CITATION: LAF v. Woodbine, 2025 ONSC 3914
COURT FILE NO.: CV-24-00728012-0000
DATE: 20250702

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: LAF CANADA COMPANY

Applicant

AND:

WOODBINE HIGHWAY 7 RETAIL INC.

Respondent

BEFORE: Parghi J.

COUNSEL: *Jeffrey Haylock* and *Emily Young*, for the Applicant

Brian N. Radnoff and *Juli Kim*, for the Respondent

HEARD: May 23, 2025

ENDORSEMENT

[1] The Applicant, LAF Canada Company ("LAF"), operates a fitness facility. It seeks an extension of its lease with the Respondent on the basis that the *force majeure* clause in the lease was triggered by government-mandated closures during COVID-19.

[2] The application is granted. This case is on all fours with the decision of the Court of Appeal for Ontario in *Niagara Falls Shopping Centre Inc. v. LAF Canada Company*, 2023 ONCA 159 ("*Niagara Falls*"). In that case, the Court considered a lease involving the same tenant, LAF. The lease was virtually indistinguishable from the one before me and had a substantively identical *force majeure* clause. The Court held that the *force majeure* clause applied to the lease during periods in which there were government-mandated closures of the premises due to COVID-19, with the result that the lease was extended for an equivalent duration and the tenant was not required to pay rent during the extension period, having already paid it during the closure periods.

[3] For the same reasons, I find that the *force majeure* clause in the lease before me applies and has the effect of extending the lease by 348 days, representing the number of days for which the premises were unable to be used as a fitness facility due to government-mandated COVID-19-related closures. LAF has paid approximately $2 million in rent for those 348 days.

The Lease

[4] The lease between the parties contains a *force majeure* clause that provides in relevant part:

> 22.3 **FORCE MAJEURE. If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of** strikes, lockouts, inability to procure labour or materials, retraction by any Governmental Authority of the Building Permit once it has already been issued, failure of power, **restrictive laws**, riots, insurrection, war, fire, inclement weather or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party delayed, financial inability excepted (each, **a "Force Majeure Event"**), subject to any limitations expressly set forth elsewhere in this Lease, **performance of such act shall be excused for the period of delay caused by the Force Majeure Event and the period for the performance of such act shall be extended for an equivalent period** (including delays caused by damage and destruction caused by Force Majeure Events). [Emphasis added.]

[5] If the *force majeure* clause is triggered, a party's obligations under the lease are delayed rather than expunged. It is on this basis that LAF seeks an extension of the lease by 348 days.

Whether the *force majeure* clause applies

[6] It is not disputed that the government-mandated closures represented restrictive laws. However, the parties disagree as to whether the closures prevented the Respondent from performing its obligations under the lease, such that the *force majeure* clause was triggered.

[7] LAF states that the Respondent's central obligation under the lease was the provision of premises that could be used as a fitness facility, and that due to the "restrictive laws" during COVID-19, the Respondent was unable to perform that obligation for 348 days. As such, there was a *force majeure* event. LAF points to the definition in the lease of the "Primary Uses" of the premises:

> PRIMARY USES. The "Primary Uses" of the Premises shall be for the operation of a health club and fitness facility which may include, without limitation, weight and aerobic training, group exercise classes, exercise dancing such as Zumba, yoga, Pilates, racquetball/squash, personal training, aerobics, health and fitness related programs, free weights, spinning/cycling, circuit training, boxing, basketball, swimming pool, swim lessons, racquetball/squash lessons, sauna and whirlpool facilities. As part of the health club and fitness facility operated within the Premises, Tenant may use portions of the Premises for uses ancillary to a health club and fitness facility (hereinafter, the "Ancillary Uses"),

> including, but not limited to, a health club and fitness facility related pro shop selling apparel and other fitness related items, physical therapy centre, spa services, sports medicine, weight loss and nutritional advising, therapeutic massage, chiropractic care, tanning salon, juice bar, vitamin and nutritional supplement sales, ATM machines located inside the Premises, vending machines located inside the Premises, child care facility for members, and food and beverage service (including the sale of healthy and/or natural foods), as well as the sale of exercise and/or health related videos and/or DVDs and other related electronic media items. In addition, Tenant shall be permitted to use portions of the Premises for storage and office uses incidental to the Primary Uses.

