CITATION: 2440537 Ontario Inc. v. Canadian Property Holdings (Winston Churchill One) Inc., 2026 ONSC 1835
COURT FILE NO.: CV-18-00593849-0000
DATE: 20260414

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
2440537 ONTARIO INC. o/a NATIONS Applicant	*Stephen Jackson* and *Anna Johnson*, for the Applicant
– and –	
CANADIAN PROPERTY HOLDINGS (WINSTON CHURCHILL ONE) INC., Respondent	*Sarah Whitmore* and *Julia Campbell*, for the Respondent
	HEARD: February 26, 2026

AKAZAKI J.

REASONS FOR JUDGMENT

OVERVIEW

[1] The tenant, Nations, applied under clause 14.05(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, for the court's interpretation of a commercial lease with the landlord, Canadian Property Holdings. The parties dispute whether the definition of "Net Rentable Area," as defined by para. 4 of Schedule "D" to the lease, includes the dimensions of two mezzanines the landlord had been obligated to tear down.

[2] Nations operates a supermarket in Canadian's Mississauga Plaza, under a long-term lease signed in 2014 and starting on January 30, 2017. Prior to that date, Schedule "C," cl. 1(c), of the lease required the landlord to provide Nations with a clean shell and demolish all interior improvements, including the mezzanines. During the site preparation phase,

Nations considered the mezzanines useful for its purposes and notified Canadian that they could stay.[1]

[3] Based on an architect's certificate calculating the "gross leasable area" of the Nations supermarket, including the mezzanine space, Nations has been paying rent based on an upwardly adjusted calculation per square foot ever since. Nevertheless, from the outset, Nations has disputed the inclusion of the mezzanine space in the rent calculation. After sporadic exchanges of lawyers' letters, Nations brought this suit in March 2018. There was no explanation for the leisurely pace of the litigation, but it came before me this year.

[4] The prayer for relief in the notice of application is simple. Nations seeks determinations of the "Net Rentable Area" as defined by the lease and whether the mezzanines should be included in the measurement. It is a pure clause 14.05(3)(d) application. It is not for me to decide what consequential remedy ensues from the court's determination.

[5] Paragraph 4 contains a measurement formula for calculating the area of the shell leased to Nations. Beyond requiring an architect or surveyor to attend and measure the space based on descriptions of wall surfaces, etc., it requires no expertise to see that para. 4 defined the perimeter for measuring the space between the dimensions. In fact, para. 4 required the architect to apply the dimensions of the lease line and to ignore recessed areas – an instruction he ignored. Because of that error, his calculated area of 55,146 sq. ft. for the shell cannot be used for the "Net Rentable Area," as defined in the lease. Canadian's argument that the architect's measurement of the gross leasable area meant the "Net Rentable Area" is untenable, in the absence of evidence from the architect of a typographical or other inadvertent misnomer. The opinion of its expert in commercial leasing, that the "Net Rentable Area" customarily includes spaces such as the mezzanines, cannot alter the plain reading and effect of the lease as worded.

[6] In arriving at this conclusion, I will consider the following issues raised by the parties:

1. Meaning of "Net Rentable Area"

2. The Architect's Certificate and the Expert Evidence of Standard Commercial Practice

3. Effect of the Estoppel Certificate

1. MEANING OF "NET RENTABLE AREA"

[7] The words, "Net Rentable Area," have a specific meaning in the lease. There is no need to go outside the contract, beyond the fact that Nations relieved Canadian of its obligation to

[1] Some of the materials mistakenly referred to the mezzanines as having been built by Nations. Nations did, however, perform some improvements to them to suit its purposes.

remove the mezzanine area. There was no evidence to compare the savings to Canadian of not having to demolish the mezzanines and the additional rent it has charged Nations.

[8] The rules of construction of commercial agreements require reading the whole contract, giving the words their ordinary and grammatical meaning: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 SCR 633, at para. 47. Here, the parties sought fit to define the terms of an essential point: measurement and calculation of the area of the demised unit in the mall, for calculating rent and other financial obligations. They also delegated the measurement to qualified persons, either an architect or a surveyor appointed by the landlord.

