IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE

CIV-2024-463-55
[2026] NZHC 1417

BETWEEN	V & A TRADING COMPANY LIMITED Applicant
AND	ACTION HOLIDAY LIMITED First Respondent
	JIAXIN SUN Second Respondent
	GAN CHEN Third Respondent

Hearing: 15 April 2026

Appearances: W M Irving and H W Fleming for the Plaintiff
A Ho for the Respondents

Judgment: 22 May 2026

JUDGMENT OF ROBINSON J

This judgment was delivered by me on 22 May 2026 at 4:30 pm
pursuant to Rule 11.5 of the High Court Rules

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Registrar/Deputy Registrar

Solicitors:
Russell McVeagh, Auckland
Crimson Legal, Auckland

Introduction

[1] On 2 March 2026, I entered summary judgment for the applicant landlord (V&A) in the amount of $255,565.44, being rental arrears and penalty interest owing by the respondent tenant (AH) as at 11 April 2025, less an abatement to which V&A accepts AH is entitled.[1] I reserved judgment in respect of V&A's application for orders under s 244 of the Property Law Act 2007 (PLA) to cancel the lease and for possession of the leased premises.[2] This was to enable AH to file further evidence and submissions in support of its asserted right to relief against forfeiture.[3]

[2] This judgment deals with AHL's application for relief against forfeiture, which V&A opposes.[4] It should be read together with the earlier judgment which sets out the relevant factual background.

Updating evidence

[3] In their memorandum dated 4 March 2026, counsel for V&A advised that the total arrears owing by AH as at that date was $339,123.69 (including GST). This allowed for an abatement of rent in relation to four units under repairs. AH's disputed claims for further abatement are going to arbitration in June 2026.

[4] In his affidavit dated 7 April 2026, the second respondent, Mr Sun, explained that, on 26 March 2026, AH paid $255,000 towards those arrears and, on 1 April 2026, it paid a further $84,124 - thereby paying in full those arrears as referred to in counsel's 4 March 2026 memorandum. Mr Sun confirmed that AH is ready, willing and able to pay immediately any "further minor balance said to be outstanding". He says the

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1 *V & A Trading Limited v Action Holiday Limited* [2026] NZHC 398 at [56] [March judgment].
2 At [57].
3 At [55]. At that stage AH had asserted a right to relief against forfeiture in opposition to V&A's summary judgment application, but it had not formally applied for relief under s 253 of the PLA. Instead, AH: pointed out (correctly) that V&A should have commenced its application for s 244 orders under Part 19 of the High Court Rules 2016, not as part of its summary judgment application for unpaid rent; and argued (unsuccessfully) that this provided it with an insurmountable procedural defence to V&A's application. At [6], [43] – [52].
4 On 2 December 2025, AH filed separate proceedings applying for relief against forfeiture. It relied on the same evidence filed in the current proceeding. This was not bought to my attention before I issued the March judgment. By consent, on 13 March 2026 I made orders under r 10.12 consolidating the two proceedings.

payments are without prejudice to AH's claim in the arbitration that it is entitled to further abatements and other relief under the lease.

[5] Mr Sun also deposes that AH intends to continue to meet its rental obligations going forward pending the outcome of the arbitration and any further order of the Court. He says further that AH is willing to comply with any conditions attached to relief against cancellation, including as to the punctual payment of rent.

[6] However, in his affidavit sworn on 14 April 2026, Mr Chen on behalf of V&A advises that although the arrears referred to in counsel's 4 March 2026 memorandum have been paid in full, there are further arrears of $86,348.32 as at 13 April 2026, including penalty interest that had continued to accrue. In their joint memorandum dated 17 April 2026, filed shortly after the reconvened hearing, counsel confirm the parties' agreement that, for the purposes of this proceeding, the quantum of outstanding rental arrears and interest is $85,436.80.[5]

[7] Moreover, in his affidavit, Mr Chen says that AH is in breach of its obligations to pay outgoings as follows:

(a) rates due to Rotorua Lakes Council of $89,075.35;

(b) Bay of Plenty Regional Council rates totalling $1,859.58; and

(c) insurance premiums of $37,961.49.

[8] Mr Chen also says that AH has breached its obligation to maintain the premises, resulting in significant deterioration and damage. Mr Chen suggests that AH's directors have engaged in similar conduct at two other motels that they operate. He refers to negative online guest reviews.

[9] Mr Chen also complains that V&A breached the lease by allowing the motel premises to be used for emergency housing during the Covid-19 pandemic without

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5 This is recorded to be without prejudice to the applicant's right to revisit the method of calculation and the respondents' claim in arbitration for further abatement.

V&A's consent. Mr Chen suggests that the fire that destroyed some of the units in 2021 was started by one of the emergency housing guests.

[10] Mr Chen also says that on various occasions AH's directors had been deceptive and antagonising, including in relation to insurance payments, outstanding outgoings, and use of the premises. Mr Chen's evidence is that AH's persistent breach of its obligations under the lease over the past four years have taken a personal toll on him and his family. He says they have spent significant time and money to recover rent, outgoings, and deal with AH's other breaches.

Submissions

[11] Mr Ho for AH emphasises it has paid the judgment debt, together with additional arrears referred to in counsel's 4 March 2026 memorandum. He refers to this Court's decision in *Mulholland v Waimarie Industries Ltd*[6] holding that where the lessee's breach consists of a failure to pay rent, there is a presumptive right to relief upon payment of the arrears and costs.[7]

[12] In response to Mr Chen's subsequent evidence of further arrears and outgoings outstanding, Mr Ho points out that these were not raised in counsel's memorandum dated 4 March 2026. AH did not have an opportunity to reply to Mr Chen's affidavit, but Mr Ho refers to Mr Sun's evidence that AH will pay any further sums outstanding. He indicates that the outstanding insurance and rates will be paid (whilst noting his understanding that V&A may have received some rebate on the rates which should be passed on).

