COURT OF APPEAL FOR ONTARIO

CITATION: LAF Canada Company v. Woodbine Highway 7 Retail Inc., 2026 ONCA 708
DATE: 20261006
DOCKET: COA-25-CV-1140

Thorburn, Gomery and Dawe JJ.A.

BETWEEN

LAF Canada Company

Applicant (Respondent)

and

Woodbine Highway 7 Retail Inc.

Respondent (Appellant)

Brian Nathan Radnoff and Juli Kim, for the appellant

Jeff Haylock and Emily Young, for the respondent

Heard: August 31, 2026

On appeal from the order of Justice Ira G. Parghi of the Superior Court of Justice, dated July 2, 2025, with reasons reported at 2025 ONSC 3914.

Thorburn J.A.:

OVERVIEW

[1] This appeal concerns the enforceability of a *force majeure* clause in a landlord and tenant agreement ("the lease").

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[2] The appellant, Woodbine Highway 7 Retail Inc. (“the landlord”) is an Ontario property management company. The respondent, LAF Canada Company (“the tenant”), operates health clubs and fitness facilities across Canada.

[3] The tenant leased premises from the landlord in Markham to operate a fitness facility. During the COVID-19 pandemic, following government restrictions, the facility shut down for 348 days.

[4] The tenant continued to pay rent during this period.

[5] The landlord appeals the application judge’s order that the *force majeure* clause in the parties’ contract operated to extend the parties’ lease, without rent owing, for a corresponding 348 days.

[6] The landlord claims that in so doing, the application judge:

(i) erred in his interpretation of the lease;

(ii) erred in finding that this court’s decision in *Niagara Falls Shopping Centre Inc. v. LAF Canada Company*, 2023 ONCA 159, 167 O.R. (3d) 198 (“*Niagara*”), is determinative, or alternatively, should have declined to apply *Niagara* on the basis that it was wrongly decided; and

(iii) failed to consider that this decision is commercially unreasonable and would create a new obligation for

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commercial landlords in Ontario, regardless of what their leases provide.

[7] For the reasons that follow, I would dismiss the appeal.

THE TERMS OF THE LEASE

[8] The relevant terms of the lease are set out below.

[9] Section 1.9 provides that the "Primary Uses" of the premises "shall be for the operation of a health club and fitness facility which may include, without limitation, weight and aerobic training, group exercise classes, exercise dancing such as Zumba, yoga, Pilates, racquetball/squash, personal training, aerobics, health and fitness related programs, free weights, spinning/cycling, circuit training, boxing, basketball, swimming pool, swim lessons, racquetball/squash lessons, sauna and whirlpool facilities." Together, these uses constitute "the health club and fitness facility operated within the Premises".

[10] Section 1.9 also provides that the "[t]enant may use portions of the premises for uses ancillary to a health club and fitness facility", such as a pro shop to sell fitness-related items, physical therapy, spa services, sports medicine, a tanning salon, a juice bar, and childcare.

[11] Under s. 2.1 of the lease, the landlord "demises and leases to Tenant and Tenant hereby leases from Landlord the Premises, upon and subject to the terms, conditions and provisions set forth in this Lease, together with any and all rights,

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benefits, privileges and easements, now or hereafter appurtenant to the Premises and the Project".

[12] In s. 8.3, the tenant covenants not to "use or allow the Premises to be used for any illegal purposes".

[13] Finally, the *force majeure* clause at s. 22.3 of the lease provides that, if either party is "delayed or hindered in or prevented from the performance of any act required" under the lease because of "restrictive laws", "performance of such act" is "excused for the period of delay caused by the Force Majeure Event" and the "period for the performance of such act" is "excused for the period of delay" and "extended for an equivalent period".

THE STANDARD OF REVIEW

[14] Contractual interpretation is a question of mixed fact and law, which attracts a deferential standard of appellate review. Intervention is only warranted where the decision under review contains an error of law or a palpable and overriding error of fact or mixed fact and law: *Sattva Capital Corp. v. Creston Moly Corp.,* 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 50-54; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] S.C.R. 235, at para. 37.

[15] Courts must be vigilant in distinguishing between an extricable question of law and a question of whether the application of a settled legal test should have resulted in a different outcome: *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32, [2017] 1 S.C.R. 688, at para. 45. Appellate intervention in contractual

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interpretation cases should be limited “to cases where the results can be expected to have an impact beyond the parties to the particular dispute”: *Sattva,* at para. 51.

[16] This is a case of contractual interpretation involving questions of mixed fact and law to which the standard of palpable and overriding error applies.

