SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-103037-183

DATE: July 16, 2020

BEFORE: THE HONOURABLE PETER KALICHMAN, J.S.C.

HENGYUN INTERNATIONAL INVESTMENT COMMERCE INC.
Plaintiff
v.
9368-7614 QUÉBEC INC.
Defendant

JUDGMENT
(Commercial lease, peaceable enjoyment, damages, superior force, resiliation)

OVERVIEW

[1] Hengyun International Investment Commerce Inc. (the **Landlord**) is the owner of a building on Cavendish Blvd. in Montreal (the **Building**).

[2] VitalMaxx Fitness Centre Inc. (**VFC**) entered into a lease with the Landlord on November 3, 2017 (the **Lease**), to operate a gym in premises located on the entire second floor of the Building (the **Premises**).[1] The Lease was for a period of five years

[1] Exhibit P-3b. An earlier lease had been signed (Exhibit P-3) but the parties agree that it was replaced by Exhibit P-3b.

commencing on October 15, 2017. At the time the Lease was entered into, VFC had been operating a gym in a nearby location for several years.

[3] Soon after signing, VFC asked the Landlord to change the name on the Lease to 9368-7614 Quebec Inc. (**Quebec Inc.**).[2] The change was never made.

[4] On December 5, 2017, VFC made an assignment in bankruptcy.[3]

[5] As of January 2018, after completing renovations, Quebec Inc. began operating in the Premises under the name NDG Fitness Center (the **Gym**). Since that time, the parties have been in constant conflict over a variety of issues and have each presented numerous requests for injunctive relief before this Court.

[6] From the Landlord's perspective, Quebec Inc. has no right to occupy the Premises. It seeks eviction as well as compensation for its loss of revenue. The same conclusion is sought in the event that the Court comes to the conclusion that the parties are bound by the Lease except that in that case, the compensation is labelled rent.

[7] Quebec Inc. claims that the Lease was assigned to it and that it has every right to occupy the Premises. It seeks a declaration to that effect. In addition, it seeks damages and a reduction in rent for a number of problems, including the Landlord's failure to provide adequate air-conditioning and heating. In the event that eviction is ordered, Quebec Inc. seeks damages representing the cost of leasehold improvements made to the Premises.

[8] The Court must answer the following questions:

I. What is the nature of Quebec Inc.'s occupation of the Premises?

II. What, if anything, is due to the Landlord?

III. Is Quebec Inc. entitled to damages or a reduction in rent?

IV. Is the Landlord entitled to resiliate the Lease and evict Quebec Inc.?

V. If Quebec Inc. is evicted, is it entitled to damages?

ANALYSIS

I. What is the nature of Quebec Inc.'s occupation of the Premises?

[2] Exhibit D-2.
[3] Exhibit P-4.

[9] The Landlord claims that Quebec Inc. is occupying the Premises without a lease. According to the Landlord, VFC did not transfer the Lease to Quebec Inc. and could not have transferred it due to its bankruptcy. Furthermore, it claims to have been unaware of VFC's bankruptcy until March, 2018.

[10] Quebec Inc. maintains that the Landlord not only knew about VFC's bankruptcy, but that one of the Landlord's representatives actually suggested this course of action. Jackson Bladi, the representative of VFC and of Quebec Inc., testifies that in the summer of 2017 he was very interested in leasing the Premises but that VFC had eight months left on its then current lease and was not looking to move before that. At a meeting with several of the Landlord's representatives, including Ms. Ling Chen and Mr. Renwei He, Mr. He suggested to Mr. Bladi that he "close" VFC in order to be able to move from one location to the other prior to the expiry of its lease. According to Mr. Bladi, it was extremely important to the Landlord that it be able to quickly lease the second floor of the Building in order to facilitate a pending loan. Mr. Bladi was open to the idea of leaving VFC's premises before the expiry of its lease and was happy to help out the Landlord, but was concerned about how the bankruptcy would work. Consequently, in consideration of his agreement to rent the Premises, he asked the Landlord to give him the right to cancel at any time upon two months' notice, which the Landlord agreed to.[4]

[11] The Landlord denies that it was in any way involved in the planning of VFC's bankruptcy. It maintains that had it been aware that VFC had gone bankrupt, it would never have allowed another company to take possession of the Premises and would have immediately sought to have it evicted. It claims that as soon as it became aware of the bankruptcy it sought an order of eviction.

[12] Since Quebec Inc. has no right to occupy the Premises and its occupation was never tolerated, the Landlord argues that no lease exists. It adds that if the Court concludes that a lease does exist, it is on a month-to-month basis.

[13] The Court is not convinced that the Landlord was aware of VFC's bankruptcy before March of 2018 or that it encouraged Mr. Bladi to take this step. The evidence in this regard is not convincing.

[14] That said, for the reasons that follow, the Court nonetheless concludes that the Landlord accepted the transfer of the Lease to Quebec Inc.

[15] According to paragraph 10.01 of the Lease, VFC was entitled to transfer its rights in the Lease provided the Landlord gave its written consent.[5] This provision is similar to the general rules set out in the Civil Code of Quebec (**CCQ**).[6]

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4 Exhibit D-18a.
5 Exhibit P-3b.
6 Articles 1870 and 1871 CCQ.

[16] In the Court's view, the Landlord's consent to the assignment of the Lease has been established.

[17] In a text message on November 29, 2017 Ms. Kristi Sivret, Mr. Bladi's spouse and the president of Quebec Inc.[7], sent the following message to Ms. Chen:

> Good morning. I was wondering if you can change the name of lease and take vitalmaxx off and put the new: 9368-7614 Quebec inc. and email the new copy
>
> Thank you xoxoxoxox [8]

[18] Ms. Chen did not reply to this request.

[19] However, two weeks later on December 12, 2017, Ms.Sivret sent another text to Ms. Chen to say:

> Hi miss Chen, i put the cheque in your mailbox. For the lease you can remove vitalmaxx and replace it by: ndg fitness center and add (9368-7614 Quebec inc) beside it and send by email the new one: kristisivret@icloud.com
>
> Thank you. [9]

[20] Ms. Chen responded to Ms. Sivret's December 12, 2017 text message with a "thumbs-up" symbol that she describes as signifying "okay".[10] However, she states that her reply was in regards to the news that the deposit cheque had been dropped off and not the request to substitute Quebec Inc. for VFC. She indicates that she found it "awkward" that Ms. Sivret was requesting a change of name because she should have known that to make such a change, she would have had to come to the office and fill out paperwork.

[21] The Court does not accept Ms. Chen's explanation.