[9] The lease defined "Net Rentable Area" in para. 4 of Schedule "D." The paragraph contained two parts. To unpack the densely worded text, I have divided the two parts and added bold font, as follows:

> In this Lease, when the words "Net Rentable Area" refer to the Leased Premises or any other rentable commercial/retail premises in the Shopping Centre, **the words "Net Rentable Area" shall mean the area**, in square feet (or, at the Landlord's option, in square metres) as certified by the Architect or Landlord's Ontario Land Surveyor, **of the Leased Premises measured from** (a) the exterior face of all exterior walls, doors and windows of the Leased Premises or the other rentable commercial/retail premises in the Shopping Centre; (b) the exterior face of all interior walls, doors and windows separating the Leased Premises or the other rentable commercial/retail premises in the Shopping Centre from Common Areas and Facilities, if any: and (c) the centre Iine of all interior walls separating the Leased Premises or the other rentable commercial/retail premises in the Shopping Centre from adjoining leasable premises.
>
> The Net Rentable Area of the Leased Premises and the Net Rentable Area of the Shopping Centre includes all interior space whether or not occupied by projections, structures or columns, structural or non-structural, and if a store front is recessed from the lease line, the area of such recess for all purposes lies within the Net Rentable Area of the Leased Premises or the Net Rentable Area of the other rentable commercial retail premises in the Shopping Centre.

[10] The first part of para. 4 defines the "Net Rentable Area" as the area of the "Leased Premises" measured from – followed by the points of reference for the architect or surveyor. The "Leased Premises" was already defined in s. 1.02 of the main body of the lease. For ease of reading, I have extracted the essential wording:

> … premises … presently designated as Unit Number 18, containing a Net Rentable Area of approximately fifty five thousand (55,000)

> square feet as shown outlined in RED on the site plan attached hereto as Schedule "B" and which shall be measured or calculated by the Architect or by an Ontario Land Surveyor or other Person designated by the Landlord in accordance with the criteria set forth in Schedule "D" of this Lease. …
>
> The boundaries of the Leased Premises extend from the top surface of the structural subfloor to the height of the demising walls as reasonably determined by the Landlord.

[11] The words, "containing a Net Rentable Area," followed by measurement or calculation, denote that "Area" refers to a figure in square feet. I do not construe the figure 55,000 as determinative, since it was described as approximate and subject to the measurement or calculation. The words "measured *or* calculated" imply interchangeability. However, para. 4 of Schedule "D" only refers to "measured." Nevertheless, the measurement of an area requires calculation of the square feet. The only task delegated to the architect or surveyor is measurement of the area, from defined dimensions. The lease provision requires no exercise of professional judgment to include balconies, mezzanines, or other usable floor surfaces inside the leased premises.

[12] The second part of para. 4 clarifies the first part, by stating that the area *includes* "all interior space," whether or not *occupied* by projections, structures, or columns. If a store front is recessed, the recessed area forms part of the measurable area. This combination of the words "includes," "occupied," and "whether or not" clearly establishes that the area taken up by interior features cannot be deducted from the "Net Rentable Area." The words "whether or not" also imply that the projections, structures, or columns cannot be added to the "Net Rentable Area." Instead, the measurements and area calculations are to be performed as if such features were absent.

[13] Without needing to specify how they define "Unit Number 1B" as outlined in "RED" on the site plan referenced in s. 1.02,[2] the three dimensions in para. 4 described as (a), (b), and (c) referred to the exterior face of walls, doors, and windows for (a) and (b) and the centre line of interior walls shared with other rentable premises for the purpose of (c). The words "measured from" denote the intention to consider these three linear dimensions as the perimeter of the area, for calculation of the interior space. The absence of the preposition "to" simply avoids the confusion of having to pick a starting dimension.