ANALYSIS

A. THE APPLICATION JUDGE MADE NO PALPABLE AND OVERRIDING ERROR IN INTERPRETING THE LEASE

[17] The appellant argues that the application judge erred in interpreting the lease as requiring the landlord to provide premises to the tenant for use as an in-person fitness facility. Interpreted correctly, the landlord argues, the lease never placed any obligations on the landlord which it did not meet, because the landlord never actively interfered with the tenant’s use of the premises, and the tenant could have instead used the premises for virtual fitness classes. As a result, the application judge was incorrect in finding that the *force majeure* clause was triggered.

[18] For the reasons that follow, I do not agree.

[19] First, whether a particular event triggers a *force majeure* clause depends on the wording of the clause and the event in question.

[20] The lease must be interpreted as a whole and in accordance with the parties’ contractual rights and obligations. As the Supreme Court of Canada explained in *Atlantic Paper Stock Ltd. v. St. Anne-Nackawic Pulp and Paper Company*

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Limited, [1976] 1 S.C.R. 580, at p. 583, a *force majeure* clause operates where an event beyond the control of the parties prevents performance of the contract. The *force majeure* clause in this lease provides the contractual mechanism for addressing precisely the circumstance at issue.

[21] Second, no independent contractual breach on the part of the landlord is required to invoke the *force majeure* clause. Only two factors are required: (1) a party must be delayed, hindered, or prevented from performing an act required under the lease; and (2) failure must result from a *force majeure* event: *Niagara,* at para. 42.

[22] These requirements of the *force majeure* clause are not in dispute, nor is the character of the disrupting event; “restrictive laws” are clearly a *force majeure* event under s. 22.3 of the lease.

[23] Therefore, for the *force majeure* clause to have been properly invoked, the operation of an in-person fitness facility must have been required under the lease, and the landlord must have been required to provide premises for use as an in-person fitness facility. Both conditions were met in this case.

[24] First, the lease contemplates that a health club and related activities will be operated “within the premises” in exchange for the payment of rent. The primary use of the premises was therefore not merely the occupancy of space, but the operation of a health club and fitness facility, in-person, on the premises.

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[25] The appellant's proposed alternative of virtual programming flies in the face of the text of the lease contemplating a "health club and fitness facility operated within the Premises", and the appellant does not assert that such virtual programming was within the objective contemplation of the parties when they entered into the lease. In any event, changing to ancillary uses would not have fulfilled the commercial purpose of the tenancy, and was inconsistent with the agreement as a whole. Moreover, s. 8.1 permitted the landlord to terminate the lease if LAF did not "remain open for the conduct of business" for more than 180 days, subject to various exceptions, one being the existence of a "Force Majeure event". It is therefore clear from the terms of the lease, that both parties were contemplating LAF running an in-person fitness facility in the shopping mall.

[26] Second, there is no palpable and overriding error in the application judge's decision that the landlord's "primary obligation under the lease was to provide premises to LAF for use as a fitness facility".

[27] The parties agree that the primary use of the premises was for the tenant to operate a health and fitness facility. Under s. 2.1 of the lease, the landlord was required to lease the premises to the tenant, "upon and subject to the terms, conditions, and provisions set forth" in the lease, including s. 1.9. A landlord is required to provide a tenant with leased premises for its intended and contracted use.

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[28] The trial judge therefore made no error justifying appellate intervention in her interpretation of the contract. The COVID-19 pandemic and resultant government restrictions rendered the premises unfit for the primary uses contemplated in the lease and, as such, constituted a *force majeure* event. The *force majeure* clause addressed the circumstances which transpired such that the lease was extended for the duration of the government-mandated closures: 348 days. Because the tenant has already paid rent for those 348 days, the application judge correctly held that the tenant owes no rent for the 348-day extension.

[29] The question is not, as the landlord argues, whether the landlord prevented the tenant from entering the premises. Rather, the question is whether the government-mandated closures prevented the landlord from performing its contractual obligation to provide premises fit for the primary uses which constituted the central purpose of the lease. They clearly did.

[30] Moreover, contrary to the landlord's argument, the requirement imposed on the tenant by s. 8.3 of the lease to not use the premises for illegal purposes does not preclude the operation of the *force majeure* clause. Both the landlord and tenant are required to perform in accordance with the law and can be hindered in their performance by its restrictions.

[31] For these reasons, I find the application judge made no palpable and overriding error in interpreting the lease.

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B. *NIAGARA* IS DETERMINATIVE AND IS NOT WRONGLY DECIDED

[32] My conclusion regarding the interpretation of the lease is reinforced by *Niagara,* where this court considered a substantively similar *force majeure* contractual provision, involving a fitness facility owned by the same tenant, subject to the same COVID-19 restrictions.

