

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-033384-069

DATE: **JULY 27, 2011**

IN THE PRESENCE OF: THE HONOURABLE LOUIS LACOURSIÈRE, J.S.C.

2850559 CANADA INC.

Plaintiff

v.

ARTISSIMO PRINTS INC. / IMPRESSIONS ARTISSIMO INC.

And

MICHAEL CHAIMBERG

Defendants

JUDGMENT

[1] The validity of a cancellation notice of a lease is the subject of this litigation. The Plaintiff is claiming 161 727,11\$ from Artissimo Prints inc., some 70 000,00\$ of which it is claiming jointly and solidarily from Mr. Chaimberg as a surety.

I. THE PARTIES

[2] 2850559 Canada inc. ("Canada inc."¹) owns premises located at 6648 to 6674 St-Patrick Street, Ville Lasalle (the "Building"). Its shareholders are Farid Somji and his wife Momtaz Somji, the latter being President and also manager of Canada inc. Ms. Somji was spending, at all relevant times, many months a year overseas, mainly in Africa and in England, and would be in Québec approximately three times a year, two weeks at a time.

[3] Artissimo Prints inc. ("Artissimo") is in the business of manufacturing wall decor. Michael Chaimberg has been its President since 1998, when he started the business.

[4] The business has grown at a rapid pace; it had a few employees in 1998 and grew to a 500 employees business in 2011. In July 2006, Artissimo employed approximately 150 people.

[5] At the period relevant to the litigation, Mr. Chaimberg was the principal shareholder of Artissimo.

II. THE FACTS

[6] On December 10, 1999, Canada inc. and Artissimo entered into a lease agreement whereby the latter leased 19,000 sq. feet of the Building² («the 1999 Lease»). The term of the lease entered into before Notary T. Van Nguyen was three (3) years, i.e. until December 31, 2002.

[7] On January, 31, 2003, Canada inc. and Artissimo entered into a new lease agreement (the "Lease")³ before Notary Nguyen for a term of five (5) years for premises described as follows (the "Premises"):

"DESCRIPTION OF PREMISES

1.01. – THE Lessor has hereby leased to the Lessee, hereto present and accepting, for a term of **FIVE (5) years**, from January 1st, 2003 to December 31, 2007, a certain commercial premises located at 6664-6668-6670, 6672 and 6674

¹ Canada inc. is also called Sofitaz Investment.

² Exhibit P-1.

³ Exhibit P-2.

St-Patrick, Lasalle, consisting of 19,000.0 square feet, 6656 St-Patrick, Lasalle, section 2, consisting of 4500 square feet and an office space located at 6656 St-Patrick, Lasalle, consisting of 500 square feet. The total superficial area hereby rented from the lessee is 24,000 square feet.

From March 1st 2003 to December 31, 2007, the lessor shall lease to the Lessee, hereto present and accepting, an additional space located at 6674 St-Patrick, Lasalle, having a superficial area of 3,400 square feet."

[8] Michael Chaimberg intervened to the Lease to guarantee, as surety, the payment of six months of rent⁴.

[9] The Lease also provided, at article 11.01, for a cancellation clause should Canada inc. be unable to meet the expansion needs of Artissimo:

"OPTION TO RENEW

11.01.- [...]

SPECIAL CONDITIONS

If the lessee needs more space for his expansion and the landlord can not provide such space, the lessee shall have the right to cancel the present lease by giving to the landlord a written notice three months in advance and by paying to the landlord a sum equivalent to the three months of the rent after the date of the cancellation of this lease.

Should Lessee has exercised its rights in the immediate preceding paragraph, the Lessee shall have the right to sublet the premises to a third party. Such party shall be approved by the landlord. One the approval's landlord has been obtain for such sublease, the lessee shall be responsible for all rent and amount due under the terms of these presents for the period between his departure of the premises and the date of possession of the premises of such third party. Furthermore, the lessee shall still remain responsible for the present lease as indicated in clause 5.14 hereinabove."

