Date of Release: May 26, 1992

No. C908144
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN: BRITISH COLUMBIA EGG MARKETING BOARD PLAINTIFF AND JANSEN INDUSTRIES LTD. and VEDDER TRANSPORT LTD. DEFENDANTS	REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE MACKOFF

Counsel for the Plaintiff:	H. Scott MacDonald
Counsel for the Defendants:	Douglas MacAdams
Dates and Place of Trial:	March 4, 5, & 6, 1992 at Vancouver, B.C.

In this action the plaintiff seeks, *inter alia*, a declaration that a letter agreement dated June 27, 1986 is an enforceable lease.

The defendant Vedder Transport Ltd. ("Vedder") was the owner of a shopping centre known as Highland Plaza in Abbotsford, British Columbia. The plaintiff ("B.C.E.M.B.")

was looking for new premises. After one or two meetings between Mr. Neall Carey and Mr. Manfred Krahn employees of the plaintiff and Mr. Larry R. Huber an employee of the defendant Vedder, the parties agreed to the terms of a lease for certain premises in Highland Plaza.

On June 27, 1986 Mr. Carey, wrote a letter to Mr. Larry R. Huber. The letter (Exhibit 1, Tab 1) reads as follows:

> Dear Larry:
>
> Re: Highland Plaza
>
> This is to confirm the agreement reached today between your company and the B.C. Egg Marketing Board:
>
> 1. The space is that formerly occupied by the hardware store, plus the adjacent washrooms, and is to be assumed as 3,600 sq. ft. for billing purposes.
>
> 2. The "triple net" lease rates are as follows:
>
> | Year | Per Sq.ft. |
> |---|---|
> | 1 | $5.00 |
> | 2 | $5.00 |
> | 3 | $5.00 |
> | 4 | $5.75 |
> | 5 | $5.75 |
> | 6 | $5.75 |
> | 7 | $6.50 |
> | 8 | $6.50 |
> | 9 | $7.25 |
> | 10 | $7.25 |
>
> 3. Expenses for the BCEMB:
>
> a) Hydro and telephone
> b) Pro rata share of property taxes

4. Expenses for Vedder:

    a) Building insurance
    b) Outside maintenance including snow removal
    c) Normal maintenance to mechanical systems

5. There will be a five year option period following the ten year base term of the lease. Rates to be determined by mutual agreement, subject to arbitration if the parties cannot agree.

6. The above is subject to:

    a) Completion of the sale of the BCEMB building August 15, 1986, and it is understood we will be permitted to commence construction of leasehold improvements July 1, 1986 but once begun, they will be completed by the BCEMB.

    b) Approval by the BCEMB Board of Directors by July 4, 1986.

7. It is agreed BCEMB will have access to the premises starting July 1, 1986, and will pay Hydro costs from that date, and that rent payments will begin September 1, 1986.

8. It is agreed that if the B.C. Egg Marketing Board shall cease to exist, that its maximum liability for unpaid rent will be the unexpired term of the lease, or twelve months, whichever is least.

9. The above is also subject to the execution by the parties of a mutually satisfactory lease agreement.

Please sign and return a copy of this letter as acknowledgement you agree with the above understanding.

Mr. Huber signed a copy of the letter on behalf of the defendant Vedder and returned the signed copy to the plaintiff.

On July 31, 1986 Mr. Huber received a letter from Mr. Carey dated that day wherein the plaintiff advised that it was removing the "subject to" in paragraph 6(a) of the letter of June 27, 1986. Thereafter the plaintiff took possession. The premises were essentially an empty shell with no useable improvements. The plaintiff spent in excess of $125,000 on improvements to make the premises useable.

The defendant Jansen Industries Ltd. (Jansen) owned 25% of the shares of Vedder and Mr. Patrick Jansen was an officer and director of both companies.

