COURT OF APPEAL FOR ONTARIO

CITATION: Priestly Demolition Inc. v. Universal Designs Ltd., 2024 ONCA 75
DATE: 20240202
DOCKET: COA-23-CV-0672

MacPherson, Miller and Paciocco JJ.A.

BETWEEN

Priestly Demolition Inc. and The Julien Holding Corporation

Plaintiffs
(Appellants)

and

Universal Designs Ltd.

Defendant
(Respondent)

James W. Kitts and Michael Decsey, for the appellants

Anthony H. Gatensby and Kathleen Lefebvre, for the respondent

Heard: January 24, 2024

On appeal from the order of Justice Michael Dineen of the Superior Court of Justice, dated May 10, 2023.

REASONS FOR DECISION

[1] The appellant Julien Holding Corporation is the beneficial owner and landlord of a commercial building located at 226 Edward Street in Aurora.

[2] The respondent Universal Designs Ltd. is a company that designed replica clothing based on movies.

[3] On November 1, 2018, the appellant and respondent entered into a lease for a unit in the appellant's commercial building in Aurora.

[4] On March 8, 2019, a fire in the respondent's unit caused damage to the unit and the building. The appellant's insurers brought an action against the respondent in which they claimed the respondent was responsible for the fire and sought damages.

[5] The respondent denied liability for the fire and asserted that the terms of the lease precluded any recovery for damage caused by the fire.

[6] On a Rule 22 (Special Case), *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, motion, Dineen J. stated the issue in these terms:

> The issue in this case is whether a commercial lease between the parties permits the landlord's insurer to bring a subrogated action against the tenant for damage sustained in a fire alleged to have resulted from the tenant's negligence, or whether the tenant's payment of a share of the landlord's insurance pursuant to the lease precludes such an action.

[7] The motion judge considered whether the indemnification provision and other terms in the lease that provide that the tenant (the respondent) is responsible for certain damage arising from its conduct were intended to displace the assumption that would otherwise flow from the tenant contributing to the landlord's fire insurance that the risk of loss by fire would be borne by the landlord (the appellant). He concluded that the lease must be read as a whole but ultimately the

provisions on which the appellant sought to rely did not reflect an intention that the respondent should not receive the full benefit of insurance to which he contributed. He noted that the indemnity provision in the lease said nothing about operating notwithstanding the respondent's contribution to the appellant's insurance.

[8] In the end, the motion judge concluded:

> Accepting that this lease is not free of ambiguity on this issue, I find that the interpretation advanced by the defendant is most consistent with the lease read as a whole. I would hold that the subrogated action is barred by the lease.

[9] The appellant contends that the motion judge made three errors in his interpretation of the lease.

[10] First, the appellant submits that the motion judge failed to read the lease as a whole in a manner that gave meaning to all of its terms and avoided an interpretation that would render one or more of its terms ineffective.

[11] We do not accept this submission. The motion judge explicitly identified and analyzed the terms in the lease relating to additional rent, insurance obligations, maintenance and repair, and indemnity. He was alive to the entire contract and, especially, the obligations it imposed on both parties.

[12] Second, the appellant asserts that the motion judge failed to properly consider or give weight to case law directly on point.

[13] We are not persuaded by this submission. The motion judge explicitly considered the leading decision by this court in this area of law, *Royal Host GP Inc. v. 1842259 Ontario Ltd.*, 2018 ONCA 467, and two more recent decisions in the same domain, *Paulin v. Keewatin Patricia District School Board*, 2019 ONCA 286 and *Capital Sewer Servicing Inc. v. Crosslinx Transit Solutions Constructors*, 2022 ONCA 10. In our view, there is nothing in the motion judge's reasoning and conclusion that falls afoul of these decisions. Indeed, the motion judge explicitly pointed out a crucial difference between the issue in this case and in *Royal Host*: "Unlike the lease in *Royal Host*, the indemnity provision in this lease says nothing to indicate that it operates notwithstanding the contribution of the tenant to the landlord's insurance."

[14] Third, the appellant contends that the trial judge erred by interpreting the lease in a manner that conflicts with the intention of the parties. Specifically, as expressed by the appellant in its factum: "The Motion Judge only considered commercial efficacy from the perspective of Universal Designs. He did not consider the perspective of Julien."

[15] In our view, this argument is not different from, and adds nothing to, the first two grounds of appeal. The motion judge was completely alive to the perspectives and arguments of both parties.

[16] The appeal is dismissed. The respondent is entitled to its costs of the appeal fixed, pursuant to the agreement of counsel, at $6,500, inclusive of disbursements and HST.

"J.C. MacPherson J.A."
"B.W. Miller J.A."
"David M. Paciocco J.A."