

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *UBCGG Leasing Ltd. v. Cressey
Development Corporation*,
2026 BCSC 444

Date: 20260227
Docket: S261476
Registry: Vancouver

Between:

UBCGG Leasing Ltd.

Petitioner

And

Cressey Development Corporation

Respondent

Corrected Judgment: The text of the judgment was corrected on the front page on
March 16, 2026.

Before: The Honourable Mr Justice Crerar

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

B. Brock
M. McGarry

Counsel for the Respondent:

A.H. Sabur
Y. Gao

Place and Date of Hearing:

Vancouver
February 27, 2026

Place and Date of Judgment:

Vancouver
February 27, 2026

[1] **THE COURT:** These will be my oral reasons for judgment in this injunction application. I make my usual reservation to expand or edit these reasons if a transcript is ordered or for any other reason. The substance and result in this decision will remain the same, however.

[2] As I have observed several times during this hearing, we are at literally zero hour. The lease in question will expire tomorrow: on Saturday, February 28th.

[3] The petition in this matter and the notice of application for the injunction in this matter were both filed yesterday: on February 26th. At that point, the applicants also sought and obtained short leave, to have this matter heard today. Counsel for the respondent apparently stayed up all night generating two thick affidavits, and a full application response. We have no wiggle room with respect to harm for one side or the other. This lack of wiggle room, as will be intimated in these oral reasons for judgment, is largely occasioned and necessitated by the timing of the petitioner tenant in this case.

[4] Before proceeding to the substance of my ruling, I will note that when this notice of application was filed yesterday, it provided a time estimate for 20 minutes. Through communications between counsel, this was modified to an hour and a half. As I indicated in several points during the hearing, one-and-a-half hours was itself wholly inadequate. Again, the timing of the application and the time estimate fall squarely on the lap of the petitioner tenant.

[5] By way of background, the petitioner tenant, UBCGG Leasing Ltd., has operated a Gold's Gym on the UBC campus since November 2005: hence, presumably, the acronym of the name of the tenant company. The respondent, Cressey Development Corporation ("**Cressey**"), is the landlord.

[6] The UBC location was the first Gold's Gym location in British Columbia. Its notice of application describes it as its flagship location in British Columbia. There are multiple Gold's Gyms throughout British Columbia. It has acquired goodwill and

a reputation associated with its business of operating gyms. The UBC location has been somewhat successful. Apparently, it currently has 2,000 members.

[7] The original lease was entered into on November 10, 2005. Although there have been subsequent agreements, including exercises of renewal options, and a formal extension agreement, the terms of the original 2005 Lease for the most part, except as expressly displaced by subsequent agreements, remain in place.

[8] The 2005 Lease includes, among other terms:

12.8 Non-Waiver

No waiver of the Tenant's obligations or the rights of the Landlord will occur as a result of any condoning, excusing, overlooking or delay by the Landlord in respect of any breach by the Tenant, ***other than an express waiver in writing, duly executed on behalf of the Landlord.***

...

**ARTICLE 14
OVERHOLDING TENANT**

14.1 No Renewal

If the Tenant remains in possession of the Premises after the end of the Term with the Landlord's consent but without either having previously exercised any right of renewal or executing a new lease or agreement to lease, ***there will be no tacit renewal of this Lease and the Tenant shall be as a tenant from month to month*** at a monthly Rent equal to the aggregate of:

- (a) a minimum monthly rent equal to twice the monthly instalment of Minimum Rent for the last month of the Term; and
- (b) Additional Rent as estimated by the Landlord for each month pursuant to Section 3.2;

and subject to the terms and conditions of this Lease insofar as they are applicable ***to a month to month tenancy, and a tenancy from year to year shall not be created by implication of law.***

...

15.7 Time

Time is of the essence of this Lease.

...

15.9 Entire Agreement

The Tenant acknowledges that there are no representations made by the Landlord which are not set out in this Lease. The Tenant further acknowledges that this Lease constitutes the entire agreement between the Landlord and the Tenant and ***may not be modified except as herein***

explicitly provided or except by subsequent agreement in writing duly signed by the Landlord and the Tenant.

[emphasis added]

[9] None of these specific terms that I have just averted to were dislodged by the 2021/22 Lease Extension and Modification Agreement.

[10] Schedule E of the 2005 Lease provides an option to extend the lease for three further periods of five years with the terms and conditions of the lease, except for those set out in Schedule E, any tenant inducements granted in the lease, and a minimum rent payable during the extended term. Schedule E expressly sets out a method by which the tenant could exercise the option to renew the lease:

2. EXERCISE OF OPTION

The Option must be exercised by notice in writing to the Landlord on or before that date which is six (6) months prior to the expiry of the initial Term of the Lease, as may be extended further to this Schedule D, Section A.

3. BINDING LEASE

If the Tenant exercises the Option, ***all of the terms and conditions of the Lease*** save for:

- (a) those set out in this Schedule E, Section A;
- (b) any tenant inducements granted in this Lease (including any Rent free or reduced Rent periods or Landlord's improvements or contributions on account of Tenant's improvements); and
- (c) the Minimum Rent payable during such extended Term;

shall be binding on the Landlord and the Tenant during the extended Term of this Lease. For greater certainty, the parties acknowledge and agree that the exercise of the Option ***shall result in an extension of the original Lease between the parties, and shall not be deemed to result in a new demise of the Premises....***

[emphasis added]

[11] As indicated, there were lease renewals between the initial term starting in 2005 and the present day. On June 10, 2014, more than six months before the expiry of the initial 10-year term, the tenant provided formal notice in writing for the 2016 renewal. The written confirmation of the exercise of the option to renew was sent out in an email:

Subject: Exercise the option to renew for another 5 years

Good day Evan:

We hereby give you notice to exercise our Formal Lease agreement at Allison Road for another 5 years! Please email us the Term and conditions of the renewal for our perusal and approval!