On October 17, 1990 the defendant Vedder delivered to the plaintiff a letter addressed to "All Highland Plaza Tenants" wherein they stated that the Highland Plaza property had been transferred to the defendant Jansen as of October 1, 1990. The letter stated, "Please be assured that your lease will remain intact ...". Mr. Kenneth Jansen, who is an officer and director of Jansen, had an opportunity to review that letter before it was sent out. He was also aware of the letter agreement of June 27, 1986.

On November 29, 1990, Mr. Kenneth Jansen on behalf of Jansen wrote a letter to the plaintiff in which he stated, "... it is our position that there is currently no lease agreement in place between the B.C. Egg Marketing Board and our company, Jansen Industries Ltd."

Mr. Jansen, who is an experienced industrial-commercial realtor, later advised the plaintiff that effective January 1, 1991 rent for the premises would be calculated on 3,769.8 sq. ft. (as compared to 3,600 sq. ft. agreed to in the letter of June 27, 1986) plus 25.5% of Triple Net Expenses which were set out as being: "taxes, water, sewer, hydro, building insurance, property maintenance, snow removal, miscellaneous costs plus a management fee of 5% on the base rent".

IS THE JUNE 27, 1986 LEASE AGREEMENT AN ENFORCEABLE LEASE?

Counsel for the defendants contends that the letter of June 27, 1986 (Exhibit No. 1, Tab 1), was not a lease in itself. He contends that it was a document which expressly contemplates a lease agreement to come later.

There is no validity to that contention. In ***Horse & Carriage Inn Ltd. v. Baron*** (1975), 53 D.L.R. (3d) 426, on

facts similar to those in this case, Mr. Justice Bouck states at p. 436:

> In ***Williams, Canadian Law of Landlord and Tenant***, 4th Ed. (1973), at t. 76, the learned author sets out the requirements of a valid lease and cites the authorities in support of his views: see also ***Jackson v. Smith*** ... a summary indicates that a lease should contain:
> (a) the identity of the parties as lessor and lessee.
> (b) a description of the premises.
> (c) the date of commencement of the term.
> (d) the rent (but this is not absolutely necessary).

All of those requirements are contained in the June 27, 1986 letter agreement. Thus, when B.C.E.M.B. advised the defendant Vedder that it was removing the "subject to" in paragraph 6(a) the letter became an enforceable lease.

With the removal of the "subject to" in paragraph 6(a), the requirement in paragraph 9 in the June 27, 1986 letter agreement that it is subject to the execution by the parties of a mutually satisfactory lease agreement, is not a condition precedent to the formation of a contract, but a term of a contract that was already in existence. It only means that as a term of the contract, formal documents should be prepared, reflecting in satisfactory language the contract that had been reached:

Mariposa Stores Ltd. Partnership v. Dylex Ltd. (1989), B.C.D. Civ. 2350-02.

The actions and conduct of both B.C.E.M.B. and Vedder from July 31, 1986 onward (which need not be set out) demonstrate that they intended and recognized that as of that date, the letter of June 27, 1986 became a lease. That recognition is also evidenced by Vedder's letter of October 17, 1990 wherein they advised the plaintiff of the sale of Highland Plaza to Jansen and wrote, "Please be assured that your lease will remain intact ...."

DID THE FAILURE TO EXECUTE A FORMAL LEASE AGREEMENT ENTITLE JANSEN TO TERMINATE THE JUNE 27, 1986 AGREEMENT?

The defendants' position may be summarized as follows. The execution of a mutually satisfactory agreement as called for by paragraph 9 in the letter of June 27, 1986, should, by reason of the words "subject to", be construed as meaning that unless the condition is met the agreement is at an end. Since no specific date is set, the court should infer an intention that it should be executed within a reasonable time.

It is not disputed that on March 16, 1990 a formal lease agreement presented by Vedder was approved by the plaintiff's solicitor but the plaintiff refused to sign it.

Therefore, it submitted on behalf of the defendants, the letter agreement of June 27, 1986, (which I have found to be a lease) falls, because of the failure to meet the condition of the "subject to" clause in paragraph 9 within in a reasonable time. That being so, the defendant Jansen was entitled to terminate the June 27, 1986 agreement by its letter of November 29, 1990.

