CITATION: 12814307 Canada Inc. v. 2700688 Ontario Inc. et al, 2025 ONSC 4951
COURT FILE NO.: CV-25-747560
DATE: 20250829

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 12814307 CANADA INC. O/A HYMUS SPORTS, Plaintiff

AND:

2700688 ONTARIO INC. and RSG HYMUS ROAD HOLDING INC., Defendants

BEFORE: Schabas J.

COUNSEL: Ocean Yam Enbar, for the Plaintiff

Raghav Vig, for the Defendants

HEARD: August 27, 2025

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REASONS ON INJUNCTION MOTION

Overview

[1] The Plaintiff seeks an interlocutory injunction enjoining the Defendants from interfering with the *status quo* of the Plaintiff's tenancy at premises owned by the Defendants. The plaintiff will continue to pay rent on a monthly basis.

[2] An interim injunction preserving the *status quo* was granted by Glustein J. on July 16, 2025, to continue until this matter was heard on August 27, 2025. At the hearing on August 27, 2025, the Defendants agreed to abide by the Order of Glustein J. until September 30, 2025, subject to any order released prior to that date.

[3] In my view, the test for an interlocutory injunction is met in this case. The Plaintiff's motion is granted.

Factual Background

[4] On or about October 13, 2021, the Plaintiff entered into a binding Agreement to Lease, dated October 13, 2021, (the "Lease") with Misco Holding Inc. ("Misco" or the "Former Landlord") for a commercial property comprising approximately 54,800 square feet. The Lease was for a term of 60 months, with rent calculated on square footage basis. The Lease provided a renewal option for 4 additional 60-month terms. Rent was to abate if the premises were not ready for occupancy on the Lease commencement date, which was March 1, 2022.

[5] In accordance with the Lease, the plaintiff advanced $548,338.88 to Misco for rent deposits reflecting first and last month's rent and advanced rent to be credited at various points in the course of the Lease.

[6] Misco was unable to deliver vacant possession of the premises on March 1, 2022, due to the presence of a holdover tenant. The Former Landlord was only able to offer about 27,000 square feet of the premises in April 2024. The Plaintiff accepted that space, on a "month to month basis", based on representations that it was to obtain the entire space under the Lease in due course and that the term of the Lease would be amended to reflect a commencement date once all the square footage was available to the Plaintiff. This is reflected in an email from the Former Landlord on April 23, 2024.

[7] The Former Landlord identified that the monthly rent reflecting the portion occupied, was to be $22,042.48, with additional payments amounting to one-third of the utility usage.

[8] Misco requested post-dated cheques for four months rent beginning June 1, 2024. However, Misco's representative died around this time, and no cheques were provided. Nevetheless, for the next 12 months, Misco did not request payment of any rent and the Plaintiff understood that rent was being deducted from the earlier advances.

[9] On April 28, 2025, the Defendants purchased the property. In May 2025, the Plaintiff billed the Plaintiff for its share of the utility costs, but not rent. At about this time, the holdover tenant vacated the remainder of the space that was the subject of the Lease. However, the Defendants did not allow the Plaintiff access to it.

[10] In June 2025, the Plaintiff says the Defendants began demanding full payment under the Lease, ignoring the arrangement that had been in place since May 2024. The Defendants said they were unaware of the Lease, but correspondence seems to suggest otherwise.

[11] On July 3, 2025, the Defendants delivered a Notice of Termination due to Rental Default. The Notice alleges that two months of rent and additional rent, for June and July 2025, totalling $139,019.38, were in arrears. The Notice of Termination refers to the Lease and takes rental amounts from it which were based on the entire 54,800 square feet of space being occupied, asserting a total monthly rent of over $60,000. The Defendants now concede that these amounts are incorrect and say that the Notice should have specified the reduced rent agreed upon in 2024 of $22,042.48.

[12] The Plaintiffs then commenced this action and sought urgent injunctive relief. On July 16, 2025, Glustein J. set a schedule for this motion and made the following interim orders:

> 1. The applicant tenant shall pay the amount of $44,088.96 into court for the monthly rental payments of $22,043.48 for June and July 2025.
> 2. As of August 1, 2025, the applicant tenant shall pay the monthly amount of $22.043.48 to the respondent landlord, without prejudice to the positions of the parties.
> 3. All terms of this order are without prejudice to the positions of the parties on the hearing of the interlocutory injunction or in any other manner in this action.

