

1969  
\*Feb. 14  
Feb. 14

KELLY DOUGLAS & COMPANY }  
LIMITED (*Defendant*) . . . . . }

APPELLANT;

AND

MUTUAL LEASEHOLDERS LIM- }  
TED (*Plaintiff*) . . . . . }

RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL  
FOR BRITISH COLUMBIA

*Contract—Lease—Rectification of written lease.*

The respondent sued the appellant for a portion of the rent accrued under a lease. The appellant counterclaimed for rectification of the lease. The lease stipulated an annual rent of \$12,000 "together with additional rent in a sum equal to the amount (if any) by which one (1%) per cent of the annual gross sales of the business carried on by the lessee . . . exceeds the said minimum annual rental . . .". The expression "gross sales" is further defined as meaning the appellant's gross revenues less certain deductions, including "...any amount paid by

PRESENT: Cartwright C.J. and Abbott, Ritchie, Hall and Pigeon JJ.

the lessee hereunder for taxes and insurance premiums". The appellant alleged that the true agreement between the parties was that taxes and insurance premiums were to be deducted from one per cent of gross sales rather than from gross sales. The trial judge dismissed the claim for rectification. The Court of Appeal held that the appellant had failed to adduce evidence of a prior concluded agreement in the terms alleged by it and that the trial judge had reached the right conclusion. The appellant appealed to this Court.

1969  
 KELLY  
 DOUGLAS  
 & Co LTD.  
 v.  
 MUTUAL  
 LEASE-  
 HOLDERS LTD.

*Held:* The appeal should be dismissed.

APPEAL from a judgment of the Court of Appeal for British Columbia affirming a judgment of Nemetz J. Appeal dismissed.

*R. P. Anderson*, for the defendant, appellant.

*D. M. M. Goldie*, for the plaintiff, respondent.

At the conclusion of the argument of counsel for the appellant, the following judgment was delivered:

THE CHIEF JUSTICE (*orally for the Court*):—Mr. Goldie, we do not find it necessary to call upon you. Mr. Anderson has said everything that could be said in support of this appeal and has done so most persuasively; but we find ourselves unable to reverse the concurrent findings of fact made in the Courts below.

The appeal is dismissed with costs.

*Appeal dismissed with costs.*

*Solicitors for the defendant, appellant: Boughton, Anderson, Dunfee & Mortimer, Vancouver.*

*Solicitors for the plaintiff, respondent: Russell & Dumoulin, Vancouver.*

---