IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20180430
Docket: S185233
Registry: Vancouver

Between:

Vapor Line Inc.

Petitioner

And

Vcan Business Solutions Ltd.

Respondent

Before: The Honourable Mr. Justice Silverman

Oral Reasons for Judgment

In Chambers

Counsel for Petitioner:	A. Schleichkorn
Counsel for Respondent:	D. Dolejsi
Place and Date of Hearing:	Vancouver, B.C. April 30, 2018
Place and Date of Judgment:	Vancouver, B.C. April 30, 2018

[1] **THE COURT:** The overarching petition in this matter involves a dispute between a lessee of the premises, the respondent and a sublessee, the petitioner, about when the sublease expires.

[2] This interim application today is brought by the petitioner seeking to enjoin the respondent from evicting the petitioner or taking any steps to do so pending disposition of the petition itself. The parties agreed that the traditional *RJR-MacDonald Inc. v. Canada (Attorney General*), [1995] 3 S.C.R. 199 test is the governing authority.

[3] The petitioner is the sublessee of the respondent. The respondent is the lessee of the landlord.

[4] While the respondent and the petitioner obviously are not persons and they have acted and made decisions through their principals, nothing will be lost and it will be more easily understandable if I speak of the parties as the petitioner and as the respondent even where it is obvious that I intend to be referring to their principals.

[5] At a basic level, the difference in the positions of these two parties seems petty, that is, it concerns 30 days – whether the sublease between the parties expires at the end of April 2018 or at the end of May 2018. But at a deeper level, and the real purpose that the difference in their positions exists, is which of them will likely emerge on June 1 as the new lessee of the landlord: will it be the current lessee, (the respondent), with a new or extended lease, or will it be the current sublessee (the petitioner) with an upgraded status as the direct lessee of the landlord?

[6] Currently, the lease between the respondent and the landlord expires on May 31, 2018. The respondent's principal says that he has an oral agreement with the landlord for an extension of that lease. There is no additional evidence other than the assertion of the respondent as to this oral agreement; however, there have been extensions of that nature in the past between these two parties.

[7] The petitioner argues that it has an agreement with the landlord that will see the respondent be evicted when its lease expires at the end of May, at which time the petitioner, according to the agreement, will become the direct lessee of the landlord.

[8] Currently, the written agreement between the parties to the sublease expires at the end of April of this year. The respondent argues that is as far as one needs to go on this application. There is clearly no serious question to be tried. There is a written agreement that says the sublease expires at the end of April.

[9] However, the petitioner argues that it was told by the respondent, that is, the respondent's principal, at the time of entering the sublease, that the headlease expired at the same time as the sublease, that is, May 31st. And further and importantly in the submission of the petitioner, the sublease was drafted by the respondent's principal who purported to have some legal knowledge. Had the petitioner had the correct information about the end of when the headlease expired, he would have insisted upon the same date for the sublease or would not have signed it.

[10] While I am inclined to think that the respondent's position on the written agreement is stronger than that of the petitioner, I am unable to say that there is not a serious question to be tried in the circumstances that I have described, and therefore the first prong of the *RJR-MacDonald Inc.* test is met.

[11] The question of irreparable harm in my view can be considered at the same time in the circumstances of this case as balance of convenience. The petitioner, if permitted to remain in the premises for the additional month, offers to continue to pay rent for that additional month. The petitioner, if required to be evicted at the end of April with the written agreement with the landlord for a new lease set to commence a month later, would be required to move out, move out all the current commercial equipment that they have in the premises, and then, if successful, move back in a month later. In my view that will be extraordinarily inconvenient and

considering all of the relevant factors, and particularly those to the balance of convenience, favours the petitioner.

[12] It follows, therefore, that the order will be granted, and I do grant it in the terms noted in the notice of application, that is, the respondent is enjoined from taking any steps to evict or cause to evict the petitioner from 1849 Lonsdale Avenue, North Vancouver, pending disposition of the underlying petition in the main petition or until further order of this Court.

[13] There will be two additional orders, and that will be that the petitioner is required to pay rent at the same rate as in the agreement after it expires at the end of April, and that the parties will take steps to do the best they can to expedite this matter for hearing as quickly as possible.

"Silverman J."