

CITATION: Vista Sudbury Hotels Inc. v. The Oshawa Group Limited., 2026 ONSC 313
COURT FILE NO.: CV-04-00008041-0000
DATE: 2026-01-15

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
VISTA SUDBURY HOTELS INC. carrying)
on business as RAINBOW VALUE) Barry Weintraub and Vincent DeMarco, for
CENTRE and VISTA SUDBURY) the Plaintiffs
COMPLEX INC.)
)
Plaintiffs)
)
- and -)
)
THE OSHAWA GROUP LIMITED,)
OSHAWA HOLDINGS LIMITED, and) Nicole Henderson and Natalie
ZELLERS INC.) Cammarasana, for the Defendants
)
Defendants)
)
)
) **HEARD at Sudbury, Ontario:**
) May 30 & 31, 2023
) June 1, 2, 5 & 6, 2023
) November 12, 2024
) And additional written submissions

2026 ONSC 313 (CanLII)

REASONS FOR DECISION - DAMAGES

CULLIN J.

Overview of the Proceeding

[1] On May 15, 2004, the defendant Zellers Inc. (“Zellers”) closed its retail operations at the Rainbow Value Centre (“the Mall”) in downtown Sudbury. The closure occurred 321 days before the expiry of its lease. The Mall’s owners, the plaintiffs Vista Sudbury Hotel Inc. and Vista Sudbury Complex Inc. (“Vista”), have commenced this action alleging that the early closure occurred in violation of Zellers’ lease and that they sustained damages as a result.

[2] This has been a long-standing proceeding. The trial of this action was bifurcated. The liability phase of the trial was resolved on appeal in favour of Vista. The Court of Appeal found

that Zellers' early closure was a breach of the "continuous use" clause in its lease. It remitted the matter back to this Court to determine the damages, if any, suffered by Vista due to the breach.

[3] During this phase of the trial, it was undisputed that Zellers fulfilled its rent and maintenance obligations for the remainder of its lease term. The damages claimed by Vista are consequential damages, including: mitigation expenses; tenant inducements; secondary rental income losses; fixturing and re-tenanting costs; and, lost opportunities. Zellers argues that the damages claim ought to be dismissed due to issues of causation, remoteness, and reasonableness.

Overview of the Facts

[4] For this purpose of this summary, I will restrict myself to an overview of the facts surrounding the claims before the court. Where necessary, evidence and disputed positions will be included to ensure a complete narrative of the facts. Documents have been quoted verbatim. Additional details and evidence will be discussed when addressing particular issues.

The Mall before Vista

[5] The Mall is a 409,000 square foot retail shopping centre in downtown Sudbury, at the intersection of Elm Street and Notre Dame Avenue. It was built in approximately 1970. Historically, two department stores served as anchor tenants, Eaton's and Towers (which subsequently became Zellers in 1990).

[6] The years leading to the departure of Zellers were challenging. The Mall went into receivership in 1993 and by all accounts was poorly managed thereafter. Eaton's, which occupied both upstairs and main floor space in the east side of the Mall, departed in October 1999 following its bankruptcy. Food City and Famous Players Theatres, also major tenants, departed shortly after in January 2000.

[7] Zellers became the Mall's principal anchor tenant, but it felt the impact of the exodus. Between January 1999 and January 2001, its sales fell from \$10.1 million to \$8.8 million.

Vista Acquires the Mall

[8] Vista acquired the Mall from the receiver on June 15, 2001. At the time of the purchase, the Mall had approximately 60 percent vacancy.

[9] Following the acquisition, Vista took steps to revitalize the Mall. It acquired a parking lot and it purchased land from the City of Sudbury to create a layby to access that new lot. It also undertook exterior façade work on the Notre Dame side, replacing the brown brick finish with new stucco and a feature wall with a neon sign.

[10] Vista undertook a marketing campaign to attract new tenants. It hired brokerage houses and consultants and attended conferences. It hired a general manager, Ray Hirani ("Mr. Hirani"), and a lease administrator, Joe Zito ("Mr. Zito"), to provide a local presence and to report to Vista's principal, Amin Visram ("Mr. Visram").

[11] Vista's efforts produced positive results. The vacancy rate decreased from 59.7 percent in 2001 to 41.5 percent at the end of 2003. Between March 2002 and September 2003, Vista entered into leases to fill several of its large vacant spaces, including leases with Oasis Fitness and Wellness (Sudbury) Inc., United Furniture Warehouse Ltd., The Northern Shop, and 1582602 Ontario Limited (the "Marketplace" grocery store). In December 2003, it signed a term sheet with Rainbow Centre Cinemas Inc. to lease the former Famous Players Theatres space.

[12] It appears that Zellers benefited from this positive momentum. Its sales increased from \$8.8 million to over \$10 million in the year ending January 2004.

The Zellers Lease

[13] The original lease (the "Head Lease"), dated October 15, 1971, was between Marchland Holdings Limited, as landlord, and Towers Department Stores Limited, as tenant. The Head Lease was for 132,949 square feet of space in the upstairs and main floor of the Mall. In 1986, it was reduced to 73,269 square feet on the main floor of the Mall and remained as such until the tenancy ended.

[14] In 1977, Towers Department Stores Limited changed its name to Oshawa Holdings Limited. In 1979, the Head Lease was assigned by Oshawa Holdings Limited to The Oshawa Group Limited by way of an amending agreement, and the space was then subleased back to Oshawa Holdings Limited.

[15] In 1990, Oshawa Holdings Limited further subleased the space to Towers Department Stores Inc. (the "Sublease"). In 1991, Towers Department Stores Inc. was acquired by Zellers, which assumed all its obligations under the Sublease. There is no dispute that the operative contract between the parties is the Sublease, and that the relevant provisions of the Sublease are reflected in the Head Lease. For simplicity, the governing contract between Vista and Zellers will be referred to in these reasons as the "Lease".

[16] Pursuant to an amending agreement dated November 1, 1985, the term of the Head Lease was extended to April 2, 2005. The Sublease expired one day prior, on April 1, 2005. The 1985 agreement amended the Head Lease at section 8.01 to require the tenant to continuously operate in the Mall during the term of the Head Lease. It also amended section 18.01, which addressed remedies in the event of a default by the tenant.

[17] The amended section 18.01 granted the landlord the right to remedy any default of the tenant and obligated the tenant to pay the landlord's reasonable expenses in effecting or attempting to effect a remedy. The section specifically provided as follows:

Section 18.01 Tenant's Defaults

(a) In the event of the happening of any one of the following events:

...

(iv) save as set out in this lease, the Leased Premises shall be vacated or abandoned, or remain unoccupied without the prior written consent of the Landlord for fifteen (15) consecutive days or more while capable of being occupied;

...

the Landlord shall have the following rights and remedies all of which are cumulative and not alternative and not to the exclusion of any other additional rights and remedies in law or equity available to the Landlord by statute or otherwise:

- (A) to remedy or attempt to remedy any default of the Tenant, and in so doing to make any payments due or alleged to be due by the Tenant to third parties and to enter upon the Leased Premises to do any work or other things therein, and in such event all reasonable expenses of the Landlord in remedying or attempting to remedy such default shall be payable by the Tenant to the Landlord on demand;
- (B) the Tenant shall pay to the Landlord on demand all costs and expenses, including reasonable lawyer's fees, incurred by the Landlord in enforcing any of the obligations of the Tenant under the Lease.

Zellers vacates the Mall

[18] In July 2003 Zellers conducted internal discussions about not renewing the Lease. It did not discuss its intentions with Vista at that time.

[19] Mr. Visram testified that, in September 2003, he had no concern that Zellers would leave. Vista was aware that Zellers' sales had increased. From Mr. Visram's perspective, Vista was undertaking extensive renovations to upgrade the Mall, several new tenants had been recruited, and the Mall's performance was improving.

[20] In December 2003, Mr. Visram attended a meeting at Zellers' head office in Toronto. Mr. Visram testified that he wanted to explore what Vista could do to enhance the Mall for its tenants, and to ascertain if Zellers intended to renew the Lease. He left the meeting believing that Zellers was very happy, and that Vista's improvements to the Mall had created value for Zellers. He testified that, in his mind, there was "every indication" that Zellers would remain in the Mall. He acknowledged in cross-examination that, notwithstanding his optimism, it was still possible that Zellers would leave.

[21] On February 26, 2004, Zellers announced that it would be closing prior to the expiry of the Lease. Mr. Visram testified that Zellers' announcement came as a shock to him. The Mall entered into "crisis mode," attempting to convince, and eventually to force, Zellers to stay. Those efforts were unsuccessful, and Zellers closed on May 15, 2004.

[22] For simplicity, Zeller's early closure shall be referred to in these reasons as the "Breach", and the period from the closure on May 14, 2004, to the Lease expiry on April 1, 2005, shall be referred to as the "dark period".

The aftermath

[23] There is debate about the impact, if any, of the Breach. There is also debate about whether Vista's actions following the Breach were reasonable remedial efforts or the inevitable consequences of Vista's decision to purchase a Mall that was in distress.