[22] Firstly, had Ms. Chen been opposed to allowing Quebec Inc. to be substituted for VFC, why did she not indicate that? It is true that Ms. Chen is not perfectly fluent in English but she regularly enters into lengthy commercial leases on behalf of the Landlord and, in the Court's view, was more than capable of replying to Ms. Sivret to simply say "no". Had she been opposed to the transfer, she could easily have found a way to communicate that message. She did not.

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7 Ms. Sivret acknowledges that she became president of Quebec Inc. to avoid creating the appearance that Mr. Bladi was merely continuing VFC under another name after the bankruptcy.

8 Exhibit D-2.

9 Exhibit D-2.

10 Ms. Sivret describes the symbol as signifying "excellent".

[23] Secondly, the deposit cheque that Ms. Sivret dropped off was issued by Quebec Inc.[11] Ms. Chen remembers noticing that the cheque was not in VFC's name but claims not to recall what name was on the cheque. She adds that tenants sometimes pay their rent personally and that it is not that unusual to have a rent cheque issued by another entity. Although that may be so, Ms. Chen herself acknowledges that in this case she found it odd. Furthermore, given that Ms. Sivret had asked to have the Lease transferred to Quebec Inc., the implication of receiving a deposit cheque from that same entity should have been perfectly clear to Ms. Chen. Had she been concerned that accepting Quebec Inc.'s cheque could imply that she was consenting to Ms. Sivret's request to transfer the Lease, she had only to ask that VFC replace the cheque. She made no such request.

[24] Ms. Chen accepted the transfer by responding positively to Ms. Sivret's December 12, 2017 text message. She then attempted to cash Quebec Inc.'s deposit cheque. It is the Court's view that Ms. Chen, on behalf of the Landlord, accepted that Quebec Inc. become the tenant under the Lease. At any rate, she certainly understood that a transfer had been requested, she did not refuse it and is presumed to have accepted it.[12]

[25] The Landlord further argues that VFC could not have validly assigned the Lease to Quebec Inc. because it had already gone bankrupt and only the trustee in bankruptcy could have transferred its assets. A creditor to VFC's bankruptcy might have grounds to contest the transfer on that basis but, in the Court's view, the Landlord does not. The Landlord accepted to contract with an entity that was not in bankruptcy.

[26] Finally, the Landlord argues that if a lease was entered into, it was on a month-to-month basis. This argument is predicated on the Court accepting that Mr. Bladi's March 28, 2018 e-mail[13] to Ms. Chen was an offer to lease and that the Landlord's April 2, 2018 letter was a refusal of that offer.[14]

[27] The Court does not accept that premise. It is clear from Mr. Bladi's March 28 e-mail that he believed that a lease existed and had already been properly transferred. He merely requested that certain adjustments be made to reflect, among other things, discussions that had taken place when the Lease was first being negotiated.

[28] The Court thus concludes that Quebec Inc. occupies the Premises in virtue of the Lease.

II. What, if anything is due to the Landlord?

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11 Exhibit P-37.
12 Art. 1871 CCQ
13 Exhibit P-8.
14 Exhibit P-9.

[29] According to the Landlord, Quebec Inc. owes $136,328.08 in rent as of May 15, 2020.[15]

[30] Subject to its claims for reductions in rent and damages (which will be dealt with below), Quebec Inc. raises only two issues with respect to the Landlord's calculations; the October 2019 rent increase and the security deposit.

[31] The issue of the rent increase concerns paragraph 1.03 of the Lease which provides that as of October 2019, the rentable area upon which the rent is calculated increased by 1500 square feet.

[32] Paragraph 1.03 of the Lease reads as follows :

> 1.03 Rentable Area: Eleven Thousand Four Hundred and Nineteen Square Feet (11,419 sq ft.) for the First Tow (2) lease years, from October 16th, 2017 to October 14th, 2019. The Non-Rentable Area of the Second (2nd) Floor is One Thousand Five Hundred Square Feet (1,500 sq. ft.).
>
> During each and every lease year following the first two lease years, from October 15th, 2019 to October 14th, 2027, the Rentable Area Increases to Twelve Thousand Nine Hundred and Nineteen Square Feet (12,919 sq. ft.).

[33] Applying this provision, the Landlord increased the rent by $1,687.00 (taxes included)[16] as of October 2019.

[34] Quebec Inc. does not dispute that an increase should be applied but argues that it should be reduced by roughly one third. According to Quebec Inc., the 1500 square feet that the Lease describes as "non-rentable area" is, in fact, common area space. Since roughly one third of the second floor space that Quebec Inc. had initially rented, was later leased to École Wing Chun Monkland, Kung-Fu studio (the **Kung Fu Studio**)[17], only one-third of the 1500 square feet should be used for the purpose of calculating the increase.

[35] The Court does not agree.

[36] While it is true that in her testimony, Ms. Chen initially referred to the 1500 square feet of "non-rentable area" referred to in paragraph 1.03 of the Lease as being common area space, the Court accepts her subsequent testimony that this was an error. Her explanation is consistent with a floor plan and a list showing the areas occupied by the various tenants of the Building.[18] The Court accepts that the 1500

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15 Exhibit P-35 C.
16 $8,983.55 – $7,296.86.
17 Exhibit P-34. Initially, the Kung Fu Studio was going to sublet space from Quebec Inc.
18 Exhibit P-35.

square feet to which the Lease refers is part of the space occupied by the Gym and is not common area space.

[37] The issue raised by Quebec Inc. in regards to the security deposit involves paragraph 1.12 of the Lease, which reads as follows:

> 1.12 Security Deposit: a total sum of Twenty Thousand Seven Hundred and Eighty-Seven Dollars and Fifty-Eight Cents ($20,787.58) to be applied as follows:
>
> > (a) Ten Thousand Three Hundred and Ninety-Three Dollars and Seventy-Nine Cents ($10,393.79), to be applied to the Base Rent, Additional Rent and Goods and Services Tax payable during the month(s) of October; and
> >
> > (b) Ten Thousand Three Hundred and Ninety-Three Dollars and Seventy-Nine Cents ($10,393.79), as security for the performance of all of the terms, obligations and conditions of the Lease.

[38] Quebec Inc. provided the Landlord with a cheque representing the full amount of the security deposit but it was returned due to a lack of sufficient funds and was never replaced.[19] Quebec Inc. now argues that it should not have to provide a security deposit at all.

[39] According to Quebec Inc., it cannot be compelled to provide the first half of the security deposit because it represents the first month's rent, which it should not have to pay due to flooding which forced it to close the Gym for three weeks.

[40] This argument must fail. Quebec Inc. already seeks a reduction in rent due to the flooding and cannot recover the same amount twice.

[41] As regards the second half of the security deposit, Quebec Inc. maintains that the Lease does not set out a delay in which to pay the deposit and, therefore, it cannot be said to be in default. It goes on to argue that it has every intention of paying the last month's rent should it still be in the Premises at that time.