The words "subject to the execution by the parties of a mutually satisfactory lease agreement" in paragraph 9 is not a condition of the lease. As previously stated, it is a term of the contract. It only means that as a term of the contract, formal documents should be prepared reflecting in satisfactory language the contract that had been reached. Nor can that paragraph be construed as meaning that the failure by a party to carry out that term within a reasonable time automatically brings the agreement to an end. I will have more to say about that later in these reasons.

The meaning to be given to the words "within a reasonable time" cannot be determined in vaccuo, because what is a reasonable time can vary from case to case. The plaintiff's refusal to execute the formal lease on March 16, 1990 cannot, in the circumstances herein, be the sole basis upon which to make the determination as to whether that

refusal constituted a failure to execute a formal lease within a reasonable time. That can only be ascertained by the conduct of the parties both before and after March 16, 1990.

On the whole of the evidence the following is a chronology concerning the matter of a formal lease. In the June 1986 discussions it was agreed that Mr. Huber, for the defendant Vedder, would have a formal lease prepared. Despite the plaintiff's several requests, Vedder refused to provide the promised lease.

As a result of that refusal, in the spring of 1987 the plaintiff instructed its solicitor to prepare a lease (at its own expense) which was to contain the terms set out in the letter lease of June 27, 1986. Upon receipt of a formal lease from its lawyer, the plaintiff sent a copy to Vedder. Vedder did not sign it.

On March 29, 1989 the plaintiff was presented with a lease prepared by Vedder's solicitor which was unacceptable to the plaintiff's solicitor. Following negotiations between the lawyers, on March 16, 1990 the plaintiff's solicitor sent a lease to the plaintiff for execution. The plaintiff refused to sign the lease because of a pre-existing disagreement between the parties relating to the interpretation of

responsibilities under the letter agreement. Vedder made no demand that the plaintiff execute that lease.

Pursuant to s. 5(2) of the ***Property Law Act***, R.S.B.C. 1979, c. 340, Vedder, as landlord, was obliged to deliver to B.C.E.M.B. a lease in form registerable under the ***Land Titles Act***. But as above noted, there was a two and a half year delay by Vedder before it satisfied that statutory requirement by delivering the first draft of a formal lease on March 29, 1989. Thus, two and a half years had passed from the time that Vedder had agreed to provide the plaintiff with a lease until it provided the first draft. Clearly time was not of the essence.

The conduct of Vedder and B.C.E.M.B. from June 27, 1986 to October, 1990 when the property was sold to Jansen, indicates that they did not consider the failure to execute a formal lease as having prevented the agreement that had been signed by the parties from being and continuing to be in full force and effect.

By reason of its own conduct Vedder could hardly have been heard to complain about non-compliance with paragraph 9. Nor did it do so. Vedder did not regard the plaintiff's refusal to sign the March 16, 1990 formal lease as in any way

affecting the landlord and tenant relationship in the terms set out in the letter of June 27, 1986 and from continuing to be so. That was made clear when at the time the property was being transferred from Vedder to Jansen, Vedder wrote the letter on October 17, 1990 assuring the plaintiff that "your lease will remain intact".

The evidence establishes that Mr. Kenneth Jansen of the defendant Jansen had an opportunity to review that letter before it was sent out and also aware of the existence of the lease letter of June 27, 1986. Thus, Jansen gave tacit authorization to Vedder to assure B.C.E.M.B. that its "lease would remain intact". Despite that assurance, only six weeks later Jansen advised the plaintiff that "... there is currently no lease agreement in place ...."

The defendants' submission that the court should infer an intention that the formal lease agreement was to be executed within a reasonable time and that the failure to do so entitled Jansen to terminate the June 27, 1986 agreement, is made with a total disregard to the conduct of the parties as above set out, and cannot succeed.