[24] From a factual perspective, what is undisputed is the following:

- a. After Zellers closed, Vista took steps to secure a replacement anchor tenant. It signed a lease agreement with Hart Stores Inc. for 45,000 square feet of the Zellers space. Its lease included a "cap adjustment clause" that expert witnesses for both parties agreed was unusual and was unfavourable to Vista. Hart Stores Inc. opened for business in the Mall in August 2005.
- b. After Zellers' departure, Vista relocated the Mall's food court, installed a new corridor to the relocated food court, retiled and repainted, completed further exterior stucco work, installed exterior windows, and installed an exterior feature wall and neon sign on the Mall's Elm Street side.
- c. Vista entered into a term sheet with Rainbow Centre Cinemas Inc. dated December 4, 2003, to lease the space formerly occupied by Famous Players Theatres. That term sheet was revised on March 18, 2004.
- d. The Northern Shop terminated its lease in June 2004. Ontario Shared Services leased its space in November 2004.
- e. Via Paris terminated its lease in October 2004.
- f. Oasis Fitness and Wellness (Sudbury) Inc. requested a rent abatement in November 2004. Its lease was terminated in August 2005. Bodyworks Fitness and Wellness Inc. leased its space and opened in October 2005.
- g. Leathers by Marie Leblanc Inc. terminated its lease in March 2005. Da Hot Spot leased its space, opened in November 2005, and closed in January 2006.
- h. United Furniture Warehouse Ltd. terminated its lease in June 2006. Community Care Access Centre leased its space and opened in January 2008.
- i. Vanna Shoes Inc. terminated its lease in September 2006. Walk This Way leased its space and opened in November 2006.
- j. Ardene and Bentley relocated to other spaces in the Mall. Ardene relocated in 2006. Bentley relocated in 2007.

Issue to be Addressed - Damages

[25] Vista alleges that Zellers' closure occurred at a critical time for the Mall. It submits that Vista's revitalization of the Mall was succeeding, and that Zellers' untimely closure killed its momentum and halted the Mall's growth.

[26] Vista seeks damages totalling \$12,070,866.49, inclusive of GST and not accounting for alternative damages, for the following:

- a. Losses from inducing Hart Stores Inc. to the Mall to replace Zellers.
- b. Costs of renovating the Mall to mitigate damages.
- c. Losses from retention concessions extended to Rainbow Centre Cinemas Inc.
- d. Losses from The Northern Shop termination and replacement by Ontario Shared Services.
- e. Losses from Oasis Fitness and Wellness (Sudbury) Inc. termination and replacement by Bodyworks Fitness and Wellness Inc.
- f. Losses from United Furniture Warehouse Ltd. termination and replacement with Community Care Access Centre.
- g. Losses from Leathers by Marie Leblanc Inc. termination.
- h. Losses from Via Paris termination.
- i. Losses from Vanna Shoes termination.
- j. Lost rent from potential new tenants.
- k. Lost percentage rent.
- l. Financing for total losses that were financed.

[27] Zellers disputes all damages claimed by Vista, arguing that they are unsupported by evidence demonstrating that they are causally connected to the Breach, that they are too remote to be recoverable at law, and that to the extent that they are recoverable that they are unreasonable.

Assessment of Damages - The Law

[28] Damages for breach of contract are measured by what is required to place the plaintiff in the position in which it would have been had the contract been performed, subject to the principle of remoteness and the plaintiff's duty to reasonably mitigate its losses: *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, [2006] 2 SCR 3 at para. 27; *Saramia Crescent General Partner Inc. v. Delco Wire and Cable Limited*, 2018 ONCA 519 at para. 35.

[29] As a threshold issue, the plaintiff has the burden to establish, on a balance of probabilities, that they suffered the damages claimed as a reasonable and probable consequence of the breach of contract: *Eastwalsh Homes Ltd. v. Anatal Developments Ltd.*, 1993 CanLII 3431 (ON CA) at para. 34.

[30] The primary measure of damages for a breach of a commercial lease is the value of unpaid rent for the unexpired period of the lease, subject to mitigation. The landlord may also recover provable losses resulting from the repudiation: *Highway Properties Ltd. v. Kelly, Douglas & Co. Ltd.*, 1971 CanLII 123 (SCC), [1971] SCR 562 at p. 570; *Saramia* at para. 30.

[31] Damages from a breach that are too remote are not recoverable. The test for remoteness of damages in contract was established in *Hadley v. Baxendale* (1854), 156 E.R. 145 at p. 151, cited with approval in *RBC Dominion Securities Inc. v. Merrill Lynch Canada Inc.*, 2008 SCC 54 at para. 12. The test in *Hadley* consists of two branches. Damages may be recovered if:

- a. in the “usual course of things”, they arise fairly, reasonably, and naturally due to the breach of contract; or,
- b. they were within the reasonable contemplation of the parties at the time of the contract.

[32] The first branch of the test is objective. It asks whether the type of loss the plaintiff claims “foreseeably and naturally arises ‘according to the usual course of things’” from the contractual breach: *Saramia* at paras. 38-39. The focus of the inquiry is the types of damages the parties understood, at the time they entered into the contract, would naturally arise from a breach: *Saramia* at paras. 38-39; *Tabrizi v. Majesty Development Group Inc.*, 2022 ONSC 1933 at para. 129.

[33] The second branch of the test asks whether a reasonable person would have contemplated the losses claimed in light of the circumstances known to the parties when the contract was formed: *Saramia* at paras. 41-42, 45. The relevant inquiry is not whether the parties contemplated the breach, but rather whether the parties reasonably contemplated that the type of damages claimed would be the probable result of a breach of the contract at the time they entered into it: *Saramia* at para. 44.

[34] Losses that do not fall under either the first branch or the second branch are not foreseeable and are therefore too remote and not recoverable. At all times, remoteness applies to the type of loss suffered, not the quantity of a proximate loss: *Saramia* at paras. 36, 44.

[35] The Court may also deny or discount a plaintiff’s damages when the damages are excessive: *Rodrigues v. Cormier*, [1993] OJ No. 1286 at para. 30.

[36] When assessing a plaintiff’s efforts at mitigating their losses, the Court is concerned with the reasonableness of those efforts. As noted by Perell J. in *Deco Homes (Richmond Hill) Inc. v. Serikov*, 2021 ONSC 2079, at para. 9: “In assessing the innocent party’s efforts at mitigation, the courts are tolerant, and the innocent party need only be reasonable, not perfect; in deciding what is a reasonable way to mitigate the effects of a breach of contract, the innocent party is not to be

held to too nice a standard; it need only act reasonably, using what it knows then, without hindsight, and it need not do anything risky.”

Overview of Witness Evidence and Determination of Admissibility Issues

Witness evidence

[37] Vista called evidence from four witnesses at trial. Mr. Visram, Mr. Hirani, and Karon Pyper, the Mall’s on-site bookkeeper, testified as fact witnesses. Lisa Hutcheson testified as an expert witness; she was qualified on consent to provide expert evidence about the impact of the departure of an anchor tenant and shopping centre strategies to address the departure of an anchor tenant.

[38] Zellers called James Tate as its sole witness. Mr. Tate testified as an expert witness; he was qualified on consent to provide expert evidence about real estate development strategy, market demand analysis, and market retail impact analysis.

Documentary evidence

[39] In addition to witness evidence, contemporaneous documents, primarily consisting of accounting records, leasing documents, and receipts, were admitted into evidence; they were mostly admitted on consent. Counsel filed an agreement confirming the basis on which the documents filed on consent were admitted.

[40] Vista also sought to rely on an affidavit of Mr. Zito, sworn April 16, 2004, for the truth of its contents. Mr. Zito passed away prior to trial and was unable to be called as a witness. Following arguments by counsel, a redacted affidavit was admitted into evidence; the unredacted portions were received and considered as evidence for the truth of their contents.

Expert evidence - admissibility

[41] Objections were raised about the admissibility of evidence given by Ms. Hutcheson and Mr. Tate. They were permitted to testify, with a ruling to be made regarding the admissibility of the evidence following written submissions from counsel.

[42] The initial report of Ms. Hutcheson was dated December 2021 (“JCWG1”). It was prepared by her in consultation with Steven Raynor, who Vista did not call to testify. It incorporated the relevant sections of a damages report prepared on behalf of Vista by John Williams in 2015. Mr. Williams passed away prior to trial.

[43] Mr. Tate responded to JCWG1 with a report dated August 8, 2022 (the “TER”). Ms. Hutcheson prepared a reply report, dated October 18, 2022 (“JCWG2”). Mr. Tate did not prepare a sur-reply report, but provided sur-reply evidence, subject to the ruling on its admissibility.

[44] At issue is Ms. Hutcheson’s opinion in JCWG2 regarding additional heads of damages and a “trend analysis” of vacancy rates the Mall (“the JCWG2 opinion”). Vista submits that the JCWG2 opinion is a proper reply opinion. Zellers objects to the JCWG2 opinion arguing that it

is not proper reply to anything raised in the TER. Alternatively, Zellers submits that Mr. Tate's sur-reply evidence regarding the JCWG2 opinion should be admitted notwithstanding that it was not supported by a written report.

[45] Having reviewed the reports, I find that the JCWG2 opinion did exceed the boundaries of a proper reply. While the "trend analysis" arguably responds to the market conditions analysis in the TER, the additional heads of damages are not logically connected to the opinion in the TER. Rather, it is a fresh opinion cloaked as a reply.

[46] With that said, I find that Zellers had seven months either to signal its objection to the JCWG2 opinion, or to prepare a sur-reply report. The trial date was scheduled on consent in December 2022, after the report was served. A trial management case conference was conducted before me on May 19, 2023. Zellers availed itself of neither of these opportunities, or the time that passed in between, to raise concerns about the JCWG2 opinion.

[47] In its written submissions, Vista describes Mr. Tate's sur-reply evidence as "underwhelming" and submits that, "He merely stated that he disagreed with Ms. Hutcheson's analysis." This leads me to conclude that Vista does not view Mr. Tate's sur-reply evidence as prejudicial.