[42] These arguments must fail as well.

[43] The purpose of the security deposit and, in particular, the second portion described in paragraph 1.12 (b), is to provide security to the Landlord for the fulfilment of Quebec Inc.'s obligations throughout the term of the Lease.[20] Simply undertaking to pay the last month's rent at the end of the Lease, as Quebec Inc. proposes to do, defeats the purpose of the security deposit. Quebec Inc. appears to have understood

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19 Exhibit P-37.

20 See also paragraph 12.03 of the Lease.

this from the outset and initially gave a cheque for the full amount. Its position only changed after its relationship with the Landlord soured.

[44] Finally, Quebec Inc. argues that since a portion of the space it leased from the Landlord was subsequently leased to the Kung Fu Studio, the security deposit should be reduced just as the rent was.[21]

[45] Such an adjustment might appear equitable but nothing in the Lease compels the Landlord to reduce the agreed-upon amount. At any rate, the Landlord must apply the security deposit to the rent owing under the Lease. A larger deposit simply means greater security. Consequently, even if the security deposit is higher than it would have been had it been adjusted to account for the Kung Fu Studio lease, Quebec Inc. will not end up paying any more rent than it otherwise would have.

[46] Since the Court has rejected Quebec Inc.'s arguments regarding the October 2019 rent increase and the security deposit, the Landlord's claim does not require adjustment. Subject to Quebec's Inc.'s claims for reduction of rent and damages, which will be examined below, it owed the Landlord $136,328.08 as of May 15, 2020 and **$145,311.63** as of June 15, 2020.[22]

III. Is Quebec Inc. entitled to damages or a reduction in rent?

[47] The arguments raised by Quebec Inc. in support of its claim for damages and reductions in rent center around the notion of peaceable enjoyment.

[48] A lessor's obligation to provide a tenant with peaceable enjoyment of the leased premises, is the essence of the lease.[23] Article 1854 CCQ sets out the lessor's duty in this regard:

> **1854.** Le locateur est tenu de délivrer au locataire le bien loué en bon état de réparation de toute espèce et de lui en procurer la jouissance paisible pendant toute la durée du bail.
>
> Il est aussi tenu de garantir au locataire que le bien peut servir à l'usage pour lequel il est loué, et de l'entretenir à cette fin pendant toute la durée du bail.
>
> **1854.** The lessor is bound to deliver the leased property to the lessee in a good state of repair in all respects and to provide him with peaceable enjoyment of the property throughout the term of the lease.
>
> He is also bound to warrant the lessee that the property may be used for the purpose for which it was leased and to maintain the property for that purpose throughout the term of the lease.

[21] As a result of the the Kung Fu Studio lease, the Landlord reduced the rent owing by Quebec Inc.
[22] This figure includes taxes.
[23] *9185-4000 Québec inc. c. Centre commercial Innovation inc*., 2016 QCCA 538 (CanLII), par. 19.

[49] The lessor's obligation to provide peaceable enjoyment is an obligation of result[24]; it can only be relieved of this obligation in the event of superior force (*force majeure)* or the fault of someone beyond its control.[25]

[50] When a lessor fails to perform an obligation owing under the lease, including the obligation to provide peaceable enjoyment, a tenant can claim a reduction in rent.[26] A tenant may also sue a lessor in damages. Although a claim in damages is separate and distinct from a request for reduction in rent, it can be exercised at the same time, which is what Quebec Inc. has done in the present case.

[51] The Court will first examine Quebec Inc.'s arguments with the respect to rent reduction and will then consider its claim for damages.

(i) Rent reduction

[52] Quebec Inc. claims rent reductions for different periods over the course of its occupation of the Premises. It concludes that it has actually overpaid its rent by $9,609.71 and asks that the Court order the Landlord to reimburse that amount.

[53] The Court will examine each period in turn.

a) March and April 2018

[54] Quebec Inc. seeks a 100% reduction in rent for these months due to a flood that occurred in the Premises in February of 2018 which caused the Gym to close for three weeks.[27] Quebec Inc. adds that during these months, it was also dealing with the Landlord's failure to provide 24-hour access to the Gym for its members.

[55] The Landlord does not deny that there was a flood in February 2018 but it does not admit that the Gym was closed for three weeks.

[56] Furthermore, according to the Landlord, Quebec Inc. failed to prove that the flood was due to any fault on its part and suggests that it was likely due to Quebec Inc.'s fault. It argues that it cannot be held responsible for a problem that was caused by Quebec Inc. and that no rent reduction should be ordered.

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[24] *Les Immeubles Gabriel Azzouz inc*. c. *Salon d'optique Fernand Ghobril inc*., 2008 QCCA 135, par. 5.
[25] *9185-4000 Québec inc. c. Centre commercial Innovation inc*., 2016 QCCA 538 (CanLII), par. 20.
[26] Art. 1863 CCQ.
[27] Under the Lease, the first five months (October 2017-Ferbuary 2018) were rent-free.

[57] The Court does not agree.

[58] The Court accepts that for a period of three weeks, Quebec Inc. was totally unable to operate and therefore had no enjoyment of the Premises. It is entitled to a reduction equivalent to the full amount of its rent for that period.[28]

[59] As far as the cause of the flood is concerned, the Landlord has failed to establish that Quebec Inc. was in any way responsible.

[60] Quebec Inc. argues that even though the flood occurred in February, it impacted sales in the months of March and April as well. This may be an issue in regards to its claim for damages, but in terms of a reduction in rent, Quebec Inc. was unable to operate for three weeks and that is the period in which it is entitled to have its rent reduced to zero. The Court will therefore apply a reduction of rent of **$5,332.28.**[29]

[61] As far as the failure to allow for 24-hour access is concerned, the Court does not consider that this is a failure on the part of the Landlord to provide peaceable enjoyment of the Premises.

[62] The Lease does not include any reference to 24-hour access to the Gym and it appears that the parties did not discuss the mechanics of such access before 2018. Once they came to an agreement on April 17, 2018 that satisfied Quebec Inc.'s need for access and the Landlord's desire for security, the problem was solved.[30]

b) <u>June to September, 2018</u>

[63] Quebec Inc. seeks a full reduction in rent for this four month period due to the fact that the Premises were either not air-conditioned at all or were poorly air-conditioned.

[64] The Building is roughly 60 years old and, according to Ms. Chen, the air-conditioning is complicated. There is a central system but for a floor of the Building to be connected to it requires equipment to be installed that is apparently very expensive.