Furthermore, as previously stated, paragraph 9 of the letter lease of June 27, 1986 cannot be construed as meaning that the failure by a party to carry out that term within a

reasonable time automatically brings the agreement to an end. A party wishing to put an end to a contract, which contains the term set out in paragraph 9, on the ground that a reasonable time for the performance of that term has expired, must first give notice to that effect.

Here, if Jansen wished to end the contract, it was obliged to set a deadline and have made it clear to the B.C.E.M.B. that Jansen would cancel or terminate the agreement if the execution of a mutually satisfactory lease agreement was not met by a certain date. Jansen did not do so. It never demanded or even requested that the plaintiff execute a formal lease. As the new landlord, Jansen never delivered an instrument in a form registerable under the ***Land Titles Act*** and had never indicated that it was prepared to be bound by the terms of the formal lease which had been negotiated between the solicitors for Vedder and the B.C.E.M.B. Jansen could not simply bring the contract to an end by doing nothing and merely plead that a reasonable time had passed. See ***Dallas et al. v. Dallas Oil Co. Ltd.*** (1930), 2 D.L.R. 788 at 791.

A demand from the defendant Jansen, the party seeking to avoid the contract, was a condition precedent to a claim on its part that the failure of the plaintiff to execute a formal

lease agreement had discharged the defendant Jansen from its obligations as the assignee of the June 27, 1986 letter lease. ***Steel Company of Canada Ltd.*** **v. Dominion Radiator Co. Ltd.** (1919), 48 D.L.R. 350. As previously noted, no such demand was made by Jansen. Instead, Mr. Kenneth Jansen on behalf of the defendant simply wrote a letter to the plaintiff on November 29, 1990 in which he terminated the lease letter of June 27, 1986. Thereafter he sought to impose a triple net agreement on the B.C.E.M.B.

I have no doubt that if the B.C.E.M.B. had received a demand from Jansen to execute the lease agreement, it would have done so rather than risk the termination by Jansen of the June 27, 1986 agreement. Having regard to the expenditure by the B.C.E.M.B. of a sum in excess of $125,000 in leasehold improvements for a long term lease and the relatively minor issues being disputed, it is inconceivable that the plaintiff would have refused a demand from Jansen to execute the lease agreement.

On the totality of the foregoing, the failure to execute a formal lease agreement did not entitle Jansen to terminate the June 27, 1986 agreement.

DID THE PARTIES INTEND A "NET LEASE"?

Paragraph 2 in the letter of June 27, 1986 states: "The "triple net" lease rates are as follows:" (rate per square foot for each year of the 10 year lease).

By definition a "triple net" lease is one whereby **the tenant is to pay all the costs or expenses** relating to the premises. (my emphasis) ***Centrum Financial Services Inc. v. STI Holdings Ltd.*** (B.C.S.C. unreported - Vancouver Registry, December 28, 1988).

The parties obviously did not understand or know the technical meaning of "triple net lease" because in paragraph 4 of that letter Vedder (the landlord) agreed to pay: (a) building insurance; (b) outside maintenance including snow removal; (c) normal maintenance to mechanical systems. Those expenses would, by definition of a "triple net" lease, have been borne by the tenant and not by the landlord. Thus counsel for Vedder could not and did not contend that the letter could be construed as showing an intention to create a "triple net" lease.

Counsel for the defendants submits that the intention of the parties to be construed from the words "triple net" in paragraph 2 is that the landlord shall be relieved of paying any of the costs or expenses relating to the premises, except those which the landlord specifically undertook in paragraph 4 above set out. That by definition is a "net lease". (See ***Centrum***, *supra*). In short, counsel submits that although the words used are "triple net", the parties intended a "net" lease.

In order to conclude that the parties intended a "net" lease as suggested by counsel for the defendants, it would be necessary to make the following two findings: First, despite the obvious fact that the parties did not know or understand the technical meaning of a "triple net" lease, there would have to be a finding that they did know or understood the technical meaning of a "net" lease, although there is no evidence to suggest or to support such a finding. In fact, on cross-examination Mr. Carey, whose evidence I accept without reservation, stated that he did not understand the meaning of a "net" lease as above defined. Secondly, after making that first necessary finding, it would require a further finding that despite that knowledge they used the words "triple net", to intend those words to mean a "net lease". On the evidence it is impossible to make those two findings which are required

to arrive at the conclusion suggested by counsel for the defendants.