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4. The respondent landlord undertakes not to re-enter the premises presently occupied by the applicant tenant until the court's determination on the August 27, 2025 hearing.

[13] The Plaintiff has made the payments required and also paid rent for August, 2025. The Defendants have agreed to abide by the Order of Glustein J. until September 30, 2025, subject to any order released prior to that date.

[14] In its responding record, the Defendants have asserted that the Plaintiff's use of the premises, which includes recreation and indoor sports, is not permitted under Toronto zoning By-laws.

Applicable test for an interlocutory injunction

[15] Pursuant to s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the Court may grant an interlocutory injunction where it appears to the Court to be "just or convenient to do so." A party seeking an interlocutory injunction must address the three-part test stated by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 ("*RJR*") at p. 334:

> (1) is there a serious issue to be tried?
>
> (2) will the applicant suffer irreparable harm if the injunction is not granted? and
>
> (3) which party will suffer the greater harm if the injunction is granted or refused – a balance of inconvenience test?

[16] The three questions must be assessed as a whole. Strength on one branch may compensate for weakness on another branch. Fundamentally, the issue is whether granting an injunction is just and equitable having regard to all of the circumstances of the case: *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at para. 25.

[17] The "serious issue to be tried" standard is a low one, requiring only that the application not be vexatious or frivolous: *RJR* at pp. 337-338. This is a lower test than when a mandatory injunction is sought, which requires a showing of a strong *prima facie* case.

[18] The Defendants suggested in their factum that the strong *prima facie* case test applies, asserting that this was due to the alleged breach of the zoning By-law. However, they cited no compelling authority and in oral argument accepted that the *RJR* test applies. In my view, this is correct. The injunction seeks to preserve the *status quo* and cannot be regarded as a mandatory injunction requiring action of the Defendants.

[19] The moving party will not suffer irreparable harm if damages will provide an effective remedy if the injunction is not granted. The balance of inconvenience test requires the Court to consider the equities of the situation, including the impact of granting an injunction.

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Application of the test

Serious issue to be tried

[20] The legal dispute is whether the Lease applies to the parties or whether the Plainitff's tenancy is merely a month-to-month arrangement which the Defendants have the right to terminate on one-month's notice for non-payment of rent.

[21] It is not my role to decide this issue on an interlocutory injunction. On a motion of this kind the Court is not to do a deep dive into the merits, but simply determine whether there is a serious issue.

[22] Here, there clearly are serious issues to be tried.

[23] The Plaintiffs and the Former Landlord signed a binding Lease in 2021. Although the commencement date has been delayed, the lease was acted upon. The Plaintiff paid rent and advance rent. When the Plaintiff took over some of the space in 2024, the rental amount was determined by reference to the Lease, and it was noted that the commencement date had not yet been fixed. Even when the Defendants took over, they initially only sought payment of a portion of the utilities as agreed with the Former Landlord.

[24] Although there is some reference to the current arrangement being month-to-month, and the Defendants assert that the Lease never commenced, or is void or frustrated due to the alleged violation of City Zoning By-law, these issues are all for a trial. The Plaintiffs have led evidence supporting their position and their case cannot be said to be frivolous or vexatious.

Irreparable harm

[25] I find that if the interlocutory injunction is not granted, the Plaintiff will suffer irreparable harm.

[26] Injunctions are strongly favoured when there is interference with property rights: *1465152 Ontario Limited v. Amexon Development Inc.*, 2015 ONCA 86. This is due, at least in part, to the often unique nature of real property, including location and features.

[27] Here the Plaintiff has established an ongoing public-facing business at the premises. It has made improvements and is waiting to expand its operation into the entire area that is the subject of the Lease. If other suitable space cannot be found, the business will be destroyed and damages are not readily susceptible to quantification. Even if the Plaintiff can move to new space, its goodwill with its customers will be harmed which, again, may not be adequately remedied in damages. Further, if the Plaintiff is forced to leave and another tenant occupies the space, it will not be able to obtain specific performance of the Lease.

[28] The Defendants submit that they will suffer irreparable harm due to the alleged zoning By-law infraction, as they may be subject to fines by the City. However, the irreparable harm

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test looks at irreparable harm to the moving party, not to the respondent. The By-law issue is more appropriately addressed at the balance of inconvenience stage.

