The Canadian Abridgment eDigests -- Contracts

2022-10
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CON.III.3.d

Subject Title: Contracts

Classification Number: III.3.d

Formation of contract -- Acceptance -- Communication of acceptance

Plaintiff, company that operated business providing security services, including stand-by services during labour disputes, commenced action to enforce payment for stand-by services provided pursuant to agreement with defendant hotel -- As evidence, it submitted series of emails alleged to constitute offer and acceptance of agreement to provide such services -- Plaintiff also claimed punitive damages based on allegations of deceit and bad faith against defendant M, hotel's director of security -- It alleged hotel had first refused to pay invoice on basis it had not entered any agreement, then on basis M had had no authority to enter agreement and, later, on basis there had been no actual strike requiring services -- It invited court to consider possibility it had been mistreated and discriminated against as minority-owned business -- Defendants denied entering any agreement for standby services, claiming they had only sought to have services provided in event strike actually occurred -- They also claimed damages sought by plaintiff were excessive and that its allegations in support of punitive damages had no basis in fact or law -- Action allowed in part -- Words used in email chain supported conclusion plaintiff had been on standby, at request of defendants, for two three-day periods -- Reasonable person would conclude from contents of emails that contract had been formed -- M had, among other things, advised plaintiff that hotel would have it "on board" and asked it to fill in supplier contract -- Plaintiff had, in reliance on those statements, signed contract arranged for employees to be on standby -- Although it appeared defendants had misled plaintiff, it did not appear they had done so knowingly -- Punitive damages were not warranted -- Plaintiff was entitled to judgment for amount of invoice, $32,950.80, plus pre- and post-judgment interest and costs.

Code Red Security v. Sheraton Centre Toronto Hotel (2021), 2021 CarswellOnt 15479, 2021 ONSC 7212, Pollak J. (Ont. S.C.J.) [Ontario]

CON.III.4

Subject Title: Contracts

Classification Number: III.4

Formation of contract -- Communication and acceptance of specific terms

Defendant indirectly owned significant piece of waterfront property -- Plaintiff and defendant signed two-page document described as heads of agreement to address purchase by plaintiff of 50 percent interest of defendant and subsequent development of lands into mixed-use development -- In weeks and months that followed, parties sought to negotiate various agreements that would reflect these intended arrangements and that were necessary to give effect to them -- For various reasons, parties were unsuccessful in their efforts and dispute

arose as to whether parties reached agreement -- Defendant brought action for breach of contract in High Court of Singapore -- Plaintiff's action to determine whether parties created enforceable agreement was dismissed -- Trial judge found parties believed that they entered into binding contract, but one or more essential terms had not been agreed to -- Trial judge found state of negotiations never reached certainty on essential terms -- Trial judge found absence of any agreement on fees for service contracts, without more, prevented either of those purported agreements from constituting binding agreement -- Trial judge found there was also no arbitration clause or similar dispute resolution mechanism by which disagreement between parties could be resolved -- Trial judge found there was no obligation to negotiate in good faith in circumstances where there was no contract in place between parties and where essential terms that remained outstanding were not tied to any objective standard -- Plaintiff appealed -- Appeal dismissed -- Trial judge did not make extricable legal error in his interpretation of either heads agreement or what terms were essential -- Plaintiff's arguments were attack on trial judge's findings about nature and purpose of heads within relevant factual matrix, as well as on judge's interpretation -- No palpable and overriding error -- Essential matters were not addressed in heads of agreement -- Enforceable contract requires more than objective intention to contract -- Nature and purpose of transaction was question of fact to which deference was owed -- Trial judge did not require agreement on all aspects of proposed development.