[10] The Lease also contained a clause providing for Artissimo to restore the Premises to their original condition at the end of the Lease⁵:

"5.06.3.- AT the termination of this lease for whatever reason, the Lessee shall, if so required by the Lessor, remove all or specified improvements including, without limiting the generality of the foregoing, all alterations or improvements installed by the Lessor or the Lessee in the premises pursuant to the terms of this lease and regardless of whether The Lessor or Lessee is or was responsible for the cost thereof, and the Lessee shall thereupon become obligated to restore the premises to their original conditions, (save for such improvements as the

⁴ Idem, article 11.01, last paragraph.

⁵ Exhibit P-2, article 5.06.3.

Lessor permits to remain) ordinary wear and tear excepted. Should the Lessee not be required to remove any alterations or improvements, they shall remain in the premises, and be deemed to have become the property of the Lessor without any compensation being paid thereof."

[11] On April 27, 2006, Artissimo notified Canada inc. by registered mail that it was cancelling the Lease because of its expansion needs, which could not be met by Canada inc. (the "Notice")⁶

[12] The Notice was sent to 600 De La Montagne Street, suite 109, the address of Canada inc. as per the Lease. The Notice was available for pick up on May 1, 2006 but was never picked up and was returned to the office of Artissimo's attorneys⁷ on or about June 6, 2006.

[13] On June 14, 2006, Artissimo's attorneys sent by fax to Notary Nguyen a copy of the Notice together with the tracking details from Canada Post⁸.

[14] Notary Nguyen's office replied that she was not authorized to receive correspondence for Canada inc.⁹, which prompted the following response from Artissimo's attorneys¹⁰:

"Dear Colleague:

As you were the professional who represented the Landlord in the execution of the Lease, and as registered mail to the Landlord has been returned unopened, we would submit that notice to you is sufficient to confirm the notice that had been sent to the Landlord, your client.

Quite frankly, we are somewhat taken aback by your response, as (apparently) you were aware of the fact that your client was not in the country. Presumably, as you are in communication with your client, you can simply transmit our correspondence to your client.

In any event, the letter is clear, your client has been advised, and that is that."

[15] Further to a conversation between the parties' attorneys, the attorney for Canada inc. wrote to those of the defendants on June 27, 2006¹¹:

⁶ Exhibit D-1

⁷ Idem.

⁸ Exhibit D-2.

⁹ Exhibit D-3.

¹⁰ Idem.

¹¹ Exhibit P-3.

"La présente fait suite à votre appel téléphonique de la semaine dernière, suivant lequel vous nous demandiez de contacter notre cliente pour lui faire part d'une lettre que vous auriez adressée n'a pas été livrée faute par le récipiendaire de l'avoir collectée.

Nous avons rejoint notre cliente à Montréal, qui nous a fait part de ce qui suit:

Votre cliente était parfaitement au courant du fait que la représentante de notre cliente se trouvait en dehors du pays. Depuis qu'elle a été informée qu'une lettre lui a été adressée mais non livrée, elle a elle-même placé trois appels au représentant de votre cliente qui ne semblait nullement pressée de lui parler ou de lui communiquer quelque document que ce soit.

Par ailleurs, si vous avez quelque document à transmettre à notre cliente, et compte tenu qu'elle se trouve à l'extérieur du pays présentement, veuillez nous faire parvenir copie, nous nous occuperons de le faire suivre à notre cliente."

[16] On June 27, 2006¹², the attorneys for Defendants sent the Notice to Canada inc.'s attorneys by email.

[17] Artissimo claims to have vacated the Premises on July 27, 2006, which is disputed by Canada inc. which rather alleges that Artissimo vacated the premises on September 6, 2006.

