

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF GATINEAU

No.: 550-17-012752-224

DATE: FEBRUARY 24, 2026

BY THE HONOURABLE JONATHAN COULOMBE, J.S.C.

8566941 CANADA INC.

Applicant

v.

SERVICE MAGIQUE AUTO INC.

and

ABDELKADER DIMIA

and

9340-7070 QUÉBEC INC.

and

MOHAMED DIMIA

Defendants

JUDGMENT

OVERVIEW

[1] On December 1, 2017, the plaintiff entered into a lease with the defendant Service Magique Auto Inc. (« **Magique Auto** ») for a commercial premises located at 465 Alexandre-Taché Boulevard in Gatineau, for the purpose of operating an automotive repair business.

[2] The lease, for a term of five years, expired on October 31, 2022.

[3] The defendants Abdelkader Dimia, 9340-7070 Québec inc. and Mohamed Dimia solidarily guaranteed, together with Magique Auto, all of its obligations under the lease.

[4] Magique Auto operated its automotive repair business in the leased premises during the term of the lease and vacated the premises a few months after its expiry.

[5] The plaintiff alleges that, upon the expiry of the lease, Magique Auto returned the leased premises in a deplorable condition and failed to comply with its obligation under the lease to restore the premises to the condition in which they were at the time the lease was entered into.

[6] The plaintiff claims the sum of \$70,338.30, which it incurred for the restoration of the premises, as well as \$15,000 in extrajudicial legal fees incurred in connection with these proceedings.

[7] At the trial, the defendants Magique Auto and 9340-7070 Québec Inc. are not represented, as their counsel withdrawn and no new counsel was retained.

[8] The defendant Mohamed Dimia, who is no longer represented by counsel, filed a consumer proposal on February 3, 2026, and a notice of stay of proceedings pursuant to the *Bankruptcy and Insolvency Act*¹ was filed in the Court record. He is therefore absent.

[9] Among the defendants, only Abdelkader Dimia is present at the trial. He is not represented by counsel, and he contests the plaintiff's claim.

[10] The defendant Dimia submits that the plaintiff is entitled to claim payment of the amounts relating to the rebuilt of an office within the leased premises, but not the full amounts claimed for the complete restoration of the premises. He maintains that the amounts claimed are excessive.

¹ L.R.C. (1985), c. B-3.

[11] The defendant Dimia further submits that, given the nature of the activities carried on in the premises, the plaintiff ought to expect that the premises would be returned in that condition.

ANALYSIS

[12] Clause 26 of the lease provides as follows:

À la fin du bail, le Locataire s'engage à laisser le local dans le même état que lorsqu'il en a pris possession et en l'occurrence refermer les trous dans les murs. Une visite des locaux serait faite par le Propriétaire.

[13] The evidence establishes that the leased premises occupied by Magique Auto were not returned in the condition in which they were received at the commencement of the lease.

[14] The photographs filed by the plaintiff show that the premises were left in a poor condition. They reveal the presence of oil on the floor and along the base of the walls, holes in the walls, and a general state of disrepair, in addition to an evident lack of cleanliness. The damages to the premises exceed normal wear and tear.

[15] Prior to undertaking the restoration work on the premises, the plaintiff obtained three estimates, the amounts of which ranged from \$68,888 to \$72,525.

[16] The cost of the restoration work incurred by the plaintiff and which are claimed in these proceedings, namely \$70,338.30, is therefore reasonable given the scope of the work required, and the defendant Dimia has adduced no evidence demonstrating that the amounts incurred to restore the premises are excessive.

[17] Moreover, the Court rejects the defendant Dimia's argument that the obligation to restore the premises is limited to the reconstruction of an office within the premises. That is not what the lease provides.

[18] The Court further notes that, in a letter sent to the defendants prior to the expiry of the lease, in June 2022, the plaintiff reiterated the obligation to restore the premises and sets out a list of the work to be completed, which included significant work and enumerated sixteen items to be carried out. The evidence does not show that the defendants denied their obligation to carry this work.

[19] Finally, the Court cannot accept the defendant Dimia's argument that, because Magique Auto operated a garage on the leased premises as provided for in the lease, the plaintiff must accept to receive the premises in such a condition, when the lease expressly provides that the tenant must restore the premises to their original condition.

[20] Accordingly, the Court finds that Magique auto failed to comply with its contractual undertaking to restore the premises at the end of the lease and is therefore liable to

compensate the plaintiff for the work performed. The other defendants are severally liable with Magique Auto to compensate the plaintiff.

[21] The amount that the defendants must pay to the plaintiff is therefore \$60,338.30, taking into account the sum of \$10,000 that was paid upon the signing of the lease, which the plaintiff acknowledges must be applied in reduction of her claim.

[22] However, the Court dismisses the plaintiff's claim for extrajudicial fees.

[23] The clause relied upon by the plaintiff for this claim reads as follows:

20. Chaque fois qu'un cas de défaut se produit et sous réserve des autres droits et recours qui lui sont conférés par le présent bail ou par la loi et nonobstant toute autre disposition législative, le Propriétaire dispose de droits et recours suivants qui sont cumulatifs et non alternatifs :

(...)