[65] The Lease calls for the Landlord to provide air-conditioning.[31] Ms. Chen was prepared to install the necessary equipment in order to have the Premises connected to the Building's central system but changed her mind when she found out that VFC had gone bankrupt. As she explains it, she was not prepared to incur such an expense for an occupant that had no lease and was in the process of being evicted. She also

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[28] See *9145-0692 Québec inc. c. 9162-8974 Québec inc.*, 2019 QCCS 5405, par. 61.
[29] $7,109.71 ÷ 4 weeks = $1,777.42 X 3 = $5,332.28 (see Exhibit P-35c).
[30] Exhibit D-18b.
[31] Exhibit P-3b, paragraph 1.06 (d).

maintains that because Quebec Inc. had failed to provide a security deposit, the Landlord lacked the necessary funds to install the proper equipment.

[66] In July of 2018, Quebec Inc. sought an injunction to compel the Landlord to install air-conditioning. The request was granted and the Landlord was ordered to "provide an air-conditioning system" in the Premises.

[67] Rather than install the equipment necessary to connect the Premises to the Building's central system, the Landlord installed six portable air conditioners.

[68] According to Quebec Inc., the six portable air conditioners were insufficient to properly cool the Premises.

[69] The Landlord disagrees. According to Mr. Quan Guo, the Building janitor, the six portable air-conditioning units that he installed in the Premises brought the temperature to acceptable levels.

[70] The evidence does not support Mr. Guo's opinion nor the Landlord's position in general on the issue of air-conditioning.

[71] The Landlord's refusal to provide air-conditioning was based on its position that Quebec Inc. had no legal right to occupy the Premises. Since the Court has rejected that position, the Landlord was in default of its obligation to provide air-conditioning under the Lease. Furthermore, since the Landlord's obligation to provide peaceable enjoyment is one of result, the fact that it lacked the necessary funds to install the proper equipment, assuming that to be true, is not a valid defense.[32]

[72] While no expert evidence was introduced by either side, the Court is satisfied on a balance of probabilities that the portable air conditioners installed after the July 2018 Court order did not succeed in cooling the Gym to acceptable levels. In this regard, the Court accepts the testimony of Mr. Bladi, Ms. Sivret and two Gym-members[33], who all testified that the temperature in the Gym during much of the summer was virtually unbearable. The temperature readings taken on several different days confirms this.[34]

[73] As far as Mr. Guo's testimony is concerned, the Court found it unpersuasive. Mr. Guo took very few temperature readings and those he did take do not support his conclusion that the portable air-conditioning units were cooling off the Gym.[35]

[74] While the Court accepts Quebec Inc.'s position that it is entitled to a reduction in rent for this period, it does not agree that a 100% reduction is warranted. It is clear that

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[32] *Société de développement du fonds immobilier du Québec inc. c. 9066-6249 Québec inc*., 2010 QCCA 300, pars. 34-35.
[33] Ms. Vasiliki Dedakis and Mr. Bernard Lamothe.
[34] Exhibits D-13 and D-14.
[35] Exhibit P-29.

the Gym was often very hot but it never closed and at least some of the members continued to train there. It cannot be said that Quebec Inc. was deprived of peaceable enjoyment throughout the period. Furthermore, daily temperature readings for the entire period were not provided and the Court does not accept that the temperature in the Gym was uncomfortably hot every day and night from June to September.

[75] Given the nature of Quebec's Inc.'s business, adequate air-conditioning is integral to its enjoyment of the Premises. With this in mind, the Court will exercise its discretion and grant a reduction of 50% for the months of June and September and 70% for July and August.

[76] Quebec Inc. is thus entitled to a rent reduction of **$17,063.30** for this period.[36]

c) <u>December 2018 and January 2019</u>

[77] Quebec Inc. seeks a two-thirds reduction in rent for the months of December, 2018 and January, 2019, in connection with cold temperatures in the Gym as well as an incident of water infiltration.

[78] There is evidence of cold temperatures in certain parts of the Gym, including the women's locker room and Mr. Bladi's office.[37] However, unlike the extremely warm temperatures that were experienced in the summer of 2018, the Court is not convinced that this problem was significant to the point of diminishing Quebec Inc.'s enjoyment of the Premises.[38]

[79] Furthermore, it is clear that a more wide-spread problem of inadequate heating had previously been experienced but that Mr. Guo resolved it by opening the valves on certain of the radiators located in the Gym. Ms. Sivret confirms this.

[80] According to Mr. Guo, he explained to Ms. Sivret how to turn the valves on if an area became too cold. She does not deny this but claims that she had no intention of touching the radiators. Furthermore, it does not appear that she or anyone else from Quebec Inc., contacted Mr. Guo to complain that certain parts of the Gym were still cold.

[81] As far as water infiltration is concerned, the evidence is scant. In a letter dated January 10, 2019, there is a reference to a problem in the women's locker room of the Gym.[39] According to Quebec Inc., the problem occurred over the New Year's period and the Landlord was slow to respond. However, the Court is not convinced on a

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[36] 50% of $7,109.71 = $3,554.85 x 2 months = $7,109.71. 70% of $7,109.71 = 4,976.79 x 2 months = $9,953.59. $9,953.59 + $7,109.71 = $17,063.30 (see Exhibit P-35c).

[37] Exhibit D-14.

[38] Apart from two temperature readings of 11° recorded in January, 2019, the remainder of those put in evidence were above 14°.

[39] Exhibit P-23.

balance of probabilities that the Landlord did not correct the problem within a reasonable time or that Quebec Inc. is entitled to a reduction in rent as a consequence.

[82] Accordingly, the Court will not grant a reduction in rent for the period of December, 2018 and January, 2019.

d) June, July and August, 2019

[83] As the summer of 2019 was approaching, the Landlord confirmed that it did not intend to take any measures in terms of air-conditioning other than reinstalling the same six portable air conditioners that it had purchased the previous summer.[40] Quebec Inc. felt that it could not take the risk of re-living the experience of the 2018 summer. As a result, it leased air-conditioning equipment from Loue Froid for $14,416.72 and asks for an equivalent reduction in rent for that period.

[84] According to Quebec Inc., the system it rented provided adequate cooling throughout the summer of 2019 such that it was able to enjoy the Premises. This evidence is not contradicted.

[85] The Landlord maintains that the air-conditioning it provided in 2018 was adequate and that there was no need for Quebec Inc. to take additional measures in 2019. The Court has already rejected that position.

[86] If a landlord neglects to incur an expense that is urgent and necessary to ensure the enjoyment of the leased premises, the tenant may incur the expense and is then entitled to reimbursement.[41]

[87] In the Court's view, that is essentially what took place in the summer of 2019. The Landlord was advised of the need for adequate air-conditioning and of Quebec's Inc.'s plans to rent a more powerful system.[42] It chose not to incur that expense and must now reimburse Quebec Inc. for the reasonable costs incurred.