[18] A letter of demand to Artissimo and Mr. Chaimberg followed on September 12, 2006¹³, wherein Canada inc. claimed 74 305.96\$, i.e.:

- 4 023,42\$ as a balance for the September rent;
- 35 141,28\$ representing three (3) months' rent, Canada inc. using September 6 as the date the Premises were vacated;
- 35 141,26\$ representing three (3) months' notice.

III. THE PROCEEDINGS

i. The Motion to Institute Proceedings and the Plea

[19] On October 20, 2006, Canada inc. served an action upon Artissimo and Michael Chaimberg, in his case jointly and severally with Artissimo for an amount equivalent to six (6) month's rent, wherein it claimed, over and above the amount of 74 305,94\$ claimed in the demand letter, a sum of 29 381,12\$ representing the amount required to restore the Premises to their original condition as per an evaluation prepared on September 13, 2006.

¹² Exhibit D-4.

¹³ Exhibit P-6.

[20] Of the total amount of 103 687,06\$, Canada inc. deducted 11 713,76\$, which represents Artissimo's deposit towards the last month of rent, for a total claim of 91 973,30\$.

[21] On October 22, 2008, the action of Canada inc. was re-amended to claim 99 134 89 \$ rather than 29 381,12 as costs of restoration of the Premises, bringing the total of the claim to 161 727 11 \$.

[22] In its Re-amended Plea in response to Canada inc.'s Re-amended Motion, Artissimo alleged essentially that:

- it gave proper notice to Canada inc. as per article 11.01 of the Lease;
- it vacated the Premises on July 27, 2006;
- it paid three (3) months' rent as per article 11.01 of the Lease; and
- it owes nothing under the terms of article 5.06.3 of the Lease, essentially because it made no improvement during the term of the Lease.

[23] Artissimo and Mr. Chaimberg further asked the Court to declare the action of Canada inc. dilatory and abusive and requested the extrajudicial fees.

ii. The proposed amendment to the Motion to Institute Proceedings

[24] After all of the evidence was adduced and after Ms. Somji, Canada inc.'s representative, had left¹⁴, Canada inc. verbally sought to amend its Motion to Institute Proceedings.

[25] It argued that the conditions necessary for Artissimo to be entitled to send the Notice, i.e. the need for expansion, had not been met and that the Notice was merely an excuse ("prétexte") to cancel the Lease. In the circumstances, Canada inc. argued that it was entitled to the specific performance of the Lease until its expiry on December 31, 2007.

[26] The Defendants contested the proposed amendment. They argued that it completely changed the theory of the case because the grounds for the issuance of the Notice had not been questioned before.

[27] They added that, in order to defend completely to this "new" claim, they would have to be able to adduce evidence before the Court, notably on the efforts made by Canada inc. to sublet the Premises during the period of the Lease.

[28] The Court dismissed the verbal motion to amend.

¹⁴ Ms. Somji left for legitimate reasons which had nothing to do with a lack of interest in the case.

[29] Never before the request to amend had Canada inc. argued that the so-called *Special Conditions* of article 11.01 of the Lease, i.e. the need for space, had not been met. The Court deemed that the proposed amendment changed entirely the nature of the action and constituted a "demande entièrement nouvelle" as per the terms of article 199 of the *Code of Civil Procedure*.

[30] The Court further considered the fact that the action had been served in 2006, that the trial had been postponed twice and that it would have to be postponed again, should the amendment be granted, to allow Artissimo a full defense.

IV- THE QUESTIONS IN ISSUE

[31] The questions in issue in this litigation are the following:

- A- Does the notice sent on April 27, 2006 comply with the conditions of the Lease?
- B- When did Artissimo leave the Premises?
- C- Is the claim for damages to restore the Premises "to their original condition" justified?

V- DISCUSSION

A- Does the notice sent on April 27, 2006 comply with the conditions of the Lease?

[32] Canada inc. alleges that, while the Notice may have been sent in April of 2006, it was only received in June. It states that, had Artissimo been in good faith, it would have sent the Notice to Ms. Somji by email to advise her of its intent to avail itself of the terms of the *Special Conditions* of article 11.01 of the Lease.