(d) le droit de recouvrer du locataire tous le (sic) dommages subis ainsi que toutes les dépenses engagées par le propriétaire en conséquence d'un défaut du locataire incluant, si le propriétaire met fin au bail, le droit de recouvrer à titre de dommages et intérêts liquidés toute différence entre les montants que le locataire aurait dû payer pendant le reste de la durée du bail suivant cette terminaison et les montants nets réellement reçus par le propriétaire pendant cette période à l'égard des lieux loués.

[24] With respect, this clause does not create an exception to the rule that each party must bear the professional fees it incurs and does not meet the parameters established by the Court of Appeal² for such professional fees to be assumed by the tenant.

[25] Although the validity of a clause inserted in a commercial lease stipulating that, in the event of default, the lessor may claim its extrajudicial fees has been recognized by the courts, the clause must clearly establish that right.

[26] In this case, the clause does not expressly provide that extrajudicial fees may be claimed, nor does its wording imply such an obligation.

[27] In *Groupe Van Houtte inc. (A.L. Van Houtte ltée) c. Développements industriels et commerciaux de Montréal inc.*³, the Court of Appeal sets out the standard that such a clause must meet in order to be enforced by the Court:

[116] Il reste bien sûr que les clauses d'honoraires judiciaires doivent répondre aux exigences des articles 1373 et 1374 C.c.Q. C'est ce qui ressort notamment de l'arrêt *Laferrière c. Entretien Servi-Pro inc.*[58], qui tient compte, entre autres, des

² *Groupe Van Houtte inc. (A.L. Van Houtte ltée) c. Développements industriels et commerciaux de Montréal inc.*, 2010 QCCA 1970.

³ *Supra* note 3, par. 116-119 and 122.

décisions rendues dans les affaires Polaris[59] et Finesses de Charlot[60], citées ici par l'appelante.

[117] Dans *Laferrière*, la clause litigieuse, insérée dans un contrat de vente d'actions, prévoyait ce qui suit :

Advenant l'un quelconque des événements suivants, les Vendeurs auront le droit d'exiger le remboursement immédiat et entier de leur créance, en plus de leurs frais et loyaux coûts.

[118] Après avoir rappelé que, dans le cas du paiement d'une somme d'argent, le créancier peut réclamer et obtenir des honoraires extrajudiciaires, faisant office de dommages-intérêts additionnels, à condition de respecter les conditions du troisième alinéa de l'article 1617 C.c.Q. (il s'agissait en l'espèce d'une obligation pécuniaire), c'est-à-dire le stipuler au contrat et être en mesure de le justifier, voici ce que dit la Cour au sujet de la clause ci-dessus :

(...)

[119] Dans *Laferrière*, la nature même des « frais et loyaux coûts » faisait donc problème, la nature de la prestation visée étant assez obscure, l'expression étant en effet « imprécise et équivoque ». On peut néanmoins conclure de l'arrêt que les clauses contractuelles pourvoyant au paiement par une partie des honoraires extrajudiciaires dépensés par l'autre pour l'exercice des droits que lui confère le contrat sont en principe valides, à condition d'être rédigées d'une façon claire, respectueuse des exigences des articles 1373 et 1374 C.c.Q.

(...)

[122] Bref, même lorsqu'elle n'indique pas un montant précis ou un mode détaillé de calcul (ce qui serait assurément préférable ne serait-ce que pour éviter ou minimiser le risque de litige accessoire sur ce point précis), la clause pourvoyant en des termes suffisamment clairs au paiement des honoraires et débours extrajudiciaires encourus par une partie dans l'exercice des droits contractuels a un objet déterminé et comporte une prestation déterminable au sens des articles 1373 et 1374 C.c.Q. Ce n'est pas, par ailleurs, une obligation purement potestative, qui met le débiteur à la seule merci de son créancier, l'avocat de celui-ci ayant du reste des obligations déontologiques en matière de facturation.

[28] The Court finds that clause 20(d) of the lease, as written, is not sufficiently clear and precise to entitle the plaintiff to claim its extrajudicial fees. It does not provide for a determinable prestation within the meaning of the law⁴.

⁴ 1373 and 1374 C.C.Q.

[29] The plaintiff therefore fails to discharge its burden of demonstrating, on a balance of probabilities, that it is entitled to claim the legal fees incurred in the course of these proceedings.

[30] Finally, the Court further notes that its conclusion with respect to this claim in no way suggests that the fees claimed are unreasonable quite the contrary.

FOR THESE REASONS, THE COURT:

[31] **GRANTS** in part the modified originating application for damages;

[32] **ORDERS** the defendants Service Magique auto Inc., Abdelkader Dimia and 9340-7070 Québec Inc. to pay solidarily to the plaintiff the sum of \$60,338.30, with interest at the legal rate and the additional indemnity from July 19, 2023, being the date of the invoice for the work;

[33] **THE WHOLE**, with legal costs.

JONATHAN COULOMBE, J.S.C.

Me Yves Letellier
Applicant's lawyer

Abdelkader Dimia
Self-represented

Hearing date: February 12th, 2026