Citation:	C.T.F. Metals Corp. v. Wolstencroft et al	Date:	20040716
2004 BCPC 0276	File No:		2003-78837
	Registry:		Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

C.T.F. METALS CORP.

CLAIMANT

AND:

BRIAN WOLSTENCROFT and DR. JULIAN BOWER and 378135 B.C. LTD and CROSBY PROPERTY MANAGEMENT LTD. and ACCURATE BAILIFFS AND COLLECTION AGENCY LTD and ROBERT GOODEY and PETER POWERS

DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE JUDGE M. E. RAE

Appearing in person:	R. Marnet
Counsel for the Defendant:	C. Martin
Place of Hearing:	Vancouver, B.C.
Date of Hearing:	July 7, 2004
Date of Judgment:	July 16, 2004

[1] The Claimant sues for damages under a number of heads arising out of a landlord and tenant relationship. Prior to the hearing there was a settlement reached between the Claimant and Accurate Bailiffs, Robert Goody, and Peter Powers. The remaining Defendants are Brian Wolstencroft, Dr. Julian Bower, 378135 B.C. Ltd. and Crosby Management Ltd. Mr. Martin acted as Counsel for all of the Defendants.

[2] The Claimant rented office space from 378135 from about 1978 until March, 2001. The Defendant, Crosby Management Ltd., managed the building from the late 1980's. Julian Bower is the Principal of the numbered company, and Brian Wolstencroft is employed by Crosby Management Ltd.

[3] The Claimant sues to recover monies that he alleges he was forced to pay to the Defendants under duress. This allegation arises out of amounts owing on a lease that the parties entered into in 1990 which expired in 1994. Pursuant to the terms of that lease, the Claimant was to pay a proportionate share of the operating expenses for the building. He paid a monthly rate based on an estimate of the expenses, and it was adjusted annually. Sometimes the Claimant was required to pay extra, and in some years he received a credit. It appears that the Claimant felt that he was being overcharged for these expenses, and for some time had declined to pay any increases. On July 15, 1994, Mr. Wolstencroft wrote to the Claimant advising that the term of the lease expired in December, and advised as to the terms they were offering for a renewal. He also advised that the Claimant owed $4261.85 for operating expenses which had accumulated over the term of the lease. The Claimant was not prepared to pay this, and Mr. Wolstencroft advised that they would not renew the lease unless the monies were paid.

[4] This dispute carried on for some time, with the lease expiring and the Claimant continuing to occupy the premises on a month to month tenancy. Eventually the Claimant was threatened with eviction, there were further discussions, and the parties agreed that the Claimant would pay about $3838.00 to settle the issue, and as a result the Defendant agreed to offer a new lease running for a term of 2 years commencing in March 1997. The Defendant agreed to accept monthly payments of $159.93 on the outstanding amount. The Claimant says that he was forced to pay these monies or face eviction, and although he made the payments, he clearly marked on each payment "paid under duress". He says as a result of the tactics used by the Defendant he is entitled to repayment of those monies.

[5] Although the Claimant was faced with the difficult choice of making payments he didn't agree with or being evicted, one can hardly say that the landlord's actions amount to duress. The term of the lease had expired, and the landlord was entitled to negotiate a new contract. The Claimant agreed to the terms, unpalatable as they were in his view, and as a result of the understanding he reached, the Defendants agreed to renew his lease. This is not duress; it is commercial reality. The claim for return of these monies is dismissed.

[6] The Claimant also claims that he is entitled to be reimbursed for the value of his time spent dealing with after hour emergencies in the building and for damage to equipment and materials lost as a result of those emergencies.

[7] The building in question is designated as a heritage building, and is located in the Hastings and Cambie Street area of Vancouver. This is an area that has seen better times, and over the last few years the appearance of the neighbourhood has declined as a result of drug dealers moving in and an increase in street crime. The building

also had its own problems with old wiring and water pipes. There was apparently frequent flooding and a number of small fires. There were street people getting into the building, and on one occasion the Claimant says he found someone almost dead from an overdose in the basement. The Claimant alleges there were a number of illegal activities going on in the building in unused office space and very little "hands on" management of the issue. He says that there was a janitor who was supposed to deal with these emergencies, but that he was never available. Over the years, starting in 1995, the Claimant sent invoices to the Defendant for these services. Two of these invoices are outside of the statute of limitations, but the invoices from March 1997 do fall within the limitation period, provided we are dealing with a contract. Those invoices amount to $1497.85. If I were to include the excluded accounts the invoices would amount to a further $2195.40.

[8] On August 8, 1997, Mr. Wolstencroft wrote to the Claimant and advised that the Claimant had no authority to provide any emergency services, and that the Defendant would not be paying his invoices. He wrote a further letter dated October 14, 1997 apparently indicating that they would not be paying an invoice they had received and which does not appear to be submitted as evidence in these proceedings.