But even were it possible to attribute to the parties a knowledge of the technical meaning of the term "net lease", from an examination of the letter of June 27, 1986, it is clear that the parties did not intend the words "triple net lease" to create a "net lease". The expense for the tenant (B.C.E.M.B.) set out in paragraph 3(b) in the letter is the "Pro rata share of property taxes". That provision is inconsistent with a "net lease". If, as submitted by counsel for the defendants, the June 27, 1986 agreement was intended to be a "net lease", then by definition all expenses associated with the premises are for the tenant to pay, other than any which the landlord expressly agreed to pay. If the agreement was intended to be a "net lease", then it would not have been necessary to include paragraph 3(b), because a "Pro rata share of property taxes" would automatically be borne by the tenant under the definition of a "net lease".

To accede to the submission by counsel on behalf of the defendants that the parties intended a "net lease" it would be necessary to ignore paragraph 3(b). That paragraph was included for a specific purpose and surely it could not have been the intent of the parties that it was to be ignored.

In further support of his contention, counsel for the defendants points to certain clauses in the unexecuted formal lease negotiated between Vedder and the B.C.E.M.B. several years after the parties signed the lease letter. Those clauses are not evidence of what the parties thought that they had negotiated in the June 27, 1986 agreement. They are simply evidence of additional matters negotiated between the lawyers after June 27, 1986. The lawyers had been given the letter agreement and had been instructed to prepare a formal lease in accordance with that agreement. The choice of words in the formal draft is that of the lawyers seeking to negotiate additional terms.

Since the parties did not intend to create a "triple net" nor a "net" lease, what did they intend by the ill chosen words "The "triple net" lease rates are as follows": (rates set out) contained in paragraph 2 of the letter lease? The uncontradicted evidence of Mr. Fred Krahn and Mr. Neal Carey, both credible witnesses whose evidence I accept, shows that the meaning which the parties intended to give to those words is that the rates are "bare bone rates", meaning that they do not include any allowance or contribution (by rent rate reduction or otherwise) from the landlord Vedder toward the cost of the required improvements to the leased premises to make them useable and for which the plaintiff paid in excess of $125,000.

My conclusion that the parties did not intend the letter lease of June 27, 1986 to be a "net lease" is borne out by the subsequent conduct of the parties and especially the conduct of Vedder. Mr. Larry Huber, who negotiated the terms of the letter agreement for Vedder and signed it on Vedder's behalf, was in charge of billing the plaintiff. From September 1, 1986 until he left Vedder around mid-1988, Mr. Huber sent the plaintiff bills only for the rent at the rate provided for and for their pro rata share of property taxes. He did not bill the plaintiff for any additional expenses which were paid by Vedder although they were not included for payment by Vedder in paragraph 4, e.g., sewer and water rates. Had the parties intended a "net lease" then, by definition of those words, such payments would have been the plaintiff's responsibility and Mr. Huber would have billed the plaintiff for such additional expenses. Thus the billing practices of Vedder, carried out by the very person who negotiated the agreement, clearly show that the parties did not consider nor intend their agreement to be a "net lease".

The June 27, 1986 letter agreement created a simple lease. The parties agreed that the described leased space is to be assumed as being 3,600 sq. ft. for billing purposes with an agreed rent rate per sq. ft. for each year of the lease. The parties also agreed as to the expenses to be borne by each of them.

EXPENSES FOR THE TENANT B.C.E.M.B.

The expenses payable by the B.C.E.M.B. are only those which are specifically set out in paragraphs 3(a) and (b) of the letter agreement. (Much later the B.C.E.M.B. agreed to pay 23% of the water and sewer rates as well).

