

SUPREME COURT OF YUKON

Citation: *Grove v 318 Arctic Color Tourism Development Ltd.*,
2022 YKSC 73

Date: 20221020
S.C. No. 22-A0064
Registry: Whitehorse

BETWEEN:

WAYNE GROVE

Petitioner

AND

318 ARCTIC COLOR TOURISM DEVELOPMENT LTD.

Respondent

Before Chief Justice S.M. Duncan

Counsel for the Petitioner

Meagan Lang

Agent for the Respondent

Wen-Tai Mao (by videoconference)

This decision was delivered in the form of Oral Reasons on October 20, 2022. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] DUNCAN C.J. (Oral): This is a petition brought by Wayne Grove against 318 Arctic Color Tourism and Development Ltd. (“318 Arctic Color”). Wayne Grove is the legal owner of a rural property outside of Whitehorse and 318 Arctic Color is a corporation that leases part of Mr. Grove’s property for the purpose of a bed-and-breakfast facility for northern lights viewing.

[2] Wayne Grove seeks the following orders:

1. termination of the lease between the parties as of 31 October 2022;
2. that 318 Arctic Color pay \$6,032.25 for repairs and maintenance charges, \$787.50 for snow removal, and \$379.02 for property tax; and
3. that 318 Arctic Color undertake further repair and maintenance charges or pay for the repairs done by Mr. Grove.

[3] 318 Arctic Color was represented at this hearing by Wen-Tai Mao, also known as Daniel Mao. He is listed as the sole shareholder and director of the corporation.

[4] The ongoing dispute over ownership of 318 Arctic Color has created the need for a court order to terminate the lease rather than relying on the release terms, according to counsel for Wayne Grove.

[5] Consistent with his practice to date, Mr. Grove gave notice of this petition to all three of Mr. Wei, Mr. Pan, and Mr. Mao. Notice to Mr. Wei and Mr. Pan was given through their counsel, Denton's. Denton's filed a response and affidavit materials on behalf of Mr. Wei and Mr. Pan, originally opposing the application. They then revised their response to take no position and did not appear at the hearing.

[6] Mr. Mao also filed a response (affidavit materials and outline) and, as noted, he appeared at the hearing to provide oral submissions. He was self-represented throughout.

[7] In the following, I will review the background facts, summarize the positions of the parties on each of the orders sought, review the relevant terms of the lease, and provide my analysis and decision.

Background facts

[8] In August 2016, Wayne Grove leased the lands to 318 Arctic Color Tours Inc., a company with Lawrence Wei and James Pan as principals (“Mr. Wei” and “Mr. Pan”). The construction of the bed-and-breakfast facility was commenced but was not finished. Liens were registered against the property, which were a breach of the 2016 lease, and Mr. Grove terminated the lease on May 11, 2017.

[9] The principals asked Wayne Grove to enter into a new lease with 318 Arctic Color, a new British Columbia corporation. Wayne Grove agreed and Mr. Mao signed the lease on behalf of the corporation. Mr. Grove also received the identical lease signed by Mr. Wei and Mr. Pan. Mr. Grove had signed one copy of the lease. The principals advised Wayne Grove that Mr. Mao would be his contact on the lease. The effective date of the lease was October 1, 2017. Through the efforts of Mr. Mao, the construction was completed and the business began operating.

[10] However, in 2018, the original principals (Mr. Pan, Mr. Wei, and Mr. Mao) began disputing the ownership and control of 318 Arctic Color. Litigation ensued in the British Columbia Supreme Court and the Yukon Supreme Court. This litigation remains unresolved.

[11] In 2019, Mr. Mao claimed against Mr. Grove for actions taken by the principals. The ongoing dispute centered around who was able to occupy the leased premises. The principals were still accessing the facility with tourists and Mr. Mao wanted Wayne Grove to evict them for their unfair occupancy. He also claimed Wayne Grove was unjustly enriched by the completed facility and the upgrades. This claim was struck on

the basis there was no reasonable cause of action under Rule 20(26) and on the basis that the claim was bound to fail — there was no triable issue under Rule 18(6).

[12] Mr. Grove took no position and takes no position in the ongoing dispute between the principals and Mr. Mao about rights to access the premises or rights under the lease. Because of the ongoing dispute, Mr. Grove gave notice of all alleged breaches of the lease to 318 Arctic Color by sending letters from counsel to all three individuals or, in the case of Mr. Wei or Mr. Pan, through their counsel. Mr. Grove also advised 318 Arctic Color by letter from counsel that he would be strictly enforcing the terms of the lease.

