

COURT OF APPEAL FOR ONTARIO

CITATION: Denny's Lube Centre (2016) Inc. v. 1121209 Ontario Inc., 2026
ONCA 67
DATE: 20260204
DOCKET: COA-25-CV-0641

Fairburn A.C.J.O., Huscroft and Zarnett JJ.A.

BETWEEN

Denny's Lube Centre (2016) Inc.

Applicant (Respondent)

and

1121209 Ontario Inc.

Respondent (Appellant)

Terry Corsianos, for the appellant

Andrei Dobrogeanu, for the respondent

Heard: January 27, 2026

On appeal from the judgment of Justice Byrdena MacNeil of the Superior Court of Justice, dated April 30, 2025, with reasons reported at 2025 ONSC 2667.

REASONS FOR DECISION

[1] The appellant landlord challenges two aspects of the application judge's decision.

The Meaning of “Audited Statement”

[2] First, the landlord takes issue with the application judge’s interpretation of the provision of the parties’ commercial lease that required it to provide to the respondent tenant, each year, an “audited statement” of the Additional Rent payable. More specifically, the landlord contests the application judge’s determination that an “audited statement” means a statement prepared by a public accountant duly licensed in accordance with the *Public Accounting Act, 2004*, S.O. 2004, c. 8.

[3] We did not call on the tenant to respond to this argument. The application judge’s interpretation of the lease is entitled to appellate deference. She accurately referred to the principles of contractual interpretation and applied them. No extricable error of law or palpable and overriding error of fact affecting the interpretation arrived at by the application judge has been shown.

[4] We reject the submission that the application judge, by interpreting the phrase “audited statement”, decided a matter outside of the pleadings. The interpretation of that phrase was clearly raised and in issue before her.

[5] We also reject the submission that the application judge failed to properly consider the effect of correspondence sent by the tenant after the lease was signed, demanding back-up information relating to the Additional Rent. The application judge specifically made reference to this correspondence; she was not obligated to give it the interpretive effect the landlord contended for, namely that

the term “audited statement” meant only that the landlord was to provide back-up information for its own calculation. As the application judge pointed out, the lease required both an audited statement as well as back-up information if the tenant requested it. The landlord’s interpretation would make the phrase “audited statement” meaningless. Moreover, the correspondence relied on by the landlord post-dated the signing of the lease. The relevant factual matrix for the interpretation of a contract is that existing at the time the contract is entered into: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S. C.R. 633, at para. 58.

[6] Finally, there is no merit to the landlord’s argument that the phrase “audited statement” simply contemplated a calculation of Additional Rent by a third party, which the landlord eventually provided. As the application judge found, an “audited statement” is one that is prepared by an accountant in accordance with the professional standards associated with an audit, which involves obtaining reasonable assurance that the statement is free of material misstatement. The accountants who compiled the calculation relied on by the landlord expressly stated that under the scope of their retainer they “did not perform an audit engagement or a review engagement ... [and] do not express an audit opinion or a review conclusion, or provide any form of assurance...” with respect to the

calculation. Such a calculation could not be an “audited statement” of Additional Rent as required by the lease.¹

Promissory Estoppel

[7] The landlord’s second challenge relates to the application judge’s conclusion that the doctrine of promissory estoppel applied such that no rent was payable by the tenant for the period prior to January 1, 2021.

[8] The application judge held that the components of promissory estoppel were established. She found that there was a representation by the landlord that rent would not be charged until January 2021, the representation was intended to affect the legal relationship between the parties by altering the obligations under the lease, the tenant reasonably relied on the representation, and the parties’ conduct supported that a representation was made.

[9] The landlord submits that the application judge’s finding that there was a representation that no rent would be charged was flawed, because the application judge went beyond the evidence in the affidavit of the tenant’s representative and also considered his cross-examination to fill in missing detail. We reject this submission. The application judge’s factual determination was properly made on all of the evidence.

¹ As there was no error in the application judge’s interpretation of “audited statement” on the basis that the term was unambiguous, it is unnecessary to address the landlord’s submission that the application judge’s alternative approach, based on the doctrine of *contra proferentem*, was erroneous.

[10] There is also no merit to the submission that the landlord could insist on payment of rent falling due before January 1, 2021 since it gave notice, years later, that it was reverting to its contractual rights. The effect of a promissory estoppel may be terminated by notice prospectively, not retroactively: *Grasshopper Solar Corporation v. Independent Electricity System Operator*, 2020 ONCA 499, at para. 72, leave to appeal refused, [2020] S.C.C.A. No. 360 and No. 361.

[11] The landlord also submits that the application judge erred in concluding that the elements of promissory estoppel were met, because she did not expressly say that there had been detrimental reliance by the tenant. We disagree.

[12] The requirement of detrimental reliance means that a claim of promissory estoppel must include “evidence of prejudice, inequity, unfairness or injustice before courts will [...] hold a promisor to its promise or assurance”: *Trial Lawyers Association of British Columbia v. Royal & Sun Alliance Insurance Company of Canada*, 2021 SCC 47, [2021] 3 S.C.R. 490, at para. 51; see also *Chitty on Contracts*, 36 ed., vol. 1 (London: Sweet & Maxwell, 2026) at 7-044. The application judge canvassed not only the representation that was made but the conduct of the tenant in reliance on it, including accepting the premises when there was both road construction and stay-at-home orders that impacted its business. She found that “it would be unfair, unjust, and inequitable for the [landlord] to recover the full amount of any shortfall in the rents given the conduct of the parties and the course of their dealings from October 2020 to October 2023” (emphasis

added). In the circumstances this is a finding that there was the type of reliance that supports the application of promissory estoppel.

Conclusion

[13] The appeal is therefore dismissed.

[14] The landlord shall pay costs of the appeal to the tenant fixed in the sum of \$11,500, inclusive of disbursements and applicable taxes.

“Fairburn A.C.J.O.”

“Grant Huscroft J.A.”

“B. Zarnett J.A.”