

COURT OF APPEAL FOR ONTARIO

CITATION: Riocan Holdings Inc. v. Metro Ontario Real Estate Limited, 2012  
ONCA 839  
DATE: 20121128  
DOCKET: C55506

Laskin, MacPherson and Gillese JJ.A.

BETWEEN

Riocan Holdings Inc.

Applicant (Appellant)

and

Metro Ontario Real Estate Limited

Respondent (Respondent)

Alexandra Lev-Farrell and Scott A. Crocco, for the appellant

Adam Stephens, for the respondent

Heard: November 26, 2012

On appeal from the judgment of Justice Geoffrey B. Morawetz of the Superior Court of Justice, dated April 27, 2012.

APPEAL BOOK ENDORSEMENT

[1] The appellant appeals from the judgment of Morawetz J. dismissing its application for a determination that the respondent must pay for certain alleged 'repairs' under its lease, namely, a parking lot repaving at a cost of \$431,000.

[2] We are not inclined to interfere with the application judge's analysis or conclusion. Neither the words 'repair' nor 'capital' are defined in the lease. In that context, the application judge engaged in a careful and comprehensive review of all of the relevant factual circumstances surrounding this major project. His ultimate conclusions, including that the work significantly extended the life of the parking lot and significantly reduced the operating costs associated with parking lot, were entirely open to him. Importantly, even if these conclusions constitute a finding of mixed fact and law, they fall at the far end of the fact spectrum and deserve, therefore, substantial deference.

[3] The appeal is dismissed. Costs to the respondent fixed at \$12,500 inclusive of disbursements and applicable taxes.