[48] In my view, neither Vista nor Zellers appear with clean hands in addressing the JCWG2 opinion. I find that the only reasonable resolution is to admit both Ms. Hutcheson's evidence and Mr. Tate's evidence in its entirety. To the extent that there are any frailties in the evidence regarding the JCWG2 opinion, the credibility and reliability of that evidence should be resolved having regard to the circumstances surrounding the JCWG2 opinion.

[49] The evidence of Ms. Hutcheson and Mr. Tate will therefore be admitted in its entirety.

Analysis and Determination of Damages

Preliminary observations and findings regarding damages

[50] In this trial, the court is asked to determine what damages, if any, Zellers is liable to pay to Vista due to closing its store 321 days before the expiry of the Lease.

[51] The Court must be mindful of the fact that Vista can only be compensated for the types of losses that foreseeably and naturally flowed from the Breach, or that would have been reasonably contemplated by the parties to flow from the Breach. The timeframe of interest in considering foreseeability is the time that the Lease was entered into. The dire circumstances of the Mall in and around the time of the Breach, and the types of damages that would have been foreseeable at that time, are not relevant to this analysis.

[52] It is undisputed that Zellers remitted all required payments under the Lease for the remainder of its term. The damages to be assessed are consequential damages arising from the Breach.

[53] Vista submits that Zellers knew as early as July 2003 that it did not intend to renew the Lease. It argues that it was misled into believing that Zellers would remain in the Mall as a long-term tenant, and that this should be considered in assessing damages.

[54] Whether Vista was misled is irrelevant. Misrepresentation is not an issue before this Court. It is not a cause of action which was plead in the statement of claim. It is not an issue which was referred for adjudication by the Court of Appeal.

[55] Vista also argues that Zellers' eleventh-hour disclosure of its intention to close impacted Vista's ability to reasonably mitigate its losses. It argues that Zellers was the Mall's anchor tenant and that its untimely closure had a significant adverse impact on the positive momentum that had been building in the Mall following Vista's involvement. It argues that these factors should be considered in assessing the nature of the damages that were incurred due to the Breach, as well as the length of time that those damages flowed.

[56] Zellers submits that there is nothing in the Lease that supports Vista's assertion that it was a "lynchpin" of the Mall, or that it accepted financial responsibility for the Mall's success or failure when it entered into the Lease. It submits that none of the types of damages claimed by Vista arose "naturally" due to the Breach, nor were they in the reasonable contemplation of the parties at the time the Lease was entered into.

[57] It is undisputed that Zellers was entitled to vacate the Mall, without penalty, on April 1, 2005. Pursuant to the Lease, Zellers was required to advise Vista of its intention to renew the Lease at least 365 days prior to expiry; this was provided in paragraph 1(ff) of the amending agreement, dated November 1, 1985. The Head Lease had previously provided for 90 days' notice of the intention to renew. This leads me to conclude that the parties were aware that Zellers was a major tenant whose departure would require advance management by Vista.

[58] I find that the eleventh-hour disclosure is relevant to the assessment of damages, and specifically to the reasonableness of Vista's efforts to mitigate its losses. In breaching its obligation of continuous operation, Zellers effectively gave Vista 79 days to prepare for its departure. I find, having regard to the terms of the Lease, that it would have been within the reasonable contemplation of the parties at the time the Lease was entered into that Zellers' departure on short notice could give rise to losses that Vista would have challenges mitigating.

[59] In my view, the more contentious issues are whether the damages claimed were caused by the Breach and whether the categories of damages claimed by Vista are the types of damages that would be compensable applying the test in *Hadley*. These issues will be considered in the context of each of the categories of damages claimed.

Losses from inducing Hart Stores Inc. to the Mall to replace Zellers

Evidence and argument

[60] Vista submits that the Breach required it to move quickly to find a replacement tenant. It submits that this search occurred under challenging circumstances, as its need for a new tenant

was widely known in the marketplace. It submits that it made several financially disadvantageous concessions to Hart Stores Inc. (“Hart”) to induce it to sign a lease.

[61] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Cap Adjustment Clause	\$3,281,545	n/a
Interior Signage Expense	\$10,000	\$700
Turnkey Expenses	\$553,406.17	\$38,738.43
Tenant Inducements	\$135,000	\$9,450
Additional Occupancy Expense – HVAC System	\$18,235.38	\$1,276.48
Total Damages Claimed: \$4,048,351.46		

[62] Mr. Visram testified that Vista pursued multiple prospective tenants, including Liquidation World, Winners, outdoor sporting goods stores, and a retailer similar to TJ Maxx. He testified that, as there were few department stores in the marketplace, it was difficult to identify a comparable replacement for Zellers. Vista also engaged commercial real estate brokers to assist with its search.

[63] Vista identified Hart as a prospective tenant. Mr. Visram testified that negotiations with Hart were difficult, and that he personally met with Michael Hart between three to five times. It was Mr. Visram’s belief that Vista’s situation was desperate and that it was vulnerable. He believed that it would be necessary to make a lucrative offer to Hart or it would not be inclined to sign a lease.

[64] Mr. Visram testified that, during negotiations, Hart insisted on rent caps, required Vista to pay for turnkey expenses, advertising, and additional occupancy expenses, and demanded tenant inducements including a period of free rent. Hart wanted assurances that Vista would take measures to increase traffic flow on the Mall’s main floor. Mr. Visram promised Hart that Vista would act immediately to relocate the food court from the second floor to the main floor.

[65] Vista led no evidence from Hart or its commercial real estate broker, nor were any documents admitted, regarding the progress of the negotiations between Vista and Hart leading to their lease.

[66] On April 27, 2005, Hart entered into an agreement with Vista to lease 45,000 square feet of the 73,000 square foot Zellers space (“the Hart lease”). The term of the Hart lease was ten years and seven months, with an expiry date of February 28, 2016. Hart had the right to renew

the Hart lease for six further terms of five years each. Ms. Hutcheson described the Hart lease as “very aggressive”.

[67] The Hart lease included a Cap Adjustment Clause (“CAC”) that provided as follows:

4.12 Total Capped Expense

Notwithstanding anything contained in this Lease to the contrary, the parties agree as follows:

(a) The amounts the Tenant is obliged to pay, pursuant to the Articles 4 and 5, in any year shall be hereinafter collectively referred to as the “Total Capped Expense”.

(b) If in any year during the Initial Term and any Renewal Term the amount the Tenant would be obliged to pay toward the Total Capped Expense under the relevant provisions at this Offer to Lease, exceeds nine percent (9%) of Gross Revenue for that year (“Excess”), Tenant shall not be obliged to pay the Excess.

(c) Once Gross Revenue for the year in question is determined (within 30 days of the end of each lease year) then if any Excess exists and in fact has previously been paid, such amount will be refunded to Tenant within thirty (30) days following the date Gross Revenue becomes determined, failing which Tenant will be entitled to deduct the overpayment plus 10% from the next sum or sums to become due.

[68] It was Ms. Pyper’s evidence that Vista had been required to pay \$3,281,545 to Hart between August 2005 and July 2019 on account of cap adjustments pursuant to the Hart lease.

[69] Both Ms. Hutcheson and Mr. Tate agreed that the CAC was an unusual term for a retail lease. In cross-examination, however, Ms. Hutcheson adopted a statement by Mr. Williams that CAC’s were terms that Hart regularly negotiated into their leases. A subsequent lease between Vista and Hart, dated September 1, 2019, also included a CAC.

[70] The plaintiff’s evidence regarding the interior signage expense was also provided by Ms. Pyper. It was her evidence that, historically, the cost of interior signage was the responsibility of the tenant. In the case of the Hart lease, Vista had agreed to pay.

[71] It was Ms. Hutcheson’s opinion that the remaining expenses and inducements agreed to by Vista were high but that the expenses themselves were not unreasonable. It was her opinion that they were necessary due to the urgency with which Vista was required to act to fill the vacancy. Had the space remained vacant, she believed that there would be a “snowball effect” and that other tenants would have left. It was her opinion that, with more time, Vista could have explored other options for the space and negotiated more favorable lease terms.

[72] It was Mr. Tate's opinion that the remaining expenses and inducements were not the result of any urgency to replace Zellers. He noted, and Ms. Hutcheson agreed, that the typical timeframe to fill a vacant anchor tenancy was 18 to 24 months. As the Zellers vacancy was filled well ahead of this timeframe, it could not be described as urgent. In Mr. Tate's opinion, the Hart lease was not the result of a negotiation conducted under duress. It was his opinion that the same agreement would have been negotiated between Hart and Vista had the negotiations occurred after the expiry of the Lease.

Findings

[73] Regardless of the Breach, Vista would have been embarking on a search for a new anchor tenant to fill the Zellers space after April 2004, when it would have become aware that Zellers did not intend to renew its lease. The 365-day renewal period under the Lease would have lapsed on April 1, 2004, and triggered that discussion between Vista and Zellers.

[74] It is apparent from the evidence that Hart had been identified as a successor to Zellers even before the Breach. The Mall's Business Plan, dated February 16, 2004 (the "Business Plan"), confirmed that Vista had commenced discussions with Hart about a prospective tenancy:

Preliminary discussions have been held with Hart Department Stores as an alternative to Zellers in the event that Zellers does not renew its lease. Hart Department Stores is looking for approximately 30,000 square feet - i.e.: less than half of what Zellers currently occupies and would not be as big a draw as Zellers is. The ideal situation would be to have Zellers presence and to have Hart Department Stores as well. Hart Department Stores is a junior department store roughly equivalent to a Giant Tiger; accordingly, it is somewhere between a dollar store and a department store of Zellers quality. This will require Zellers permission as they have an exclusivity clause in their Lease.

