

COURT OF APPEAL FOR ONTARIO

MORDEN\*, WEILER and CHARRON JJ.A.

IN THE MATTER OF an Application pursuant to Rule 14.05(3)(d) of the Rules of Civil Procedure;

AND IN THE MATTER OF an Application pursuant to Part III of the *Commercial Tenancies Act*, R.S.O. 1990 C.1.7:

**B E T W E E N:**

1497777 ONTARIO INC.	)	Charles Simco and Leslie Dizgun for the
Applicant	)	appellant
(Appellant)	)	
- and -	)	
	)	
LEON'S FURNITURE LIMITED AND	)	Geoff R. Hall for the respondent Leon's
MARCA SCHOOL OF HAIR DESIGN	)	Furniture Limited
INC.	)	Barnet H. Kussner for the respondent
Respondents	)	Marca School of Hair Design Inc.
(Respondents in appeal)	)	
	)	Heard: February 11, 2003

On appeal from a judgment of Justice Paul U. Rivard of the Superior Court of Justice dated June 5, 2002.

**A D D E N D U M**

**BY THE COURT:**

[1] This court rendered its decision in this matter on September 24, 2003. Subsequent to its release, the parties disagreed on the settlement of the formal order of the court and, consequently, moved for directions.

---

\* Justice Morden did not participate in the giving of the decision in this *addendum*.

[2] Both parties agree that the formal order should declare that the lease, which is the subject-matter of the litigation, is terminated. They disagree, however, on whether the order should specify the date of termination.

[3] We are of the view that the date of termination could, and probably should, have formed part of the court's reasons and that the omission can now be rectified by motion under rule 59.06. We are further of the view, given the intervening retirement of Justice Morden that the matter can be determined under s. 123 (3) of the *Courts of Justice Act* by the remaining justices who heard the appeal.

[4] We hold that the lease was effectively terminated on November 19, 2001. We agree with the landlord's submission that this determination does not in any way inhibit the discretion of the judge hearing the trial of the issue on the question of relief from forfeiture.

[5] We make no order as to costs on this motion.

Released: MAY 13 2004  
KMW

Signed: "Karen M. Weiler J.A."  
"Louise Charron J.A."