
CANADA / JUDGMENT

Shanahan v. Turning Point Restaurant Ltd.,

2011 BCSC 956

COURT

Supreme Court of British Columbia

DECIDED

15 July 2011

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2011 BCSC 956 Shanahan v. Turning Point Restaurant Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Shanahan v. Turning Point Restaurant Ltd.,

2011 BCSC 956

Date: 20110715

Docket: 20014

Registry: Cranbrook

Between:

Michael Shanahan

Plaintiff

And

The Turning Point Restaurant Ltd.

Defendant

Before: The Honourable Mr. Justice Melnick

Reasons for Judgment

Counsel for the Plaintiff:

G.A. Purdy

Counsel for the Defendant:

B.C. Kluge

Place and Date of Trial:

Golden, B.C.

April 5, 6 & 7, 2011, and

Cranbrook, B.C.

May 17 & 18, 2011

Place and Date of Judgment:

Cranbrook, B.C.

July 15, 2011

- [1] The plaintiff, Michael Shanahan ("Mr. Shanahan"), seeks a declaration that he has a valid and subsisting lease on certain commercial premises leased to him by the defendant, The Turning Point Restaurant Ltd. ("TPR"). He also seeks an order directing that TPR return to him certain chattels he says it seized when it purported to terminate the lease in August 2009. He also seeks damages, although he has abandoned a claim for loss of profits.
- [2] TPR counterclaims for damages for the cost of certain equipment it alleges Mr. Shanahan purchased from it, unpaid rent and repairs to the premises. It also seeks an order compelling Mr. Shanahan to transfer to it a liquor licence it alleges he holds in conjunction with the premises.

I. BACKGROUND

- [3] Mr. Shanahan is a locomotive engineer for the Canadian Pacific Railway ("CPR"). He had had a dream of owning a bar and grill for some years. He saw it as a way to create an income for himself after his eventual retirement from the CPR. In early 2008, a period of discussions with Evangelos Tsadilas ("Mr. Tsadilas"), one of the then principals of TPR, resulted in Mr. Shanahan's offering to lease a commercial building then owned by TPR.
- [4] TPR had operated the Omega Bar in these premises for a year or two, but had closed the business as it was not profitable. It had disposed of most of the improvements.
- [5] Mr. Tsadilas and his wife, Maria Tsadilas ("Ms. Tsadilas"), were about to leave for a vacation in Greece, so they left instructions with their son John Tsadilas, who was to look after TPR's business in their absence, that he was to sign a lease that Mr. Shanahan would present to TPR, and that they would take it to TPR's lawyer and see to any required amendments when they returned. Thus, on May 7, 2008, a lease of Lot 1, s. 12, Twp. 27, R. 22, West of the 5th Meridian, Kootenay District, Plan NEP83523, was entered into by Mr. Shanahan as tenant and TPR as landlord.