Thanks

Victor Newman

[12] With respect to the most recent renewal, there was some inconsistency and complication that the landlord attributes to leniency on its part occasioned by the COVID-19 disruption of the university campus. The tenant disagrees, and argues that there was a pattern of laxity or non-strict compliance with the lease with respect to the lease renewals. For example, with respect to the 2022 renewal, there was not a timely exercise of the renewal option, and the tenant sought a shorter term. After the period of notice provision had passed on August 31, 2020, the tenant requested and was granted a lease extension for three years in February 2021. This renewal apparently did not lead to an executed agreement, at that time. In February 2022, negotiations started for the 2022 renewal. It was not until April 21, 2022 that the parties entered into a Lease Extension and Modification Agreement, effective March 1, 2021, for a further five-year term.

[13] That leads us to today, the end of that five-year term, as of tomorrow.

[14] In the brief 2021/2022 Lease Extension and Modification Agreement, “Lease” is a defined term, referring to the original 2005 Lease.

[15] Article 1.1 of the 2021/2022 Lease Extension and Modification Agreement confirms that “[t]he Landlord hereby demises and leases the Premises to the Tenant for the Second Extended Term on the covenants, provisos, terms and conditions set forth in the Lease except...”

[16] In other words, all of the terms of the original 2005 Lease continue to govern the relationship between the parties except as otherwise expressly dislodged in the 2021/2022 Lease Extension and Modification Agreement. To further emphasise the point, none of the provisions that I highlighted above—that is, non-waiver, time of the

essence, entire agreement, and the method of exercising the option to renew (in writing, at least six months before the expiry of the term of the lease)—were expressly dislodged by any of the article 1.1 subparagraphs.¹

[17] Article 1.2 of the Lease Extension and Modification Agreement expressly confirms that the parties “will perform and observe the covenants, provisos, terms and conditions contained in the Lease as fully as if such covenants, provisos, terms and conditions had been repeated herein in full with such modifications only as are necessary to make them applicable to this Agreement and the Landlord and the Tenant hereby ratify the Lease as amended herein.”

[18] In short, there is an express confirmation between the parties that those original 2005 Lease provisions will continue to govern their relationship.

[19] Under the 2021/2022 Lease Extension and Modification Agreement and the renewal option in the original 2005 Lease, the tenant was required to write to the landlord to exercise its right of renewal six months before the expiry of the current term: that is, by August 31, 2025.

[20] It is not disputed that the tenant provided no clear statement in writing before August 31, 2025 by which the tenant unambiguously indicated that it would exercise its option to renew the lease. Rather, the tenant points to an email on July 7, 2025 from the principal of the tenant to the landlord:

[describes a minor flood on the premises]

...This incident couldn't have happened at a worse time as the brand new UBC Rec Centre just recently opened (July 2nd) and we have been greatly affected by the new facility opening. While our summers are not as busy, the full impact of the Rec Centre won't be realized until the Fall when students can access the rec centre for \$50 per semester! At that low rate, we simply cannot compete and are anticipating greatly reduced revenues. **We are still trying our best to stay in business, but this new competition on campus will make things incredibly difficult for us to continue**, especially with the large increases in CAM charges over the past few years.

Our Lease Agreement ends on February 28, 2026. I am not sure what the renewal rate will be at that time, but I hope you will take into consideration the obstacles we are now facing.

[emphasis added]

[21] The July 7th tenant email is far from a clear and unequivocal statement that the tenant would exercise its option to renew the lease. It stands in stark contrast to the 2014 emailed written confirmation to exercise the option to renew the lease, quoted earlier in these reasons.

[22] In that email chain, the principal of the tenant also said that he would be in touch in August to discuss the lease renewal. He did not do so until November, however.

[23] On November 6, 2025, well after the August 31st deadline to exercise the renewal option, the principal of the tenant writes to the landlord:

Good afternoon, Tom.

I am sure you are aware our Lease at University Marketplace will end on February 28th, 2026. With the current increased competition in the local area, opening of the UBC Recreation Centre in July of this year, our business has been tremendously impacted. Within the four (4) months of their opening, over 650 members have cancelled their accounts at that particular location. Adding to the problem is the reduction of foreign and international student acceptances into UBC.

To provide some perspective, we sold one-third the number of memberships we traditionally do during this past September. We went from 374 members sold in September 2023 and 344 members sold in September 2024, down to 134 memberships sold in September 2025, generating less than one-third the revenues compared to previous years. September is one (1) of two (2) months, January being the other, when we have our largest customer acquisition at UMP. With the lower sales conversion volume and reduced membership rates we offered in an attempt to be as competitive as possible with the rec centre, our cashflow has been significantly reduced, resulting in financial strain.

My question to you is, are there any concessions that can be made by the Landlord to assist us during this difficult time? We are determining if we can survive these changes in market conditions, especially if the rent for the Premises will increase or even remains at the same rate. We still feel there may be some market share for us at that location, but it will take time for us to rebuild our membership base after experiencing the mass exodus of students this Fall. We are well established at this location, being a tenant for over 20 years, and anticipate students will slowly return to becoming members with us again if we reinvest and improve our equipment and offerings at that club. However, it is a risk with no guarantee that we can build up the membership base back to where it was prior to the rec centre opening. ***Can you provide me with some insight on what the rental rate will be to renew the Lease? We hope the Landlord is willing to work with***

us to find an amicable solution so we can retain tenancy at this location.

Time is of the essence with less than three (3) months remaining in our current Lease term so please let me know your thoughts.

Thank you.

Andrew Uy

VICE PRESIDENT

[emphasis added]

[24] Again, the tenor of this communication is far from an unambiguous statement in writing that the tenant will exercise its option to renew the lease. Rather, it indicates a desire for further negotiations, with an expectation of concessions in rent or otherwise, if and when the lease is renewed.