[75] While it is possible that Zellers may have explored other options absent the Breach, it is also apparent that Vista's options for an anchor tenant, and in particular a department store anchor tenant, were limited. Hart was known to lease vacant anchor spaces, which is likely why Vista engaged it in preliminary discussions even before the Breach. I find it is more likely than not that Hart would have been the replacement tenant, regardless of the Breach.

[76] I find that the CAC would have been a required, non-negotiable term of any lease with Hart. Its inclusion in the Hart lease was not the result of any urgency perceived by Vista. I find that it is not a compensable loss.

[77] With respect to the remaining expenses and inducements, I find it more likely than not that Vista was more generous when negotiating terms following the Breach than it would have been following the expiry of the Lease. On this point, I preferred the evidence of Ms. Hutcheson. I found that Mr. Tate's opinion failed to reconcile the difference between a negotiation in the context of the planned vacancy of a major tenant and a negotiation in the context of a sudden, unexpected vacancy.

[78] I agree with Ms. Hutcheson that Vista would have felt pressure to fill the sudden vacancy quickly. The unexpected closure of a major tenant would have caused alarm to prospective tenants, as well as concerns about a “snowball effect” among remaining tenants. I find it reasonable to conclude that Vista would have yielded to negotiable demands to fill the Zellers vacancy as quickly as possible. Hart would have been aware of their vulnerability, and as “very shrewd” negotiators likely would have bargained for the most favorable terms they could get.

[79] I find that a major tenant entering into a lease would have understood that a sudden premature closure in breach of its lease could place pressure on the landlord to fill their vacancy quickly. It would have been reasonably foreseeable that the landlord may be required to make more generous concessions to secure a prospective tenant than they would otherwise make in a lease negotiation.

[80] I find that reasonable inducements to a prospective tenant filling a sudden, unexpected vacancy due to a breach are a type of damage that would have arisen fairly, reasonably, and naturally from such a breach. Alternatively, I find that reasonable inducements to a prospective tenant in those circumstances would have been within the reasonable contemplation of the parties when they entered into the Lease.

[81] I accept Ms. Pyper’s evidence that the cost of interior signage was historically a tenant expense. I find that this expense was an inducement offered by Vista to secure Hart’s tenancy that it would not have offered but for the urgency caused by the Breach. The full amount of this expense, in the amount of \$10,700 inclusive of GST, is a compensable loss.

[82] In addition to fully funding the turnkey expenses to prepare the space for Hart, the Hart lease inexplicably provided a tenant allowance for leasehold improvements of \$3.00 per square foot, payable to Hart within seven days of the commencement date of August 1, 2005.

[83] I find that there is no plausible explanation for this tenant inducement other than Vista’s objective of securing Hart’s tenancy as quickly as possible. I find that the full amount of this tenant inducement, in the amount of \$144,450 inclusive of GST, is a compensable loss.

[84] I am not satisfied on the evidence that Vista’s agreement to fully fund turnkey expenses and HVAC equipment expenses for the Hart space was solely the result of urgency caused by the Breach. The leases filed as exhibits at trial included tenancies for which Vista paid all or some of these expenses.

[85] I accept Ms. Hutcheson’s opinion that these expenses were “high” in the context of the lease that Vista received in return. I am satisfied that it is likely that Vista was more generous in agreeing to fund turnkey and equipment expenses than it would have been when negotiating a tenancy under ordinary circumstances. On the other hand, as “very shrewd” negotiators, it is my view that Hart would have insisted that Vista pay the majority of the turnkey and equipment expenses as a condition of any lease.

[86] In my view, it is reasonable to allocate 25% of the turnkey expenses and HVAC equipment expenses, or \$152,914.12 inclusive of GST, as a compensable loss.

*Costs of renovating the Mall to mitigate damages**Evidence and arguments*

[87] Vista submits that it undertook an extensive renovation to the Mall in an effort to mitigate its damages. It relocated the food court and constructed a ground-level access corridor, tiled and painted the interior of the Mall, installed windows, applied stucco to exterior walls, and added exterior signage. It submits that it also moved tenants Ardene and Bentley closer to the central area of the Mall.

[88] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Food Court relocation	\$1,023,886.28	\$71,672.04
Access corridor	\$83,246	\$5,827.22
Tiling and painting	\$541,780.70	\$37,924.65
Exterior stucco	\$717,499.74	\$50,224.98
East wall exterior windows	\$122,382	\$8,566.74
Feature wall and signage	\$45,309.64	\$3,171.68
Relocate Ardene & Bentley	\$78,815.46	\$5,517.08
Total Damages Claimed: \$2,795,824.21		

[89] Mr. Visram acknowledged in his evidence that most of the renovations, and specifically the relocation of the food court, were contemplated prior to the Breach. It was his evidence that the projects were expedited due to the dire circumstances caused by the unexpected vacancy. The renovations were part of a strategy to make the Mall more attractive and to maximize traffic for its remaining tenants. Mr. Visram also testified that the relocation of the food court was a component of Vista's agreement with Hart.

[90] The relocation of the food court was contemplated as early as 2003 but had been deferred to address other priorities. The Business Plan indicated the following:

The issue of the food court relocation was essentially put on hold in the year 2003 while various options were considered for the south-east corner of the mall. Possibilities included an entertainment centre and the expansion of the office space from the current four floors of the office tower into the existing second floor food court area with a potential further expansion onto the second floor of Eaton's. In 2004 decisions will

have to be made in that regard. Currently there are discussions ongoing that could occupy potentially 40,000 feet of office space. Not all potential tenants have the vision to imagine what the office space will look like when they look at the existing food court. It may well be wise, and beneficial, if the space was made available so that a potential tenant can see what it is bargaining for.

[91] The food court renovations were ultimately undertaken in 2006. The food court was moved from the second floor of the Mall to the main floor of the Mall. It was originally in the southeast corner, near the upper floor entrance to Eaton's; that space subsequently became office space. The food court was moved to the north end of the Mall, near the gym and the retail stores.

[92] Exterior façade, windows, and signage work was undertaken to the Notre Dame side of the Mall prior to the Breach. The exterior work undertaken following the Breach was to the Elm Street side of the Mall. That work was also identified as a pending project in the Business Plan:

The renovations completed on Notre Dame Avenue were the topic of discussion throughout Greater Sudbury and acted as a calling card for consumers, who had not been in this mall for more than ten years, to once again make the Rainbow Value Centre a shopping destination. The continued construction along Elm Street and at the Frontenac parking lot will only enhance the drawing power of the Rainbow Value Centre.

...

Mr. Belanger continues to be the mall Architect for 2004. His design appears in the first phase of construction on Notre Dame Avenue and the exterior of the building, in United Furniture and the Marketplace Grocery Store. Mr. Belanger has been mandated to continue the exterior design along Elm Street and the Frontenac parking lot.

[93] Vista submits that the relocation of Ardene in 2006 and Bentley in 2007 to retail spaces closer to the food court was related to the Breach. Mr. Visram testified that they were experiencing a lack of traffic following the Breach and therefore were moved to a more central area of the Mall. He described the moves as tenant inducements.

[94] Zellers argues that none of these damages can be characterized as mitigation from the Breach. It argues that the renovations relate to issues of upkeep and maintenance that pre-existed the Breach. Alternatively, it argues that, if the damages claimed can be characterized as mitigation, they are not reasonable.

Findings

[95] Even before the Breach, Vista was undertaking an extensive course of renovations to the Mall in an effort to revitalize it. Those renovations were a component of the upkeep and maintenance of the Mall and were planned to continue.

[96] In my view, it would not have been in the usual course of the Lease or reasonably contemplated by the parties that Zellers would be responsible for the cost of modifications or improvements that would have been undertaken regardless of the Breach.

[97] The question to be determined, then, is whether the modifications and improvements claimed by Vista were related to Zellers' departure and undertaken due to the Breach, or whether they were instead a component of the upkeep and maintenance of the Mall.

[98] Vista alleges that the relocation of the food court was a term of its agreement with Hart but provided no documentary evidence in support of its position. While Vista may have verbally represented to Hart during their negotiations that it intended to relocate the food court, that representation was not incorporated into the Hart lease. There was no specified timeframe within which the relocation was required to occur, and indeed no apparent legal obligation at all to follow through on such an undertaking.

[99] I find on the evidence that the relocation of the food court was the next phase in Vista's planned evolution of the Mall, specifically the plan to convert the southeast corner of the Mall to office space. I find that it was neither related to nor expedited by the Breach. It was related to the upkeep and maintenance of the Mall, and it is not a compensable loss.

[100] The exterior façade, windows, and signage work at the Mall were already underway before the Breach. The exterior work to the Elm Street side of the Mall was a planned continuation of this project that was neither related to nor expedited by the Breach. It was related to the upkeep and maintenance of the Mall it is not a compensable loss.

[101] The tiling and painting of the interior of the Mall were, in my view, projects related to the general upkeep and maintenance of the Mall. I am not satisfied on the evidence that this work was required to mitigate Vista's damages, or that it was related to or expedited by the Breach. I find that these expenses are not compensable losses.

[102] The relocation of Ardene and Bentley occurred two and three years respectively after the Breach. By that time, Hart had moved into Zellers' space and ostensibly would have improved any traffic lost following the Breach. In my view, the relocation of Ardene and Bentley are more plausibly connected to the evolution of the Mall and the relocation of the food court.

[103] Even if I were to accept that Ardene and Bentley suffered a downturn in business following the Breach that required them to relocate, that is the same fate that would have awaited them following Zellers' closure absent the Breach. The timing of the relocations is such that I find that they were not related to or expedited by the Breach. I find that these expenses are not compensable losses.

