COURT OF APPEAL FOR ONTARIO

CITATION: Street Godz Inc. v. 2556593 Ontario Inc., 2025 ONCA 138
DATE: 20250221
DOCKET: COA-23-CV-0697

MacPherson, Huscroft and Coroza JJ.A.

BETWEEN

Street Godz Inc.

Plaintiff (Appellant)

and

2556593 Ontario Inc.

Defendant (Respondent)

David Marcovitch, for the appellant

Obaidul Hoque, for the respondent

Heard: February 18, 2025

On appeal from the judgment of Justice Andra Pollak of the Superior Court of Justice, dated June 2, 2023.

REASONS FOR DECISION

[1] We dismissed the appeal at the completion of the parties' oral arguments. These are our reasons.

[2] In 2018, Street Godz Inc. ("the appellant") and 2556593 Ontario Inc. ("the respondent") entered into a lease agreement for the appellant to rent the rear part of a premises located at 4252 Chesswood Drive in the City of Toronto. The lease

was for a period of five years and permitted the use of the property for a garage/auto mechanic business. The appellant operated a garage and offered auto mechanic services.

[3] At some point, the appellant stopped paying rent. In 2021, the appellant asked the respondent to consent to an assignment of the lease to a prospective buyer of its company. The buyer intended to use the premises as an auto body shop. The respondent refused to consent. Ultimately, the appellant vacated the premises.

[4] The appellant commenced the underlying action and claimed that the respondent breached the lease in several ways, including by refusing consent to an assignment of the lease.

[5] The respondent counterclaimed and sought damages for rent arrears and for the cost of repairs for damage done to the premises by the appellant.

[6] The trial judge dismissed the appellant's action and granted the respondent's counterclaim. She ordered that the appellant pay $81,270 for rent arrears and $93,800 for damages.

[7] The appellant makes three submissions on appeal.

[8] First, the appellant argues that the trial judge erred in granting damages for the cost of repairs based on an estimate provided by a contractor who did not testify in court, which was improper as it constituted hearsay evidence.

[9] We disagree. It is not clear to us that the trial judge relied on the quotation for a hearsay purpose. The trial judge identified the issue as whether the respondent had provided the court “with the evidence necessary in order to evaluate the damage”. In determining damages, the trial judge did not exclusively rely on the quotation provided by the contractor. The trial judge accepted the testimony of Abdul Hatif, a representative of the respondent, that the respondent had incurred damages and received a quote to repair the premises. The respondent relied on photographs showing the condition of the unit before and after the duration of the appellant’s lease to support the claim. The trial judge recognized that the contractor who provided the quote had not been called but found the photographs concerning. Consequently, she was satisfied on the evidence that the respondent had made out its claim because there was no evidence to suggest that the quote was unreasonable. We see no basis to interfere.

[10] Second, the appellant submits that that the trial judge erred by discouraging it from introducing a surreptitious recording of a conversation about the lease between Mr. Hatif and the appellant’s principal, as well as comments by Mr. Hatif to an adjacent property owner. The appellant attempted to introduce these recordings during Mr. Hatif’s cross-examination. According to the appellant, the trial judge improperly held that the surreptitious recordings were illegal acts and not admissible in the proceedings.

[11] We are not persuaded by the appellant's submission. While we do not necessarily agree with the trial judge's comments about the alleged illegality of the surreptitious recordings, ultimately, this ground of appeal turns on whether the surreptitious recordings were admissible because they had probative value to the issues raised by the parties. The appellant has failed to show that any of the recordings were relevant, probative, or that it was prejudiced by the exclusion of the recordings during the cross-examination of Mr. Hatif.

[12] Third, the appellant argues that the trial judge erred in finding that it had not proven that the respondent's refusal to consent to the assignment of the lease was unreasonable and violated the terms of the lease. We disagree. This issue turned on a factual finding by the trial judge that there was a valid explanation for the respondent's refusal. Mr. Hatif gave evidence that there are material differences between the operation of an auto body shop and an auto mechanic shop. The trial judge accepted this evidence and concluded:

> The evidence of the defendant is that an auto body shop requires more space for customers to get in and out of the premises, as they usually involve tow trucks that would have to deliver the cars to the auto body shop. On the basis of the evidence, I accept this explanation as it is clear from the pictures and all of the evidence that the parking space and access of cars to freely drive around the property is severely limited.

[13] The appellant, in effect, has asked this court to re-try this issue on appeal. That is not our task. There is no basis to interfere with the trial judge's conclusion.

[14] For these reasons, the appeal is dismissed. The respondents are entitled to their costs of the appeal fixed in the agreed amount of $7,000 inclusive of disbursements and HST.

"J.C. MacPherson J.A."
"Grant Huscroft J.A."
"S. Coroza J.A."