [47] I agree with the Applicant that this statement is inadmissible hearsay. Christina does not identify the source of her information and belief as required by Rule 39.01(5). She does not append any of the “heavily documented” medical reports she purports to rely on. The dates of the alleged reports are not provided. This statement is clearly contentious.
- [48] It is not clear whether Christina is suggesting that Vince was not competent when he signed the authorization in December 2020, but if she is, she has failed to provide any admissible evidence to support that position. I note that s. 2 of the *Substitute Decisions Act, 1992*, S.O. 1992, c. 30 provides that “A person who is eighteen years of age or more is presumed to be capable of entering into a contract.” The onus is on Christina to rebut that presumption, and she has failed to do so. I also note that it was not until June 12, 2023, that the lawyer for Alati Auto Truck wrote to the lawyer for MacGyver to inform him that Vince Alati no longer had authority to bind Alati Auto Truck.

Five Percent Increase

- [49] The Applicant tried to renegotiate the Lease Agreement so that they could have the three year extension without the 5% rent increase. On the other hand, the Respondent tried to renegotiate the Lease Agreement so that the lease extension would go month-to-month without the 5% increase. Neither side agreed to the other’s proposed amendment, and so the Lease Agreement remained unchanged.
- [50] The Applicant may have been persistent, although the only written correspondence relating to this appears to be the letter of November 1, 2023 requesting that the rental rate remain the same and Samar’s email to Christina and Vince of January 13, 2023. In any event, it was not a violation of the Lease Agreement to make that request. I agree with the lawyer for MacGyver who wrote to the Respondents’ lawyer on January 18, 2023 that, “the request to keep the gross rent at the existing rate was merely a request for an indulgence and not a waiver of our Client’s right to extend the Lease...”. MacGyver’s lawyer also confirmed in that letter that her client agreed to pay the 5% increase in gross rent.
- [51] The Respondent states that the Applicant did not pay the increased rent for three months.
- [52] The Applicant’s evidence is that on January 30, 2023, they forwarded updated cheques with the 5% rent increase and the additional \$375 for January’s rent. The Applicant takes the position that they paid the 5% increase within days of Christina confirming that the increase would apply to the extended term.
- [53] Either way, the Respondent argues, the \$375 shortfall in January 2023 was a breach of the Lease Agreement, and disentitled the Applicant to the extensions.
- [54] In my view, this brief delay in paying 5% of the rent was not a breach in the circumstances of this case. Christina emailed the Respondents on January 15, 2023, stating:

As per our last conversation, the landlords are exercising their right to not renew this agreement upon its two year expiry. We will move into a month-to-month lease based on the SAME TERMS as previous with the current rent being unchanged.

- [55] This position was somewhat confusing, since the Landlord did not have the right to not renew the agreement, but Christina was suggesting that she had previously told Tony and Samar that the current rent would be unchanged. In these circumstances, the Applicant got their lawyer involved, and paid the additional \$375 for January as soon as the parties' respective positions became clear. I do not accept that this minor delay in these circumstances amounted to a "default of any covenant within the lease".

Relief From Forfeiture

- [56] In the alternative, if either the additional signs or the late payment of \$375 was a breach of the Lease Agreement, I accept the Applicant's position that this is an appropriate case to grant the Tenant relief from forfeiture.
- [57] Under s. 98 of the *Courts of Justice Act*, R.S.O., 1990, c. C. 43 (the "CJA") and s. 20 of the *Commercial Tenancies Act*, R.S.O. 1990 (the "CTA"), the Court has the discretion to grant a tenant relief from forfeiture against the loss of their interests or rights under a lease.
- [58] The relevant provisions provide as follows:

Courts of Justice Act, s. 98

A court may grant relief against penalties and forfeitures, on such terms as to compensation or otherwise as are considered just.

Commercial Tenancies Act, s. 20

Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the lessee may, in the lessor's action, if any, or if there is no such action pending, then in an action or application in the Superior Court of Justice brought by the lessee, apply to the court for relief, and the court may grant such relief as, having regard to the proceeding and conduct of the parties under section 19 and to all the other circumstances, the court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the court considers just.