[88] While the Landlord did not agree that such a system was necessary, it did not contest the reasonableness of the amount incurred by Quebec Inc. In the Court's view the amount that Quebec Inc. paid to Loue Froid appears reasonable.[43]

[89] The Court will therefore apply a reduction of **$14,416.72** to the rent owing for June, July and August, 2019.

e) March – June, 2020

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40 Exhibit D-19.
41 Art. 1868 CCQ.
42 Exhibit D-19.
43 Exhibit D-15.

[90] Quebec Inc. was forced by government decree to close the Gym as of March 24, 2020 due to the Covid-19 pandemic (the **Decree**).[44] Fitness facilities such as the Gym, were not on the list of services that were deemed essential and were thus unable to operate.[45]

[91] Quebec Inc. argues that its inability to operate and, thus to generate revenue, was caused by superior force (*force majeure*) and that it should therefore be relieved of its obligation to pay rent for this period.

[92] The Landlord does not agree that the situation in which Quebec Inc. finds itself qualifies as superior force. At any rate, it argues that such a situation is contemplated by paragraph 13.03 of the Lease which requires Quebec Inc. to pay rent notwithstanding an event of superior force. Paragraph 13.03 reads as follows:

> 13.03 Unavoidable delay
>
> Notwithstanding anything in this Lease to the contrary, if the Landlord or the Tenant is delayed or hindered in or prevented from the performance of any term, obligation or act required hereunder by reason of superior force, strikes, lockouts, labour troubles, riots, accidents, inability to procure materials, restrictive governmental rules, regulations or orders, bankruptcy of contractors, or any other event whether of the foregoing nature or not which is beyond the reasonable control of the Landlord or the Tenant, as the case may be, then the performance of such term or obligation or act is excused for the period of the delay, and the party so delayed shall be entitled to perform such term, obligation or act within the appropriate time period after the expiration of such delay, without being liable in damages to the other.
>
> However, the provisions of this Section 13.03 shall not operate to excuse the Tenant from the prompt payment of the Base Rent or Additional Rent or any other payments required by this Lease.
>
> (Underlined by the Court)

[93] The Landlord adds that Quebec Inc. applied for and received a government emergency loan of $40,000 in the context of the Covid-19 pandemic, and cannot therefore argue that it was prevented by superior force from paying the rent. As Mr. Bladi acknowledged, the proceeds of the loan were used primarily to pay his legal fees in connection with the current case. No part of the loan was used to pay rent. Accordingly, the Landlord maintains that even if paragraph 13.03 does not apply, Quebec Inc. was not prevented from paying rent, it simply chose not to. Either way, the Landlord argues that it has every right to insist on the payment of rent for these months.

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[44] Order in Council No. 223-2020 made on March 24, 2020 by the Government of Québec.

[45] By virtue of Ministerial Order 2020-047 of the Minister of Health and Social Services dated 19 June 2020, facilities such as the Gym were allowed to reopen on June 22, 2020.

[94] For the reasons that follow, the Court does not agree with the Landlord and concludes that no rent can be claimed from Quebec Inc. for the months of March, April, May and part of June, 2020.

[95] To understand the Court's reasoning, which differs from that of Quebec Inc., it is necessary to review certain of the legal concepts at issue, beginning with superior force.

[96] Superior force is defined at Art. 1470 CCQ.

> **1470.** A person may free himself from his liability for injury caused to another by proving that the injury results from superior force, unless he has undertaken to make reparation for it.
>
> Superior force is an unforeseeable and irresistible event, including external causes with the same characteristics.
>
> (Underlined by the Court)

[97] An event is unforeseeable if it could not reasonably have been foreseen at the time the obligation, in this case, the Lease, was contracted. In the context of the Covid-19 pandemic, the Court is satisfied that this criteria is met.

[98] As for the requirement of irresistibility, the event must prevent the performance of the obligation by anyone and not just by the debtor.[46] Furthermore, the fact that the obligation may be more onerous or difficult, does not satisfy the criteria of irresistibility.[47]

[99] Quebec Inc. argues that it was prevented from fulfilling its obligation to pay rent because it was unable to generate revenue due to the Decree.

[100] The Court does not agree with Quebec Inc.'s analysis which applies a subjective approach to irresistibility. In order to qualify as superior force, the event at issue must prevent any tenant in Quebec Inc.'s situation from paying its rent and not just those who lack sufficient funds.

[101] In the Court's view, it is the Landlord that was prevented by superior force from fulfilling its obligation to Quebec Inc. to provide it with peaceable enjoyment of the Premises.[48] While it is true that Quebec Inc. still had access to the Premises, continued to store its equipment there and benefited, to some extent, from services, the

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[46] Didier LLUELLES et Benoît MOORE, Droit des obligations, 3e éd., Cowansville, Éditions Yvon Blais, 2018, par. 2734 et Pierre-Gabriel JOBIN et Nathalie VÉZINA, Les obligations, 7e éd., Cowansville, Éditions Yvon Blais, 2013, par. 846.

[47] Pierre-Gabriel JOBIN et Nathalie VÉZINA, Les obligations, 7e éd., Cowansville, Éditions Yvon Blais, 2013, par. 846 et Vincent KARIM, Les obligations, 4e éd., vol. 1, Montréal, Wilson & Lafleur, 2015, par. 3254.

[48] While it was not raised, the Decree may constitute a legal disturbance within the meaning of Art. 1858 CCQ, which the Landlord also has the obligation to warrant. Even if this were the case, it would not change the Court's analysis.

Lease provides that the Premises are to be used "solely as a gym"[49] and this activity was prohibited by virtue of the Decree. As a result, it is the Court's view that Quebec Inc. had no peaceable enjoyment of the Premises during this period.

[102] According to Article 1694 CCQ, a "debtor released by impossibility of performance may not exact performance of the correlative obligation of the creditor ». Consequently, while the Landlord was prevented by superior force from providing peaceable enjoyment, it could not insist that Quebec Inc. pay rent.

[103] The Landlord correctly points out that in commercial leasing, the provisions of the CCQ, including the obligation to provide peaceable enjoyment, are not of public order and the parties are therefore free to limit their impact.[50] According to the Landlord, this is precisely the effect of paragraph 13.03 of the Lease.

[104] The Court does not agree.

[105] There is no doubt that paragraph 13.03 of the Lease refers to situations of superior force. However, in the Court's view, the clause contemplates obligations, the performance of which is delayed; not obligations that cannot be performed at all. According to the language of paragraph 13.03, the party unable to perform an obligation is only excused for the period of the delay and is entitled to perform it at a later time.

[106] The Landlord's fulfilment of its obligation to provide peaceable enjoyment of the Premises from March through June of 2020 has not been delayed; it simply cannot be performed. Consequently, the Landlord cannot insist on the payment of rent for that period and paragraph 13.03 of the Lease does not apply.