- [6] Mr. Tsadilas and Mr. Shanahan had discussed the rent. It was to be \$2,800 a month base rent with "triple net" costs for property taxes and insurance; the GST on rent, insurance and property taxes were approximated at \$1,000. Mr. Tsadilas had indicated that TPR wanted the first and last month's rent in advance. Mr. Shanahan says he gave Mr. Tsadilas \$2,000 in cash some time prior to the preparation of the lease. He then dropped off a cheque to the office of Mr. Ewan, TPR's lawyer, for \$5,600. Mr. Ewan eventually sent that money to TPR. None of the \$5,600 was ever held in any form of trust arrangement; rather, it was all deposited to the account of TPR by Ms. Tsadilas. Mr. Tsadilas denied that Mr. Shanahan ever gave him the \$2,000. Mr. Shanahan's bank records indicate that he withdrew \$2,000 in cash about the time he says he paid that sum to Mr. Tsadilas.
- [7] It was also agreed between Mr. Shanahan and Mr. Tsadilas that the first month he occupied the premises would be without charge.
- [8] Mr. Shanahan had his lawyer prepare a lease. When John Tsadilas received it, he phoned his parents in Greece. They instructed him to sign it on behalf of TPR. He did so. He apparently did not mention to Mr. Shanahan anything about his parents intending to take it to their lawyer when they returned.
- [9] Upon returning from Greece, Ms. Tsadilas took the lease to TPR's lawyer. As a result, she told Mr. Shanahan that TPR required certain changes to the lease. Mr. Shanahan said that he felt he had no choice but to agree with the changes and he did so. The lease makes no mention of the requirement of TPR to pay the "first and last month's rent" in advance (whether only the base rent or inclusive of a pre-estimate of triple net costs as well was not made clear).
- [10] The lease was for a term of three years from May 1, 2008. It stated that the first month's rent was due June 1, 2008, thus providing Mr. Shanahan with the right to occupy the premises for a month to undertake improvements.
- [11] The original lease had indicated that Mr. Shanahan would operate a "food and beverage" establishment. TPR required that to be changed to a "liquor primary" establishment, which more properly reflected the nature of his operation and would not conflict with TPR's restaurant next door. TPR also required that the option to purchase provided to Mr. Shanahan be removed. As noted, he agreed to that. However, remaining in the lease was a right of first refusal. It provided as follows:
5. The parties mutually agree as follows:
- (o) Right of First Refusal: The Landlord shall not sell, offer to sell, transfer or otherwise dispose of its Interest in the demised premises unless the Landlord first offers by notice in writing (referred to in this clause as the "Offer") to the Tenant the prior right to purchase the demised premises. The Offer shall set forth that the whole of the demised premises is offered for sale and that the Offer is open for acceptance for thirty days after the receipt of the Offer by the Tenant. The purchase price for the demised premises shall be as agreed between the parties, and failing agreement shall be determined by an independent

appraiser appointed by the parties. If the parties are unable to reach agreement on the appraiser, the appraiser shall be appointed by Bruce F. Fairley, Barrister & Solicitor, of Golden, B.C., or any partner of the firm Fairley & Scott or its successor firm. The appraiser shall determine the fair market value of the demised premises. The appraiser may receive such submissions from the parties as the appraiser determines in his absolute discretion. The determination of the appraiser shall be final and binding upon the parties. If a binding agreement for purchase and sale is reached by the parties, the obligations of this lease will cease and expire as of the closing date of such agreement. Any rent already accrued due as of the closing date will still be payable to the Landlord unless otherwise agreed to in writing by the parties.

The lease also provided that the parties mutually agreed to the following:

5(a) Entire Contract: That the whole of the contract is contained in this lease agreement.

5(b) Waiver: That no waiver shall be effective unless given in writing.

...

5(h) Default by Tenant: That if default is made in payment of rent or any part thereof, and such default continues for 30 days after the due date for payment, or in the case of non-observance or non-performance on the part of the Tenant of any covenant, condition, restriction or stipulation herein contained, express or implied, and which continues for 20 days after written notice of such non-observance or non-performance is delivered to the Tenant, the Landlord may, at its option, cancel this lease by written notice to the Tenant, in which event any accrued monthly rent as of the date of the written notice of cancellation shall immediately become due and payable to the Landlord.

[12] The other addition to the lease that Mr. Shanahan agreed to was a definition of triple net costs:

Triple Net to include following:

- One twelfth (sic) of Town of Golden Property Taxes paid on the first of each month.
- One twelfth (sic) of the estimated Insurance Costs on the building paid on the 1st of each month
- gst payable on the first of each month with rent. on premises (sic)

[13] As noted, the parties had agreed to a practice of Mr. Shanahan paying an estimate of the triple costs of \$1,000 a month together with the base rent of \$2,800. However, in her evidence, Ms. Tsadilas noted that, at some time, she had calculated the actual triple net costs to be \$932 a month. She said that it was the intent of both parties to adjust for the actual costs at some point, but that had not taken place when the lease was terminated. Thus, on July 1, 2009, the expectation of both parties was that the rent due on that date was \$3,800.