- [59] In *2324702 Ontario v. 1305 Dundas*, 2019 ONSC 1885, at para. 15, Nakatsuru J. summarized the legal principles as follows:

The power to relieve from forfeiture is discretionary, fact-specific, and granted sparingly. The onus lies on Remix [the party seeking relief from forfeiture]. It must show that enforcing the contractual right of forfeiture would lead to an inequitable consequence on Remix. Factors to consider include the conduct of Remix, the gravity of the breach, the disparity between what is forfeited and the damage caused by the breach: *Saskatchewan Bungalows Ltd. v. Maritime Life Assurance Co.*, 1994 CanLII 100 (SCC), [1994] 2 S.C.R. 490, at para. 32. This assessment is based on a reasonableness standard: *Ontario (Attorney General) v. McDougall*, 2011 ONCA 363, at paras. 87 to 92. In the context of a default due to non-payment of rent, other specific factors to consider are whether the tenant comes to court with clean hands; whether there is an outright refusal to pay rent; the extent of the rental arrears; and whether the landlord has suffered serious loss due to the delay in paying rent: *Michele's Italian Ristorante Inc. v. 1272259 Ontario Ltd.*, 2016 ONSC 4888, at para. 36.

- [60] In *Rahawanji v. Gwendolyn Shop (1973) Ltd.*, 2011 ONCA 771, at paras. 2-3, the Ontario Court of Appeal stated that relief from forfeiture is a remedy which is not granted as a matter of course, particularly regarding commercial leases. The Court adopted this statement by Doherty J.A. in *Ontario (Attorney General) v. 8477 Darlington Crescent*, 2011 ONCA 363, at para. 93:

Relief from forfeiture is very much the exception and will be granted only where the party seeking that remedy clearly makes the case that forfeiture would be an inequitable and unjust order in all the circumstances.

- [61] In exercising its discretion to grant relief from forfeiture, a court must consider three factors: (i) the conduct of the Applicant; (ii) the gravity of the breach; and (iii) the disparity between the value of the property forfeited and the damage caused by the breach: *Kozel v. The Personal Insurance Company*, 2014 ONCA 130, at para. 31; *Shah v. Southdown Towns Ltd.*, 2017 ONSC 5391, at para. 31.
- [62] In my view, if there was a breach of the Lease Agreement by the Applicant, this is an appropriate case in which the relief from forfeiture should be granted to the Applicant.
- [63] There is no suggestion that the Applicant has ever failed to pay its rent on time during the almost five years that it has been a tenant. The evidence in this case indicates that the Applicant confirmed its intention to exercise its 3 year renewal option on September 15, 2022 and November 1, 2022. There were negotiations between the parties – with the Applicant asking that the rent not be changed and the Respondent taking the position that the renewed lease would be month-to-month at the same rent – which resulted in some misunderstanding and uncertainty. When the parties' positions crystalized in mid-January 2023, the Applicant's counsel confirmed that the Applicant was prepared to pay the 5% increase. Replacement checks were provided promptly by the end of January 2023, and the Applicant made up the 5% shortfall (\$375) for the month of January 2023.

- [64] The Applicant conducted itself reasonably and in good faith, the breach was minor – a 5% shortfall (\$375) paid by the end of the month – and the damage caused by this minor breach was vanishingly small in the context of total gross rent of \$94,500 per annum. Moreover, the lease is extremely valuable to the Applicant, which has spent approximately \$159,000 in leasehold improvements, including drywall, framing, ceilings, washrooms, flooring and signage.
- [65] With respect to the additional signs, the Applicant acted reasonably and in good faith in seeking and obtaining Vince’s consent to install five signs, and reasonably relied on his authorization to install these signs. If the signs caused any damage to the brick, the Applicant acknowledges that it is responsible for the cost of repairs at the expiration of the Lease in accordance with the terms of the Lease Agreement.

Conclusion

- [66] This Court Orders:
- [67] The Applicant has a five year renewal right at the end of the current Lease pursuant to the terms of the Agreement to Lease dated December 3, 2020.
- [68] If the parties are not able to agree on costs, the Applicant may serve and file costs submissions of up to three pages, plus costs outline and any offers to settle, within 20 days of the release of this decision, and the Respondents may file responding submissions on the same terms within a further 15 days.

Justice R.E. Charney

Released: June 9, 2025

CITATION: 961838 Ontario Ltd. v. Alati, 2025 ONSC 3435

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

961838 ONTARIO LTD. o/a MACGYVER
AUTOBODY & COLLISION

Applicant

– and –

VINCENZO ALATI, IOLANDA ALATI, and ALATI
AUTO TRUCK SERVICES LTD.

Respondents

REASONS FOR DECISION

Justice R.E. Charney

Released: June 9, 2025