[107] That said, even if the Landlord's interpretation of paragraph 13.03 was correct, it cannot be read in such a way as to fully and completely relieve the Landlord of its principal obligation under the Lease, which is to provide peaceable enjoyment of the Premises. The parties to a lease can agree to limit the impact of a landlord's failure to provide peaceable enjoyment but cannot agree to exclude it altogether. This view has been expressed in doctrine[51] and has been endorsed by the Court of Appeal of Quebec.[52]

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49 Exhibit P-3b, par. 1.11.

50 This is not the case in residential leasing, see Art. 1893 CCQ.

51 Pierre-Gabriel Jobin, *Le louage*, 2e éd., Cowansville, Éditions Yvon Blais, 1996, p. 445; Bernard Larochelle, *Le louage immobilier non résidentiel*, 2e éd., Montréal, Wilson et Lafleur, 2007, p. 22.

52 *CNH Canada Ltd. c. Promutuel Lac St-Pierre - Les Forges, société mutuelle d'assurances générales*, 2015 QCCA 204, par. 60; *Société de gestion Complan (1980) inc. c. Bell Distribution inc.,* 2011 QCCA 320 (CanLII), footnote 6 referenced at par. 25;

[108] Under the circumstances, the Court will reduce the rent for the months of March through June 2020 and deduct **$26,950.65** from the Landlord's claim.[53]

f) General rent reduction

[109] Quebec Inc. argues that for all months in which it does not seek a specific reduction in rent, the rent should nonetheless be reduced by 33% to take account of the overall impact of the Landlord's numerous failures to provide peaceable enjoyment of the Premises.

[110] In support of this argument, Quebec Inc. refers to the problems addressed above[54] as well as to a number of other events and problems, namely the Landlord's failure to properly maintain common areas and, more generally, harassment by the Landlord, primarily in connection with its refusal to provide Quebec Inc. and Gym-members with parking privileges.

[111] Firstly, the Court does not agree with Quebec Inc.'s approach.

[112] In every instance where Quebec Inc. demonstrated that the Landlord had failed in its duty to provide peaceable enjoyment of the Premises, a reduction in rent was granted. Where Quebec Inc. failed to make such a demonstration, no reduction was allowed. To award a further reduction without specific evidence would be contrary to the principles set out in the CCQ[55] and would provide Quebec Inc. with a benefit to which it is not entitled.

[113] Secondly, the Court is not convinced on a balance of probabilities that the additional problems raised by Quebec Inc. entitle it to a reduction in rent over and above what has already been granted.

[114] With respect to the common areas located on the second floor of the Building, Quebec Inc. takes issue with the state of the bathrooms, both of which have now been closed by the Landlord. The evidence discloses that both bathrooms were vandalised at some point and that the toilets were blocked and overflowing.[56]

[115] However, it is important to note that the Gym has its own bathrooms and that those are the bathrooms its members use. There is no evidence to suggest that Quebec Inc. or its members were making use of the common bathrooms. Consequently, the Court is not convinced that its peaceable enjoyment of the Premises has been diminished.

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53 $8983.55 X 3 = $26,950.65. The Gym was ordered closed from March 24 to April 22, 2020.

54 I.e. The lack of proper air-conditioning, lack of proper heating, flooding, lack of 24 hour access and water infiltration.

55 Arts. 1854 and 1863 CCQ.

56 Exhibit D-16.

[116] As far as parking is concerned, Quebec Inc. argues that the Landlord agreed to allow Gym-members to park in the lot behind the Building. However, in what Quebec Inc. characterizes as evidence of harassment, the Landlord changed its parking policy, refused to allow members to park behind the Building and actually had certain members' cars towed from the lot.

[117] The Court is not convinced that Quebec Inc. was ever given the parking privileges that it asserts. There is nothing in the Lease about parking. Furthermore, the Court considers it unlikely that the Landlord would ever have agreed to allow all the Gym-members to park in the lot behind the Building since there are only 72 spots in all and many other tenants in the Building.

[118] The evidence suggests that the Landlord agreed to allow Gym-members to park in the lot behind the Building after 5 pm but not during the day. Furthermore, in April, 2018, when the Landlord distributed new parking passes to replace the old ones, Quebec Inc. received two, one for Mr. Bladi and Ms. Sivret.[57] This appears to be consistent with what was done for other tenants.

[119] While it is true that at least one Gym-member had his car towed, this happened during the day and his car did not have a new parking pass. There is no evidence to suggest that the Landlord targeted his car because he was a member of the Gym. In fact, the Landlord hired an outside towing company to ensure that only cars with valid passes were parked in the rear lot during the day.

[120] Finally, Quebec Inc. emphasizes that the Landlord admitted that it did not consider the Gym to be a tenant and, consequently, did not provide it with all the privileges and benefits that tenants of the Building were entitled to receive, such as air-conditioning and parking. Instead, the Landlord sought every opportunity to run it out of business and force it to leave the Premises. According to Quebec Inc., the Landlord's overall attitude and approach amounts to harassment and further justifies the general rent reduction.

[121] The Court does not agree.

[122] Certain of Quebec Inc.'s complaints have been retained; others not. However, Quebec Inc. has failed to demonstrate that the Landlord's various breaches of the Lease were part of a concerted effort to harm Quebec Inc. In short, the Court does not agree that the Landlord's behaviour amounts to harassment.

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[57] Although it appears that this was only after Mr. Bladi's car was towed.

g) Conclusion in regards to rent-reduction

[123] In total, the Court grants a rent-reduction of **$63,762.95**, on account of the following issues:

- Closure due to flood in February, 2018: $5,332.28
- Lack of proper air-conditioning in summer 2018: $17,063.30
- Rental of air-conditioning system, summer, 2019: $14,416.72
- Closure of Gym due to Decree: $26,950.65

[124] After the rent reduction of $63,762.95 is applied, the Landlord is owed **$81,548.68**.[58]

(ii) Damages

[125] Quebec Inc. claims compensatory damages of $164,805.50 and punitive damages of $5,000.[59]

[126] The compensatory damages claimed by Quebec Inc. have two distinct components: (a) lost revenue ($124,805.90) and (b) stress and inconvenience ($40,000). The Court will examine each in turn before turning to the claim for punitive damages.

a) Lost revenue

[127] Quebec Inc. claims to have lost $124,805.90 in membership revenue due to all the problems it experienced in the Premises. The claim is calculated on the basis of the decrease in its gross revenue over the period of the Lease. More specifically, Quebec Inc. alleges that due to the Landlord's actions, its gross revenue went from $186,135.18[60] in 2017 to $115,318.93[61] in 2018 and finally to $132,145.53 in 2019. Using 2017 as a base-line, Quebec Inc. adds the losses in gross revenue in 2018 ($70, 816.25) and 2019 ($53, 989.65) to arrive at a total loss of $124, 805.90.