- [14] While Mr. Shanahan was the tenant of the premises, the business conducted in them, "Shanahan's Bar and Grill", was by a corporation, Shanahan's Bar and Grill Inc. ("Shanahan's Inc."). It was Mr. Shanahan's evidence that all of the equipment he acquired to run the business was placed in the name of Shanahan's Inc. There was no documentation to evidence this, and the purchase of most assets appeared to have been in Mr. Shanahan's name personally. However, on July 31, 2008, a PPSA Security Agreement was granted to Community Futures Development Corporation of the S.E. Region of B.C. ("Community Futures"), and "all of the debtor's present and after acquired personal property used in the business known as Shanahan's Bar & Grill Inc..." were pledged as collateral. In cross-examination, Mr. Shanahan noted that although he did not record when assets were put into the name of Shanahan's Inc., it was before the termination of the lease.
- [15] It was Mr. Shanahan's evidence that he paid about \$74,000 for the chattels and equipment and about \$25,500 for leasehold improvements, all of which ultimately became the property of Shanahan's Inc.
- [16] TPR terminated the lease by letter dated August 11, 2009. The reason given, by implication from the letter's reference to paragraph 5(h), was default by Mr. Shanahan in either paying his rent or for some other breach of the covenants of the lease. The letter did not specify. The evidence at trial was that Mr. Shanahan was made to understand that it was for non-payment of rent.
- [17] Mr. Shanahan's business (or, more properly, the business of Shanahan's Inc.) between the time he opened in 2008 and the beginning of August 2009 had not been profitable. In fact, Shanahan's Inc. only had three months in which it recorded a profit. Mr. Shanahan was frequently late in paying his rent. Undoubtedly, dealing with him was a continuing frustration for Mr. and Ms. Tsadilas.
- [18] Mr. Shanahan got into business knowing nothing about running a business. He had a lawyer and an accountant, but clearly did not appreciate sufficiently the need to budget, keep records, or even (from the state in which the premises were discovered when TPR effected entry to them on August 10, 2009) the degree of cleanliness necessary and protocols for food handling required in such a business. Although Shanahan's Inc. had some money in the bank at the end of July 2009, the evidence makes it fairly clear that Shanahan's Inc. was not just struggling at that point, it was close to being broke.
- [19] It is questionable whether Mr. Shanahan or Shanahan's Inc. could have continued in business much beyond that point. That being as it may, there is a question whether Mr. Shanahan was in default at all in the payment of his July 2009 rent.