Concord Pacific Acquisitions Inc. v. Oei (2022), 2022 CarswellBC 88, 2022 BCCA 16, Dickson J.A., Harris J.A., Stromberg-Stein J.A. (B.C. C.A.); affirming (2021), 2021 BCSC 129, 2021 CarswellBC 219, Voith J. (B.C. S.C.); additional reasons to (2019), 97 B.L.R. (5th) 199, 2019 BCSC 1190, 2019 CarswellBC 2103, Voith J. (B.C. S.C.); additional reasons to (2020), 2020 BCSC 368, 2020 CarswellBC 616, Voith J., In Chambers (B.C. S.C.) [British Columbia]

CON.V.5.a

Subject Title: Contracts

Classification Number: V.5.a

Mistake -- Mistake as to nature of agreement (Non est factum) -- General principles

Plaintiff landlords entered into five-year lease agreement signed by corporate defendant as tenant and personal defendants B and R as indemnifiers -- Tenant took possession of leased premises for use as pharmacy, it paid rent for first two years of lease, and it then went into default and vacated premises -- Landlords gave notice of default and took steps to re-let premises to new tenant -- Landlords brought this action seeking damages based on breach of lease agreement -- Tenant and B had not filed response to claim, and claim proceeded against R as indemnifier under lease -- Landlords applied for judgment by way of summary trial -- Application granted -- R personally signed lease agreement as indemnifier for any breach by tenant -- R claimed non est factum, and he had burden to establish that what he signed was fundamentally different from what he believed it to be -- R claimed he did not read agreement before signing it because his English was poor and he relied on B's representation that document was for pharmacy business -- Court proceeded on basis that R honestly held fundamental misunderstanding as to nature and effect of document he signed, and that he did not understand that what he signed was lease agreement in which he made commitment to indemnify landlord for any breach by tenant -- R filed affidavit written and executed in English with no indication that he required assistance of interpreter -- R filled out detailed credit history forms in his own handwriting that he provided to landlord, and there was no indication R had difficulty understanding nature of forms that he completed in English -- There were text message communications between R and B that were entirely in English, which indicated R

conducted at least part of his dealings with B in English -- While R held genuine subjective belief that B and tenant's dealings with landlords regarding release did not involve him, there was good reason to question objective reasonableness of his belief and extent of his diligence in satisfying himself as to exact nature of relationship between various parties -- R was careless in signing agreement without reading it -- R was clearly able to read English but he did not read document, and he did not seek any legal advice -- R's reliance on B's representations was relevant but did not necessary absolve him of legal responsibility -- R's level of carelessness was high given significance of transaction -- There was no evidence landlords had anything to do with representations that B made, they played no role in R's misunderstanding as to nature of his commitment under lease agreement, and they were properly characterized as innocent third parties -- R's non est factum defence failed.

Asara Holdings Inc. v. 1041085 B.C. Ltd. (2021), 2021 BCSC 2350, 2021 CarswellBC 3783, Riley J. (B.C. S.C.) [British Columbia]

CON.IX.4.f

Subject Title: Contracts

Classification Number: IX.4.f

Performance or breach -- Obligation to perform -- Alternative methods of performance

Whether company impliedly bound by principal's previous agreement to alternative method.

Terrafarma v. Berry (2021), 2021 CarswellOnt 17061, 2021 ONSC 7374, L.A. Pattillo J. (Ont. S.C.J.) [Ontario]

CON.IX.8.d

Subject Title: Contracts

Classification Number: IX.8.d

Performance or breach -- Breach -- Miscellaneous

Plaintiff leased nine trucks to corporate defendant ISEES which was owned by individual defendant J -- Plaintiff alleged that ISEES had stopped making payments on six trucks in August 2017 and had failed to return them -- Plaintiff sued for outstanding balances owed and for conversion of its trucks -- Plaintiff obtained judgment against ISEES for amounts due under leases but parallel claim against J was dismissed -- Trial judge ruled that ISEES was in breach of disputed lease agreements by failing to make monthly payments and failing to return trucks as required by agreements -- Trial judge also ruled that ISEES was also liable to plaintiff for tort of conversion but that J was not -- Plaintiff appealed dismissal of parallel claim and costs; defendants cross-appealed -- Appeal allowed; cross-appeal dismissed -- Issue between parties was matter of debt arising from breach of contract while breach of contract could sometimes make breaching party liable in tort, contract took primacy -- Truck leases were primarily method of financing and private ordering of parties should be respected -- Transaction was debt transaction in substance and remedies should prima facie be in contract and debt -- If rental payments were not made, or trucks were not returned, parties intended that remedy would be for breach of contract -- Foundation of parties' relationship in contract meant that defendant was lawfully entitled