[14] The plain and grammatical meaning of para. 4, in the context of the definition of "Leased Premises" in 1.02, describes a shell. Any features such as projections, structures, or columns can neither be deducted or added to the area measurement. The fact that the Leased Premises had two mezzanines no more increased the measured area by augmenting the usable space than any projection, structure, or column could have decreased the measured

[2] It appeared in the site plan as "RETAIL A," and no red outline appeared in the site plan duplicated in the application records.

area by putting space out of use. Because these dimensions describe the perimeter only without reference to a floor, Nations could have added an entire second floor without adding to the "Net Rentable Area," as defined. In contrast, the definition in para. 3 of the "Gross Floor Area" of the shopping mall required a specific exclusion of the basement storage facility.

[15] A plain and grammatical reading of para. 4 of Schedule "D" therefore does not contemplate adding the mezzanine floor area to the "Net Rentable Area."

2. THE ARCHITECT'S CERTIFICATE AND THE EXPERT EVIDENCE OF STANDARD COMMERCIAL PRACTICE

[16] Canadian argued that the architect's certificate it provided to Nations at the outset of the lease and the affidavit from its expert on commercial tenancies should govern the issue of addition or exclusion of the mezzanine spaces in the area calculation. By combined operation of clause (e) of s. 1.06 and s. 9.04 of the lease, if there is a dispute as to the "Net Rentable Area," the architect's certificate is binding after a 30-day period during which it was subject to challenge. Because of the incorrect mandate statement in the certificate referring to "gross" instead of "Net," I need not decide whether this application could have been barred if the certificate had used the correct wording. The landlord did not provide a certificate for the measurement of the "Net Rentable Area."

[17] Before the Commencement Date of January 30, 2017, Canadian delivered the certificate of Frank Nucifora of Alex Rebanks Architects Inc., dated December 7, 2016. The landlord's cover letter dated December 14, 2016, purported to comply with the requirement in s. 1.05, cl. (b) of the lease stated:

> Prior to the Commencement Date the Landlord, provide [*sic*] a certificate as to the Net Rentable Area of the Leased Premises measured in accordance with the provisions of Schedule "D" of this Lease prepared by the Landlord's Architect or an Ontario Land Surveyor and such certificate shall form a part of this Lease.

[18] The certificate stated that the "gross leasable area" of the unit was 60,536 sq. ft., including the mezzanines. Without the mezzanines, the ground floor area was 55,146 sq. ft. Nations objected to the use of "ANSI/BOMA" standards for measurement. On May 13, 2017, Nation's lawyer notified Canadian that the architect had certified the "gross leasable area" including the mezzanines based on the ANSI/BOMA standard but not based on the method of measurement of the "Net Rentable Area" under the lease.

[19] After Nations' objection, Charles Kennedy, the Director of Construction at CREIT Management LP, Canadian's property management firm, provided the architect with Schedule "D." I drew the inference from this event that Mr. Nucifora had not previously seen the lease wording. This fact was also consistent with the drawing in the certificate,

which indicated shaded dimensions for the calculated area. The perimeter dimensions in the certificate drawing included exclusions of recessed store fronts behind the lease lines depicted in the contractual site plans, contrary to the stipulation in para. 4 of Schedule "D" that:

> … if a store front is recessed from the lease line, the area of such recess for all purposes lies within the Net Rentable Area of the Leased Premises ...

[20] The architect then reissued the certificate, with the original date and identical drawing, but substituted the "ANSI/BOMA" methodology note to "area calculations are based on lease agreement document Schedule 'D' method of floor measurement executed on October 5, 2014." The continued use of the same drawing, without regard to the requirement to include the recessed areas, also suggested the architect did not read the lease wording or was indifferent to the change in methodology.

[21] Ultimately, the architect's certificate did not certify the "Net Rentable Area." Those three words did not appear on either certificate. Interestingly, Nations relied on the words, "Gross Rentable Area," used in para. 3 of the June 27, 2014, Offer to Lease. That provision estimated the "Gross Rentable Area" at 55,000 sq. ft. and specifically excluded "the areas of any mezzanines" and other areas. Beyond the obvious logic that a net figure should be lower than a gross one, one might consider a nuanced comparison resulting a counter-intuitive distinction. However, s. 14.21 of the lease, an Entire Agreement clause, precluded any comparison between the documents.