Losses from Rainbow Cinemas retention concessions

Evidence and arguments

[104] Before Zellers announced its departure, Vista and Rainbow Centre Cinemas Inc. ("Rainbow Cinemas") had negotiated an initial term sheet dated December 4, 2003 ("Term Sheet

1”), for the lease of the premises formerly occupied by Famous Players Theatres. Vista submits that it was required to renegotiate Term Sheet 1 following Zellers’ closure announcement.

[105] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Occupancy expense – HVAC system	\$198,100	\$13,867
Rent allowance – 3 months’ free rent	\$73,944.03	n/a
Total Damages Claimed: \$285,911.03		

[106] Term Sheet 1 provided the following:

Rent Free Fixturing Period and Free Rent:

The Tenant will have 120 days from the earlier of (i) the date on which possession of the Premises is given to the Tenant for purposes of installing Tenant's FF&E and (ii) the date on which the Landlord's architect certifies that the premises is sufficiently complete to allow joint occupancy. During the 120 day period, the Tenant will be responsible only for utilities so long as the Tenant has not opened to the public. If the Tenant open to the public within the 120 day period, in addition to utilities, it will pay Common Area Maintenance.

Landlord and Tenant’s Work and Landlord allowance:

At the Tenant’s option, to be exercised no later than the satisfaction or removal of the Tenant's conditions, the Landlord will pay a cash allowance in the amount of \$400,000, in the form of the Landlord's work listed below.

The Tenant shall provide and install the Furniture, Fixtures and Equipment, including but not limited to: seats, screens, projection and sound equipment, concession equipment, point of sale equipment etc. In addition, the Tenant will be responsible for any construction costs in excess of \$400,000. The Tenant acknowledges, that the \$400,000 is to be used toward building renovation/modification for example HVAC, demising walls, washrooms etc. and not for the purchase of FF&E. The T will repay the LL allowance fully over the first 10 year term in annual amounts (paid monthly) of \$66,508.80.

[107] On March 18, 2004, Vista and Rainbow Cinemas agreed to an amended term sheet ("Term Sheet 2"). Relevant to this action were the following terms:

Rent Free Construction and Fixturing Period:

The Tenant will have 150 days (subject to Unavoidable Delay) from the date building permits are issued to complete construction and fixturing. During the 150 day period, the Tenant will be responsible only for utilities so long as the Tenant has not opened to the public. If the Tenant open to the public within the 150 day period, in addition to utilities, it will pay Common Area Maintenance. The Tenant will diligently pursue completion of the architectural drawings and will apply for the building permits within 45 days of the date of execution of this agreement and will use reasonable commercial efforts to ensure that construction commences within 60 days or shortly thereafter, of the execution of this agreement. It is the Tenants intention to be open for September 2004.

Tenant's Work:

The Tenant shall provide and install Furniture, Fixtures and Equipment (to the same standard as it's present cinemas in the Greater Toronto Area), including but not limited to: seats, screens, projection and sound equipment, concession equipment, point of sale equipment etc. In addition, the Tenant will be responsible for any construction costs in excess of the costs referred to in Construction Allowance and Landlord Contribution below. The Tenant will provide appraisals and/or paid bills for review by the LL showing that the T investment in the premises and FF&E is at a minimum \$700,000.

Construction Allowance:

The full construction budget has been attached as Schedule "A".

The Landlord has agreed to provide the Tenant with a Construction Allowance in the amount of \$400,000. plus G.S.T. The Construction Allowance will be paid on behalf of the Tenant in the following manner:

When the General Contract for the cinema construction is to be awarded, a separate Contract in the name of Vista Sudbury Hotel Inc. in the amount of \$400,000. plus G.S.T. will be executed by the Landlord. The Vista Construction Contract will be on account of work such as: demolition, concrete, drywall, plumbing, ceilings, fireproofing, HVAC, demising walls, washrooms and other work agreed to and verified by Vista.

Simultaneous to the signing of the contract by Vista Sudbury Hotel Inc, for the \$400,000, a separate contract for Rainbow Cinemas will

be signed to include the balance of the work identified in Schedule "A". A copy of the contract signed by Rainbow Cinemas will be provided to the Landlord.

The Tenant will repay the Construction Allowance fully over the first 10 year term in annual amounts (paid monthly) of \$66,508.80. This amount is in addition to any base rent, common area charges, taxes and utilities otherwise payable.

Landlord Contribution:

In addition to the Construction Allowance the Landlord agrees to make the following two (2) contributions to the Cinema construction at Landlord expense:

1. The Landlord has agreed at Landlord expense to supply new HVAC systems and related items, as required, including metal fabrication, roofing materials etc. that serve the original area of the expanded cinemas. The Landlord cost of these items is capped at the lesser of \$111,300. and actual cost (plus applicable taxes). At the time the Construction Contracts for the Cinema are awarded, the Contract for the aforementioned items will be issued in the name of and paid for by Vista Sudbury Hotel Inc. Within 45 days of the opening of the Cinema to the public, the general contractor will execute and provide to both the Landlord and Tenant a Statutory Declaration that the contract amount has been paid in full.

2. The Landlord will pay the Tenant upon invoice by the Tenant the sum of \$5775.00 plus G.S.T. to reimburse the Tenant for Landlord related construction costs included in the Tenant scope of work. This construction has been identified as the relocation of the 3 boiler pipes that are located within the current cinema space. The Tenant will be entitled to invoice the amount at any time after the opening of the Cinema to the public.

[108] Term Sheet 2 also provided that the vacancy of the Zellers space would not be used in calculating rent abatement for 38 months from the later of the date that Zellers vacated the Mall or Rainbow Cinemas opened to the public.

[109] The lease ultimately signed by Rainbow Cinemas, dated June 18, 2004 (the "Rainbow lease"), provided that Vista would supply a new HVAC system at a cost of \$198,100 plus GST, totalling \$211,967.

[110] It was Mr. Visram's evidence that Vista was required to renegotiate its terms with Rainbow Cinemas and to offer inducements to persuade it to complete the Rainbow lease following Zellers' departure announcement. It was his evidence that Vista's agreement to supply

the new HVAC system was an inducement. Vista argues that inducements to prospective tenants were a reasonably foreseeable consequence of the Breach.

[111] Zellers argues that the repair or replacement of the HVAC system was not a consequence of the Breach. It notes that Vista and Rainbow Cinemas were aware that the HVAC system required attention prior to Zellers' announcement, as it was identified as a potential action item in Term Sheet 1. Further, it was Mr. Tate's evidence that the replacement of an HVAC system is typically the landlord's responsibility, undertaken either as a maintenance expense or an expense incurred to prepare the space for the tenant.

[112] With respect to rent, Mr. Visram also testified that Rainbow Cinemas was granted a rent-free period that extended beyond what was provided in the Rainbow lease. He testified that the fixturing period commenced on March 1, 2004, and was to continue for 150 days, but that Rainbow Cinemas did not, in fact, begin paying rent until November 1, 2004. Mr. Visram relied on the Rainbow lease and the ledger in giving this evidence.

Findings

[113] Vista and Rainbow Cinemas identified the HVAC system as a potential repair item in Term Sheet 1 however, the negotiated terms provided that the cost of the repair was to be borne by Rainbow Cinemas. Vista was to advance a \$400,000 construction allowance that would be repaid by Rainbow Cinemas over a period of ten years.

[114] Term Sheet 2 was signed three weeks after Zellers' announcement. It changed the rent abatement formula to reflect Zellers' departure, but also made changes to the financial responsibility for preparing the space. It shifted financial responsibility for the HVAC system, as well as the cost of relocating three boiler pipes, to Vista.

[115] I find that a major tenant entering into a lease would have understood that a sudden, premature closure in breach of its lease could adversely impact lease negotiations in progress and could require the landlord to offer inducements to prospective tenants. It is reasonably foreseeable that a prospective tenant may require inducements to lease when the landlord's property is suddenly significantly different than it was at the outset of the negotiation.

[116] I find that reasonable inducements to such a prospective tenant are a type of damage that would have arisen fairly, reasonably, and naturally from such a breach. Alternatively, I find that reasonable inducements to such a prospective tenant would have been within the reasonable contemplation of the parties to the lease.

[117] I find that assuming the expense of replacing the HVAC system in the Rainbow Cinemas space, totalling \$211,967, was caused by the Breach. In my view, Vista's agreement to fund the HVAC system was most likely either an inducement or consideration for Zellers' agreement to change the abatement formula. I find that it is a compensable loss.

[118] With respect to Vista's claim for an extended rent-free period, I find that this position is not supported by the documentary evidence. Contrary to Mr. Visram's evidence, the Rainbow lease provided in section 1.7 that the fixturing period commenced on May 21, 2004, not March 1,

2004. Also contrary to Mr. Visram's evidence, the tenant ledger indicated that Rainbow Cinemas commenced paying rent on October 1, 2004, not November 1, 2004. Rent therefore commenced 131 days after the commencement of the fixturing period.

[119] Term Sheet 1 provided for a 120 day rent-free fixturing period. Term Sheet 2 and the Rainbow lease provided for a 150 day rent-free fixturing period. There is no evidence before me that the extension of the fixturing period from 120 days to 150 days was an inducement by Vista to Rainbow Cinemas.

[120] I find that a rent-free fixturing period was always contemplated to be a term of the Rainbow lease. At 131 days, the rent-free period was less than the term provided in the Rainbow lease. I find that no additional rent-free period was extended beyond the fixturing period. I find that there is no compensable loss.

Losses from The Northern Shop termination and replacement by Ontario Shared Services

Evidence and argument

[121] On March 26, 2004, one month after Zellers' announcement of its premature closure, The Northern Shop ("TNS") terminated its lease. Vista claims lost rent from TNS and its costs to prepare TNS' space for a new tenant.