- [20] According to Mr. Shanahan, just before the end of July he asked Mr. Tsadilas to apply the "last month's rent" he had deposited with TPR to the July rent. He received no direct response from Mr. Tsadilas, but he said that he believed that would happen because Mr. Tsadilas told him not to worry about it, business was down for him too, and "we'll get through it". Mr. Tsadilas flatly denied that this exchange took place. Rather, said Mr. Tsadilas, Mr. Shanahan once again promised to have the rent to him the day after they spoke.
- [21] Mr. Shanahan did not otherwise pay the \$3,800 due on July 1, 2009. Nor did he pay that sum before Ms. Tsadilas parked a vehicle in front of the back door of the premises at about 10 p.m. on August 10, 2009, to prevent him from removing any equipment and effectively blocking entry to the premises. She was concerned that the equipment TPR had sold to Mr. Shanahan for \$5,000 would be removed without being paid for.
- [22] On August 11, 2009, Ms. Tsadilas, acting on behalf of TPR, had the lock on the door changed, denying access to Mr. Shanahan.
- [23] When TPR terminated the lease, Ms. Tsadilas was made aware that a large ice machine in the basement had malfunctioned and flooded the basement floor. She arranged for the mess to be cleaned up and for the premises to be cleaned. From the photographs put into evidence, it is clear to me that the premises were dirty, poorly maintained and damaged. Louise Morris put in 103.5 hours of work cleaning the premises. She valued her time at \$15.00 an hour. TPR paid her \$1,552.50. Repairs to a hole apparently punched in a washroom wall cost TPR \$2,100, and it spent \$101.15 on a new lock for the door. Ms. Tsadilas spent as many hours cleaning as did Ms. Morris.
- [24] Mr. Shanahan was permitted to retrieve his and Shanahan's Inc.'s business records.
- [25] Mr. Tsadilas said that he did speak to Mr. Shanahan in early August 2009 about Mr. Shanahan buying the premises, but no price was mentioned. He said they had had an earlier understanding of \$400,000. However, Mr. Tsadilas said that Mr. Shanahan told him he could not come up with a partner and, thus, did not have the money to go ahead with a purchase.
- [26] Mr. Shanahan said that he had intended to move ahead with the purchase of the premises. Further, he said that in early August he had submitted his resignation to CPR (on a tentative basis - subject to tying down the purchase), he was going to cash in his pension to use for the purchase of the premises, and it was TPR that ultimately would not sell.
- [27] In fact, TPR did sell the premises. In September 2009, a lawyer for TPR instructed Mr. Kevin Cox ("Mr. Cox"), TPR's accountant, to record a "sale" of the building to another company owned by Mr. and Ms. Tsadilas, 504361 B.C. Ltd. ("50Co"). This sale was declared in the land title transfer document in September 2009, at a consideration of \$357,200.

- [28] In fact, no actual money was paid by 50Co to TPR for the "sale". It was an all paper transaction. However, Mr. Cox was apparently asked by the lawyer to record the effective transfer of title as at July 1, 2009. This makes little sense given the actual time of transfer, but that was Mr. Cox's evidence.
- [29] When TPR terminated Mr. Shanahan's lease, Ms. Tsadilas made enquires of Community Futures respecting the chattels and equipment. She discovered that everything was encumbered. Thus, in its letter to him of August 11, 2009, TPR noted: "Your ownership of all contents are subject to dispute".
- [30] Then, a misunderstanding on the part of Ms. Tsadilas occurred. Community Futures, who held mortgage security over Mr. Shanahan's home for the money they had advanced to help Shanahan's Inc. get started in business and who, I have no doubt, did not want to be encumbered with the furnishings and equipment of a bar, sent a letter dated August 21, 2009, to TPR saying that it released its interest in the equipment located on the premises "belonging to Shanahan's Bar and Grill". Ms. Tsadilas took that letter, and a conversation she says she had with a member of the clerical staff of Community Futures, to mean that it was releasing the equipment to TPR. Of course, Community Futures was not in a position to do any such thing, nor did its letter say that, but that is how Ms. Tsadilas took it. In the result, TPR would not release any of the equipment to Mr. Shanahan (or Shanahan's Inc., assuming Mr. Shanahan was acting on its behalf when he asked for it).
- [31] At one point, Ms. Tsadilas, on behalf of 50Co, sold some of the barstools for \$800. Of course, 50Co had no right to do that either.
- [32] The fixtures, equipment and chattels that were in the premises when TPR terminated Mr. Shanahan's lease are, for the most part, still there. TPR was sold in early 2010 to John Tsadilas and his wife, Megan Tsadilas. John Tsadilas' evidence was that TPR has no interest in any of the improvements or equipment.
- [33] In February 2011, Shanahan's Inc. sold to Mr. Shanahan "any and all equipment, fixtures or leasehold improvements" on the premises. Notably, Shanahan's Inc. did not assign to Mr. Shanahan any cause of action it might have against TPR or others respecting those assets, or its former business.