[13] Counsel for V&A submits that the presumption of relief does not apply because further rental arrears, together with costs and other outgoings, remain outstanding. Mr Fleming points out it took AH three weeks to begin complying with the Court's orders and says $400,000 remains outstanding (including costs).

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6 *Mulholland v Waimarie Industries Ltd* HC Christchurch CIV-2009-409-707, 15 May 2009.

7 At [23(1)].

[14] Mr Fleming submits that, in any event, this is an exceptional case in which relief should be refused even if payments are up to date.[8] He says there are "obvious questions" about AH's solvency, noting the time AH took to pay the judgment debt and its earlier evidence of cashflow constraints. Mr Fleming says AH has acted in a calculated and cynical manner, continuing to operate the motel while not paying any rent for two years and failing to properly maintain or repair the premises. He says the relationship between the parties has irretrievably broken down,[9] and it is unrealistic to expect the parties to restore a working relationship for the balance of the lease term (to 2046, with renewals).

Decision

[15] Balancing all the relevant considerations, I am satisfied it is appropriate to grant AH relief against the cancellation and possession orders to which V&A would otherwise be entitled. V&A's concerns about current arrears and ongoing compliance are understandable in light of AH's history of deliberate non-payment. But I am satisfied that relief can be granted subject to conditions to address those legitimate concerns.[10]

[16] It is obviously to AH's credit that it has paid the judgment debt together with the additional rent and accrued interest as set out in counsel's memorandum dated 4 March 2026. I also understand AH has kept rental payments up to date since then. In his affidavit, Mr Sun confirmed that AH will pay other arrears. Mr Sun referred in his affidavit to "minor" amounts outstanding. As it turns out the outstanding amounts are hardly "minor", but the parties have subsequently agreed the quantum of rental arrears and default interest. Relief is conditional on payment by AH of those outstanding arrears in short order.

[17] AH is also to pay the outstanding insurance and rates referred to at paragraph 8 of Mr Chen's affidavit dated 14 April 2026. As noted, Mr Ho indicated these will be paid. If there is any dispute about quantum, AH is to "pay now, argue later".

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8 *Studio X Ltd v Mobil Oil New Zealand Ltd* [1996] 2 NZLR 697 (HC) at 701.
9 *Beattie v Mason* [2023] NZHC 3613.
10 Property Law Act 2007, s 256; and DW McMorland and others *Hinde McMorland and Sim Land Law in New Zealand* (online ed, LexisNexis) at [11.243(f)].

[18] Although AH has recently paid, and remains obliged to pay, significant arrears, I accept Mr Ho's submission that any questions or concerns about AH's solvency at this stage are ultimately speculative. AH failed to pay rent for a lengthy period, but this appears to have been based on a genuine (if misconceived) belief that it had good grounds to withhold payment and defend V&A's claims. In any event, AH paid the judgment debt relatively swiftly, together with the further arrears referred to in counsel's 4 March 2026 memorandum. At least to that extent, AH clearly had access to funds, and, as Mr Ho points out, the second and third respondents guarantee AH's obligations.

[19] I do not consider the other matters raised by Mr Fleming amount to exceptional circumstances that justify declining relief. I understand AH disputes the breach of its maintenance and repair obligations, and these issues will be canvassed in the imminent arbitration. In any event, V&A has not served a notice under s 246 of the PLA (cancellation for breaches of covenant other than non-payment of rent).

[20] While the relationship between the parties is problematic, and there are ongoing disputes including about abatements, maintenance and repair, I do not consider this amounts to exceptional circumstances to justify declining the relief. The relationship is a purely commercial relationship between lessor and lessee. There will shortly be an arbitration to resolve their ongoing disputes, in accordance with the terms of their lease. This is quite different to the case of *Beattie v Mason*[11] where the defaulting lessee had also sold the land to the lessor and provided vendor finance. The lessor and lessee in that case were also neighbours and close family members whose relationship had broken down significantly.

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[11] Above n 9.

Result

[21] I grant the first respondent relief against cancellation of the lease, on the following conditions:

(a) AH is to pay the outstanding rental arrears and default interest referred to in counsel's joint memorandum dated 17 April 2026 within 10 working days of this judgment.

(b) AH is to pay the insurance and rates arrears referred to in Mr Sun's affidavit dated 14 April 2026 within 15 working days.

(c) AH is to ensure, from the date of judgment until the expiry or termination of the lease, that the rent and outgoings payable under the lease are not in arrears by any more than five working days.

[22] If AH fails to satisfy the conditions set out at [21(a)] and [21(b)] above, V&A will be entitled to judgment for:

(a) cancellation of the lease;

(b) possession of the leased premises; and

(c) the full amount of rental arrears owing by the respondents at the date of judgment, together with interest at the relevant rate.

Costs

[23] V&A is entitled to costs. It seeks indemnity costs in accordance with the terms of the lease. Its claim for indemnity costs is set out in counsel's submissions of 13 April 2026, and Mr Chen has provided supporting evidence in his affidavit of 14 April 2026.

[24] The relevant terms of the lease are clear and the relevant legal principles are well established. Perhaps naively, I encourage parties through counsel to try to agree. Otherwise, AH is to file any submissions of not more than five pages within 10 working days. Unless I require anything further I will deal with costs on the papers.

Robinson J