[33] The Court does not subscribe to the Plaintiff's argument.

[34] First of all, the address of the Plaintiff is mentioned on the first page of the Lease.

[35] Secondly, the parties have, themselves, specifically provided in the Lease for a clause of Election of Domicile and there is no evidence that Canada inc. designated another address:

"Election of Domicile

13.01.- THE Parties hereby elect domicile for all matters herein as follows: the Lessor at his address above mentioned or at any other address in the District of

Montreal he may designate in writing to the Lessee and the Lessee in the herein leased premises." (emphasis added)

[36] Thirdly, there are precedents for the De La Montagne address having been used for matters pertaining to the Lease. For instance, in June of 2005, the Plaintiff's attorney reminded Artissimo that the monthly rent had to be paid at 600 De La Montagne, suite 109¹⁵.

[37] While this is sufficient to dispose of the first question in issue, the Court feels that it is necessary to add that other means of sending the Notice did not prove, in this particular instance, successful.

[38] For instance, the attorneys for Artissimo sent to Notary Nguyen a copy of the Notice on June 14, 2006; she never forwarded it to Ms. Somji.

[39] In fact, she was rather aloof in her treatment of this fax. After stating before the Court that she "surely" received the June 14 fax to which was attached the Notice, she stated, after some hesitation, that she "surely read it". Then, she said that she looked at her "mandate" from Ms. Somji, did not find that she was authorized to receive correspondence for her, was probably very busy ("June being a busy month") and probably did not transfer it to Ms. Somji. In fact, she added that she put it aside and, after a while, probably threw it away because her file was closed ...

[40] Notary Nguyen also justified her decision not to forward the fax to Ms. Somji by saying that the latter (whom she had represented for some fifteen (15) years and who is described as "her friend" in a Motion for Postponement prepared by Me Lata and dated December 9, 2008) was often out of the country, hence her decision not to take the steps to locate her in a busy month such as the month of June.

[41] Me Nguyen also stated that she did not send the Notice to Me Lata, Canada inc.'s attorney, even though he happens to be her husband, to share the same fax number with her and to have an office on the same floor as her, because she did not know that Me Lata was her attorney ...

[42] And, to "boucler la boucle", despite the evidence which could lead to the conclusion that the Notice never reached its addressee, Ms. Somji herself testified to the effect that she was told by her own attorney in April 2006 of Artissimo's will to cancel the Lease.

[43] In the Court's view, this is an illustration of the reasons why the parties would choose to specify an Election of Domicile in the Lease.

[44] Canada inc's decision to elect domicile at 600 De La Montagne, suite 109, implied that it would take steps to give effect to that choice (all Ms. Somji would say on

¹⁵ Exhibit P-9 B.

the subject is that a neighbour was in charge of picking up the mail). Its failure to efficiently take such steps did not result in casting further obligations on Artissimo, which were not specified in the Lease, i.e. to have to track down Ms. Somji.

[45] Therefore, in the Court's opinion, Artissimo did not have to take other steps than those provided in the Lease when sending the Notice and said notice is deemed to have been sent on April 27, 2003.

B- When did Artissimo leave the Premises?

[46] There is contradictory evidence as to the date when Artissimo left the Premises.

[47] Ms. Somji did not testify on this particular subject because she was not in Montreal until the Fall of 2006, at a period that she could not specify and, therefore, did not go to the Building.

[48] Mario Caetano did. He is a contractor who carries on business under the name Refexio and has been a lessee of Canada inc. at 6652 St-Patrick since 1996. He is very familiar with the Building, notably because he is also Ms. Somji's «homme de confiance» and would, on occasion, effect repairs and maintenance work for her.

[49] Mr. Caetano was a witness to Artissimo first occupying the Premises in late 1999, early 2000. Refexio was still a lessee of the Building when Artissimo left.

