

**CITATION:** Bennington Financial Corp. v. 2724112 Ontario Inc., 2025 ONSC 1072  
**COURT FILE NO.:** CV-22-00002130-0000  
**DATE:** 2025-02-18

**SUPERIOR COURT OF JUSTICE – ONTARIO**

491 Steeles Avenue East, Milton ON L9T 1Y6

**RE:** Bennington Financial Corp., plaintiff

**AND:**

2724112 Ontario Inc. and Christopher Graham, defendants

**BEFORE:** Justice Chown

**COUNSEL:** Seta Boyadjian, for the plaintiff.  
Email: [setab@benningtonfinancial.ca](mailto:setab@benningtonfinancial.ca)

Christopher Graham, acting in person.  
Email: [grahamchris341@gmail.com](mailto:grahamchris341@gmail.com)

**HEARD:** January 9, 2025, by video conference

**ENDORSEMENT**

[1] Bennington Financial is a commercial leasing company. Its customers select equipment. Bennington then buys that equipment and rents it to the customer.

[2] In March 2021, Bennington leased ten heavy duty bins to the defendants. The defendants made payments under the lease from March 2021 until February 2022, but failed to make further payments.

[3] Bennington made demands and tried to recover the bins and resell them. The defendants refused to surrender the bins or advise where they were located. Bennington brought this action against the defendants, and now brings this motion for summary judgment.

**PROCEDURAL HISTORY**

[4] Bennington commenced this action on October 27, 2022.

[5] The defendants defended this action on November 25, 2022. The statement of defence asserts that the defendants were misled, in that the agreement is not a lease “but rather is structured as a finance contract, with terms less favourable to the defendants than were represented.” Among other things, the defence asserts that the defendants were induced into the contract based on false representations. In short, the defendants allege that Bennington “failed to provide the defendants with proper notice and disclosure of the terms of the Agreement, breached the duty of good faith and reasonableness in contractual relations, and that the Agreement is fraudulent, invalid, and should otherwise be set aside.”

[6] The defendants issued a third party claim against the leasing agent, Mayo & Associates Ltd., on December 5, 2022 (see court file CV-22-2130-00A1).

[7] Bennington first advanced this summary judgment motion with a simplified procedure motion form and supporting affidavit dated March 2, 2023. The motion was originally returnable on May 18, 2023. The defendant, Christopher Graham, delivered a responding affidavit dated May 12, 2023.

[8] The motion did not proceed on May 18, 2023, but was re-scheduled to proceed as a long motion on December 19, 2023. It did not proceed that day because counsel for the defendants was seeking to get off the record, and the plaintiff consented to the adjournment. Chozik J. adjourned the motion to April 29, 2024.

[9] On March 28, 2024, Emery J. signed an order removing Steinbergs LLP as counsel of record for the for the defendants (see court file CV-22-2130-00A1). The order recites Mr. Graham’s address, including his email address:  
[grahamchris341@gmail.com](mailto:grahamchris341@gmail.com).

[10] I can see no endorsement in Case Center to indicate what happened on the April 29, 2024 return date of this motion.

[11] In an endorsement dated September 19, 2024, Mills J. noted that the defendants had not attended the motion brought by the third party to dismiss the third party claim,

for failure to appoint counsel or serve a notice of intention to act in person. Mills J. noted that the defendants had been properly served with that motion. Mills J. said she had been advised that Mr. Graham had communicated with counsel by email regarding the motion. She made an order dismissing the third party claim (see court file CV-22-2130-00A1).

[12] Coats J. addressed this motion at triage court on September 12, 2024, and then again on September 26, 2024. Her endorsements on both dates indicate that no one appeared for the defendants. Her endorsement on September 26, 2024 set the hearing of this motion for January 9, 2025, and the matter came before me on that date. Mr. Graham attended the hearing, which was held by video.

### **SUITABILITY FOR SUMMARY JUDGMENT**

[13] Under rule 20.04(2)(a), “The court shall grant summary judgment if ... the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.” I am required to first determine if there is a genuine issue requiring a trial based only on the evidence before me, without using the enhanced fact-finding powers contained in rule 20.04(2.1). “There will be no genuine issue requiring a trial if the summary judgment process provides [the judge] with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a)”: *Hryniak v. Mauldin*, 2014 SCC 7, at para. 66.

[14] In this case, there is no need to resort to the enhanced fact-finding powers. As I will explain, the defendants’ evidentiary materials do raise factual disputes, but these are fully answered in the reply affidavit filed by the plaintiff.

### **MERITS**

[15] The plaintiff provided an affidavit of Melanie Darling dated March 2, 2023. She says that Mr. Graham completed an application for financing on his own behalf, and on behalf of 2724112 Ontario Inc. (“272”). Mr. Graham also signed a lease dated March 22, 2021. In the lease, he and 272 are styled as co-lessees. Two signatures that purport to

be Mr. Graham's signature are indicated, one on behalf of 272 and one on his own behalf. The plaintiff purchased the bins for approximately \$50,000 inclusive of taxes and registered its ownership under the PPSA. The payments were to begin on March 22, 2021. The defendants made payments under the lease until April 2022 – the last payment being on April 22, 2022. The affidavit goes on to calculate the amount owing under the lease to be \$61,792.45.

[16] In his responding affidavit, Mr. Graham says that the signature on the credit application is not his, and considerable information is missing. He also denies executing the lease agreement (exhibit D to the Darling affidavit), although he admits to executing the second page of it. I note that this page starts at paragraph 13, and Mr. Graham's signature appears twice on this page – once on behalf of 272 and once on his own behalf. Mr. Graham's affidavit does not suggest he was unaware of the content of paragraphs 1 through 12.