[8] The Respondent states that it was not in fact unable to fulfill its obligations under the lease. It submits that its obligations under the lease should be understood with reference to the various permitted uses of the premises under the lease, which include "ancillary uses," and not merely the primary use of the premises as a fitness facility. LAF at all times had unimpeded access to the premises and the Respondent never interfered with LAF's use of the premises. The Respondent states that LAF should have explored potential "ancillary uses" of the premises more aggressively, for instance by offering virtual exercise classes or selling fitness merchandise online for curbside pick-up, and its failure to do so does not mean that the Respondent failed to meet its obligations.

[9] I do not agree.

[10] I find that the Respondent's primary obligation under the lease was to provide premises to LAF for use as a fitness facility. LAF's primary use of the premises was "the operation of a health club and fitness facility". The lease says as much, and a common sense understanding of LAF's business confirms as much. The lease contemplates ancillary uses of the premises, but ancillary uses are just that: they are ancillary to the primary use. They are not substitutes for it. Indeed, the lease makes this clear when it provides, "**As part of the health club and fitness facility** operated within the Premises, Tenant may use portions of the Premises **for uses ancillary to a health club and fitness facility**" (emphasis added). The Respondent's argument would have the effect of elevating the meaning of "ancillary uses" unduly, and creating uncertainty in commercial tenancies.

[11] I further find that the Respondent was unable to perform this obligation because of the government-mandated closures due to COVID-19. The result was a *force majeure* event as defined in the lease. That is, the closures constituted "restrictive laws" that "hindered" the Respondent "in" or "prevented" the Respondent "from the performance" of its obligation under the lease to provide premises for use as a fitness facility. The Court of Appeal made the same finding in *Niagara Falls*, at para. 28, and in *Windsor-Essex Catholic District School Board v. 2313846 Ontario Limited o/a Central Park Athletics*, 2022 ONCA 235 ("*Windsor-Essex*"), at paras. 4 and 7.

[12] The Respondent submits that *Windsor-Essex* is distinguishable from this case. It notes that the *force majeure* clause in *Windsor-Essex*, unlike the one here, expressly entitled the tenant to a

rent abatement. As such, the tenant in *Windsor-Essex* was entitled to a rent abatement under the terms of the lease, while LAF is not so entitled under the terms of its lease.

[13] This distinction between the two cases does not assist the Respondent. I agree with the Respondent's interpretation of the two *force majeure* clauses. However, LAF is not requesting a rent abatement: it seeks an extension of the lease, a result that is expressly contemplated in the *force majeure* clause agreed upon by the parties.

[14] The Respondent further states that I should not rely on *Niagara Falls* because the Court of Appeal in that case did not address or make findings on whether there had been a breach by the landlord of its obligations under the lease. The Respondent states that the Court simply proceeded to apply the *force majeure* clause on the assumption that there had been such a breach. In this case, there was no breach, and as such the *force majeure* clause is not triggered.

[15] It is unclear what the Respondent means by "breach" in this context.

[16] To the extent that the Respondent suggests that an outright contractual breach is required to trigger the *force majeure* clause, and that the Court in *Niagara Falls* simply assumed that there was such a breach without making an actual finding of a breach, I do not agree. A "breach" is not a precondition to the application of a *force majeure* clause. The only preconditions are the specific requirements set out in the *force majeure* clause itself. In *Niagara Falls*, in which the *force majeure* clause was substantively identical to the one here, the Court described those requirements, at para. 42, as follows:

> There are two components to the operation of the Force Majeure Clause. First, a party must be "delayed or hindered in or prevented from the performance" of an act required under the Lease. Second, the failure to perform must be because of a type of event amounting to a Force Majeure event, as that term is defined in the Force Majeure Clause.