Positions of the Parties and Relevant Lease Terms

[13] The lease defaults requiring relief, according to Mr. Grove are as follows:

- s. 7.2 of the lease provides that the landlord is not obliged to repair, maintain, replace, or alter the premises or improvements and the tenant assumes sole responsibility for the condition, operation, maintenance, and repair of the bed-and-breakfast facility;
- the tenant is obligated under s. 7.2 at its costs to repair, maintain, and keep in a good state all of the bed-and-breakfast facility; and
- under s. 7.5, if the tenant fails to perform its obligation to repair and maintain, the landlord may give the tenant 10 days to do so and then may enter to remedy the default with the tenant paying the cost on demand.

[14] Here, Mr. Grove emailed 318 Arctic Color through all three parties on October 23, 2021, confirming he had asked on numerous occasions for the installation of gutters on the main building to prevent the sinking of the foundation caused by heavy

rains and snowmelt saturating the ground. The tenants did not do the work so Mr. Grove installed the eavestroughs and poured cement under and around the failing parts of the foundation at the cost of \$6,032.25. Mr. Mao does not dispute the invoices for this work or 318 Color's obligation to pay them. However, he is only willing to pay the amounts if the lease is renewed.

[15] Under s. 3.3 of the lease, 318 Arctic Color is required to pay the landlord its proportionate share of property taxes as well as for services or work provided by the landlord. Mr. Grove performed two snow removals on the property costing \$787.40, for which he provided an invoice. 318 Arctic Color's share of the property taxes was \$379.02. These amounts are substantiated by invoices but remain unpaid. Mr. Mao does not dispute these amounts are owing or 318 Arctic Color's obligation to pay but he refuses to do so unless the lease is renewed.

[16] The second repair and maintenance default relates to needed repairs not yet done. Mr. Grove provided notice to 318 Arctic Color on April 25, 2022, of additional repairs and maintenance required, specifically lifting the main building to repair the foundation, filling in a sinkhole, and removing garbage from the property. The tenant's obligations to do the repairs at its expense or to pay the landlord for doing them results from s. 7.5 of the lease referred to earlier in these reasons.

[17] 318 Arctic Color has not started the repairs and so Mr. Grove seeks an order that they undertake the repairs or pay the costs to him of those repairs. Mr. Mao, again, does not object to this order if the lease is renewed.

[18] The last two orders sought are in the alternative and relate to the termination of the lease. Mr. Grove seeks an order under ss. 11.4(a)(1) or (b) of the lease to terminate

on the basis that 318 Arctic Color failed to pay the rent within five days of demand — that is (a); and (b), has failed to start or complete repairs and maintenance within 15 days' notice. Rent is defined in the lease to include basic rent and additional rent. Basic rent is the monthly rent payment. Additional rent means any money owing by the tenant to the landlord except for basic rent.

[19] Here, because 318 Arctic Color has not paid the invoices for the repairs within the five-day period and has not begun the repairs requested by the letter dated April 25, 2022, from Mr. Grove, the landlord seeks to terminate the lease under s. 11.4.

[20] Alternatively, Mr. Grove seeks a declaration that the lease is terminated at the end of the term (October 31, 2022). Termination on this basis depends on the tenant's failure to exercise the option to renew.

[21] Section 2.3 of the lease provides the tenant with an option to renew if it fulfilled three conditions precedent:

1. duly and regularly paying the rent;
2. performing every covenant under the lease; and
3. giving written notice of renewal.

[22] Here, Mr. Grove says that 318 Arctic Color has not fulfilled the conditions precedent in s. 2.3. He says:

1. 318 has not duly and regularly paid the rent, specifically additional rent which constitutes the monies owed for the repairs done and requested to be done;

2. the failure of 318 Arctic Color to have commenced or completed the repairs requested or paid the invoices means they have not regularly performed their obligations; and
3. 318 Arctic Color has not given notice to renew the lease.

[23] Mr. Mao acknowledges the repairs have not been done and the amounts owing. However, as stated earlier, he agrees to pay them only if the lease is renewed. He suggests in his materials that he did give notice to renew the lease. He relies on emails sent to Mr. Grove in March and April 2022. It appears from these emails, and it is confirmed by his outline, that Mr. Mao wishes to negotiate a new lease with another of his companies (I Like Home Designs).

[24] Aside from this evidence, most of Mr. Mao's submissions were focused on the dispute between him and Mr. Wei and Mr. Pan, and his attempts to discredit their reputations as businesspeople.

Analysis and Decision

[25] Upon review of the extensive affidavit material and exhibits from Mr. Grove, Mr. Mao, and from principals Mr. Wei and Mr. Pan, I have come to the following conclusions.