[22] Canadian's lawyer provided the revised certificate on June 6, 2017, and stated:

> While the attached area certificate replaces the earlier one dated December 7, 2016, the end result is still the same in that the Net Rentable Area of the Leased Premises is shown to be 60,536 square feet.

[23] This unfortunate attempt at making a silk purse out of a sow's ear – which Mr. Nucifora's revised certificate undoubtedly was – perpetuated the back-and-forth exchange between the lawyers until the launch of this application.

[24] The discovered defect in the certificate ought to have presented an opportunity for the landlord, as the one instructing the architect, to prevent future disagreement over the square footage by examining precisely what the contractual wording required the architect to measure. Before representing that "Net Rentable Area" and "gross leasable area" were identical, Canadian's lawyer ought to have questioned why that would be. In the absence of such inquiry, the statement in his letter was axiomatically an attempt to hammer a square peg into a round hole. Because such attempts inevitably irritate the intelligence of the interlocutor, it was not surprising that Nations continued to press the issue.

[25] In hindsight, at least, the 2017 correspondence emerged as the missed opportunity to resolve the point without a protracted lawsuit. Canadian's current counsel provided a clear illustration of how this could have been done, by citing *KMH Cardiology Centres Incorporated v Lambardar Inc*., 2022 ONSC 7139. At paras. 32-37 and 49 of that case, Myers J. construed a provision in the lease delegating the resolution of disputes to an expert nominated by landlord and or approved by the tenant, as allowing the expert to determine whether basements should be included in the "gross leasable office space" for allocation of building operating expenses. The decision is consistent with the reality of contracts in many commercial and industrial contexts containing third-party expert determination of disputed issues. These are not arbitrators but experts, usually appointed mutually or proposed by one party and consented by the other.

[26] The fact that the expert might be called on to interpret a contract is also commonplace and should not be a bar to the use of an expert: *LPF NRStor Holdings LTP v. NRStor Incorporated*, 2025 ONSC 2514, at paras. 30-32. The expert cannot, however, rewrite or depart from the contractual mandate: *Ivaco Inc. (Re)*, 2007 ONCA 746, at para. 3, and *Saputo Inc. et al v. Dare Holdings Ltd. et al*, 2012 ONSC 4981, at para. 6.

[27] Examples of the role of expert certifiers are not hard to find. Although subject to curial review, experts acting reasonably within their mandates tend to command considerable defence. See *Tokayer v. Verduci et al*., 2025 ONSC 5475, at paras. 53-55. Every building project of a significant magnitude will nominate an architect or engineer as a payment certifier for the purposes of triggering the release of holdbacks and funding from lenders. That role is also enshrined in the *Construction Act*, R.S.O. 1990, c. C.30, such as the trust provisions under Part II. Such a certifier can routinely be expected to interpret construction agreements, drawings, and specifications, to maintain the progress of a building project. Many partnership and shareholder agreements refer to accountants or valuators for binding determination of financial issues. This mechanism is designed to inoculate annual financial reconciliations against incubation of acrimony and litigation.

[28] The purpose of parties contracting to rely on experts to certify technical points such as measurement of premises is to perpetuate confidence and good faith in their ongoing relations. The architect in this case appeared insensitive this purpose. He simply replaced the "ANSI/BOMA" wording with the one citing Schedule "D" of the lease, without regard to what the different methodology required. He also never certified the "Net Rentable Area," as required. He did not bring to the issue his expertise and status as certifier of a technical measurement. Rather, the only skill he brought to the exercise was altering a document without showing whether he used software or correction tape.

[29] Counsel for Canadian argued that the reference to "gross" area was equivalent to a typographical error substituting "gross" for "Net." Because the word appears in the phrase, "Gross Floor Area," in other parts of Schedule "D," I find that such an error plausible. However, the nature of the error cannot inspire confidence in the person who made the error. Canadian did not file an affidavit from the architect, Mr. Nucifora, avowing inadvertence. Equally plausible is the possibility that the architect simply misunderstood or was indifferent to his mandate.