[122] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Lost rent increase	\$14,000	n/a
Lost rent during vacancy	\$90,000	n/a
Refixturing for OSS	\$375,232	\$26,266.24
Total Damages Claimed: \$505,498.24		

[123] TNS was an outdoor supply store occupying 15,000 square feet in the southern portion of the former Eaton's space. It was a month-to-month tenant. It had entered into a temporary lease agreement on April 1, 2003, at a rate of \$6,500 per month (the "TNS lease").

[124] On October 30, 2003, TNS offered terms for a three-year lease at a rate of \$10,000 per month. Vista accepted those terms on January 7, 2004. A new form of lease was circulated to TNS on February 4, 2004 (the "TNS draft"). The commencement date of the TNS draft was March 1, 2004.

[125] On March 26, 2004, following Zellers' announcement, TNS declined to sign the TNS draft. Instead, it gave notice that it would be terminating the TNS lease, effective June 30, 2004.

[126] Vista secured a replacement tenant quickly. It signed a lease with the Ontario Realty Corporation on behalf of Ontario Shared Services (“OSS”), dated April 1, 2005, which provided for the lease of 28,600 square feet in the former Eaton’s space, including the space that had been occupied by TNS (the “OSS lease”). The term of the OSS lease was five years, with two extension terms of five years each. The rent was \$37,537.50 per month, or \$450,450 annually.

[127] The OSS lease provided for a fixturing period of 151 business days commencing on November 1, 2004. Vista paid all the fixturing costs for the space. The lease ledger indicates that OSS paid a reduced rent of \$7,348 for the month of April 2005 and commenced paying its full rent on May 1, 2005.

[128] It was Ms. Hutcheson’s evidence that, based on the rent payable under the TNS draft, Vista lost \$14,000 in rent for the period from March 1, 2004 to June 30, 2004, calculated as the difference between the \$10,000 per month payable pursuant to the TNS draft and the \$6,500 per month of rent payable pursuant to the TNS lease. It was her evidence that Vista lost \$90,000 in rent during the four-month period between July 1, 2004 and November 1, 2004 when TNS’s space was vacant, and the five-month fixturing period under the OSS lease that commenced on November 1, 2004. Ms. Hutcheson acknowledged that Vista received a rent surplus after OSS commenced payment of rent and, as such, there was no loss beyond that point.

[129] It was Ms. Hutcheson’s opinion that the expenses incurred by Vista to fixture the space for OSS were related to infrastructure changes to convert the space from a retail space to an office space. It was her opinion that this was not a traditional refixturing and that it should be compensable as damages.

[130] Zellers argues that the damages claimed are not causally connected to the Breach and that they are too remote to be recoverable. It argues that, in assessing damages, the Court must consider the significant benefits that accrued to Vista due to the replacement of TNS by OSS. At the time it terminated the TNS lease, TNS was paying an annual rent of \$78,000 for 15,000 square feet of space; had it finalized the TNS draft, its annual rent would have increased to \$120,000 for a three-year lease term. By comparison, OSS leased 28,600 square feet of space at an annual rent of \$450,450 for a five-year renewable lease term.

Findings

[131] I find that a major tenant entering into a lease would have understood that its sudden, premature closure in breach of its lease could adversely impact the relationship between the landlord and an existing tenant. The sudden premature closure of a major tenant during the existing tenant’s renewal period could prompt the existing tenant to terminate their lease rather than to renew it, which would give rise to damages arising from the lost tenancy.

[132] I am satisfied on the evidence that TNS’ decision to terminate the TNS lease was directly related to the Breach. Prior to Zellers’ announcement of its early departure, TNS had confirmed in writing that it was prepared to enter into the TNS draft. The only intervening event that occurred prior to signing the TNS draft was the announcement.

[133] On the evidence, I am prepared to award damages for lost rent during the four-month vacancy period between the departure of TNS and the commencement of OSS' lease. I find that these damages were directly related to the Breach, that they foreseeably and naturally arose from the Breach, or alternatively that they would have been within the reasonable contemplation of the parties.

[134] I am prepared to award damages at the rent rate payable pursuant to the TNS lease. That rent rate was \$6,500 per month, resulting in a loss of \$26,000. I am not prepared to award damages at the rate under the TNS draft as Vista was not legally entitled to receive that rent due to the absence of a signed agreement.

[135] I find that the remaining damages claimed by Vista are unreasonable, do not fairly arise from the Breach, and would not have been in the reasonable contemplation of the parties. In my view, Vista was made whole for the loss of TNS' tenancy when it secured OSS as a tenant. OSS was a superior tenant renting more space for a longer term at a higher rent rate.

[136] With respect to Vista's claim for lost rent during OSS' fixturing period I find that, as Vista received a surplus of rent under the new tenancy, it would be overcompensated if it were to receive loss of rent damages after OSS took possession on November 1, 2004. I find that there is no compensable loss for lost rent after November 1, 2004.

[137] I find that Vista's expenses in reconfiguring and fixturing TNS' retail space into office space for OSS cannot be characterized as reasonable mitigation expenses. The expenses did not mitigate damages arising from the Breach; rather, they underwrote the significant financial benefit that Vista expected to receive from OSS' tenancy.

[138] Further, I do not find that expenses incurred to convert Mall space from retail use to office use are damages that fairly arise from the Breach, nor would they have been in the reasonable contemplation of the parties at the time the Lease was entered into. They do not represent compensable losses.

Losses from Oasis Fitness and Wellness (Sudbury) Inc. termination and replacement by Bodyworks Fitness and Wellness Inc.

Evidence and arguments

[139] Following the Breach, Oasis Fitness and Wellness (Sudbury) Inc. ("Oasis") requested a rent abatement and subsequently defaulted on its lease. Vista claims as damages rent arrears, losses for the time its space was empty, and losses for the difference in rent over the term of its lease.

[140] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Rent arrears	\$80,404.42	n/a

Lost rent during vacancy	\$95,856.25	n/a
Lost difference in rent	\$1,713,458.93	n/a
Total Damages Claimed: \$1,889,719.60		

[141] Vista also advanced an alternative argument for damages. It submitted that, if the Court accepted that Oasis would have failed due to Zellers' departure regardless of the Breach, that damages should be assessed for 321 days' of lost rent in the amount of \$337,203.90.

[142] On March 2, 2002, Oasis entered into a ten-year lease for a 25,000 square foot space ("the Oasis lease"). Its rent was \$383,425 annually. Its lease ended on August 1, 2005, due to non-payment of rent.

[143] Oasis first defaulted on its rent in August 2004. In September 2004, Vista agreed to reduce Oasis' rent retroactively to August 1, 2004. The rent abatement continued until December 2004. Thereafter, Oasis defaulted again, and arrears accrued until the Oasis lease ended.

[144] Following the termination of the Oasis lease, Oasis' equipment was sold, and the proceeds of sale were applied to its rent arrears, leaving a balance owing of \$80,404.42. Bodyworks Fitness and Wellness Inc. ("Bodyworks") purchased the equipment and in October 2005 it began to lease a portion of Oasis' space for \$150,000 annually.

[145] The only evidence connecting Oasis' failure to the Breach is the competing evidence of the parties' experts. Vista led no evidence from Oasis regarding this issue.

[146] Ms. Hutcheson noted that Oasis would not have started its operation with an existing clientele and that it would have required time to build its membership base. It was her opinion that, had Zellers remained in the Mall for the term of the Lease, Oasis would have benefitted from its additional traffic to sell memberships. On cross-examination, Ms. Hutcheson acknowledged that she had no experience owning or operating a gym. She confirmed that she did not review any documentation about Oasis' reasons for requesting a rent abatement when preparing her opinion.

[147] Mr. Tate disagreed with Ms. Hutcheson's opinion. Based on his prior experience conducting market analysis for the fitness industry, it was Mr. Tate's opinion that there was little demographic overlap between the customers who frequented Oasis and those who frequented Zellers. It was his opinion that the Breach would have had little impact on Oasis, although he conceded that it may have justified Vista's decision to grant the requested rent abatement commencing in August 2004.

[148] It was Mr. Tate's opinion that the failure of Oasis was due to mismanagement. He noted that its rent was inordinately high and that it would have made it economically challenging to sustain the business. Both Ms. Hutcheson and Mr. Tate acknowledged that Bodyworks was able to establish and sustain a successful gym in the Mall shortly after the failure of Oasis.

Findings

[149] On this issue, I preferred the opinion evidence of Mr. Tate to that of Ms. Hutcheson. He had relevant experience in the fitness industry, and I found his opinion to be more reflective of the evidence. In my view, the success of Bodyworks subsequent to Oasis' departure supports Mr. Tate's opinion that the failure was related to Oasis' business model and unsustainable lease terms and not to the Breach.

[150] Dealing first with the rent abatement, prior to the abatement, Oasis' base rent plus GST was \$27,954.47 per month. After the abatement, it was \$21,666.68. The tenant ledger indicated that the abatement commenced in August 2004 and continued until July 2005. The rent rolls indicated that it commenced in November 2004 and continued until December 2004.

[151] The oral evidence was contradictory regarding the length of the abatement. Ms. Pyper testified that the rent abatement commenced in August 2004 and ended when Oasis once again defaulted on its rent. According to the ledger, the default resumed in January 2005. Ms. Hutcheson and Mr. Tate both testified that the rent abatement was only extended for two months. In her evidence, Ms. Hutcheson referred to the rent rolls. Mr. Tate relied upon Ms. Hutcheson's evidence. I accepted Ms. Pyper's evidence as Vista's bookkeeper, supported by the information in the tenant ledger.