[25] The tenant's primary argument is that through past communications and, in particular, the 2021/2022 renewal, and other modes of communication between the parties, the landlord has effectively waived or acquiesced or is estopped from relying upon the strict provisions of the lease with respect to the exercise of the renewal and, presumably, by extension, is also barred from relying upon the entire agreement clauses, time of the essence clauses, and non-waiver clauses. I reject this argument.

[26] These are two sophisticated commercial entities. They have been involved in a commercial lease, with renewals, for 20 years. These are express terms. Commercial landlords and tenants enter into commercial leases for certainty. While there may have been lassitude in the 2021/2022 lease renewal, at no point did the landlord ever indicate some sort of express and clear waiver of the express and clear written terms in the governing lease, as one would expect in the face of those provisions.

[27] While there may have been some departure from the strict wording of the lease in 2021/2022, at the end of the day, the parties did reach an agreement. And, again, specifically, there was no express statement at that time or at any point between July 2025 and the present day that the landlord would not rely upon the

written terms of the agreements, or that its lassitude in 2021/2022 would somehow, if it were even possible, displace the clear written language of the 2005 Lease and its adoption in the 2021/2022 Lease Extension and Modification Agreement.

[28] While lassitude and generosity may have been evidenced in the communications leading up to the 2021/2022 renewal, the tenant was fortunate in that an agreement was reached. Here, absent some sort of amendment of the 2005 Lease or an express indication that the landlord would not be relying upon its terms, the risk of a delayed or unconsummated lease renewal agreement is borne by the tenant.

[29] I was not taken to any evidence or statement by the landlord that would give any reasonable expectation or reliance on the part of the tenant that the landlord would not be relying upon the strict terms of the written lease agreements. And from what I have seen—and I understand that there has been considerable communication back and forth between the parties in the frantic final weeks before the end of this agreement—the tenor of the landlord’s communication has been strict insistence on its rights, albeit with some offers to the tenant by which, if accepted, the tenant could stay on in the tenancy for an additional month, or perhaps longer. Those offers were very much offers. They do not expressly or by implication somehow waive the landlord’s strict rights under the written 2005 Lease, as confirmed in the 2021/2022 Lease Extension and Modification Agreement.

[30] I will give a little bit more by way of background communications before turning to the test for an injunction.

[31] On November 7, 2025, after the tenant’s November 6th email quoted above, the landlord advised the tenant that it was considering its options, and that it had other groups interested in the premises. That month the landlord engaged a realtor to find another tenant.

[32] On December 4, 2025, the tenant sent another communication to the landlord, advising that there needed to be further discussions and a plan, and expressly raising the possibility of leaving the premises:

Hi Tom,

I tried reaching you by phone this morning, but left a voicemail. I have now send numerous emails and made several calls but have not received any response from you since your email on November 27th. I would appreciate a response and a time when we can discuss our Lease at UMP. ***The lease expires in two and a half months and we need to plan if we are going to stay as a Tenant or leave at the end of the Lease Term.***

Please get back to me today so we can discuss our options.

Thank you.

Andrew Uy

VICE PRESIDENT

[emphasis added]

[33] Again, this is the polar opposite of an unambiguous exercise of an option to stay. As a mode of negotiation, the tenant is still holding out the strong possibility that it will be out the door at the end of February.

[34] The uncertainty continued.

[35] On December 31, 2025, the tenant told the landlord that it would like to renew the lease for two years at the same base rental rate with an additional three five-year options, rent to be negotiated: all terms not contemplated in the original 2005 Lease or extension agreements.

[36] On January 9, 2026, the landlord responded again that it had other parties interested in the space. Again, it is far from resolved that a renewal would occur.

[37] I will not quote the rest of the exchanges, but I will incorporate and adopt paragraphs 28 through 38 of the application response as a summary of those further communications (substituting, for clarity and consistency, “landlord” and “tenant”):

28. On January 12, 2026, the tenant sent a letter purporting to be a notice that “confirms the intention we have previously expressed to exercise our option to extend our lease...” (emphasis added).

29. On January 16, 2026, the landlord advised that the window for exercising the Renewal Option expired on August 31, 2025 and that they are exploring their options and invited the Applicant to make an offer to lease.
30. On January 23, 2026, the tenant submitted two different approaches to lease the Premises. Contrary to the tenant's position, these two offers were not "terms for an extension of the Lease" but new offers to lease the Premises without any references to the Lease (from 2005) in the preamble or body.
31. On January 30, 2026, the tenant followed up and once again noted that their lease expires at the end of February and would need to know if their offer is being seriously considered as they "must provide ample notice to [their] members and inform them we will be shutting down the club if Cressey is not going to lease use the premises."
32. On February 2, 2026, landlord advised the tenant that a decision was made to proceed with the termination of the Lease due to the expiry of the term.
33. The parties entered into further discussions and on February 3, 2026, the landlord presented the tenant with two options, either an offer to extend the lease or an offer for the tenant to overhold for period of one month subject to the terms and conditions in the Lease, failing which, the tenant will be required to vacate and surrender the Premises on February 28, 2026.
34. The parties entered into subsequent negotiations but could not come to terms.
35. On February 24, 2026, the tenant's counsel, for the first time, took the position that the Applicant had more than the intention to exercise the Renewal Option but in fact, had done so on July 7, 2025.
36. On the same day, the landlord confirmed once again that the Lease will expire on February 28, 2026 but proposed (the "**Overholding Proposal**") that "notwithstanding the foregoing and in accordance with the Landlord's Letter dated February 3, 2026, the Landlord is prepared to permit the Tenant to overhold in the premises until March 31, 2026 subject to the advance payment..."
37. On February 25, 2026, the tenant provided a post-dated cheque and purported to accept the Overholding Proposal while not agreeing to overhold and maintaining that they are entitled to a five-year extension of the Lease.
38. On the same day, the landlord advised that the advance payment is not accepted unless the tenant accepts the overholding terms and conditions.
- [underlining as in original]

[38] During this time, the parties are very much in a game of chicken, to use Mr. Sabur's term. We have two sophisticated commercial entities rattling sabres, going back and forth, in the face of a very clear deadline: the end of the lease term approaching rapidly at the end of this month.