[26] As acknowledged by Mr. Mao, 318 Arctic Color is in default of the lease on two bases:

1. they have not paid the invoice for the repairs, snow removal, and proportionate share of property taxes; and

2. they have not started or completed the repairs requested by the landlord, that is, the foundation repairs, repairs to the sinkhole, and the garbage removal.

[27] No defence was provided by Mr. Mao to these defaults and a review of the lease terms and the affidavits supports Mr. Grove's contention.

[28] So, I will order that 318 Arctic Color pay the landlord its share of property taxes, the completed repair and maintenance of the building, the two snow removal invoices, and that 318 Arctic Color also pay for the completion of the additional repairs. The share of the property taxes is \$379.02; the completed repair and maintenance of the building is \$6,032.25; and the two snow removal invoices are for \$787.40.

[29] Turning to the termination of the lease, while Mr. Mao seeks to renew the lease and appears to argue that written notice was given through emails in March and April 2022 within the prescribed time limits, I cannot accept this submission.

[30] Mr. Grove's counsel provided case law discussing the kind of wording required to affect an option to renew a lease. The main cases they have relied on are *Royal City Shopping Centre Ltd. v Canadian Direct Insurance Inc.*, 2005 BCSC 1597, and *Money Mart Canada Inc. v Austrocan Investments Inc.*, 2012 BCSC 1634.

[31] In both these cases, the courts were required to interpret the wording of a letter purporting to exercise an option to renew a commercial lease. In both situations, the letters proposed certain changes to the existing lease terms. The court in both cases stated the notice to renew must be clear, unequivocal, and unambiguous. The court must also have regard to the surrounding circumstances to determine whether the tenant intended to negotiate a new lease rather than to renew an existing lease. In both

these cases, as a result, the court found the letter was not effective to exercise the option to renew the existing lease.

[32] Here, in this case, in a series of emails to Mr. Grove, starting March 30, 2022, and also on April 25, 2022, and April 27, 2022, Mr. Mao advised that he and his wife decided to return to Whitehorse and were “planning to bring this camp back on track again” and he was working on some documents which he would soon send to Mr. Grove.

[33] On April 25, 2022, Mr. Mao stated, “I recommend you to terminate the existing contract, and resign a new contract with me to solve the unfair and awkward situation, then we can focus on the venue, maintaining and marketing development.” Later in that same email, he wrote, “If I can resign a new contract with you, trust me, I’ll run this camp very well.” Mr. Mao attached to the email dated April 27, 2022, his certificates of good standing for his company I Like Home Designs Ltd. and for 318 Arctic Color Tourism Development Ltd. Mr. Mao did not respond in substance to Mr. Grove’s notice dated April 25, 2022, of the amounts due under the lease and the failure to provide written notice in a timely way to renew the lease.

[34] I find that the emails of March and April 2022 from Mr. Mao do not meet the legal requirements of a clear, unambiguous, and equivocal option to renew the existing lease. While Mr. Mao says he and his wife are planning to get the camp going again, he also refers to preparing new documents and refers to a new contract and asks that Mr. Grove enter a new lease with him. These comments in Mr. Mao’s email were part of very large emails containing disparaging details about the business conduct of Mr. Wei and Mr. Pan. The ongoing conflict among Mr. Mao and Mr. Wei and Mr. Pan are the

surrounding circumstances which support Mr. Mao's request to enter into a new lease and not a mere renewal of the current one.

[35] Further, in any event, he acknowledges the defaults, although says he will not pay them unless the lease is renewed or a new lease is entered into. This is not the way the lease is written. Defaults must be cured, payments and repairs made first, before renewal can occur.

[36] I find that there was no notice to renew the lease and the conditions precedent to renew have not been fulfilled.

[37] So, I will order that the lease is terminated because 318 Arctic Color has not complied with its terms and has not exercised the option to renew.

[38] The orders to pay for repairs done and requested to be done while the lease was in effect are enforceable because of s. 1.8 of the lease. It provides that every obligation of the landlord and tenant set out in the lease extends throughout the term and to the extent that any such obligation ought to have been observed or performed before or on expiry or early termination of the term, such obligation will survive the expiry or early termination of the term until it has been observed and performed.

[39] Those are my orders.

[40] The costs of this petition will go to Mr. Grove.

[DISCUSSIONS]

[41] Mr. Mao, what Ms. Lang is suggesting is that she is going to draft the order coming out of my decision and then she will send it to you for you to review and make any comments or suggestions if you disagree with how she has worded it. You will talk about that with each other. Once you are satisfied with it, she will sign it on behalf of

both of you so you do not have to wait for the original to come to you, sign the original, and mail it back to her.

DUNCAN C.J.