

COURT OF APPEAL FOR ONTARIO

CITATION: North York Family Physicians Holdings Inc. v. 1482241 Ontario
Limited, 2012 ONCA 36
DATE: 20120120
DOCKET: C53593

Feldman and LaForme JJ.A. and Swinton J. (*ad hoc*)

BETWEEN

North York Family Physicians Holdings Inc.

Applicant (Respondent in Appeal)

and

1482241 Ontario Limited

Respondent (Appellant)

Flora Poon, for the appellant

David P. Preger, for the respondent

Heard and released orally: January 16, 2012

On appeal from the order of Justice Katherine Corrick of the Superior Court of Justice, dated March 22, 2011.

ENDORSEMENT

[1] The appellant landlord raises three issues on the appeal.

[2] The first relates to the commencement date of the lease. We see no error in the analysis of the application judge. The term “premises” is defined to include the demising walls. Articles 4.01 and 5.06 of the lease which deal with the commencement date and with the “landlord’s work” are both based on delivery of

the premises by the landlord. Since the demising walls were not built until June 22, 2009 by the landlord, the lease did not commence until that date when the “premises” as defined were delivered.

[3] The second issue raised by the landlord is the commencement date for the payment of rent for the parking spaces. In our view, while the application judge erred in the interpretation of the term “tenant business” to mean the business of the sub-tenant, Shoppers Drug Mart, nevertheless, in the context of Article 4.02 of the lease, the result the application judge reached was correct, in any event.

[4] The tenant’s business was subletting the leased premises to Shoppers Drug Mart and operating the 181 leased parking spaces. Furthermore, the visitor area parking, consisting of 156 of the spaces, is parking designated in the lease as patient parking for North York Family Health Team Inc., a company operated by the tenant, not Shoppers Drug Mart customers.

[5] The evidence clearly showed that both sides treated the parking as not turned over by the landlord until August 2009. The landlord did not invoice the tenant for it and the landlord itself collected the parking fees during that period. Nor did the tenant pay the parking rent, although it did pay (but later disputed) the base and additional rent from April to July 2009. The portion of the tenant’s business involving operating the leased parking spaces did not commence until August, 2009. In our view, the application judge therefore made no error in

concluding that the rent for the parking spaces did not commence before August 1, 2009.

[6] The third issue is the landlord's obligation to pay the leasehold improvements allowance and whether that amount should be paid directly to the tenant or to Shoppers Drug, as provided in Article 5.07 of the lease. In oral argument both counsel agreed that the amount should be paid directly to Shoppers Drug. The order of the application judge will be amended to that extent. Otherwise the appeal is dismissed.

[7] Paragraph 5 of the order will be amended to provide that the monies in court for October/November 2009 rent of \$29,097.50, plus court accrued interest are to be paid out to the appellant, and it shall pay to Shoppers Drug Mart at the same time, \$39,275, plus applicable interest, if any.

[8] Costs to the respondent fixed at \$9,000 inclusive of H.S.T. and disbursements.

Signed: "K. Feldman J.A."

"H. S. LaForme J.A."

" K. Swinton J. (ad hoc)"