

# COURT OF APPEAL FOR ONTARIO

CITATION: Niagara Falls Shopping Centre Inc. v. LAF Canada Company,  
2023 ONCA 228  
DATE: 20230331  
DOCKET: C70676

Gillese, Tulloch and Roberts JJ.A.

BETWEEN

Niagara Falls Shopping Centre Inc.

Plaintiff (Respondent)

and

LAF Canada Company and Fitness International, LLC

Defendants (Appellants)

Jeffrey Haylock and Emily Young, for the appellants

Harvin Pitch and Adam Brunswick, for the respondent

Heard: December 16, 2022

On appeal from the judgment of Justice Andra Pollak of the Superior Court of Justice, dated April 19, 2022, with reasons reported at 2022 ONSC 2377, 161 O.R. (3d) 531.

## COSTS ENDORSEMENT

[1] On March 8, 2023, we released our decision in this matter. In our decision, we allowed the Tenant's appeal and declared that: (1) the Lease be extended for a period equivalent to that for which the premises were closed due to government-mandated COVID closures; and (2) during the Lease extension

period, the Tenant is not required to pay rent. We also re-affirmed that part of the Judgment below which ordered the Tenant to pay monthly rent during the government-mandated closure periods. We invited the parties to make written submissions if they were unable to resolve costs of the appeal, the motions below, the action and the counterclaim.

[2] We have now received and reviewed the parties' costs submissions.

[3] The Tenant brought the appeal. The appeal was necessary in order to correctly decide the rights and obligations of both the Landlord and Tenant during the COVID mandated closures. However, as the Tenant recognizes, its costs of the appeal should reflect that it was not wholly successful. We accept the Tenant's submission that a costs order of \$20,000, all inclusive, reflects the divided success on appeal and so order.

[4] We make no order as to costs of the motions, the action, and the counterclaim. In our view, when the result of the appeal is factored in, each of the Landlord and the Tenant enjoyed some success both in terms of their claims and their defences to the other's claims. Therefore, each shall bear its own costs of those matters.

"E.E. Gillese J.A."

"M. Tulloch J.A."

"L.B. Roberts J.A."