COURT OF APPEAL FOR ONTARIO

CITATION: Extreme Toronto Sports Club v. Razor Management Inc., 2025 ONCA 114
DATE: 20250214
DOCKET: COA-24-CV-0584

2025 ONCA 114 (CanLII)

Pepall, Paciocco and Sossin JJ.A.

BETWEEN

Extreme Toronto Sports Club

Plaintiff/Defendant by Counterclaim (Appellant)

and

Razor Management Inc., Matthew Raizenne and 2699677 Ontario Inc. c.o.b. Stadium Sports Leagues

Defendants/Plaintiffs by Counterclaim (Respondents)

Jordan Diacur, for the appellant

R. Adam J. Pyne-Hilton, for the respondents

Heard: February 11, 2025

On appeal from the judgment of Justice Lisa Brownstone of the Superior Court of Justice, dated May 10, 2024.

REASONS FOR DECISION

[1] This appeal involves the interpretation of three licence agreements in which the respondent, Razor Management Inc., granted the appellant, Extreme Toronto Sports Club, licences for the use of three sports fields annexed to Toronto schools. The appellant used the fields to run recreational adult competitive sports leagues.

[2] With the arrival of COVID-19 in March 2020, the fields could not be used all the time or at all. The parties disagreed on who should bear the burden of these closures. In April 2020, the Federal Government introduced the *Canada Emergency Commercial Rent Assistance* programme ("*CECRA*") whereby a lessor was to reduce the rent it charged by 25%, the lessee would pay 25% of the rent, and the Government would pay the remaining 50% to the lessor. However, the appellant initially refused to apply and also refused to make any payments to the respondent for the months of April, May, June, and July of 2020. In August 2020, the fields re-opened and the appellant made payments for the months of August and September. By this time, the appellant had unpaid licence amounts of just over $300,000.

[3] Ten days before the expiry of the *CECRA* deadline, the appellant provided the application to the respondent but subject to terms. The parties ultimately reached an agreement for the first period of closure from March to July 31, 2020. On October 9, 2020, the Ontario Government announced a second suspension of adult sports league competition but the facilities remained open and could be used although team sports could not be practiced or played. On November 23, 2020, there was a further Government mandated shutdown.

[4] In December 2020, the Federal Government introduced a new relief programme but again the appellant refused to apply.

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[5] On January 4, 2021, the respondent advised the appellant that it was in default of the licence agreements on account of non-payment for the months of October, November, December, and January 2021. The respondent advised that if the appellant did not pay or apply for the Government subsidy, the respondent would terminate the licence agreements. No payment ensued and it delivered a notice of termination on February 26, 2021.

[6] The appellant sued for damages for amongst other things, wrongful termination and breach of the licence agreements. The respondent counterclaimed for damages for rental arrears and lost rent.

[7] The respondent brought a motion for summary judgment for the arrears owing that was granted. The parties agreed that if owing, these amounted to $338,984.20 and that if the respondent was successful, the appellant's action should be dismissed. The appellant appeals from that judgment.

[8] The issue in dispute was whether the licence agreements required the appellant to pay the respondent licence fees after October 9, 2020. There was no dispute that the appellant could not use the facilities during most of the shutdown periods. Both parties relied on the terms of the agreements (which were similar) and principles of contractual interpretation. The appellant did not rely on the doctrine of frustration or *force majeure* provision. The appellant advocated in favour of a pay-if-available interpretation of the agreements and the respondent

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argued that the appellant should pay for bargained-for times regardless of use. The trial judge concluded that "When each agreement is read, the objective intention of the parties is clear: [the appellant] is to pay based on the time allocated to it, regardless of whether it uses or is able to use the facilities."

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[9] The appellant submits that there are two extricable questions of law raised by this case: (i) did the motion judge err by failing to review the licence agreements as a whole and to accord an interpretation to the open door and suitable/safe clauses that gave meaning to them; (ii) did she err in her assessment of the effect of the appellant's failure to perform its obligations under those clauses by failing to consider that one party to a contract is not under an obligation to perform where the counterparty fails to perform the required conditions.

[10] We do not accept these submissions. As Rothstein J. stated in *Sattva Capital Corp v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 54, courts should be cautious in identifying extricable questions of law in disputes over contractual interpretation.

[11] The motion judge correctly identified the principles of contractual interpretation described in *Sattva*. She applied those principles and determined that the appellant was to pay based on time allocated regardless of use or ability to use.

[12] The parties bargained for specific exemptions that relieved the appellant of its payment obligations but nothing excused the appellant from paying in the circumstances that arose in this case. Moreover, there was no *force majure* provision. She noted that the respondent was required to open the doors to each of the facilities 30 minutes before the licence times (the Open Doors clauses) and the requirement to maintain the facility with regular cleaning (the Suitable/Safe clauses). She also reviewed s. 8.1 of the licences which the appellant had claimed was simply a damages shield. She considered the words of each agreement, the agreements as a whole and the surrounding circumstances and carefully rejected each of the appellant's arguments that favoured its interpretation. This included his argument relating to licences and leases. She concluded that only the express exceptions contained in the agreements excused the appellant from its obligation to pay rent.

[13] The motion judge made no reviewable errors of law.

[14] We are also unpersuaded that the motion judge made any palpable and overriding errors. In substance, the appellant sought to establish palpable and overriding errors by offering alternative interpretations of the contract. The motion judge was not obliged to accept the appellant's interpretive arguments. In essence, the appellant invites this court to reinterpret the parties' agreement. The interpretation provided by the motion judge was open to her and was arrived at without error.

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[15] The motion judge also did not err in concluding that the respondent was entitled to terminate the licences for non-payment.

[16] The motion judge made no reviewable errors of law or palpable and overriding errors in concluding that the appellant was obliged to pay the mounts claimed by the respondent.

[17] For these reasons, the appeal is dismissed with costs to be paid by the appellant to the respondent in the agreed upon amount of $15,000 inclusive of disbursements and applicable tax.

"S.E. Pepall J.A."
"David M. Paciocco J.A."
"L. Sossin J.A."

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