[50] A diagram filed by Mr. Caetano¹⁶ describes the areas occupied by Refexio¹⁷ and by Artissimo¹⁸ in 2006.

[51] Mr. Caetano, as lessee and being responsible for sundry repairs, was therefore a witness of the whereabouts of people in and around the Building in 2006. He stated that Artissimo made most of its move out of the Premises before the construction holiday which started on January 15, 2006, at which time he started his own vacations.

[52] He added that, when he came back from vacation towards the end of August, he noticed that there were still trucks coming to and going from Premises. He did recognize trucks which were used by Artissimo and was familiar with the employees who drove them. He could not specify what activities were going on in the Premises after July nor did he go inside to see whether Artissimo was still occupying them.

[53] Finally, he did acknowledge that, upon his return from vacation, the parking lot was no longer used by Artissimo's employees.

¹⁶ Exhibit P-16.

¹⁷ Id., left hand side.

¹⁸ Id., space surrounded by a blue line.

[54] For his part, Mr. Chaimberg testified to the effect that Artissimo moved its last effects out of the Building around Canada Day. In fact, he stated that Artissimo gradually started moving out as early as 2005 in premises located at 1401 St-Patrick street in Montreal where it initially occupied 90,000 square feet¹⁹. However, Mr. Chaimberg also stated that Artissimo kept "junk" and other obsolete effects that were to be sold in the Premises after the beginning of July.

[55] Finally, Mr. Jeffrey Flegg, who joined Artissimo in 2002, was examined on discovery on February 27, 2007. At the time, he was general manager of Artissimo.

[56] Mr. Flegg was asked when Artissimo vacated the Premises:

«Q. So, my first question is, when you say "vacated", were you... what do you mean by that?

A. We had removed all operations, all staff, all equipment from the location.

Q. Yes? And that was on July twenty-seventh (27th), two thousand and six (2006)?

A. Yes.

Q. You sure of that?

A. I don't remember, I think that there might have been a little garbage left behind, which Michael acknowledged and said he was willing to ... there may have been like some stuff on the floor that was garbage.

Q. That was garbage?

A. Well, like scrap that was ultimately thrown out.»

(page 21)

[57] Further on during the same examination on discovery, Mr. Flegg mentioned that Artissimo initially moved out in 2005²⁰ and added:

«Q. Okay. Now, I have information that you didn't move on the twenty-seventh (27th) of July, as you stated in your Plea, and I want to give you...

A. Moved out. We didn't move on the twenty-seventh (27th).

¹⁹ See exhibit D-8.

²⁰ Examination on discovery of February 27, 2007, p. 41.

Q. No? Was it the last day that you stayed in the premises? The twenty-seventh (27th) of July, was it the last day that you went to the premises?

A. I said earlier that I was going to confirm it. The last day I went, yes, I can confirm for me...

Q. M'hm.

A. ...I can't talk... there's two hundred odd people; I will double-check. Several people had keys, I don't remember if anybody went after. I said I... we talked about this, it was an undertaking, if I remember right, that I was going to confirm that for you.

Q. But you state very vigorously in your Plea that you left on the twenty-seventh (27th), that ...

A. So then I guess...

Q. Were you speaking for yourself...

A. ...when I told...

Q. ...is that it?

A. I know I wasn't in the building, again, after...

Q. Okay.

A. ...the twenty-seventh (27th). Everybody else, I'll confirm to you.

Me ANGELA MARKAKIS:

I think your question before, and what he undertook to say is that if someone else went afterwards, not that the company was operating, right?

A. That's right.

Q. Because this is what the allegation is.

A. The operation ended, we moved out in early July. The actual physical moving of the operation was done on July fourth (4th), fifth (5th) and sixth (6th). That's when the movers were hired that you've asked about, that's when the main move took place, and then we emptied out the building and moved stuff for the rest of that period.

