

COURT OF APPEAL FOR ONTARIO

CITATION: Mr. Zagros Management Inc. v. Yulee Developments Inc., 2025  
ONCA 852  
DATE: 20251208  
DOCKET: COA-25-CV-0283

Gillese, Pepall and Zarnett JJ.A.

BETWEEN

Mr. Zagros Management Inc.

Applicant (Respondent/  
Appellant by way of cross-appeal)

and

Yulee Developments Inc.\*, 11254316 Canada Inc., Shadi Zamani  
and 1000884194 Ontario Inc.

Respondents (Appellant\*/  
Respondent by way of cross-appeal)

Gasper Galati and Dylan Baker, for the appellant/respondent by way of cross-appeal

Daniel Hamson and Sara Ray Ramesh, for the respondent/appellant by way of cross-appeal

Heard: November 17, 2025

On appeal from the judgment of Justice Suzan Fraser of the Superior Court of Justice, dated January 20, 2025, and from the order dated April 4, 2025.

REASONS FOR DECISION

[1] This appeal revolves around the validity of default and termination notices given pursuant to a commercial lease.

## Background

[2] Mr. Zagros Management Inc. (“**Mr. Zagros MI**”) owns a system of Mr. Zagros franchise restaurants. Mr. Zagros MI leased premises in a shopping centre in Newmarket, Ontario (the “**Leased Premises**”) from Yulee Developments Inc. (“**Yulee**”). Under the terms of the lease (the “**Lease**”), Mr. Zagros MI was the tenant (“**Tenant**”) and was obliged to pay Yulee the rent for the Leased Premises.

[3] 11254316 Canada Inc. (“**112**”) was the franchisee who operated from the Leased Premises. There was no lease agreement between 112 and Yulee. However, under the terms of the franchise agreement between Mr. Zagros MI and 112, 112 was required to pay the rent for the Leased Premises directly to Yulee.

[4] Shadi Zamani was the sole director of 112. Under the franchise agreement between Mr. Zagros MI and 112, Ms. Zamani was identified as the “Indemnifier”. She entered into an indemnity agreement with Mr. Zagros MI in which, among other things, she guaranteed prompt and punctual fulfillment of 112’s obligation to pay the Lease rent. Ms. Zamani also entered into an indemnity agreement with Yulee in which, among other things, she guaranteed all amounts payable under the Lease by Mr. Zagros MI as Tenant, to Yulee.

[5] The Lease gave Yulee the right to re-enter the Leased Premises if Mr. Zagros MI failed to pay the Lease rent, so long as Yulee gave five days written notice to Mr. Zagros MI before re-entry. The Lease further provided that a re-entry

was not a termination unless Yulee gave written notice of its intention to elect to terminate to Mr. Zagros MI.

[6] 112 failed to pay the rent for March 2024. It did not make Mr. Zagros MI aware that the rent was unpaid.

[7] On March 8, 2024, Yulee sent an email to Ms. Zamani with a letter attached. The letter was addressed to 112 "O/a Mr. Zagros". The letter was made to the attention of "Shadi Zamani". The letter requested payment for the March 2024 rent within 5 business days "to avoid further escalation to a Notice of Default under the terms of the [L]ease".

[8] On April 3, 2024, Yulee delivered a notice of default to the Leased Premises, by courier (the "**Default Notice**"). The Default Notice was addressed to "Mr. Zagros Management Inc. o/a Mr. Zagros, Attn: Shadi Zamani". The Default Notice was also sent to Ms. Zamani by email. The Default Notice was not delivered to Mr. Zagros MI. The Default Notice required that the Lease rent payment for March 2024 be made by April 8, 2024.

[9] On April 4, 2024, counsel for Ms. Zamani sent an email to counsel for Yulee advising that neither the March 8, 2024 letter nor the Default Notice had come to the attention of Mr. Zagros MI.

[10] On April 9, Yulee sent a letter by mail to the head office of Mr. Zagros MI. When the letter came to the attention of Mr. Afzal, the principal of Mr. Zagros MI, he attempted to contact Ms. Zamani without success.

[11] The rent arrears were not paid so, on April 24, 2024, Yulee posted a notice on the Leased Premises purporting to terminate the Lease (the “**Termination Notice**”). The Termination Notice was addressed to 112 “o/a Mr. Zagros”.

[12] On May 27, 2024, Yulee entered into a lease for the Leased Premises with 1000884194 (“**194**”), Ms. Zamani’s new company.

[13] 112, Ms. Zamani and 194 are together referred to as the “**Zamani Parties**”.

[14] Mr. Zagros MI successfully applied for a declaration that both the Default Notice and the Termination Notice were void and of no effect (the “**Application**”). By order dated April 4, 2025, it was awarded costs of the Application, on a partial indemnity basis, fixed at \$60,000, payable jointly and severally by the Zamani Parties; Yulee was ordered to bear its own costs of the Application (the “**Costs Order**”).

[15] Yulee appeals against the application judge’s determination that the Default Notice and the Termination Notice were void.