[128] At least insofar as the lack of proper air-conditioning is concerned, the Court is satisfied that the Landlord committed a fault. However, notwithstanding the evidence of fault, the Court concludes that Quebec Inc. has failed to prove its damages.

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58 $145,311.63 - $63,762.95 = $81,548.68. This amount is calculated as at June 15, 2020 and is inclusive of taxes.

59 In the event that eviction is ordered, it seeks an alternative damage award of $43,880 on the basis of unjust enrichment in connection with the leasehold improvements it claims to have made to the Premises.

60 Exhibit D-20.

61 Exhibit D-22.

[129] Firstly, Quebec Inc. uses VFC's gross revenues in 2017 as a baseline to measure its losses in 2018 and 2019. In some respects, VFC's business was continued by Quebec Inc.[62] However, VFC was still a separate entity in a different location, with its own operational and financial history. While it is certainly possible in certain situations for parallels to be drawn between one business and another, in this case, the Court does not have sufficient information regarding either business to reasonably equate VFC's actual revenues with Quebec Inc.'s potential revenues.

[130] Secondly, the Court does not accept that Quebec Inc.'s damage is equivalent to its loss of gross revenue. The analysis takes no account of the expenses that Quebec Inc. would have had to absorb had those revenues been generated. Quebec Inc. argues that, as a fitness facility, each additional membership is pure profit and creates no additional expense. Consequently, it argues that it is not necessary to introduce evidence of Quebec Inc.'s overhead or expenses to calculate its loss.

[131] This same argument was rejected by the Court of Appeal in *Electrolux Canada Corp. c. American Iron & Metal.*[63] The Court explained its position as follows:

> [17] Respondent's attorney pleaded that overhead is a constant so that the proof of these cost items is unnecessary to show the loss of profit from this contract. The position is specious since, if it were true, then the contract in question would necessarily be treated for present purposes as supporting less operating expense and thus generating a higher profit margin than the rest of the Respondent's activities.
>
> [18] I consider the absence of the proof of Respondent's overall costs enumerated above to be fatal to the proof of loss of profit. Respondent had the burden of proof of such loss. The judge's error in this regard is palpable and overriding and, given the absence of evidence, we cannot substitute our judgment for that of the trial judge by calculating a gross margin and applying it to the anticipated lost revenue as calculated by the judge to arrive at a figure of lost profit.

[132] This explanation applies equally to the situation at issue. The Court does not agree that each additional membership would be pure profit to Quebec Inc.[64]

[133] Thirdly, Quebec Inc. has failed to demonstrate on a balance of probabilities that it suffered a loss in membership as a result of the problems it experienced in the Premises.

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62 In particular, VFC's members were all solicited to join the Gym. Furthermore, the Court learned that Quebec Inc. used the same equipment as VFC, after ownership had been transferred to a third party to keep it beyond the reach of creditors.

63 2016 QCCA 1692 (CanLII).

64 The Court does not consider Quebec Inc.'s failure to introduce evidence of its expenses as an absence of evidence. Based on its arguments, the Court understands that Quebec Inc. made a strategic choice that such evidence was not necessary.

[134] In this regard, it must be pointed out that Quebec Inc.'s client management system allows for virtually no tracking of membership trends. More specifically, Quebec Inc. is incapable of demonstrating how many members migrated from VFC, how many left and when. The evidence presented by Quebec Inc. is anecdotal at best.

[135] Quebec Inc. is correct to point out that the weaknesses in its evidence or the lack of an expert report are not in themselves reasons to dismiss its claim in damages for lost revenue.[65] Furthermore, it is recognized that a judge has discretion to "arbitrate damages"[66]. However, under the circumstances, the evidence on the whole simply does not support the conclusion sought. To grant any part of Quebec Inc.'s claim for lost revenue would require the Court to speculate and would, therefore, exceed the limits of its discretion in such matters.

[136] Furthermore, evidence of causality is also problematic. While the Court accepts that certain of the problems experienced in the Premises, such as the lack of adequate air-conditioning in the summer of 2018, may have caused certain members of the Gym to quit, it is difficult, if not impossible, to isolate that problem from the numerous other factors that might have influenced such a decision. In this regard, it is important to remember that VFC went bankrupt and that this may very well have left certain individuals frustrated and possibly reluctant to follow Mr. Bladi to a new location. As well, the evidence demonstrates that there is significant competition in the health club industry in the sector in which the Gym is situated. M. Bladi acknowledges that there may be as many as 25 different clubs although in his view only 5 are true competitors.

[137] Accordingly, the Court concludes that Quebec Inc. is not entitled to damages for lost revenue.

b) Stress and inconvenience

[138] Québec Inc. claims $40,000 for the stress and inconvenience that it suffered as a result of the Landlord's actions.

[139] This claim cannot be granted.

[140] As Justice Frédéric Bachand recently observed in *Luxme International Ltd. c. Lasnier*[67], the case law has consistently held that legal persons cannot claim damages for inconvenience. The Court sees no reason to depart from that line of cases.

[141] In any event, it should be added that Quebec Inc. led no specific evidence to demonstrate that it suffered such damages.

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65 *Provigo inc. c. 9007-7876 Québec inc.*, J.E. 2005-192 (C.A.), par. 138.
66 *Société des parcs des Iles c. Renaud*, 2004 CanLII 25747 (QC CA), par. 26.
67 2019 QCCS 1180 (CanLII), par. 113.

c) Punitive damages

[142] Quebec Inc. claims punitive damages of $5,000.

[143] It is recognized that the right to peaceable enjoyment of leased premises is protected by the *Quebec Charter of Human Rights and Freedom (t*he **Charter**).[68] Consequently, where that right has been the subject of unlawful and intentional interference, the Court can award punitive damages, even to legal persons.[69]

[144] Quebec Inc. argues that the Landlord's conduct since the winter of 2018 amounts to harassment and was intended to harm Quebec Inc. so that it could not contest the legal proceedings and would be forced to vacate the Premises. According to Quebec Inc., this amounts to unlawful and intentional interference with its right to peaceable enjoyment of the Premises and thus justifies the claim for punitive damages.

[145] The Court does not agree.