[152] I find that Vista extended the rent abatement to Oasis due to the Breach, and that the losses arising from that abatement fairly arose from the Breach. I find that the parties would have understood when they entered into the Lease that such damages would naturally arise from such a breach of the Lease. I assess the damages arising from the rent abatement to be \$31,438.95, being \$6,287.79 per month for a period of five months.

[153] I find that the remaining damages claimed by Vista due to Oasis' default were unconnected to the Breach. I find that Oasis was a business that was doomed to failure, and its failure would have occurred regardless of anything that was happening with Zellers. I am not satisfied on the evidence that Oasis' failure was expedited by the Breach. The remaining damages claimed by Vista are not compensable losses.

[154] I find that there was no basis on the evidence or at law to award the alternative damages claimed by Vista, and I decline to do so.

Losses from United Furniture Warehouse Ltd. termination and replacement with Community Care Access Centre

Evidence and argument

[155] United Furniture Warehouse Ltd. ("UFW") terminated its lease with Vista on June 30, 2006. Vista claims damages for lost rent, for broker commissions incurred by Vista to secure the tenancy with UFW, and for renovation costs to adapt the UFW space for a new tenant.

[156] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Lost rent during vacancy	\$142,975.76	n/a
UFW Broker Commissions	\$52,176.24	\$3,130.60
Refixturing for CCAC	\$544,300	\$38,101
Lost rent during refixturing	\$114,625	n/a
Total Damages Claimed: \$895,308.60		

[157] Vista also advanced an alternative argument for damages. It submitted an alternative calculation for lost rent during vacancy, based on 321 days of lost rent, in the amount of \$79,414.94. It also submitted an alternative calculation for refixturing costs, as there was a dispute regarding this issue which was settled for \$800,000.

[158] On July 1, 2003, UFW entered into a ten-year lease with Vista (“the UFW lease”). The UFW lease included a clause that granted both Vista and UFW the right to terminate it with three months’ written notice if UFW’s gross revenue did not exceed \$2,000,000 by the end of the third year of the UFW lease.

[159] UFW did not achieve its gross revenue targets and terminated the UFW lease on June 30, 2006. Vista led no evidence from UFW, nor any documentary evidence, regarding the circumstances giving rise to the termination.

[160] UFW’s space was temporarily leased by Bentley from June 15, 2007, until January 31, 2008. It was leased to Community Care Access Centre (“CCAC”) on September 1, 2008.

[161] Ms. Hutcheson noted that UFW was a relatively new tenant at the time of the Breach. She testified that, not only did Zellers’ presence attract traffic to the Mall, but its space provided an easy access point to UFW within the Mall that was lost when Zellers closed. It was Ms. Hutcheson’s opinion that, absent the Breach, UFW would have had a better opportunity to achieve its gross revenue targets which would have locked it into the UFW lease.

[162] It was Mr. Tate’s opinion that there was no causal link between the Breach and UFW’s decision to terminate the UFW lease. He noted that, had UFW elected to remain, its rent was going to increase from an amount based on a percentage of sales, which was approximately \$90,000 annually, to a fixed rent of \$225,000 annually. It was his opinion that this rent increase would have been unsustainable for UFW.

Findings

[163] I agree with Mr. Tate’s assessment that the significant pending rent increase was likely the motivating factor for the decision to terminate the UFW lease. The issue in assessing Vista’s

entitlement to damages, in my view, is whether the Breach caused UFW's failure to meet the gross revenue targets that would have bound it under the UFW lease.

[164] The UFW lease, entered into well before the Breach, recognized that UFW may have challenges satisfying its sales targets in the Mall and gave both it and Vista a mechanism to terminate the UFW lease if it underperformed.

[165] There is no evidence before me beyond speculation that the Breach caused or contributed to UFW's sales performance or its decision to terminate the UFW lease. The UFW tenant ledger discloses that UFW's annual rent, which was based on a percentage of its sales, increased throughout the term of the UFW lease. That term included a period of more than two years after the Breach.

[166] In my view, there were a myriad of circumstances that pre-existed and followed the Breach that could have contributed to UFW's sales performance and its decision to terminate the UFW lease. I am not satisfied on the evidence that Vista has met its burden to demonstrate a causal connection between the Breach and the termination of the UFW lease that would entitle it to any of damages claimed, including the alternative damages. I find that this is not a compensable loss.

Losses from Leathers by Marie Leblanc Inc. termination

Evidence and argument

[167] Leathers by Marie Leblanc Inc.'s ("LBM") lease with Vista was terminated in March 2005 for non-payment of rent. Vista claims as damages rent arrears, as well as the remaining rent owing under its lease.

[168] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Rent arrears	\$1,943.93	n/a
Rent remaining on lease	\$39,983	n/a
Total Damages Claimed: \$41,926.93		

[169] Vista also advanced an alternative argument for damages. It submitted an alternative calculation for lost rent remaining under the lease, based on 321 days of lost rent, in the amount of \$10,616.75.

[170] In October 2003, LBM entered into a five-year lease with Vista (the "LBM lease"). The LBM lease provided for graduated rent increases. LBM defaulted in paying its rent in November 2004. At that time, its rent was \$1,070.25 per month.

[171] The LBM lease was terminated in March 2005 for non-payment of rent. Its inventory was sold, and the proceeds of sale were applied to its rent arrears, leaving a balance owing of \$1,943.93. Vista claims this amount, as well as the remaining rent owing under the LBM lease after subtracting the amounts paid by two temporary tenants that leased LBM's space from November 1, 2005 to January 31, 2006, and from May 1, 2007 to September 30, 2007.

[172] The only evidence connecting LBM's default to the Breach is the competing evidence of the parties' experts. Vista led no evidence from LBM regarding this issue.

[173] Zellers concedes that one month's lost rent in the amount of \$1,076.42 is recoverable by Vista. It concedes that lost rent from a tenant's closure, in breach of their lease, during Zellers' dark period is a reasonably foreseeable type of loss arising from the Breach. It was Mr. Tate's opinion that the remaining damages are unconnected to the Breach and are too remote to be recoverable.

[174] Ms. Hutcheson identified LBM as another relatively new tenant that relied on the traffic generated by Zellers to support its business. It was her opinion that LBM's failure was the result of the Breach and that all losses arising from the termination of the LBM lease are recoverable losses.

Findings

[175] I preferred Mr. Tate's opinion to that of Ms. Hutcheson. If, in fact, LBM's fortunes were tied to Zellers' presence in the Mall, then LBM's closure would have been inevitable following the expiry of the Lease in April 2005. Zellers would not be responsible for damages beyond that date, as they would not be causally connected to the Breach. I find that all losses beyond April 2005, including the alternative damages claim advanced by Vista, are not recoverable losses.

[176] In my view, however, all losses up to April 2005 should be recoverable. I would award damages in the amount of \$3,020.35, representing unpaid rent arrears to the termination of the LBM lease in the amount of \$1,943.93 plus one additional month of rent to the end of the dark period in the amount of \$1,076.42.

Losses from Via Paris termination

Evidence and argument

[177] Via Paris' ("VP") terminated its lease with Vista in October 2004. Vista claims as damages rent to the end of the dark period.

[178] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Lost rent during dark period	\$110.21	n/a

Total Damages Claimed: \$110.21

[179] In March 2004, Via Paris (“VP”) entered into a month-to-month lease with Vista (the “VP lease”). It ended the VP lease in October 2004. Vista re-leased the space and mitigated its lost rent to the end of the dark period, except for \$110.21, which it claims as damages.

[180] VP was also owned by Marie Leblanc.

[181] The only evidence connecting VP’s failure to the Breach is the competing evidence of the parties’ experts. Vista led no evidence from VP regarding this issue.

[182] Zellers’ expert conceded that there could be a causal link between the Breach and the termination of the VP lease during the dark period. Zellers argued, however, that the causal link was more tenuous than in the case of LBM because the VP lease was a month-to-month lease, VP could leave at any time, and no evidence had been led connecting VP’s termination of the VP lease to the Breach.

Findings

[183] Although there was no default of the VP lease, I find that this closure should be considered through the same lens as the LBM closure because both businesses were owned by the same individual. It would be incongruent to find that LBM’s closure was caused by the Breach and not make the same finding regarding VP’s closure within the same timeframe. I am satisfied that the \$110.21 of lost rent from VP is a compensable loss.

Losses from Vanna Shoes termination

Evidence and argument

[184] Vanna Shoes (“Vanna”) terminated its lease with Vista in September 2006. Vista claims as damages rent lost during the period that Vanna’s space was vacant.

[185] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Lost rent during vacancy	\$1600	n/a
Total Damages Claimed: \$1600		

[186] On September 1, 2002, Vanna entered into a five-year lease with Vista (the “Vanna lease”). It terminated the Vanna lease in September 2006. Its rent was \$1,600 per month.

[187] The Vanna lease included the following termination clause:

The Tenant or the Landlord can terminate the lease with 90 days notice to the other party but not within the first three years of the lease unless Zellers discontinues its operations in the Rainbow Outlet Centre. If the Tenant will terminate, it will pay a penalty of \$2,000 plus the unamortized portion of the Tenant Allowance. If the Landlord will choose to terminate it will forfeit the Tenant Allowance already paid but as yet unamortized.

[188] The only evidence connecting Vanna’s failure to the Breach is the competing evidence of the parties’ experts. Vista led no evidence from Vanna regarding this issue. Vista submitted that its were undisputed. Zellers argued that Vanna’s termination was unconnected to the Breach.

Findings

[189] Vanna left the Mall more than two years after the Breach and more than a year after the Lease expired, notwithstanding that it had the option to leave with 90 days’ notice following both the Breach and the Lease expiry.