[16] Mr. Zagros MI seeks leave to appeal the Costs Order. If granted leave, it seeks to have Yulee made jointly and severally liable, along with the Zamani Parties, for the costs of the Application.

[17] While this appeal relates to the validity of the Default and Termination Notices, it comes within the context of an ongoing larger franchise dispute between Mr. Zagros MI and 112. In the larger franchise dispute, Mr. Zagros MI alleges that 112 joined forces with other franchisees to stop making payments in order to be in a position to take over the head leases and operate their own businesses, outside of the franchise.

[18] After hearing Yulee's oral submissions on this appeal, the court advised the parties that it was unnecessary to hear from Mr. Zagros MI in response. It also advised the parties that Mr. Zagros MI was granted leave to appeal the Costs Order. It then heard oral submissions from both parties on that matter. Below we provide our reasons for dismissing the appeal and the cross-appeal.

### **The Decisions Below**

[19] The application judge found that Yulee had not complied with ss. 14.1(a) and 14.2(a) of the Lease because Yulee had not brought the Notices of Default and Termination to the attention of Mr. Zagros MI. Consequently, she held that the Notices were of no force and effect. The relevant provisions of the Lease read as follows:

14.1(a) [If] the Tenant fails to pay any Minimum Rent or Additional Rent on the day or dates appointed for payment (provided the Landlord first gives five (5) days' written notice to the Tenant of the Tenant's failure); ...

14.2(a) If the Landlord elects to re-enter the Premises, or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may, without terminating this Lease, make any alterations and repairs as are necessary in order to relet the Premises. ... No re-entry or taking possession of the Premises will be construed as an election on its part to terminate this Lease unless a written notice of that intention is given to the Tenant.

[20] The application judge ordered costs against the Zamani Parties because they kept the notices from Mr. Zagros MI. She observed that their actions were part of the dynamics of the larger franchise dispute, and that the Zamani Parties had brought motions that unnecessarily complicated the proceedings.

[21] The application judge rejected Yulee's submission that Mr. Zagros MI should be ordered to pay its costs of the Application because the Lease required Mr. Zagros MI to indemnify Yulee for any loss or expense arising from and out of the Lease occasioned by any act or omission of the tenant or by anyone permitted to be on the Leased Premises by the tenant. She said that because Yulee's notices were deficient, the circumstances of this case did not fit within the meaning of the words "occasioned by any act or omission of the tenant".

### **The Issues on Appeal**

[22] On appeal, Yulee submits that the application judge erred in finding that the Default Notice and the Termination Notice were void.

[23] On the appeal of the Costs Order, Mr. Zagros MI submits that, in failing to order costs of the Application against Yulee, the application judge erred in principle or made a decision that was plainly wrong. It seeks an order making the costs below payable by Yulee, along with the Zamani Parties, on a joint and several basis.

### **Analysis**

[24] We see no error in the application judge's findings that the Default Notice and the Termination Notice were deficient because they had not been properly served on Mr. Zagros MI. The application judge accepted Yulee's submission that notices were to be delivered to the Leased Premises. However, they did not comply with the requirements of s. 17.11 of the Lease because they were improperly addressed. The Notice of Termination was addressed to 112, rather than to Mr. Zagros MI, and the Default Notice was addressed to the attention of Ms. Zamani, again as opposed to Mr. Zagros MI. Accordingly, as the court advised the parties at the oral hearing of the appeal, Yulee's appeal was dismissed.

[25] In terms of the cross-appeal, we reject the submission that the application judge erred in principle by failing to order costs against Yulee. The application judge recognized that, as the entirely successful party on the Application, costs normally follow the event and, consequently, Mr. Zagros MI was presumptively entitled to its costs against all the unsuccessful parties, including Yulee.

Nonetheless, she exercised her discretion and did not order costs against Yulee, instead ordering that Yulee bear its own costs of the Application.

[26] Contrary to the submission of Mr. Zagros MI, the reasons of the application judge explain why she so exercised her discretion. The application judge said that she would not order costs against Yulee because she found “the Application was necessitated by [Mr. Zagros MI’s] failure to pay rent”. On the facts, that finding was open to the application judge. Mr. Zagros MI was aware, by or around April 9, 2024, that the March 2024 rent for the Leased Premises had not been paid and that Yulee would be taking steps to terminate the Lease. By April 24, 2024, Mr. Zagros MI had not cured that default. In light of that finding, we see no basis for appellate intervention with the exercise of the application judge’s discretion to refuse to order costs against Yulee.

### **Disposition**

[27] Accordingly, the appeal is dismissed and, while leave to appeal the Costs Order is granted, that appeal is also dismissed. Costs of the appeal are payable by Yulee to Mr. Zagros MI in the agreed-on amount of \$25,000, all inclusive. The parties agreed no additional costs were to be awarded on the cross-appeal.

“E.E. Gillese J.A.”  
“S.E. Pepall J.A.”  
“B. Zarnett J.A.”