[146] As detailed above, the Landlord did breach certain of its obligations to Quebec Inc., such as the obligation to properly air-condition the Premises. However, the evidence does not support the contention that this failure, or, for that matter, any of the other alleged breaches of the Landlord's duties, was done with a view to harming Quebec Inc. The Landlord is trying to evict Quebec Inc. from the Premises and that eviction will no doubt harm Quebec Inc. However, that is the consequence of the Landlord's actions; it is not the objective. In this respect, the present case can easily be distinguished from the cases on which Quebec Inc. relies to argue that punitive damages are warranted.[70]

IV. Is Quebec Inc. entitled to resiliate the Lease and evict Quebec Inc.?

[147] In the event of a default, which includes the non-payment of rent, the Lease provides that the Landlord has the option to resiliate without court approval notwithstanding the provisions of the CCQ.[71] However, the Landlord has not exercised that option and instead asks the Court to declare that Quebec Inc. is in default, resiliate the Lease and order eviction.

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68 R.S.Q. c. C-12. See Article 6 of the Charter as well as *Gervais Harding et Associés Design inc. c. Placements St-Mathieu inc*., J.E. 2005-1484 (C.S.), par. 217.

69 Art. 49 of the *Charter*.

70 *Polyzos c. 1852-7226 Québec inc*., 2011 QCCS 1943; *Gervais Harding et Associés Design inc. c. Placements St-Mathieu inc*., J.E. 2005-1484 (C.S.).

71 Exhibit P-3b, par. 15.01.

[148] A lessor is entitled to seek resiliation of the lease in cases where non-performance causes it serious injury.[72] According to the Landlord, that that is the case here.

[149] Quebec Inc.'s initial position was that resiliation was not justified since the Landlord's monetary claim was offset by the reductions in rent and damages. However, since the Court has only partially accepted Quebec Inc.'s arguments and has concluded that an amount of $81,548.68 remains owing to the Landlord, that position is no longer tenable.

[150] Quebec Inc. further argues that the Landlord should be prevented from seeking resiliation and eviction because of its bad faith.[73] In particular, it points to the Landlord's attempt to invoke the allegedly illegal transfer of the Lease from VFC to Quebec Inc. as grounds for eviction even though it was well aware that VFC had gone bankrupt.

[151] The Court does not agree that the Landlord's behaviour justifies Quebec Inc.'s request that it be prevented from seeking resiliation or eviction.

[152] First, the Court does not agree that the Landlord has acted in bad faith. Both sides of this bitter and aggressively-fought dispute have levelled accusations of bad faith and improper conduct against the other and have portrayed themselves as victims. In the Court's view, neither party is entirely blameless nor entirely to blame.

[153] Second, notwithstanding that the Court has dismissed certain of the claims brought by the Landlord, there remains a considerable balance owing.

[154] The question is whether or not the Landlord has satisfied its burden to demonstrate serious prejudice.

[155] The Landlord argues that it has established serious prejudice by demonstrating that the lack of payment by Quebec Inc. prevented it from carrying out the work required to connect the Premises to the central air-conditioning system. In addition, it maintains that if the Lease is not resiliated and eviction is not ordered, it will suffer serious prejudice by virtue of the fact that Quebec Inc. will be unable to satisfy the present judgment and it will have to bring proceedings to force it to vacate the Premises.

[156] The Landlord has failed to establish serious prejudice.

[157] The Court is not satisfied that Quebec Inc.'s failure to pay the security deposit actually prevented the Landlord from carrying out work in the Building. The evidence in this regard is not compelling. On the contrary, it appears that the Landlord's decision to not carry out the work necessary to connect the Premises to the central air-conditioning system was taken as a result of its view that Quebec Inc.'s occupation was illegal.

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[72] Art. 1863 CCQ.

[73] *Safilo Canada inc. c. Chic Optic inc.,* [2005] R.J.Q. 27 (CA), par. 22 à 26.

[158] The Court is sympathetic to the Landlord's argument that it may have to bring additional proceedings against Quebec Inc. to seek its eviction in the event of non-payment. However, the Court cannot assume that Quebec Inc. will be unable to satisfy the present judgment or any other of its obligations.

[159] In reaching this decision, the Court is mindful of the fact that in the context of the Lease, $81,548.68 is a significant amount and represents more than nine months' rent. However, much of this amount has accumulated over the course of the litigation and represents the difference between the amount Quebec Inc. was ordered to pay on an interim basis and this Court's decision on the merits.

[160] The Court thus concludes that the Landlord is not entitled to resiliate the Lease and evict Quebec Inc. from the Premises.

V. If Quebec Inc. is evicted, it is entitled to damages?

[161] Even though it is not necessary to determine whether the Landlord would have been unjustly enriched by the leasehold improvements made to the Premises had eviction been ordered, the Court nonetheless indicates that Quebec Inc.'s claim would have been dismissed.

[162] Articles 1493 and following of the CCQ set out the criteria for unjust enrichment. The plaintiff must establish the "enrichment of the person being sued, his or her own impoverishment, a correlation between the enrichment and the impoverishment, the absence of justification, the absence of fraud and the absence of any other remedy."[74]

[163] Quebec Inc.'s claim does not satisfy the criteria for unjust enrichment. In particular, the Court notes that there is a justification for the leasehold improvements that were carried out, namely: the Lease.[75]

[164] Furthermore, Quebec Inc. did not establish its interest in making the claim. The invoice for the work was made out to a company that belongs to Ms. Sivret.[76] Both she and Mr. Bladi explained that this was an error but the Court does not accept their explanation. The fact that the invoice was made out to another company is consistent with the evidence of other transactions carried out in the context of VFC's bankruptcy, including the decision to have a third party acquire VFC's equipment to keep it from being seized by creditors. Furthermore, no proof was offered to establish that Quebec Inc. paid for the leasehold improvements or repaid Ms. Sivret's company.

[165] Had eviction been ordered, Quebec Inc.'s claim for damages based on unjust enrichment would thus have been dismissed.

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74 *Forestier SL inc. c. Gestion Unibec inc.*, 2017 QCCA 998 (CanLII), par. 38.
75 *9155-6555 Québec inc. c. Desarts Communication inc.*, 2019 QCCA 1924, par. 3.
76 Exhibit D-11.

FOR THESE REASONS, THE COURT:

[166] **GRANTS** in part the Plaintiff's Re-Reamended Originating Application for Issuance of an Interlocutory and Permanent Injunction Order;

[167] **DISMISSES** the Defendant's Cross-Demand;

[168] **CONDEMNS** Defendant to pay Plaintiff the sum of $81,548.68 with interest at the legal rate and the additional indemnity of Art. 1619 CCQ as of May 2, 2018;

[169] **WITH JUDICIAL COSTS.**

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PETER KALICHMAN, J.S.C.

Me Daniel Brook
Brook Legal Inc.
Attorney for the Plaintiff

Me Frédéric Legendre
Municonseil Avocats Inc.
Attorney for the Defendant

Dates of hearing: June 12, 15, 16, 17 and 18, 2020