[17] Mr. Graham's affidavit goes on to state that the credit approval and funding processes the plaintiff followed did not include expected steps, such as a Know-Your-Customer meeting and forms, a signed credit application with net worth statement and financial statements from the borrower, pre-approval, credit review, a bill of sale including serial numbers, proof of insurance, and registration of security. Mr. Graham said he did not receive the welcome letter attached to the Darling affidavit and suggests that this was because his email was compromised or hacked at the time it was sent. None of these points are material, in that they do not impact the enforceability of the agreement between the parties.

[18] Mr. Graham's affidavit further states that he never signed delivery or acceptance of the bins and the plaintiff withdrew the first payment prior to delivery of the bins, contrary to the wording in the purchase order. He includes an email string from April 2021 (not April 2022 as indicated in paragraph 18 of his affidavit) that shows that delivery was an issue at that time. He says in an April 17, 2021 email to the leasing agent, "I have not even received the Bins and I am making payments." He asked to have the payments stopped. The leasing agent replied on April 19, 2021, saying that the

bin vendor had indicated “the bins are ready to ship but haven’t gone out at your request. ... I’m afraid the lenders position will be that they put out funds on March 22 [2021] to accommodate your request and lease payments commence based on when the lender is directed to pay the supplier.” The defendants continued to make payments for a year after that. They cannot now use this as a basis to suggest they are not bound by the contract.

[19] Mr. Graham’s affidavit then says that the payment amount was increased without notice in May 2021, although particulars of the increase are not provided. He says that 272 never agreed to the increase. Again, however, the defendants continued to make payments until April 2022. There is no evidence that the defendants objected to the increased amount at the time.

[20] Mr. Graham’s affidavit then says he tried to arrange financing to buy out the leases but was never given a correct buyout amount. He says he only determined that the interest rate was 29.8% when he received the buyouts and did calculations, and he never agreed to that rate. I am not persuaded that these factors would allow the defendants to escape liability for their contract.

[21] A reply affidavit from Ms. Darling includes a transcript from a recorded call in which Mr. Graham confirmed that he had signed the lease. In this call, the plaintiff’s representative advised Mr. Graham that the lease would commence with the first payment being taken on March 24, 2021, and Mr. Graham acknowledged this. Mr. Graham confirmed his email address. Regarding delivery of the bins, the plaintiff’s representative said, “So, we understand you either have the equipment or making arrangements to obtain the equipment so we will submit the deal for payment to the vendor and commencement of your agreement.” Mr. Graham merely said, “thank you” in response.

[22] All of the possible defences raised by Mr. Graham are answered in the reply affidavit. Most importantly, given that the defendants made payments under the lease for over a year, they cannot now try to escape their obligations under the lease.

[23] The defendants' materials do not criticize Ms. Darling's calculation of the amount owing.

[24] The hearing on January 9, 2025 was difficult because Mr. Graham did not present his position in a logical way, and he frequently spoke over me. He began his oral submissions by advising that he had had his identity stolen and describing the legal and other difficulties that this had caused him. He re-iterated some of the points raised in his affidavit. He said the plaintiff had not followed its own procedures. He also made many factual assertions that were not contained in his affidavit. He said he purchased the leased items and did not lease them. This is not consistent with his own affidavit. When I advised him that his materials said nothing about his identity theft, Mr. Graham said that he had more materials that, as I understand it, he had given to his previous lawyers, and he blamed them for not putting these materials before the court. Mr. Graham did acknowledge being aware that his lawyers were not acting for him in this matter, although, as I understand it, he did not become aware of this immediately in March 2024 when they got off the record. Mr. Graham suggested he had not received emails about this matter. He did acknowledge being made aware of this hearing by way of an email from plaintiff's counsel's office in December 2024. I raised the prospect of an adjournment, and Mr. Graham did not seem to want an adjournment.

[25] Mr. Graham left the Zoom meeting before the hearing for this motion was finished, saying, "Do as you wish. Do what you want." He said he had a private investigating team and detectives working around him. He said, "Anything that can be done can be undone." He then thanked the Court for its time and left the meeting.

[26] Given Mr. Graham's comments, and given that he is self-represented, I carefully considered whether it might be appropriate to give him an opportunity to file additional materials; however, in light of the procedural history, the non-specific nature of Mr. Graham's description of the evidence that he would like to put before the court, and the lengthy period of time he has had to respond to this motion, this would not be appropriate or fair to the plaintiff.

[27] The plaintiff has established that there is no genuine issue requiring a trial. The defendants have not raised a genuine issue requiring a trial. The plaintiff is entitled to judgment for the requested amount.

### **INTEREST AND COSTS**

[28] I will accept written submissions on interest and costs.

[29] The Darling affidavit calculated interest only to March 2023. The draft judgment uploaded to Case Center by the plaintiff on January 8, 2025 is for the same amount calculated in the March 2023 affidavit. If the plaintiff is content with that amount, I do not need further submissions on pre-judgment interest, as this is favourable to the defendants.

[30] I will receive submissions on post-judgment interest, but my inclination is that post-judgment interest at the presumptive rate under the *Courts of Justice Act* is more appropriate than post-judgment interest at the contractual rate of 26.82%.

[31] The plaintiff may file further submissions on interest and costs, consisting of three double-spaced pages (in addition to a costs outline and copies of any offers to settle). This is to be served and filed by February 28, 2025. The plaintiff should also file a draft judgment in Word format. The defendants may file responding submissions on interest and costs with the same page limit. This is to be served and filed by March 10, 2025. No reply without leave.

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Chown J.

Released: February 18, 2025