Me JOSE LATA:

Q. Did you use the premises after the twenty-seventh (27th) as storage?

A. Not that I'm aware of, but I'll double-check.

Q. Now, when can you provide me with the undertakings, Mr. Flegg?

Me ANGELA MARKAKIS:

After we receive the stenographer's notes.»

(pp. 41 to 43)

[58] No undertaking provided by Me Flegg was brought to the attention of the Court which would shed more light on this question.

[59] From all of the evidence, the Court comes to the conclusion that Artissimo moved its operations gradually from 2005 and had removed the bulk of the effects from the Premises by July 27th, 2006. However, there were still some remaining, belonging to Artissimo, and there was some activities of said company in the Premises after July 27.

[60] Artissimo argued that Mr. Caetano's testimony on this subject was not credible. It stated that he had a stake in the action, notably because he was Canada inc.'s «homme de confiance» and because he had performed the major part of the work for which Canada inc. is claiming compensation as per article 5.06.3 of the Lease.

[61] On the contrary, the Court found Mr. Caetano's testimony credible. He was forthright, declined to speculate when he did not know the answers and certainly did not have more at stake in this action than Messrs. Flegg and Chaimberg, whose testimonies on this subject were vague, to the point where the Court retains Mr. Caetano's.

[62] In the circumstances, the Court is of the opinion that, even if the value of the effects left in the Premises after July 27 might have been negligible and even if Artissimo's activities were reduced to a minimum, the Premises were not vacated until the end of August.

[63] The Court will now deal with an argument made by Canada inc. to the effect that there would have been a judicial admission on the part of Artissimo that it vacated the Premises in September 2006.

[64] This argument stems from an exchange which took place on November 7, 2008 between Mr. Justice Chaput, Canada inc.'s attorney, Me Lata and Artissimo's attorney, Me Maude Miron Bilodeau, when Canada inc.'s motion to amend was contested.

[65] The relevant excerpt of the transcript is the following²¹:

[...]

LA COUR:

-O.K. Oui. Alors...

Me MAUDE MIRON BILODEAU:

- Donc ces factures-là Monsieur le juge, donc si je fais juste un état un peu des procédures dans ce dossier-ci, la... les... mes clients qui étaient locataires...

LA COUR:

- Oui.

ME MAUDE MIRON BILODEAU:

...des clients de mon confrère sont partis...

LA COUR:

- Oui.

ME MAUDE MIRON BILODEAU:

... en septembre deux mille six (2006) du local. [...]

(emphasis added)

[66] The Court does not consider Me Miron Bilodeau's statement to be a judicial admission.

[67] There is ample jurisprudence on the notion that a party is not presumed to have renounced to a right; the law is also clear that a judicial admission has to be "claire, sans ambiguïté et sans équivoque".²²

[68] The circumstances in which the so called judicial admission was made do not meet this test, especially since the date when Artissimo left the Premises is at the heart of the litigation and is the object of a specific paragraph of Artissimo's Plea.

[69] Me Miron Bilodeau's short statement, taken out of a larger context, does not constitute a judicial admission.

²¹ Transcript of the hearing of November 27, 2008, page 11.

²² Jean-Claude Royer, *La Preuve civile*. 1995, Cowansville, Éditions Yvon Blais, par. 805, p. 528.

[70] In summary, according to the evidence, the amounts owed to Canada inc. for three months rent and three months notice as per article 11.01 of the Lease, based on the Premises having been vacated on July 27, 2006 (rather than August 27 2006), had been paid by Artissimo²³ (taking into account one month rent as deposit) except for the rent for the period of September 20 to September 27 for an amount of 2 707, 65 \$.

[71] A cheque for that amount, dated May 20, 2011, was offered to Canada inc. by Artissimo during the trial, i.e. on May 25, 2011²⁴. Canada inc. refused delivery of the cheque because it was not certified and was not legally tendered.

[72] Considering that the cheque was offered during the trial, close to five years after the institution of the action, the Court subscribes to Canada inc's position and will add the amount of 2 707, 65 \$ to the amount owed by the Defendant.

