

# BETTER LATE THAN NEVER: COURT FINDS THAT LANDLORD STILL ENTITLED TO PAYMENT OF ADDITIONAL RENT AFTER FORGETTING TO INVOICE TENANT FOR 3 YEARS

Posted on December 19, 2016

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The recent decision of *Bulley v. Weatherford Canada Partnership*<sup>[1]</sup> is a good reminder for commercial landlords and tenants alike that, absent a clear intention by the parties to amend, the written lease terms will likely prevail, even where an entitlement owing to one party (in this case, additional rent) is not initially claimed by the benefiting party.

## Background Facts

An oil and gas company (the “**Tenant**”) entered into a lease agreement with a commercial landlord (the “**Landlord**”) for a term of seven years (the “**Lease**”). Under the terms of the Lease, the Tenant was obligated to pay basic monthly rent as well as additional rent which was based upon the Landlord’s operating costs and expenses in relation to the premises (the “**Additional Rent**”).

For the first three years of the Lease, the Landlord invoiced the Tenant for basic rent, but forgot to seek payment for the Additional Rent. The Landlord eventually realized its mistake and issued invoices to the Tenant seeking payment for the three years worth of Additional Rent charges. The Tenant refused to pay and claimed that the Landlord had waived its right to collect the outstanding amounts. The Landlord commenced an action in the Supreme Court of British Columbia seeking payment of the outstanding Additional Rent.

## The Decision

The parties asked the court to determine whether the Landlord was precluded from collecting the Additional Rent, since the Landlord had failed to collect the amounts at the time they actually came due. The Court found that the Landlord’s failure to collect funds for the Additional Rent was the result of an unintentional mistake made by the Landlord, and as a result, the Tenant was still required to satisfy its obligations under the Lease.

The Tenant also tried to argue that the Landlord should be prohibited from collecting the Additional Rent because the relevant limitation period had expired. The Court dismissed the limitation argument, confirming that the two year limitation period under the current *Limitations Act*<sup>[2]</sup> did not begin to run until a demand

had been made. Since a demand for payment was made by the Landlord once the mistake was noticed, the Landlord was well within the applicable two year limitation period.

### **Takeaways**

Landlords and tenants should be aware that an unintentional mistake to enforce an obligation will not typically alter the terms of a lease agreement. That is, the courts are likely to enforce the written terms of a lease absent evidence of a clear intention by the parties to amend the terms of their agreement.

by Jamieson D. Virgin and Dharampreet Dhillon, Articled Student

[1] *Bulley v. Weatherford Canada Partnership*, 2016 BCSC 1955[ps2id id='1' target='']

[2] Limitations Act, S.B.C. 2012, c. 13[ps2id id='2' target='']

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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