[30] The architect's implicit opinion of what constituted the gross rentable area was oddly consistent with the expert affidavit of Jeff Ross, an expert in commercial real estate practices hired by Canadian. Mr. Ross opined that the "Net Rentable Area" must include the mezzanines, for three reasons:

(1) Nations is making use of them;

(2) they are "interior space" as defined in Schedule "D"; and

(3) charging rent for mezzanines is a standard practice in Ontario commercial tenancies, and no commercial tenant would expect to use them for free.

[31] Essentially, Mr. Ross' opinion boiled down logically to an equation of "Net Rentable Area" with the total space the tenant can use, as opposed to the specific two-dimensional algorithm contained in para. 4 of Schedule "D" requiring measurements *from* defined perimeter boundaries. Mr. Ross' approach simply replaced the legal wording with industry custom or subjective opinion. Both the custom and his opinion may be valid and logical, but neither Mr. Ross nor the court can rewrite the contract: *AXA Insurance (Canada) v. Ani-Wall Concrete Forming Inc*., 2008 ONCA 563, at para. 30.

[32] Mr. Ross' opinion contained no discussion of the difference in commercial leasing between net and gross, although there must have been a practical distinction because of their separate use in Schedule "D." There was also no commentary on any difference between "leasable" and "Rentable," beyond what might interest a linguist.

[33] The dispute would never have arisen, if the landlord's agent had originally instructed the architect to follow the lease methodology. Comparing the Offer to Lease and the Lease, I also appreciate Nations' belief that the landlord seized on the architect's error to increase the rent based on mezzanine surfaces that were never intended to remain part of the demised premises. Neither of these considerations ultimately affect the outcome of this suit, which must be based on a reading of the lease wording in accordance with ordinary common law convention.

[34] As a practical matter, it might seem obvious that the court could use the architect's certificate without the measurement of the mezzanines, to arrive at a "Net Rentable Area" of 55,146 sq. ft. However, that figure could be marginally low, because of the deduction of spaces recessed from the lease line. The only valid and credible resolution for the parties is to require the landlord's architect to remeasure the area of the premises' shell at the lease line, without such deductions.

3. EFFECT OF THE ESTOPPEL CERTIFICATE

[35] Canadian relied on a "Tenant's Acknowledgement" form, dated June 26, 2017, addressed to its mortgagee stating that Nations occupied an area of 60,536 sq. ft. and that the monthly rent for June 2017 in the amount of $116,027.33 has been paid. This document, prepared

in anticipation of the landlord's refinancing of the whole shopping centre, replaced a 2016 document acknowledging 55,000 square feet. Canadian referred to the 2017 document as an estoppel certificate binding Nations to the higher figure for the square footage stated in the architect's certificate.

[36] On its face, I cannot construe the acknowledgement beyond capturing the point-in-time situation when Nations executed it. At that time, it paid $116,027.33 in rent for June 2017, based on occupation of 60,536 sq. ft. Previously, the certificate stated 55,000. Both documents were true and honestly fulfilled their purpose of satisfying the risk management requirements of the mortgage underwriter. Neither document expressly bound either party to a figure for the "Net Rentable Area."

[37] The 2017 estoppel certificate could not determine the issue in this application, any more than the 2016 version bound Canadian to the lower figure.

CONCLUSION AND COSTS

[38] In terms of the relief sought in the application, the only conclusion the court can reach is that the "Net Rentable Area" as defined in the lease does not include the mezzanines. Because the architect did not follow the lease wording requiring the area to be measured at the lease line, the parties cannot rely on the measurement of the area of the shell used to construct the supermarket. Such an exercise would not be onerous for the landlord's architect to complete. If Mr. Nucifora only changes the words "gross" to "net" and continues to include the mezzanines in his calculation, counsel for Nations has leave to summon him to testify at a live continuation of the hearing.

[39] Despite the litigation, the parties must coexist for the balance of a lease not ending until at least 2037. The figures in the bill of costs submitted by Nations' counsel are rather modest, for litigation of this nature. I urge the parties to resolve the costs of the application. If they are unable to do so within 14 days, counsel for Nations may deliver costs submissions to which Canadian's counsel may reply within a further 14 days. Any submissions should be served and filed and forwarded to my judicial assistant.

Akazaki J.

Date: April 14, 2026

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Released: April 14, 2026