II. DISCUSSION

- [34] I am satisfied, on a balance of probabilities, that Mr. Shanahan paid \$2,000 in cash to Mr. Tsadilas by way of a good faith deposit on the lease they contemplated Mr. Shanahan would be entering into with TPR. Both Mr. Shanahan's bank records and his subsequent payment to Mr. Ewan of only two months' base rent of \$5,600 (in the face of having had discussions of there being triple net costs of about \$1,000 a month) reinforce what I found to be convincing evidence on this point from Mr. Shanahan. I do not accept the evidence of Mr. Tsadilas that he did not receive the \$2,000.

- [35] When the lease was prepared on Mr. Shanahan's instructions, it made no mention of a requirement that he pay the first and last month's rent in advance. TPR had the opportunity to have that remedied as it did with other parts of the lease after the return of Mr. and Ms. Tsadilas from Greece. Given that Mr. Shanahan agreed to the changes TPR wanted, even after John Tsadilas signed the lease on the instructions of his parents, I have no doubt that he would have agreed to that addition as well, particularly as he had agreed to it verbally and he had acted throughout, until near the end of July 2009, as if he assumed that the extra \$3,800 he paid before the start of the term of the lease was for the last month of it. The lease, however, expressly excluded this prior agreement. Thus, in the financial situation in which he found himself, Mr. Shanahan was within his rights to request that this money be applied to the July 2009 rent. I find Mr. Shanahan did make that request and that Mr. Tsadilas was probably equivocal in his response to it, and that Mr. Shanahan was probably lulled into a false belief that Mr. Tsadilas had agreed with his request. TPR was obliged to comply with Mr. Shanahan's request. Thus, on August 11, 2009, the date TPR purported to terminate the lease, it was not then entitled to do so.
- [36] Even though the transfer of the title to the premises took place on September 4, 2009, on the instructions of the lawyer for TPR that transaction was recorded as being effective July 1, 2009. Whether TPR and 50Co actually agreed upon anything respecting the transfer of the premises to 50Co before August 11, 2009, I do not know. However, it is a fact that they clearly considered the deal effective July 1, 2009, during the term of the lease, when Mr. Shanahan still had the right of first refusal (at a price to be negotiated or determined by an independent appraiser). Thus, whatever may or may not have passed between Mr. Shanahan and Mr. Tsadilas in early August 2009 about TPR selling him the premises, the fact was that Mr. Shanahan then had a right of first refusal if TPR wished to sell the premises. This right was not limited to being available only if the lease was in good standing, as is often the case.
- [37] That said, I find that no agreement was concluded between TPR and Mr. Shanahan as a result of their conversations in early August 2009 about the possible sale of the premises to Mr. Shanahan. But those conversations may well have been generated by Mr. Tsadilas knowing more than he was then saying to Mr. Shanahan, i.e. about a then ongoing process to transfer the premises to a separate company owned by Mr. and Ms. Tsadilas, 50Co.
- [38] I accept that, in early August, Mr. Shanahan made enquiries as to how he might fund the acquisition of the premises. I also conclude, however, that his not moving forward with that acquisition was not so much due to the improper termination of the lease by TPR, but rather by his own inability to find a partner with money and his financial incapacity to otherwise fund such a purchase. The parties had spoken of a potential price of \$400,000 in 2008. Undoubtedly, a price of \$357,200 was never mentioned in August 2009. Whether the potential of obtaining the premises at this lower price would have made any difference to Mr. Shanahan's ability to fund the purchase is unknown; but, given his then overall financial circumstances, I find that the purchase was improbable, even if he had accessed his CPR pension.