[190] According to correspondence between Vista and Vanna dated October 9, 2002, the Tenant Allowance was only \$5,000 and therefore it seems unlikely to have been a barrier to an early termination by Vanna. The fact that Vanna remained in the Mall leads me to conclude that there was no causal connection between the Breach and Vanna’s eventual decision to terminate the Vanna lease.

[191] In the circumstances, I find that any losses incurred from Vanna’s termination of the Vanna lease are not compensable losses.

Lost rent from potential new tenants

Evidence and argument

[192] Vista claims lost rent from prospective tenants who they submit would have filled the Mall’s vacancies but for the Breach.

[193] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Lost rent – potential tenants	\$1,586,063	n/a
Total Damages Claimed: \$1,586,063		

[194] Vista also advanced an alternative argument for damages. It submitted an alternative calculation for lost rent from potential tenants, based on 321 days of lost rent, in the amount of \$189,625.62.

[195] In support of its position, Vista relies on a trend analysis prepared by Ms. Hutcheson. She testified that, based upon an analysis of the Mall's progress between June 2001 and February 2004, Vista was trending toward a 5% vacancy rate shortly after the expiration of the Lease. In assessing its damages, Vista assumes that those prospective tenants would have entered into five-year leases.

[196] Vista submits that, were it not for the Breach, it would have had 11 months to continue to reduce its vacancy rate and to bolster its preparations for Zellers' departure upon the expiration of the Lease in April 2005. It argues that it has incurred damages due to this loss of momentum.

[197] Zellers submits that Vista's claim for lost opportunity damages is not supported by evidence connecting those damages to the Breach. It notes that Vista led no evidence about or from prospective tenants, which is a significant evidentiary gap given that Vista was facing a Zellers vacancy in any event. It submits that there is no evidence from prospective tenants that they would have leased space in a mall that Zellers was going to be leaving in 321 days.

[198] It was Mr. Tate's evidence that Ms. Hutcheson's trend analysis was flawed. He observed that it was mere speculation that the Mall's vacancy rate reduction trend would have continued on the same trajectory. It was his opinion that the assumptions underlying Ms. Hutcheson's opinion were unreasonable, and that her trend analysis had failed to consider important information regarding the types of rental spaces contributing to the Mall's vacancies.

Findings

[199] Loss of opportunity occurs "in situations where a contract is breached and one party is deprived of the opportunity to obtain the benefit that was contemplated at the time the contract was made": *Mason Homes Ltd. v. Oshawa Group Ltd.*, [2003] O.J. No. 3826 at para. 256.

[200] To recover damages for loss of opportunity a claimant must prove that the contract breach caused the loss of opportunity, and that the lost opportunity had a reasonable probability of materializing. When assessing damages, the value of the opportunity must be discounted by the unlikelihood of it happening: *Mason Homes* at paras. 256-258; *Eastwalsh* at paras. 33-34, 38, 44, 57-59.

[201] A plaintiff bears the burden of proving their claimed losses and quantum of damages "on a reasonable preponderance of credible evidence". While a wrongdoer will not be relieved of liability simply because lost opportunity damages are difficult to assess, a claimant must still establish causation and demonstrate that it "lost more than a mere chance or speculative claim": *Mason Homes* at paras. 257, 266; *Eastwalsh* at para. 41; *Spina v. Shoppers Drug Mart Inc.*, 2023 ONSC 1086 at para. 481; *Cassandro v. Glass*, 2019 ONCA 654 at para. 35.

[202] I did not find Vista's evidence in support of its claim for loss of opportunity to be compelling.

[203] Ms. Hutcheson's trend analysis was undermined by its assumptions and the information that it failed to consider. Its most glaring oversight, in my view, was its failure consider the

impact of the impending expiry of the Lease on the marketability of the Mall as a retail space and on the terms that would be demanded by prospective tenants.

[204] Even if the Breach had not occurred, Vista would have soon discovered that Zellers was not renewing the Lease. In my view, it is likely that prospective retail tenants would have sought lease terms to shield them from the impact of the expiry of the Lease. Month-to-month leases, “escape clauses”, or rents based on percentage of sales similar to those negotiated by tenants such as TNS, Vanna, and UFW would have been foreseeable.

[205] As noted by Mr. Tate, Ms. Hutcheson’s trend analysis also failed to consider the types of spaces leased leading to the Breach and those contributing to the Mall’s vacancies. The evidence suggests that many of the spaces leased in the year leading to the Breach were large spaces, for example, TNS and Rainbow Cinemas. This may have artificially inflated Vista’s vacancy reduction rate. Vista may not have continued its vacancy rate reduction trend as it turned to smaller spaces, even in the absence of the Breach.

[206] Finally, Ms. Hutcheson’s opinion failed to consider the fact that Zeller’s closure may have had little impact on its ability to attract prospective office tenants.

[207] Vista has not satisfied me on the evidence that Zellers’ early departure caused it to lose prospective tenant opportunities. I am not satisfied that it lost more than a mere chance to fill vacancies in the Mall due to the Breach. I find that lost rent from potential new tenants is not a compensable loss.

Lost percentage rent

Evidence and analysis

[208] Vista submits that its percentage rent declined following Zellers’ early departure. It submits that the decline was due to reduced sales secondary to reduced traffic in the Mall.

[209] Vista claims the following damages:

Loss Claimed	Amount of Loss	GST (where applicable)
Lost percentage rent	\$20,573.21	n/a
Total Damages Claimed: \$20,573.21		

[210] Mr. Hirani and Ms. Pyper testified that, after the Breach, traffic declined substantially in the Mall. They both observed that the Mall reverted to its 2001 state, when Vista had first purchased it, and that there was “nobody” in the Mall. Mr. Harani testified that Mall traffic decreased by 75 to 80 percent.

[211] Some of the tenants in the Mall paid rent calculated as a percentage of their sales. In particular, Ardene, Rainbow Showcase, TNS, and UFW paid percentage rent. Ms. Pyper testified that percentage rent declined by 15 to 20 percent following the Breach. She calculated Vista's loss to be \$20,573.21. Zellers submits that this is a miscalculation and that the difference in rent over the 12-month period prior to the Breach is \$9,244.39.

Findings

[212] A review of the data used to calculate this loss does not support Vista's position that there was a decline in percentage rent connected to the Breach, or even a loss. A review of Exhibit 148, the ledger used to calculate the loss, reveals the following:

- a. TNS stopped paying percentage rent after December 2003, prior to the Breach. The draft lease exchanged between Vista and TNS on February 4, 2004, indicates that percentage rent was "intentionally deleted", which suggests to me that this was a negotiated change unrelated to the Breach. The change appears to have been implemented when it was agreed upon, notwithstanding that the TNS draft was not yet signed.
- b. Rainbow Showcase (not to be confused with Rainbow Cinemas) stopped paying percentage rent in May 2004. The 2005 rent roll discloses that it had commenced paying a fixed rent.
- c. Ardene's percentage rent increased, from \$10,651.05 during the period from May 2003 to April 2004 to \$11,622.70 during the period from May 2004 to April 2005.
- d. UFW commenced paying percentage rent in July 2003. Its percentage rent increased from \$60,881.33 during the period from July 2003 to April 2004 to \$71,646.23 during the comparable period from July 2004 to April 2005.

[213] This evidence leads me to conclude that percentage rent slightly increased following the Breach. In the circumstances, I find that damages have not been proven and there is no compensable loss.

Financing for total losses that were financed

[214] Vista submitted that, in the alternative to awarding judgment based on its claimed losses, if the Court were to assume that any losses would have been incurred regardless of the Breach, but 321 days later, it could award damages to Vista for interest on the expenses it incurred mitigating its losses but limit those damages to 321 days. It calculated that interest to be \$796,216.83.

[215] As I have awarded damages based on Vista's claimed losses, I find that it is unnecessary to determine this alternative claim for damages.

Disposition

[216] In summary, I find that Zellers is liable to pay the following damages to Vista as a result of the Breach:

- a. Losses from inducing Hart Stores to the Mall to replace Zellers as an anchor tenant, in the amount of \$297,679.51.
- b. Losses from Rainbow Cinemas retention concessions, in the amount of \$211,967.
- c. Losses from The Northern Shop lease termination, in the amount of \$26,000.
- d. Losses from the Oasis Fitness lease termination, in the amount of \$31,438.95.
- e. Losses from the Leathers by Marie lease termination, in the amount of \$3,020.35.
- f. Losses from the Via Paris lease termination, in the amount of \$110.21.

[217] The total damages awarded are \$570,216.02. The plaintiff's remaining claims for damages are hereby dismissed.

[218] The parties may make written submissions regarding any calculation errors in damages ordered within 45 days of the date of this decision. Failing this, the damages herein ordered shall become the final judgment of this Court.

[219] Failing agreement, the parties shall file their written submissions as to prejudgment interest and costs within 60 days of the date of this decision.

[220] Should either party wish to schedule a case conference to seek directions with respect to any aspect of this judgment or should either party wish to make oral submissions regarding the calculation of damages, prejudgment interest, or costs, they may request an appearance date before me by contacting the trial co-ordinator at Sudbury, Ontario.

Cullin J.

Released: January 15, 2026

CITATION: Vista Sudbury Hotels Inc. v. The Oshawa Group Limited., 2026 ONSC 313

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

VISTA SUDBURY HOTELS INC. carrying on
business as RAINBOW VALUE CENTRE and VISTA
SUDBURY COMPLEX INC.

Plaintiffs

– and –

THE OSHAWA GROUP LIMITED, OSHAWA
HOLDINGS LIMITED, and ZELLERS INC.

Defendants

REASONS FOR DECISION - DAMAGES

Cullin J.

Released: January 15, 2026