

COURT OF APPEAL FOR ONTARIO

CITATION: Taragar Holdings Limited v. Zaidman, 2015 ONCA 630

DATE: 20150917

DOCKET: C58405

Laskin, MacPherson and MacFarland JJ.A.

BETWEEN

Taragar Holdings Limited

Plaintiff

(Respondents)

and

Jeruham Zaidman

Defendant

(Appellant)

Jeruham Zaidman, acting in person

John S. Contini, for the respondent

Heard and released orally: September 14, 2015

On appeal from the judgment of Justice Wendy M. Matheson of the Superior Court of Justice, dated January 31, 2014.

ENDORSEMENT

[1] The trial judge's finding that the appellant failed to pay rent from January 2010 is supported by the evidentiary record. While the appellant proffered a series of cheques to the landlord, the landlord refused the lesser amount and insisted on payment in full as was its right.

[2] The lease obligated the tenant to pay his share of services as outlined whether or not he made use of those services.

[3] The appellant takes issue with the trial judge's factual findings and her characterization of some of his complaints as "inconveniences". No evidence of damages for any loss of business was led. The trial judge found as a fact that the distraint was specifically not a forfeiture of the lease.

[4] The fact that the locks were changed does not alone render an otherwise lawful distraint a forfeiture. The notice served on the appellant specifically noted that it was not a forfeiture and the appellant was not excluded from the premises.

[5] The trial judge was in the best position to determine the tenant's claim for damages. She heard the evidence, weighed it accordingly, and came to the conclusions she did. This is the role of a trial judge and we see no basis on which to interfere.

[6] The appeal is dismissed.

[7] Costs to the respondent fixed in the sum of \$4,000.00 inclusive of disbursements and HST.

"John Laskin J.A."

"J.C. MacPherson J.A."

"J. MacFarland J.A."