Mr. Rudy Kasdorf took over from Mr. Huber when he left Vedder in mid-1988. In 1990 Mr. Kasdorf sent the plaintiff bills totalling $4,413.66 being the pro-rata share of hydro costs for the outside common areas of the shopping centre for the years 1986 to October 1990 inclusive. Prior to 1990 Vedder had always borne those hydro expenses. The B.C.E.M.B. refused to pay those bills and Vedder counterclaims for those expenses.

That counterclaim must be dismissed. Under paragraph 3(a) the parties agreed that the B.C.E.M.B. is to pay "Hydro and telephone". That can only mean that the B.C.E.M.B. is to pay the hydro and telephone expenses which are separately metered and separately billed to the plaintiff. Had the parties intended to include a pro rata contribution from the B.C.E.M.B. to Vedder's own hydro and telephone expenses, then the words "pro rata share of" would have been used in paragraph 3(a) just as they were used in paragraph 3(b) with regard to property taxes.

In support of Vedder's counterclaim, counsel for the defendants submits that the outdoor lighting expenses do not fall within paragraph 4(b) as an expense payable by Vedder. I will deal with that shortly. But even if that submission were held to be correct, that expense would not automatically by borne by the B.C.E.M.B. as it would be if the letter agreement was a "net lease". But, as previously stated, it is not a "net lease". Therefore, the expenses payable by the plaintiff are only those which are specifically set out in paragraphs 3(a) and 3(b). The pro rata share of the expenses for outdoor lighting is not included in paragraph 3(a).

EXPENSES FOR VEDDER (NOW JANSEN)

Counsel for the defendants submits that outdoor lighting expenses do not fall within paragraph 4(b) whereby expenses for Vedder are for "outside maintenance". In support of that submission he refers to two dictionaries in which the word "maintenance" is defined as "repairing" or "keeping in repair". He therefore contends that maintenance of outside lighting involves repairing the lighting system; that supplying electricity for outside lighting is not maintenance and therefore does not fall within "outside maintenance" as those words are used in paragraph 4(b).

The interpretation contended for is too restrictive. The complete wording of paragraph 4(b) reads: "Outside maintenance **including snow removal** (my emphasis)". Clearly, snow removal is not an act of repairing or keeping in repair any portion of the outside. By including snow removal as part of Vedder's outside maintenance responsibility, the parties indicated that they did not intend outside maintenance to be limited to matters of repair or keeping in repair.

The Oxford Thesaurus, 1991, gives the following synonyms for "maintain": "2. look after, take care of, care for, preserve, (keep in) service, keep up, keep in repair."

I agree with the submission of counsel for the plaintiff that in the context of paragraph 4(b) of the June 27, 1986 agreement, "outside maintenance" involves repairing, keeping in repair, looking after and caring for the landscaping and parking lot, cleaning up and removing snow, litter, debris, and all other matters associated with the outside.

By paragraph 4(a) ("building insurance") the landlord has the responsibility to obtain (and pay for) insurance for all matters arising with respect to the building known as Highland Plaza. It matters not whether the insurance coverage

for the building extends to liability, machinery and equipment, property loss or rental loss. Each of these relate to the building and are an expense for the landlord.

The landlord's expense under paragraph 4(c) "normal maintenance to mechanical systems" is self explanatory.

UNALLOCATED EXPENSES

The division or allocation of expenses is set out in paragraphs 3 and 4 of the June 27, 1986 letter agreement. The agreement makes no provision as to which party is responsible for any unallocated, new, or unanticipated expenses. Should the matter of any such expenses arise, it would have to be resolved by negotiation between the landlord and the tenant. The landlord will only be able to pass on such additional expenses which may arise to the B.C.E.M.B., if, as with the water and sewer expenses, the B.C.E.M.B. specifically agrees to assume any such additional expense.