[39] As an extension of this hard-nosed negotiation, in the face of little time to correct the course of the ship before hitting the rock, at zero hour, the tenant brings this petition and application for an injunction. It is a sad reality of our overloaded courts that commercial litigation matters often get lower priority than criminal and family matters. The tenant's likely anticipated judicial response to this last-minute application would be a direction that the *status quo* be maintained, effectively giving the tenant the relief it seeks: an injunction against eviction. .

[40] I will turn to the well-known tests for an injunction in our jurisdiction. It is sometimes presented as the two-part *Wale* test that rolls the irreparable harm consideration into the balance of convenience: *British Columbia (Attorney General) v. Wale*, 1986 CanLII 171 (CA), 9 BCLR (2d) 333 (CA), aff'd [1991] 1 SCR 62, 1991 CanLII 109. Sometimes it is set out as the three-part *RJR-MacDonald* case which treats irreparable harm as its own consideration: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311 at 334, 1994 CanLII 117. Our Court of Appeal has confirmed that both tests are effectively the same, and that the court exercises broad discretion to do whatever fairness and justice requires in the circumstances: *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395 at para 37.

[41] I turn to the first consideration under either formulation of the injunction test: the serious question to be tried. As presaged in my preamble, the present is a rare case where the applicant tenant has not set out a serious question to be tried. I am not satisfied that the clear language of the lease, the specific terms quoted above, as confirmed in the 2021/2022 Lease Extension and Modification Agreement, have in any way been displaced, through any operation of implied contract, waiver, estoppel, or otherwise. Specifically, the formal requirements to renew the lease, and the protective provisions to oust equitable arguments, and arguments based upon communications outside of the four corners of the lease, prevail. The tenant has provided no evidence that, even if one put aside the non-waiver, entire agreement, and time of the essence provisions in the lease agreement, the landlord had somehow waived or acquiesced or is somehow through an equitable or quasi-

contractual mechanism estopped or prevented from relying upon the plain language of the Lease as confirmed in the extension agreement.

[42] I base this conclusion on the evidence before the Court in this half-day interlocutory application in the face of a lease ending within hours. I expressly confirm that nothing in these reasons should bind a future judge who may consider this matter later, upon a full consideration of all of the dealings and communications of the parties over these past 20 years, only a portion of which could be reviewed today.

[43] I will address at the merits stage another tenant argument. The tenant points to a letter the landlord sent on February 24, 2026 (Tuesday of this week):

We write in response to your letter dated February 24, 2026.

The Tenant failed to exercise the option to extend the lease in accordance with the provisions of the Lease – the words “Our Lease Agreement ends on February 28th, 2026” and “I will be in touch with you in August to discuss the Lease Renewal” from emails exchanged on July 7, 2025 fail to meet the requirement for written notice in accordance with the Lease.

Furthermore, ***the Tenant’s email dated November 6, 2025 acknowledges that “our Lease at University Marketplace will end on February 28, 2026”***

In fact, the Tenant’s letter to the Landlord dated January 12, 2026 which seeks to confirm “the intention we have previously expressed to exercise our option to extend our lease” also fails to meet the requirements of the Lease – “intention to exercise” is not notice of “exercise” of the option to extend the term of the Lease.

Notwithstanding the foregoing, prior to the writer engaging directly with the Tenant on February 2, 2026, the Tenant did propose to the Landlord’s representative a short-term extension of one (1) or two (2) years with unspecified rent concessions on account of adverse market conditions.

Accordingly, the Landlord confirms expiry of the Lease on February 28, 2026. Notwithstanding the foregoing and in accordance with the Landlord’s letter dated February 3, 2026, the Landlord is prepared to permit the Tenant to overhold in the premises until March 31, 2026 subject to the advance payment of one month’s gross rent in the amount of \$47,557.98. Said payment must be received by the Landlord on or before 2:00 p.m. on February 25, 2026 failing which the offer to overhold will be deemed withdrawn.

Thanks for your immediate attention to this matter.

[emphasis added]

[44] The tenant argues that this February 24, 2026 letter puts forward an offer, which was accepted by the tenant forwarding a cheque to the landlord. Thus, the tenant is entitled to stay in the premises at least until March 31, 2026.

[45] There are several problems with this argument.

[46] The first problem is a practical one. As observed, it offers very little assistance to the tenant except to delay the inevitable by one month.

[47] The second problem is that the February 24th letter includes terms that govern the method of acceptance of the February 24th offer.

[48] The first term, as per the final paragraph quoted above, is that the offer is “in accordance with the Landlord’s letter dated February 3, 2026”. The terms set out in the February 3rd letter are thus incorporated into this purported February 24th offer. Accordingly, there must be compliance with both the February 24th and the February 3rd letter, for the tenant to establish a good arguable case based on the February 24th letter. I will turn to the February 3rd letter momentarily.

[49] The second term is that the tenant must make an advance payment of the March rent, and that it must be received by the landlord by February 25th, failing which the offer to overhold will be deemed withdrawn.

[50] I will start with the payment terms. The tenant did deliver a cheque on or before February 25th for the said amount. The cheque was post-dated to March 1st. The post-dating of the cheque to March 1st does not constitute an advance payment: the landlord cannot receive those funds until March 1st, several days after the February 25th deadline.

[51] Apart from that problem, the February 3rd letter, which again is incorporated by the phrase “in accordance with the Landlord’s letter dated February 3, 2026,” the payment must be made by way of certified cheque or bank draft payable to the landlord. Apart from those express required methods of payment, the security and immediacy provided by a certified cheque or bank draft informs the term “advance

payment”. The landlord is saying that “we need the money in our hands by February 25, 2026.”