[9] The Claimant says that these emergencies were frequent and time consuming to deal with. He says that he was unable to contact the janitor, and that it was necessary for him to deal with the police and fire department on these occasions. However, there is little detail provided on these invoices to provide dates and times of attendances, specific emergencies dealt with and services provided. There are no invoices provided to substantiate the alleged damages and loss of equipment or the alleged purchases made. There is no evidence that the Claimant ever made any effort to contact the Defendants on any of these specific occasions. The Claimant says that he usually looked after these things himself, because his past experience suggested that there was no one to deal with these after hour emergencies.

[10] It is clear that the Defendant was on notice as of August 1997 that his invoices would not be paid. There is no basis to suggest that there was an implied agreement that he would be reimbursed for his time, or that the Defendants ever did or said anything to give rise to an expectation in the mind of the Claimant that he would be compensated for his time. Damage to materials and equipment as a result of fire or flooding might be recoverable, but there is no evidence to substantiate what those losses were, nor is there any evidence that itemized receipts or estimates for the cost of repair were ever submitted to the Defendant on a timely basis. It is not clear that repairs were ever made to damaged equipment or that new equipment or parts were actually purchased. It is clear that the building that the Claimants occupied was becoming an increasingly unpleasant place from which to run a business, but in spite of that, the Claimant continued to rent space on a month to month basis for a number of years after the lease expired, and after the last invoice was forwarded to the Claimant. Had the self imposed obligations the Claimant assumed for the maintenance of the building been overly onerous, it was always open to them to give notice and vacate the premises. The claim for reimbursement for emergency services is dismissed.

[11] The third head of damages is a claim for reimbursement of monies paid to a bailiff who had attended to seize goods to cover unpaid rent while the Claimant was in the process of moving out of the premises. The Defendant wrote to the Claimant some time in late 2000 advising them that they would be increasing the rent. The Claimant wrote back and advised that they were not prepared to pay a rent increase, and felt that a decrease would be appropriate. They also indicated that if such an offer was not forthcoming they would be vacating the premises, and that they were giving them 30 days notice pursuant to the lease. When such an offer was not forthcoming, the Defendant made plans to vacate the premises. They did not pay the rent due on March 1, although they were still occupying the premises. The janitor advised Mr. Wolstencroft that the Claimant was making preparations to leave. Mr. Wolstencroft advised the owners, who instructed him to have a bailiff attend. The bailiff did attend, and the Claimant promptly paid the rent, which he says had not been paid due to an oversight, although he maintains that for the previous twenty years the rent had always been paid promptly.

[12] The bailiff demanded that the Claimant not only pay the rent, but also another $412.00 in bailiff's costs. The Claimant does not dispute the fact that he owed rent of $1202.00, but he maintains that it was not open to the Defendant to send in a bailiff to seize his good without at least giving him notice that the rent was due. He says that as a result he has been charged an additional $412.00. He says he had forgotten about the rent and did not intend to leave without paying it.

[13] On March 15, 2001, the Defendant had sent a letter to the Claimant advising them of the amount of the rent and providing an accounting of the operating expenses. The Claimant says he did not get this letter before the bailiff arrived, however, there has been a letter produced by the Defendant that was written by the Claimant on March 23, prior to the attendance of the bailiff, that apparently makes reference to the March 15 letter. There is

some evidence that the Claimant had gotten some information suggesting that the March rent was due, prior to the arrival of the bailiff.

[14] However, in the circumstances in which the Defendant found themselves, they were in my view entitled to take the action they did in order to collect the rent. It was well past the due date and they had not received the March rent. They became aware that the Claimant was making preparations to leave. There is some evidence to suggest there had either been some conversation or written notice received by the Claimant concerning the March rent. Giving notice to the tenant that the rent was overdue might be the preferred course of action depending on the circumstances, but the landlord tenant contract did not require this, and, the landlord was entitled to occupy the premises without giving notice in a situation where the rent was overdue and the tenant appeared to be in the process of leaving. The claim for reimbursement of the bailiff's fees is dismissed.

[15] I would also note that Mr. Wolstonecroft was an employee of the Defendant Crosby Management, and as such was carrying out his duties as an employee in all of his dealings with the Claimant. There is not basis to find him personally liable. Similarly, Crosby Management was the agent of the owner of the building, and was carrying out the owners instructions, so there is no basis upon which they could be found liable. Mr. Bowers is the principal of the numbered company who owned the building, and as such there is no basis upon which to find him liable. Should I have found any liability here, the only party who could in law be found liable would have been the numbered company.

[16] For all of the above reasons the claim is dismissed.

MARGARET E. RAE, P.C.J.