[73] The finding that Artissimo vacated the Premises at the end of August 2006 rather than the end of July warrants an award of one additional month of rent, i.e. 11 713, 77 \$, to Canada inc. to which the Court will add 2 707, 65 \$ as unpaid notice for a total amount of 14 421,42 \$.

C – Is the claim for damages to restore the Premises to their original condition justified?

[74] Canada inc. argues that it had to perform work to restore the Premises to their original conditions, as per article 5.06.3 of the Lease. It originally claimed 29 381, 12 \$, which was the value of the estimate prepared by Mr. Caetano of Refexio on September 13, 2006²⁵. The amount claimed was later increased to 99 134, 89 \$ through an amendment which was granted by Mr. Justice Chaput on November 7, 2008.

[75] Artissimo replies that article 5.06.3 of the Lease relates to work performed during the term of the Lease and not to work done during the term of the 1999 Lease. It argues that article 14.05 of the Lease precludes Canada inc. from claiming for restoration from alterations and improvements made during the term 1999 Lease:

«14.05 The present Lease shall cancel and replace for all purposes required by law any prior verbal or written agreements or understandings between the Parties concerning the premises;»

[76] The Court subscribes to Artissimo's argument.

[77] Article 14.05 of the Lease cancels and replaces prior written or verbal agreements or understandings concerning the Premises, including the 1999 Lease.

²³ Exhibit D-7B.

²⁴ Exhibit D-7C.

²⁵ Exhibit P-7.

[78] In such a context and reading articles 14.05 and 5.06.3 together²⁶, the notion of "original conditions" of the latter article is bound to refer to the conditions as they existed at the beginning of the Lease, i.e. January 1, 2003.

[79] According to article 5.06.3 of the Lease, in order to have Artissimo pay restoration costs, Canada inc. has the burden of proving:

- 1) Its request to Artissimo to do the restoration work;
- 2) The nature of the "improvements-alterations" which it wants removed;
- 3) That such improvements-alterations have been made by Artissimo since January 1, 2003.

[80] To provide some context, it is useful to refer to the evidence on the type of work performed in the Premises between January 2000 and August 2006.

[81] Ms. Somji described the area rented by Artissimo on December 10, 1999 as "beautiful" but this is not quite what the evidence reveals.

[82] The Court rather concludes from the evidence that the Premises initially required a lot of work and that a large part, if not most, of what was necessary to adapt the Building to Artissimo's needs was done in 2000 and 2001, during the term of the 1999 Lease.

[83] The evidence shows that, when Artissimo took possession of the rented space in January 2000, it enhanced the Premises. Artissimo first proceeded to a major clean up, then installed improved lighting, upgraded the electrical connections, constructed separation walls, set up offices and put in carpets and tiles.

[84] Ms. Somji testified that, upon arrival in 2000, Artissimo made her demolish three walls to convert four 4 500 sq. feet units into a larger 19 000 square feet area. She confirmed that Artissimo built offices during the term of the 1999 Lease. However, she gave no further details as to the improvements-alterations done after January 1, 2003.

[85] Ms. Somji stated that, after Artissimo left, she converted the area initially leased by Artissimo back into 4 500 sq. feet units because it was "easier to rent".

[86] She stated that the demolition work and the electrical work were done at the request of her new tenants:²⁷

«Q. [72] The demolition work and the electrical work, was it the tenants that asked for it or did you offer it?

²⁶ 1427 Civil Code of Québec: Each clause of a contract is interpreted in light of the others so that each is given the meaning derived from the contract as a whole.

²⁷ Examination on discovery of Ms. Somji on November 27, 2008.