[33] In *Niagara*, at para. 28, this Court held that "the motion judge made no error" in finding that "the government-ordered closure of the Premises was a *force majeure* event triggering the operation of the Force Majeure Clause for the Landlord", and that the restrictions "prevented the Landlord from performing its obligation under the lease to provide the Premises for use as a fitness facility". The Court upheld the motion judge's determination that the landlord was required to provide premises upon which a health club could operate in-person.

[34] The fact that the landlord did not itself impose the closure, prevent access to the premises, or intentionally interfere with the tenant's business did not change the analysis in *Niagara*.

[35] In *Windsor-Essex Catholic District School Board v. 2313846 Ontario Limited o/a Central Park Athletics*, 2022 ONCA 235, 27 B.L.R. (6th) 163, this court upheld the finding that government lockdowns prevented a landlord from performing its obligation to provide the leased premises for their contracted use. The lockdowns were held to constitute a *force majeure* event. While in that case, the landlord took affirmative steps to prevent the tenant from accessing the premises, the effect of

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the restrictions was the same: preventing the landlord from providing what the parties had contracted for.

[36] Moreover, the cases cited by the landlord to suggest that *Niagara* is wrongly decided are distinguishable.

[37] The case of *Hudson's Bay Company ULC v. Oxford Properties et al.,* 2021 ONSC 4515, 156 O.R. (3d) 427, aff'd *Hudson's Bay Company ULC Compagnie de la Baie D'Hudson SRI v. Oxford Properties Retail Holdings II Inc.,* 2022 ONCA 585, 163 O.R. (3d) 81, is of no assistance to the landlord. In that case, at para. 33, the court held that "the landlord did not do anything that caused the closure of the mall", and therefore, refused to grant the tenant "an abatement based on a breach of the tenant's right to quiet enjoyment". However, that holding regarding the right to quiet enjoyment – in a case about relief from forfeiture under s. 20 of the *Commercial Tenancies Act,* R.S.O. 1990, c. L.7 – does not affect the result under the *force majeure* clause at issue here.

[38] Similarly, while there was a *force majeure* clause at issue in *Porter Airlines Inc. v. Nieuport Aviation Infrastructure Partners GP,* 2022 ONSC 5922, the result in that case has no bearing on this one. In that case, the *force majeure* clause was not triggered, because despite the restrictions of the COVID-19 pandemic, Porter Airlines could still have met the obligation under the contract (payment of funds) it was seeking to avoid: para. 452. Moreover, no government order required Porter

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Airlines to suspend its commercial aviation operations; it did so of its own accord: paras. 460-1.

[39] For these reasons, I find that the reasoning in *Niagara,* that the government-mandated closures triggered the *force majeure* clause by preventing the landlord from performing its obligation to provide premises for use as a fitness facility, applies in this case.

[40] I reject the landlord's submission that *Niagara* was wrongly decided. As in *Niagara,* the issue in this case is not whether the landlord breached the lease, but whether the landlord was prevented from performing its contractual obligation because of a *force majeure* event. Since the answer to this question is yes, the *force majeure* clause excused performance of the contract for the duration of the closures and extended the period for performance by the same time.

C. THE DECISION IS NOT COMMERCIALLY UNREASONABLE

[41] Nor do I agree with the landlord's claim that the application judge's interpretation is commercially unreasonable and would create a new obligation for commercial landlords, regardless of what their leases provide.

[42] The terms of this lease specifically envisage a rent-free extension for the period during which the *force majeure* clause operates. When entering into the lease, the parties clearly contemplated that, should the circumstances arise such that the *force majeure* clause was invoked, this would be the result. The result is particular to the wording in this contract.

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CONCLUSION AND COSTS

[43] The application judge correctly interpreted the lease, identified the landlord's obligation to provide premises for use as a health club and fitness facility, and concluded that the government-mandated COVID-19 restrictions prevented the landlord from performing that obligation, triggering the *force majeure* clause. Moreover, the landlord's proposed alternatives for the premises were inconsistent with the primary use contemplated by the lease.

[44] As such, the *force majeure* clause was properly invoked, and because rent had already been paid for the 348-day period, the tenant owes no rent for the 348-day extension. The absence of an intentional act by the landlord does not preclude the operation of the *force majeure* clause.

[45] For the above reasons, I would dismiss the appeal. On the agreement of both parties, the respondent tenant LAF Canada is entitled to its costs in the amount of $20,000, all inclusive.

Released: October 6, 2026 "J.A.T."

"Thorburn J.A."
"I agree. S. Gomery J.A."
"I agree. J. Dawe J.A."

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