



- Issue 1: Do the materials provide a basis for a finding of liability?
- Issue 2: If so, what are the damages to which the plaintiffs are entitled?

## **Analysis**

### **Issue 1: Do the materials provide a basis for a finding of liability?**

#### **Consequences of noting in default**

[7] Pursuant to r. 19.02, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the Statement of Claim.

[8] However, pursuant to r. 19.06 a plaintiff is not entitled to judgment on a motion for judgment or at a trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[9] In particular, r. 19.05 provides that a motion for judgment which involves a claim for damages shall be supported by evidence given by affidavit.

#### **The test on a motion for default judgment**

[10] The test on a motion for default judgement was set out in *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC) as follows: A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim? B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim?

[11] I am satisfied that the plaintiffs have established liability based upon the following deemed admissions in the Statement of Claim:

- In April 2022, the defendant defaulted on its lease payment obligations pursuant to a lease with the plaintiffs: para 17.
- On September 15, 2022 the plaintiffs sent written notices of default setting out the rent arrears and requiring payment by September 22, 2022: para 20.
- The defendant failed to pay the lease arrears. On October 26, 2022 the plaintiffs terminated the lease: para 21.
- The defendant has not made any further payments: para 22.

### **Issue 2: What are the damages to which the plaintiff is entitled?**

[12] The plaintiffs are entitled to be compensated for their loss of bargain which means they are entitled to be put in the same position they would have been in if the defendant had not breached the lease: *Morguard Corporation v. Bramalea City Centre Equities*, 2013 ONSC 7213.

[13] The evidence establishes that the unpaid rent arrears as of the date of termination was \$51,076.95 inclusive of HST.

[14] In *Morguard*, at para 34, Perell J. described the quantum of recovery for lost future rent as “the present value of the unpaid future rent for the unexpired period of the lease, less the actual rental value of the premises for that period plus reasonably foreseeable consequential losses.”

[15] The evidence establishes that as at the termination date there were ten months remaining on the term of the lease.

[16] The plaintiffs were able to re-lease a portion of the premises.

[17] The future rent owed for the unexpired term of the lease, less the rental income from the lease to the new tenant is \$59,817.41 inclusive of HST.

[18] Therefore, the total damages owed are  $\$51,076.95 + \$59,817.41 = \$110,894.36$ .

### **Costs**

[19] The plaintiffs request costs on a partial indemnity basis in the amount of \$8,743.38, inclusive of disbursements. I have reviewed the rates and time charged which I find fair and reasonable. I also find that such costs were within the reasonable contemplation of the defendant.

### **Interest**

[20] The plaintiffs claim pre-judgment interest at the contract rate of 8.7 % in the amount of \$5,867.98 which I award.

[21] The plaintiffs claim post-judgment interest at the contract rate of 8.7 % which I award.

[22] Judgment to go as requested.

---

Papageorgiou J.

**CITATION:** 175 Bloor Street East Inc. v. Dakin West Inc., 2023 ONSC 5155

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

175 BLOOR STREET EAST INC. and OPTRUST  
OFFICE INC.

Plaintiffs

– and –

DAKIN WEST INC.

Defendant

---

**REASONS FOR JUDGMENT**

---

Papageorgiou J.

**Released:** September 12, 2023