- [39] Notwithstanding the urgings of his counsel that, at the termination of the lease, most of the chattels, equipment and leasehold improvements were really owned by Mr. Shanahan personally, the evidence (particularly that of Mr. Shanahan himself) demonstrates unequivocally to me that they were in fact then owned by Shanahan's Inc. That Shanahan's Inc. "sold" them to Mr. Shanahan in 2011 really means nothing in the overall scheme of things. When the lease was terminated, the only asset held by Mr. Shanahan was the rights under the lease itself. On August 11, 2009, Shanahan's Inc. owned all the assets, including leasehold improvements and operated the business on the premises.
- [40] On August 10, 2009, TPR had no right to block Mr. Shanahan's access to the premises; it had no right to change the lock on the door on August 11, 2009; and, as already noted, it had no right to terminate his lease. Further, it had no right to refuse his request to remove from the premises all of Shanahan's Inc.'s equipment, chattels and leasehold improvements upon the termination.
- [41] The actions of TPR on August 10 and 11, 2009, effected a forfeiture of the lease: *Mybrie Investments Ltd. v. Icana Techno Corp.*, [1997] B.C.J. No. 2475 (S.C.). This would have been so even if Mr. Shanahan had then been in default, which he was not. The action of TPR in denying Mr. Shanahan (or more properly Shanahan's Inc.) the right to remove the leasehold improvements, chattels and equipment was wrongful. TPR did not act in compliance with the provisions of the Rent Distress Act, R.S.B.C. 1996, c. 403, but that was not surprising given its mistaken belief that Community Futures had effectively given it all of the fixtures, equipment and chattels. However, the mistaken belief of Ms. Tsadilas and of TPR on that point does not excuse what TPR did.
- [42] A problem here is that the equipment, chattels and leasehold improvements effectively seized by TPR in August 2009, did not then belong to Mr. Shanahan, but rather to Shanahan's Inc., which is not a party to this action. Nor, for that matter, are Mr. and Ms. Tsadilas and 50Co. John Tsadilas, one of the two present shareholders of TPR, says TPR has no present interest in the chattels and equipment. TPR has sold the leasehold improvements with the premises to 50Co, although that transaction could not be described as an arm's length transaction for value without notice.
- [43] There was no evidence of the value of the leasehold improvements, chattels and equipment as of August 11, 2009 (other than what Mr. Shanahan said he paid for them originally). In my view, given their already worn condition, the photographs put into evidence demonstrate that it is not unrealistic to value the leasehold improvements as of that date at 75% of their original value, or \$19,125, and the chattels and equipment at 60% of their original value, or \$44,400, for a total of \$63,525.
- [44] Section 10 of the Rent Distress Act provides:

If distress and sale is made for rent alleged to be due, and no rent is due to the person distraining, or to the person in whose name or right the distress is taken, then the owner of the property distrained and sold, or his or her personal representatives, may, by proceeding against the person distraining, or the personal representatives, recover double the value of the property distrained and sold, together with full costs of the proceedings.

- [45] While the provisions of the lease did not give TPR the right to terminate the lease on August 11, 2009, in the face of my having determined that Mr. Shanahan had the right to have the \$3,800 deposit held by TPR applied to the July rent, it is also true that on that day there was then due to TPR a further \$3,800 as of August 1, 2009 (or arguably somewhat less than that if one calculated exactly the triple net costs). Undoubtedly, however, in September 2009, there was a "sale" of the leasehold improvements to 50Co. Then, at a later date, 50Co sold some of the barstools.
- [46] This discussion gives rise to two questions. Are these circumstances in which s.10 of the Rent Distress Act apply? And, either way, is Mr. Shanahan barred from recovery due to the fact that Shanahan's Inc. was the owner of that which was "distrained" but was not made a party to this action?
- [47] This is not a case like *Timberland Forest Products (1996) Ltd. v. Pattar Cedar Products Ltd.*, 2008 BCSC 641, where the plaintiff operated a business with equipment not in its own name. There, Meiklem J. found that the plaintiff had a possessory interest in the equipment and was thus entitled to damages for its conversion.
- [48] Here, Shanahan's Inc. owned all the equipment and improvements and operated the business. Mr. Shanahan was simply the tenant under the lease. In my view, it was not Mr. Shanahan's chattels, equipment and improvements that were distrained (for I find that TPR did effect a distraint -- and sale to 50Co of at least the improvements) or, if I am incorrect, converted. Rather, it was those of Shanahan's Inc. The right to be compensated for this distraint or conversion is that of Shanahan's Inc. Shanahan's Inc. did not assign its cause of action to Mr. Shanahan when it sold him the chattels, equipment and leasehold improvements earlier this year.
- [49] Any claim for damages for loss of business is also that of Shanahan's Inc. The claim for loss of profits was withdrawn as undoubtedly it was clear in the evidence there were no profits, although that would have been a claim of Shanahan's Inc. as well.
- [50] So, in these circumstances, what is the measure of the damages suffered by Mr. Shanahan? He possibly lost the right to purchase the premises at what may have been an advantageous price; although, I have already expressed my conclusion that it is improbable that he could have come up with even the price paid by 50Co in August 2009. Mr. Shanahan lost the opportunity to continue with a tenancy of which, technically, he was entitled to enjoy at least until August 31, 2009. (I say August 31, 2009, as the lease gave him 30 days after the due date in which to come up with the rent.)