[52] I turn to the February 3rd letter from the landlord to the tenant. It opens:

WHEREAS the term of the Lease is set to expire on February 28, 2026
AND WHEREAS the Premises measure 12,314 ft²
AND WHEREAS the Tenant wishes to extend the terms of the Lease
ACCORDINGLY the Landlord hereby proposes the following non-binding options for the Tenant’s consideration

[53] The February 3rd letter offered two options to the tenant.

[54] Option A offered a full extension, with detailed provisions:

Option “A” to extend the Lease subject to the following principal business terms:

1. Term. The Term of the Lease will be extended for a period of ten (10) years with an expiry date of February 28, 2036
2. Option to Extend.
 - (a) Notwithstanding anything to the contrary in the Lease and provided the Tenant has not been in breach of any covenants and conditions of the Lease, the Tenant will have the option to extend the Term for only one (1) additional period of five (5) years (the “**Extended Term**”) exercisable by the Tenant by written notice delivered to the Landlord no less than one (1) year prior to the expiry of the Term
 - (b) The Minimum Rent payable during the Extended Term will be the greater of the Minimum Rent payable during the final year of the Term or the fair market basic rent for the Premises as at the commencement of the Extended Term
 - (c) Prior to the commencement of the Extended Term, the Landlord and the Tenant will make a bona fide effort to agree upon the fair market rental value of the Premises as at the commencement of the Extended Term, but failing such agreement, the fair market Minimum Rent during the Extended Term will be determined by arbitration pursuant to the *Commercial Arbitration Act* (British Columbia) with reference to rent being paid for similar premises similarly improved taking into account the length of time of the extension of the Term and the advantageous nature of the location of the Premises and any use to which the Premises might otherwise be put
3. Minimum Rent. The Minimum Rent will be as follows:
[Table of Rents for years 1–10]

4. Deposit. The Deposit will be increased from \$42,731.16 to \$94,817.79 being \$90,302.66 plus \$4,515.13 GST which is to be paid forthwith as a good faith deposit pending preparation and execution of a formal extenuation agreement in respect of the Lease
5. No inducements. For clarity, there will be no tenant inducements whatsoever associated with the proposed extension of the Lease

[55] Option B offered a limited overhold extension until the end of March:

1. Overholding Period. Subject to the terms and conditions of the Lease, the Tenant may overhold in the Premises for a period of one month expiring on March 31, 2026
2. Rent. The Tenant will forthwith pre-pay the sum of \$47,557.98 on account of Minimum Rent and Additional Rent plus GST for the month of March 2026

[56] The February 3rd letter sets out terms for acceptance of Option A or Option B:

HOWEVER if both Options “A” a[nd] “B” are not acceptable to the Tenant, the Tenant will be required to vacate and surrender the Premises to the landlord on February 28, 2026

THIS PROPOSAL LETTER is non-binding. ***Only a fully executed definitive agreement executed by both the Landlord and the Tenant will be binding.*** Should the Tenant select Option “A”, the Tenant is required to forthwith submit a good faith deposit by certified cheque or bank draft in the amount of \$52,086.63 payable to the Landlord; and ***should the Tenant select Option “B”, the Tenant is required to forthwith submit advance payment of March 2026 rent in the amount of \$47,557.98 by way of certified cheque or bank draft payable to the Landlord.***

The Tenant is required to respond in writing on or before 4:00 p.m. on February 5, 2026 failing which this proposal will be deemed to have been withdrawn and will be of no force or effect.

Thanks in advance for your consideration and we look forward to your advice at the earliest opportunity.

[emphasis added]

[57] In contrast, it is clear that the February 24th letter only offered a one-month overholding possibility: a third problem for the tenant. Twice, the final February 24th letter paragraph, containing the offer, expressly uses the term “overhold”. I am satisfied, based on the general common law meaning of “overhold”, combined with the definition and provisions concerning overhold in the 2005 Lease (quoted above),

which terms are ongoing, that the terms of the overhaul Option B set out in the February 3rd letter are specifically incorporated into the February 24th offer.

[58] The February 24th letter thus required certified cheque or bank draft for the advance payment. Again, if just an ordinary cheque was provided—let alone an ordinary cheque that was post-dated—it likely could not be realised as an advanced payment until after March 1st: that is, the opposite of an advance payment.

[59] The tenant seeks to avoid the payment terms by reference to the landlord's letter of February 25th:

We confirm receipt of your letter dated February 25, 2026. For absolute clarity, the Landlord hereby confirms in no uncertain terms that the Lease will expire on February 28, 2026 (the "Expiry Date"); accordingly, with respect to the two (2) cheques that were delivered with your February 25, 2026 letter, please note the following:

1. the first cheque dated February 26, 2026 in the amount of \$1,907.48 is accepted on account of the annual reconciliation of operating costs and property taxes for the period ending on October 31, 2025; and
2. ***the second cheque post dated to March 1, 2026 in the amount of \$47,557.98 respecting the gross payment for the month of March 2026, is not acceptable unless the Tenant confirms in writing its acceptance of the following overholding terms and conditions:***
 - (a) the Tenant acknowledges and confirms expiry of the Lease on February 28, 2026;
 - (b) the Tenant acknowledges and agrees to the overholding terms and conditions set out in Article 14 of the Lease for the month of March 2026 and the Tenant expressly accepts that there is no tacit renewal or extension of the Lease; and
 - (c) the Tenant agrees to surrender and deliver vacant possession of the Premises to the Landlord on March 31, 2026 in accordance with the Landlord's instructions set out in the Landlord's letter dated February 2, 2026.

To reiterate, your client deliberately elected not to exercise the option to extend the term of the Lease and ***instead opted to negotiate a shorter term extension which is corroborated by the written record.*** Any attempt to seek relief from the Court is bound to fail. Be advised that the Landlord will seek to recover all costs and damages incurred by the Landlord in the event that the Tenant elects to pursue such an avenue.