Balance of inconvenience

[29] This factor also favours the Plaintiff. It is the Plaintiff's business that will suffer and be inconvenienced if the injunction is not granted. The Defendants, on the other hand, will continue to be paid rent. Subject to the By-law issue, there is no evidence that the Defendants will be inconvenienced by continuing to have the Plaintiff as a tenant; indeed, the property has many tenants and presumably was purchased as an income property by the Defendants.

[30] The actions of the Defendants in seeking to terminate occurred, it is said, after the Defendants became aware of the Lease, which they claim not to have known of when they bought the property. If so, that is a result of their own failure to conduct due diligence, or they may have a remedy, should they wish to pursue it, against the Former Landlord. However, as the Plaintiffs have agreed to continue to pay the rent and utilities and have undertaken to pay any other damages that the Defendants may suffer if the case is ultimately decided in favour of the Defendants, the balance of inconvenience clearly favours the Plaintiff.

[31] This leaves the Zoning By-law issue.

[32] It appears that this issue may have been discussed when the Lease was signed in 2021. Schedule A to the Lease contains an explicit representation from the Former Landlord that "the said premises can be used for the intended use which is Indoor sports, Recreation & event along with a kitchen for eating establishments based on an assembly act." The Schedule also states that the "Tenant may apply to the City of Toronto for minor variance to change the zoning to allow the intended use of Business to go for public use and such consent will be advanced by the landlord to support the application to get City approval."

[33] The Defendants argue that Plaintiff's use is not permitted because a "recreation use must be on a lot that fronts a major street": Chapter 60 of Zoning By-law 569-2013. After the deadline for filing responding evidence, the Defendants produced an opinion from a planner that the Plaintiff's use is not on a "major street" and violates the zoning By-law. The Plaintiff has not had an opportunity to respond to this opinion.

[34] A Court should not ignore, let alone approve, of conduct that breaches laws, including municipal zoning By-laws: *Java Investments v. 1000225661 Ontario Inc. et al*., 2025 ONSC 1940 at para. 65. It will be inconvenient if the City takes the view that the By-law is being infringed and seeks to enforce it. However, it is not for me to make a final determination of the lawfulness of the use on this motion. Rather, I must consider all the circumstances in balancing the parties' interests.

[35] The Plaintiff has been operating its business for over a year. The Defendants bought the property with knowledge of the Plaintiff's use, which is advertised by signage on the building and is known to the public. The Defendants only raised this issue, belatedly, in

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the lawsuit; it was not a ground for termination of the tenancy on July 3, 2025. There is no evidence that the City takes the position that the use is unlawful, or that the City is even aware of or investigating the use. Any action the City may take is speculative, and can be addressed by the parties, including, if ultimately necessary, requiring the Plaintiff to compensate the Defendants for any damages they may suffer by reason of what may be an unlawful use of the property.

[36] Accordingly, the balance of inconvenience favours the Plaintiff.

Conclusion

[37] All of the *RJR* factors favour the Plaintiff. The motion for a prohibitory injunction is granted.

[38] Pending adjudication of this action, the Defendants are enjoined form interfering with the Plaintiff's tenancy and occupation of the premises it currently occupies. This includes prohibiting the Defendants from terminating the tenancy, re-entering the premises, removing signage, directing customers of the Plaintiffs away from the premises, changing the locks or taking possession of the premises.

[39] I also order that the Plaintiff make monthly rent payments to the Defendants of $22,043.48 until this action is adjudicated or the Defendants complete work in accordance with the Lease and provide the Plaintiff full access to the 54,800 square feet as described in the Lease, after which the Parties shall be bound by the terms of the Lease with a commencement date of the first of the month following completion of the Landlord's Obligations and provision of full access to the entire premises.

[40] The Plaintiffs originally also sought an order that the Defendants provide an accounting of the rent payments and the money advanced in 2021. However, that was not pursued before me as it is something that will be addressed through discovery in the action.

[41] If costs cannot be agreed upon, the Plaintiff shall deliver submissions of not more than three pages (double-spaced), excluding attachments, within 14 days of the date of this decision. The Defendants shall deliver their responding submissions (with the same page limit) within 7 days of receipt of the Plaintiff's submissions. The submissions of all parties shall also be sent to my assistant by e-mail.

Paul B. Schabas J.

Date: August 29, 2025

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