- [51] Mr. Shanahan also became personally liable for certain guarantees he had of the obligations of Shanahan's Inc., including \$81,000 for the collateral mortgage on his home to Community Futures. He also claims to be personally liable for another \$88,000 in debts, which arose from the acquisition of equipment or operations by Shanahan's Inc.
- [52] Whatever wrongdoing TPR did to Mr. Shanahan, it is not responsible for the business losses of the non-party, Shanahan's Inc. Yet, Mr. Shanahan has been placed in a personally difficult financial position by the failure of Shanahan's Inc. - something that may have occurred anyway within a short time after August 11, 2009 - but was certainly accelerated and compounded by the actions of TPR which ended any chance Mr. Shanahan may have had of guiding Shanahan's Inc. to profitability.

III. DAMAGES

- [53] In the result, I would award Mr. Shanahan damages of \$100,000 against TPR for its high-handed, unjustified action in terminating his lease. I cannot grant any relief to Shanahan's Inc., of course, because it is not a party. However, I have set the amount of damages here to reflect that TPR wrongfully terminated the lease, failed to honour the provisions of that lease respecting offering him a right of first refusal, and deprived him of the opportunity, however remote I think it may have been, to recover from the difficult financial circumstances in which he found himself in August 2009.
- [54] In these circumstances, I would also award damages to TPR for the \$5,000 Mr. Shanahan owed for the equipment. TPR expended money and effort cleaning, but it had no right to be on the premises. I dismiss its claim for cleaning the premises. However, TPR should be compensated for \$2,100 to repair the damages to the premises.
- [55] Thus, the net damages owing by TPR to Mr. Shanahan are \$92,900. Mr. Shanahan is entitled to court order interest on this amount at Registrar's Rates from August 11, 2009, to date of judgment.
- [56] One of the corollaries of this judgment, of course, is that as Mr. Shanahan no longer has the lease of the premises, neither he nor Shanahan's Inc. will have the right to maintain the licence to operate a licensed premises. It is open to 50Co or others with a possessory interest in the premises to apply for one for the premises.
- [57] That TPR may have engineered the sale of the premises, and Mr. and Ms. Tsadilas the sale of TPR, with the consequent large recorded debt of both companies, to attempt to be judgment-proof is something not within the contemplation of this action. It is unfortunate that not all of the players were made parties. It may be that a happier conclusion for both parties would be the sale to Mr. Shanahan of the premises for \$357,200, the return to Shanahan's Inc. of all improvements, chattels and equipment (except for the sold barstools), replacement of the bar stools with new ones of the same type and value, and the payment of Mr. Shanahan's costs; but, that type of result is not open to me to order in the circumstances here. If it is an avenue the parties wish to pursue, I leave it to them.

[58] Mr. Shanahan is entitled to his costs on Scale B.

"Melnick J."

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