[17] The Court went on to find that COVID-related government closures prevented the landlord from performing its obligation under the lease to provide premises that could be used as a fitness facility, at paras. 28 and 43, and that the closures fell within the definition of a *force majeure* event in the clause, at para. 43. It accordingly concluded that the *force majeure* clause applied and the lease was to be extended. The Court did not use the language of a "breach" because there need not be a breach in order for a *force majeure* clause to have application.

[18] The *force majeure* clause in *Niagara Falls* was substantively identical to the one here. It imposed the same requirements as the clause here. The Court in *Niagara Falls* held that the clause applied in the circumstances before it; those circumstances are identical to the ones here. *Niagara Falls* is factually on all fours with this case, and for the same reasons as those in *Niagara Falls*, I find that the *force majeure* clause applies here. The Respondent was unable to perform its obligation under the lease to provide the premises to LAF for use as a fitness facility. It was unable to carry out this obligation because of restrictive laws in the form of government-mandated closures during COVID-19, which constitute a *force majeure* event as defined in the lease.

[19] Finally, I consider the Respondent's reliance on *Hudson's Bay Company ULC Compagnie de la Baie D'Hudson SRI v. Oxford Properties Retail Holdings II Inc.*, 2022 ONCA 585, 163 O.R. (3d) 81 ("*HBC*"). The Respondent cites *HBC* for the proposition that compliance with public health laws does not constitute a breach of a lease. It submits that, based on *HBC*, the steps it took in response to COVID-19 lockdown rules did not breach the lease and therefore did not trigger the *force majeure* clause.

[20] I am unable to agree. As discussed above, the *force majeure* analysis does not require a finding of contractual breach. It requires a finding that a party's obligation under the lease could not be satisfied due to a defined *force majeure* event. *HBC* therefore does not assist the Respondent. In any event, *HBC* did not involve a dispute over the application of a *force majeure* clause: it involved a request for relief from forfeiture under section 20 of the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7.

The implications of the triggering of the *force majeure* clause

[21] I find that the triggering of the *force majeure* clause operates to extend the lease, to account for the time periods during which the Respondent could not perform its obligations under the lease. This result is clearly outlined in the clause itself: "performance of such act shall be excused for the period of delay caused by the Force Majeure Event and the period for the performance of such act shall be extended for an equivalent period."

[22] I further find that LAF does not have to pay rent during the extension period, because it has already remitted rent for the 348 days at issue.

[23] Accordingly, I declare that the expiration date of the primary term of the lease is extended by 348 days to May 14, 2031, with LAF owing no rent during the 348-day extension. Relatedly, I declare that the commencement date of the first five-year option term, as defined in the lease, if exercised by LAF, would be May 15, 2031.

Costs

[24] In exercising my discretion to fix costs under section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, I may consider the factors enumerated in Rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Those factors include the result achieved, the amounts claimed and recovered, the complexity and importance of the issues in the proceeding, the principle of indemnity, the reasonable expectations of the unsuccessful party, and any other matter relevant to costs.

[25] In *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 60, the Court of Appeal for Ontario restated the general principles to be applied when courts exercise their discretion to award costs. The Court held that, when assessing costs, a court is to undertake a critical examination of the relevant factors, as applied to the costs claimed, and then "step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable".

[26] Applying these factors here, I conclude that it is appropriate to grant LAF most of its costs on a partial indemnity scale. LAF was entirely successful in its application. It is therefore entitled to its costs based on the principle of indemnity. Its materials were of assistance to the court, and the amount of money at stake in this proceeding is significant. While LAF's costs on the application were higher than those of the Respondent, this is to be expected where, as here, the Applicant must compile the evidentiary record.

[27] I accordingly order the Respondent to pay LAF's costs in the amount of $30,000.00, inclusive of inclusive of fees, disbursements, and taxes. In my view, this result is fair and reasonable in all the circumstances. This amount is to be paid within 30 days.

Date: July 2, 2025

Parghi J.