EXPENSES RECOVERABLE BY THE DEFENDANT JANSEN

By counterclaim, the defendant Jansen claims from the B.C.E.M.B. all costs or expenses relating to the shopping centre for the last three months of 1990 and for all of 1991. Jansen would be entitled to all those costs or expenses only

if the lease was a "triple net" lease. But, as previously stated, this is not a "triple net" lease and under the June 27, 1986 agreement, Jansen (as was Vedder) is limited to charging the B.C.E.M.B. for 23% of the property tax. No other expenses are chargeable to the B.C.E.M.B. unless they have since been expressly accepted by it, such as the expense for water and sewer. Therefore, Jansen's counterclaim is dismissed.

THE B.C.E.M.B.'s CLAIM AGAINST VEDDER FOR CLEAN UP COSTS

I accept the evidence of the plaintiff's witnesses that the outside area was not reasonably maintained by Vedder. They stated that a lot of garbage (from McDonalds) was permitted to accumulate in front of the plaintiff's door; landscaping was not maintained; cigarette butts emptied from car ashtrays were permitted to remain on the parking lot.

When the plaintiff complained to Mr. Huber about any such neglect of outside maintenance, he attended to it. However, when Mr. Kasdorf took over from Mr. Huber in mid 1988, he ignored the plaintiff's oral complaints. The plaintiff's letters of complaint concerning the lack of systematic proper maintenance were also ignored by Vedder. Finally, on April 14, 1989 the plaintiff delivered a letter to

Vedder wherein they advised that if Vedder did not institute proper outside maintenance by May 4, 1989, the B.C.E.M.B. would engage someone to do it and bill Vedder for the cost. The plaintiff was told that nothing would be done about its complaints and that if they did not like it they could leave. From May, 1989 to October, 1990 inclusive, the plaintiff paid $1,835.00 for the required clean up costs. They billed Vedder for those costs but Vedder has refused to reimburse the plaintiff. The plaintiff claims that amount from Vedder.

As previously stated, by the terms of paragraph 4(b) of the June 27, 1986 agreement it is the landlord's responsibility for outside maintenance which includes such things as clean up, removing snow, debris, litter, etc. The plaintiff's reasonable complaints went unanswered. Their letter of April 14, 1989 was ignored. Vedder having ignored it's responsibility, cannot be heard to complain that it be compelled to pay what it cost the plaintiff to have done that which should have been done by the landlord. The plaintiff will have judgment against Vedder in the amount claimed. As an aside, I would point out that since Jansen took over, outside maintenance has been carried out daily and is being done to the complete satisfaction of the plaintiff.

In the result, the plaintiff will have the following declarations and orders sought:

1. A declaration that the plaintiff is a tenant in possession of the leased premises.

2. A declaration that the June 27, 1986 letter agreement is an enforceable lease.

3. A declaration that the defendant Jansen Industries Ltd., is bound by the June 27, 1986 letter agreement as the assignee or successor of the defendant Vedder Transport Ltd.

4. A declaration that the amounts payable by the plaintiff under the June 27, 1986 letter agreement are limited to:
   (a) annual rent at the square footage rate set out in the agreement as calculated on the basis of the leased premises being 3,600 square feet.;
   (b) a proportionate share (being 23%) of the real property tax levies of the District of Abbotsford for the lands and improvements on the lands, and
   (c) a proportionate share (being 23%) of the water levy of the District of Abbotsford for the lands and improvements on the lands.

5. An order that the defendant, Jansen Industries Ltd., deliver to the plaintiff an instrument incorporating the June 27, 1986 letter agreement in a form registerable under the ***Land Titles Act***, pursuant to s. 5(2) of the ***Property Law Act***, R.S.B.C. 1979, c. 340.

6. An order that the plaintiff recover the sum of $1,835.00 from the defendant Vedder Transport Ltd., together with interest on that amount at the rates prevailing from time to time, pursuant to the Court Order Interest Act.

7. An order that the plaintiff recover its taxable costs and disbursements from the defendants, at Scale 4, payable forthwith after taxation thereof.

8. An order that the counterclaims of the defendants, Jansen Industries Ltd. and Vedder Transport Ltd. are dismissed with costs.

"MACKOFF J."

Vancouver, British Columbia
May 26, 1992