to possession of trucks at commencement of leases, and recovery of them by plaintiff was matter of contractual right -- Defendant did not acquire possession of trucks illegally and their possession was subject to obligation to return them end of contract but that did not mean that their possession after that point was tortious -- There was no covenant or contract of guaranty or indemnity -- J was not party to six disputed leases and did not provide personal guarantee -- Corporate defendant was separate legal person -- Expectation in commercial dealings is that personal liability of shareholder or director of corporation would be engaged by written guarantee -- Attempt to find defendant ISEES collaterally liable in conversion, was to support claim against J -- Secured lender should not be able to engage personal liability of directors and shareholders of corporate borrower simply by suing for tortious conversion of collateral rather than in contract or debt.

Driving Force Inc v. I Spy-Eagle Eyes Safety Inc (2022), 2022 ABCA 25, 2022 CarswellAlta 189, Frans Slatter J.A., Frederica Schutz J.A., Jack Watson J.A. (Alta. C.A.) [Alberta]

CON.XIV.5.b

Subject Title: Contracts

Classification Number: XIV.5.b

Remedies for breach -- Damages -- Leasing agreement

Appellant was numbered company, who formerly operated car wash in building leased from respondent association -- Association terminated company's lease, which company claimed was wrongful termination -- Company brought action for damages for alleged wrongful termination -- Company's action was dismissed -- Trial judge determined that termination was not wrongful, and in any event that damages had not been proven -- Company appealed from judgment -- Appeal dismissed -- Trial judge did not err, by not awarding damages in amount company would have received from association to buy out lease -- Any misconduct on part of association did not rise to level needed to find punitive damages -- Association's actions were not taken in bad faith, and constituted reasonable termination of lease for business purposes -- Damages were not proven, and action was properly dismissed.

101100002 Saskatchewan Ltd. v. Saskatoon Co-operative Association Limited (2022), 2022 SKCA 12, 2022 CarswellSask 33, Barrington-Foote J.A., Leurer J.A., Ottenbreit J.A. (Sask. C.A.); affirming *101100002 Saskatchewan Ltd. v. The Saskatoon Co-operative Assn. Ltd.* (2019), 2019 SKQB 300, 2019 CarswellSask 621, G.M. Currie J. (Sask. Q.B.) [Saskatchewan]

CON.XIV.5.l.ii

Subject Title: Contracts

Classification Number: XIV.5.l.ii

Remedies for breach -- Damages -- Loss of profits consequent to breach -- Commercial losses

Appellant was numbered company, who formerly operated car wash in building leased from respondent association -- Association terminated company's lease, which company claimed was wrongful termination -- Company brought action for damages for alleged wrongful termination -- Company's action was dismissed --

Trial judge determined that termination was not wrongful, and in any event that damages had not been proven -- Company appealed from judgment -- Appeal dismissed -- As question of law was involved, standard of review was correctness -- Calculation of damages would never be exact, and relied on best efforts of trial judge to estimate damages -- It was within trial judge's authority to find that company had not provided sufficient financial information -- It was not clear that company would have earned any profits, so that they would have been entitled to damages in any amount.

101100002 Saskatchewan Ltd. v. Saskatoon Co-operative Association Limited (2022), 2022 SKCA 12, 2022 CarswellSask 33, Barrington-Foote J.A., Leurer J.A., Ottenbreit J.A. (Sask. C.A.); affirming *101100002 Saskatchewan Ltd. v. The Saskatoon Co-operative Assn. Ltd.* (2019), 2019 SKQB 300, 2019 CarswellSask 621, G.M. Currie J. (Sask. Q.B.) [Saskatchewan]