We request that your client confirms its agreement to the overholding terms and conditions set out in Section 2 above by returning a signed copy hereof on or before noon on February 26, 2026 failing which the Tenant will be obliged to vacate and deliver possession of the Premises

to the Landlord on the Expire Date – February 28, 2026. Thanks in advance for your immediate attention.

[emphasis added]

[60] The tenant argues that paragraph 2, emphasised above, indicates that the landlord was satisfied with the tenant’s post-dated non-bank draft form of payment. By extension, the landlord is prevented from relying upon the wording and tenor of the terms and conditions of the February 24th letter incorporating the February 3rd letter terms.

[61] The February 25th letter does not expressly indicate that it accepted the post-dated cheque. The February 25th letter imposes additional terms by which the post-dated cheque could be accepted. Specifically, as set out above, the post-dated cheque would only be accepted if:

- (a) the Tenant acknowledges and confirms expiry of the Lease on February 28, 2026;
- (b) the Tenant acknowledges and agrees to the overholding terms and conditions set out in Article 14 of the Lease for the month of March 2026 and the Tenant expressly accepts that there is no tacit renewal or extension of the Lease; and
- (c) the Tenant agrees to surrender and deliver vacant possession of the Premises to the Landlord on March 31, 2026 in accordance with the Landlord’s instructions set out in the Landlord’s letter dated February 2, 2026

[62] Suffice to say, none of those terms were accepted by the tenant. Paragraph 2 of the February 25th letter is immaterial, because the tenant never accepted the terms of that offer through acceptance or delivery of terms (a), (b), and (c). Paragraph 2 does not represent, expressly or by implication, some sort of waiver of the pre-existing requisite terms set out in the February 24th and February 3rd letters.

[63] The tenant makes a further argument based on the landlord’s February 26, 2026 letter:

We write in response to your second letter dated February 25, 2026 received after the end of the business day.

First and foremost, **the Lease expires on February 28, 2026** – this is indisputable. Baseless assertions and demands cannot change that fact.

You referenced our letter of February 24, 2026 but you are misreading the proposal made by the Landlord therein. In good faith, we wrote that “the Landlord is prepared to permit the Tenant to overhold in the premises until March 31, 2026 subject to the advance payment of one month’s gross rent in the amount of \$47,557.98 which is in keeping of the overhold provisions set out in Article 14 of the Lease. Said payment must be received by the Landlord on or before 2:00 p.m. on February 25, 2026 failing which the offer to overhold will be deemed withdrawn.” For clarity, the Landlord proposed a one month overhold subject to payment before the deadline.

While you delivered a post-dated cheque in the amount of \$47,557.98 on behalf of your client, you did not accept the Landlord’s offer to “overhold” and, while inconsequential in the circumstance since the offer was not accepted, the post-dated cheque does not qualify as “advance payment” by the deadline stipulated by the Landlord.

In good faith, the Landlord made the offer to overhold to permit the Tenant to wind down its business and to vacate the premises in an orderly fashion. To that end, the Landlord sought to clarify for a second time its offer to overhold in its February 25, 2026 letter. ***Again, the Tenant has until noon today to accept this final proposal failing which you may pick up your client’s cheque from our reception desk at your convenience.***

[emphasis added]

[64] The tenant notes that in neither the February 25th nor 26th letter does the landlord reject the tenant’s cheque on the basis that it is neither a bank draft nor a certified cheque.

[65] There is no obligation on a party to set up all of the legal arguments for not accepting a cheque in a communication such as the February 25th or 26th letters. The landlord is not estopped from raising that argument later on. The landlord bears no obligation to set out every potential argument that it could make.

[66] In any case, it is perfectly understandable that letters written in the course of frenzied communications in the final days of the lease terms not comprehensively set out legal positions. The February 24th, 25th, and 26th letters arise in the context of, no doubt, many communications between the parties, in the face of a rapidly approaching deadline, in the context of, no doubt, both sides ramping up for potential litigation.

[67] In any case, the February 26th letter does reject the tenant’s form of purported advance payment. It raises the specific objection earlier discussed: a cheque post-

dated to March 1st does not qualify as advance payment, as the money will not be in the landlord's hands until after the commencement of the overhaul lease term.

[68] The tenant argues that it has met the relatively low merits enquiry for an injunction: he has established a good arguable case or a serious case to be tried. While he is free potentially to argue these points again in front of another presider on a full examination of the record in the proper amount of allocated time, based on the materials before the court on this injunction application, the tenant's arguments do not get the tenant over the first injunction hurdle. It fails at this stage.

[69] I turn to irreparable harm. The tenant argues that it has built up 20 years of reputation and goodwill at its UBC location. I acknowledge that there is case law that finds harm to goodwill as a form of amorphous irreparable harm that is not adequately compensable in monetary damages: see the discussion in *Landmark Solutions Ltd. v. 1082532 B.C. Ltd.*, 2021 BCCA 29 at paras 64–66. The tenant cites *Hui 789 Development Ltd. v. Fraserway RV Limited Partnership*, 2023 BCSC 2479 at paras 60,71; *Burquitlam Care Society v. Fraser Health Authority*, 2015 BCSC 1343 at paras 28–30; *Kassiouris v. Kalantzis*, 2017 ONSC 1985 at paras 26, 54; *12814307 Canada Inc. v. 2700688 Ontario Inc.*, 2025 ONSC 4951 at paras 25–27; *1305 Dundas W Inc. v. 2324702 Ontario Inc.*, 2019 ONSC 5068; *Delta Hotels Ltd. v. Okabe Canada Investments Co.*, 106 AR 185, 1990 CanLII 5884 (AB KB).

[70] In the context of this commercial dispute, however, loss of goodwill in itself does not constitute irreparable harm, let alone irreparable harm that will carry the day. Goodwill is not necessarily unquantifiable in monetary damage.