A. No, the tenants asked for it.»

(page 17)

[87] Ms. Somji also mentioned that she had to pay an electrical contractor, Entreprises d'Électricité E.J. Ltée²⁸ to put electrical boards in each 4 500 sq. feet unit, back to where they were in 2000 before Artissimo moved in; she also had Allard Technologies Inc.²⁹, a company specialized in plumbing, heating and natural gas, modify the gas meters and gas supply so that there be gas supply for each unit, which, there again, was the situation before Artissimo moved in 2000.

[88] The evidence is clear that this work was aimed at restoring improvements-alterations made during the 1999 Lease to the original condition.

[89] Ms. Somji was also questioned³⁰ on the reasons why the value of the work to be performed under the terms of article 5.06.3 of the Lease went from an estimate of 29 381, 12 \$³¹ to a real value of 99 134, 89 \$³²:

«Q. [74] But for this invoice, if you take the fifty-three, forty-three (43) plus the thirteen (13), this is how much Refectio charged you for this work, how did you, how did they get to this from their initial estimate of twenty-nine thousand (29 000)? What happened? did something happen?

A. Did something happen, you mean?

Q. [75] Well, what happened from the initial estimate? did...

A. Ah! This was just an ...

Q. [76] ... look at the ...

A. ... estimation, because at that time, we thought it will take only this much, my, we will, it will be demolished only part of the walls, because I didn't know that the new tenants will need more space, not more space, but different locations and...

Q. [77] I don't follow you...

A. ... they will need...

Q. [78] ... sorry

²⁸ Exhibit P-15.

²⁹ Id.

³⁰ Supra, note 31.

³¹ Exhibit P-7.

³² Exhibit P-15.

A. ...the walls to be built.

Q. [79] They would need the walls to be built?

A. Yes.

Q. [80] So you didn't anticipate the additional needs of certain tenants?

A. I didn't.

Q. [81] So the additional needs of the tenants that were explained to you by the tenants, you proceeded to do the work? And you...

A. Yes

Q. [82] ...you were charging Artissimo for it?

A. Yes, of course.»

(pages 18, 19)

[90] When questioned at trial on the explanation for the significant difference between the estimate of 29 381, 12 \$ and the amount claimed of 99 134 , 89 \$, Ms. Somji was very vague. For instance, at one point, she stated that she was claiming 99 134, 89 \$ for restoration costs, to state later that she was claiming both the sums of 99 134 , 89 \$, and 29 381, 12 \$, to finally admit that the work provided for in the estimate was included in the sum of 99 134 , 89 \$.

[91] Canada inc. has not satisfied the burden to prove that the work, for which it claims 99 134, 89 \$, refers to restoration relating to improvements-alterations made since January 1, 2003.

[92] Moreover, a lot of this restoration work was done pursuant to the requests of new lessees, i.e. Reflexio (for an extra 9 000 sq. feet), Bluebird MFG. Co and Jonathan Leduc, the last two in the Spring 2008³³, long after Artissimo had left the Premises.

[93] In the circumstances, the Court will not grant the damages claimed by Canada inc. for restoration work as per article 5.06.2. Such requests are not those contemplated at article 5.06.2 of the Lease for restoration work.

[94] **FOR THESE REASONS, THE COURT:**

[95] **GRANTS** in part the Plaintiff's motion;

³³ Exhibit D-9.

[96] **TAKES ACT** of the resiliation of the lease entered into on January 31, 2003 as of August 27, 2006;

[97] **ORDERS** Artissimo Prints inc./ Impressions Artissimo inc. to pay to Plaintiff the sum of 14 421,42 \$ with interests and additional indemnity since September 12, 2006;

[98] **ORDERS** Michael Chaimberg to pay the above mentioned amount jointly and severally with Artissimo Prints inc./Impressions Artissimo inc.

[99] **WITH COSTS.**

LOUIS LACOURSIÈRE, J.S.C.

Me José M. Lata

LATA & COMPANY

Attorney for the Plaintiff

Me Angela Markakis

BCF LAWYERS

Attorney for the Defendants

Date of hearing: May 24, 25 and 26, 2011.