[71] As stated by Justice D. Smith (then of this Court) in *472448 B.C. Ltd. v. 343554 B.C. Ltd.*, 2006 BCSC 1075, recently applied in *350 Doyle Avenue Holdings Inc. v. City of Kelowna*, 2025 BCSC 2532 at para 17:

[22] It is settled law that damages attributable to loss of goodwill, loss of sales and revenues, inconvenience, loss of quiet enjoyment, and lost rights under a lease, are quantifiable and compensable. See. *Mark Anthony Group (S.C.)*, *supra*; *Trans-Pac Fibre Inc. v. K-Pac Fibre Ltd.* (30 June 2005), Vancouver SO5339 (S.C.); *Clark's Gamble of Canada Ltd. v. Grant Park Plaza Ltd.* (1967), 64 D.L.R. (2d) 570 (S.C.C.); *Denovan v. Lee* (1999), 65

D.L.R. (4th) 103 (B.C.C.A.); and, *Evergreen Building Ltd. v. IBI Leaseholds Ltd.*, (2005), 50 B.C.L.R. (4th) 250 (C.A.), 2005 BCCA 583.

[72] As stated in *Ivy Lounge West Georgia Limited Partnership v. TA F&B Limited Partnership*, 2021 BCSC 997, recently cited in *1380882 B.C. Ltd. v. Aztec Properties Company Ltd.*, 2024 BCSC 1001 at para 59:

[36] Irreparable harm is harm that either cannot be quantified in monetary terms or that cannot be cured: *RJR-MacDonald*, at 341; *Airside Event Spaces Inc. v. The Township of Langley*, 2021 BCCA 90 at para. 20. Permanent market loss or irrevocable damage to business reputation has been recognized as constituting irreparable harm, as has interference with property rights or a business: *Canadian Pacific Railway Limited v. Doe*, 2020 BCSC 388 at para. 55; *Onkea Interactive Ltd. v. Smith*, 2006 BCCA 521 at para. 18. However, loss of goodwill, sales and revenues, and rights under a lease are quantifiable and compensable: *472448 B.C. Ltd. v. 343554 B.C. Ltd.*, 2006 BCSC 1075 at para. 22.

[37] Here, the plaintiff does not contend that its damages will be impossible to quantify. Rather, it has focused on the fact that it has invested significant capital in the business and that it will run out of money soon if it is unable to re-occupy the Licenced Area. It has proffered no evidence that its future losses are unquantifiable. There is no evidence of what the plaintiff's finances are or why it cannot reopen elsewhere. There is no evidence that the Licenced Area is unique and cannot be replaced. The mere loss of a business location or goodwill does not equate to irreparable harm. Whether this is so depends on the circumstances of each case: *Landmark Solutions Ltd. v. 1082532 B.C. Ltd.*, 2021 BCCA 29 at paras. 63–65.

[73] A future court, aided by expert evidence would be able to ascribe a value to a loss of goodwill in the present circumstances. That exercise would of course only be carried out if the tenant can persuade a future court that it was entitled to continue its tenancy in this location, notwithstanding the contractual and factual background that I have just recited.

[74] The goodwill associated with the Gold's Gym name transcends the individual location, through the existence of multiple Gold's Gyms operating for many years in the Lower Mainland area. Were the tenant to relocate, that aspect of the goodwill—and I would imagine that is a considerable aspect of the goodwill—would be carried to the new location. The present case stands in contrast to goodwill arguments advanced by a company that has all of its goodwill eggs in one commercial location

basket. I would also note that this gym location is at UBC. Some percentage of the membership will be moving on in any case with graduation.

[75] I would also adopt the landlord’s submissions with respect to irreparable harm in their entirety, as follows.

The tenant is a business operating a gym and fitness facility on the Premises for profit. Even if the tenant is ultimately successful and the Lease is renewed, it will be for a maximum of 10 years.

In addition, any uniqueness to the location is simply by proxy to the University of British Columbia and the access to students for increased membership which the tenant would lose access even if they are successful after 10 years

This circumstance is analogous to *Aztec*, where the Court noted that:

61 138 has cited numerous ways in which it says that it will suffer harm if an injunction is not granted permitting it to operate its business on the premises until the end of the lease renewal period. However, in my view, the harms described by 138 are mostly financial in nature.

...

64 If the plaintiff is ultimately successful in persuading a court that it validly renewed the lease and the settlement agreements ought to be set aside, the primary basis for a damages award will be 138's lost profits over the balance of the five-year renewal period which would have commenced in 2023 had the lease been validly renewed. Further, if 138 can prove any other types of harm, including some or all of those described above, it can be awarded further damages accordingly. In my view, damages would adequately compensate 138 for its losses.

***Aztec* at paras. 61, 64**

[76] The harm to the tenant can be compensated in damages and quantified as the difference between the profitability in the Premises and in an alternative location, plus other quantifiable and compensable damages in relation to the loss of a lease.

[77] I turn to the balance of convenience, which, of course, is usually the main battleground in an injunction application. *Canadian Broadcasting Corp. v. CKPG Television Ltd.*, 64 BCLR (2d) 96 at 10, 1992 CanLII 560 (CA) sets out the classic list of non-exhaustive considerations:

- a) the adequacy of damages as a remedy for the applicant if the injunction is not granted, and for the respondent if an injunction is granted;
- b) the likelihood that if damages are finally awarded they will be paid;
- c) the preservation of contested property;

- d) other factors affecting whether harm from the granting or refusal of the injunction would be irreparable;
- e) which of the parties has acted to alter the balance of their relationship and so affect the status quo;
- f) the strength of the applicant's case;
- g) any factors affecting the public interest;
- h) and any other factors affecting the balance of justice and convenience.

[78] With respect to (a), damages would, presumably, adequately compensate the landlord if there is some delay in a new tenant's occupancy. These discussions with a new tenant are already underway, however. If the landlord suddenly cuts off those communications, or delays the new tenant's tenancy, the delay will harm the landlord's reputation: both in the sense of general reliability, as well as its reputation as a landlord who conducts its business in an orderly way, and has good relations with tenants. This factor cuts both ways.

[79] With respect to (b), the likelihood that damages will be paid, the landlord has access to the tenant's financial statements. The landlord has not provided details of those financial statements, reasonably fearing prejudice to the tenant if it filed those confidential documents attached to an affidavit in a public registry. That said, Mr Lamman, for the landlord, avers that his review of the tenant's financial statements indicates that it is a shell company with no material assets. This lack of assets engages not only consideration (b) but the important issue of the applicant tenant's undertaking to the Court: Mr Lamman states his concern that the tenant will not be able to fulfill its undertaking to court to pay the landlord damages that may result from the issuance of an injunction, on limited facts and limited time: a particularly important component of a commercial injunction such as the present.

[80] The tenant's failure to reassure that its undertaking has substance is a concern not only to the landlord, but also to the Court. It is a deficiency that falls on the shoulders of the applicant tenant. The tenant ought to have provided that reassurance in its preliminary materials. The fact that the tenant had little time to provide such particulars is, again, occasioned by the decision of the tenant to leave its injunction application to the last minute. It is the tenant's own fault that it lacks a

further opportunity in this zero-hour application to try to stop up this deficiency in its materials.

[81] Consideration (c)—preservation of contested property—is inapplicable.

[82] I have addressed considerations (d) and (f) above.

[83] Consideration (e)—which of the parties has acted to alter the *status quo*—is a neutral consideration in the present case. Although the tenant will likely have to vacate the premises, it is not as if this necessity flows from any sudden new action by the landlord. That obligation has been in writing: it has been clear for many years that the lease term would expire tomorrow. The *status quo* was that absent a renewal of the lease on the terms under the written lease agreement, as confirmed by the 2021/2022 Lease Extension and Modification Agreement, with written notice six months before the end of the lease term, the tenant would have to vacate. I cannot say that the landlord has in any way changed the *status quo*.

[84] Consideration (g): the public interest and third parties. I do acknowledge that if the gym has to close down then the members of Gold's Gym at UBC may be inconvenienced. Gold's Gym would be well placed to try to preserve that business with alternative arrangements at one of their other locations. UBC has other gym facilities. I find this to be a minimal factor in the present circumstances.

[85] With respect to (h), the tenant argues that the landlord is likely to enter into an agreement with a third party to re-let the premises before determination of the petition, thus impacting the availability of the relief sought by the tenant.

[86] Again, that is largely occasioned by the tenant's own delay, both in terms of sealing a deal, as it were, to renew the lease, and in terms of bringing this application at the last minute.

[87] Insofar as the landlord proceeds in the face of the pending litigation to lease out the premises to a third party, the landlord does that at its own risk. It will face potential damages claims from the present tenant and a potential breach of contract

claim or other claim from the potential new tenant. The landlord is a sophisticated commercial entity and can weigh the risk of proceeding. All of those aspects of a new lease with a new tenant can be addressed with a damages claim at the end of the day.

[88] As noted above, the tenant's ability to realise on a damages claim against the landlord would appear to be weak, although I am again expressly withholding any final judgment in that regard. Another adjudicator reviewing the full record over an appropriate amount of time with full review of the appropriate documents and history and jurisprudence could theoretically reach a different conclusion. If this matter goes before other adjudicators, I direct the parties not to make reference to this preliminary opinion except with the full disclaimer with which I have presented it.

[89] Anything arising from that, counsel?

[90] CNSL B. SABUR: If I could be so bold, Justice.

[91] THE COURT: Don't be bold at 4:34pm, but go ahead.

[92] CNSL A. SABUR: I have a duty to my client to do this because it cost real money and that's the issue of costs.

[93] THE COURT: All right.

[SUBMISSIONS ON COSTS]

[94] THE COURT: The landlord seeks special costs or something tantamount to special costs, on the basis of the extraordinary work that had to be done at the last hour to respond to the injunction application.

[95] While I was critical throughout my reasons with the last-minute nature of this application, this scenario of a last-minute rush to the Courthouse is not so far out of the ordinary for commercial disputes such as to warrant special costs in this instance. We see such applications regularly.

[96] The materials before the Court also match the pattern of many such injunctions. Notwithstanding the underlying merits, in the weeks leading up to the injunction application, there is a frenzy of correspondence and offers back and forth, the acceptance of which by one party or the other would have made an injunction unnecessary.

[97] In at least the February 3rd letter, there remained the express contemplation that the tenant could continue on the premises. The February 24th and 25th letters contemplated that the tenant may be able to continue on the premises, if only for a month. If any of these proposals reached an agreement, then the necessity of the injunction could have gone away.

[98] I appreciate that in the context of costs, the landlord may consider its various offers of extensions to illustrate the principle that no good deed goes unpunished.

[99] While I have found in favour of the landlord, it was not pure folly or spite for the tenant to proceed with this petition and this present application. Although this urgent application is most disagreeable and inconvenient for the respondent and its counsel, and for the Courthouse staff, and for the judge, who is going hoarse and is exhausted at 4:39 this Friday afternoon, it is not such a clear abuse such as to warrant special costs. That all said, I will award costs of this application on the highest scale: scale C.

[100] It is clear that counsel for the landlord had to expend considerable resources, time, and energy in a finite amount of time, to respond to this application: hence the higher costs. The respondents' materials are excellent: addressing a case of some complexity, in a crucible of time.

[101] I would say parenthetically that the tenant's counsel's materials were also excellent and helpful, notwithstanding the ultimate conclusion that I have reached today.

[102] Anything else? Thank you.

“Crerar J.”

¹ The four article 1.1 subparagraphs deal with minimum rent, two free months’ rent, two future rights to extend the lease terms, and tenant inducements.