

COURT OF APPEAL FOR ONTARIO

CITATION: Convocation Flowers Incorporated v. Anisa Holdings Ltd., 2026
ONCA 145
DATE: 20260227
DOCKET: COA-25-CV-0284

Favreau, Copeland and Madsen JJ.A.

BETWEEN

Convocation Flowers Incorporated

Applicant (Respondent)

and

Anisa Holdings Ltd., Antonio Almeida, Isabel Almeida and Chris Linhares

Respondents (Appellants)

Neil G. Wilson and Meaghan Coker, for the appellants

Julian Binavince, for the respondent

Heard: February 2, 2026

On appeal from the order of Justice Papageorgiou of the Superior Court of Justice,
dated January 20, 2025.

REASONS FOR DECISION

[1] This appeal arises in the context of a commercial lease dispute where the tenant alleges that the landlord fundamentally breached the lease and that it is entitled to damages.

I. OVERVIEW AND BACKGROUND

[2] The appellant landlord, Anisa Holdings Ltd. (“Anisa”), purchased a commercial building and property in 2022. The property included parking, a loading area (the “loading docks”) and loading doors on the north side of the building, and a driveway on the northeast side of the property that accessed the loading docks.

[3] The previous owner of the building had leased a unit in the building to the respondent, Convocation Flowers Inc. (“CFI”), in June 2018 (the “Lease”), from which CFI operated their fresh flower business. The Lease includes a schedule requiring the landlord to enlarge the door opening to the loading docks from the unit and raising garage door clearance (the “improvements”). When Anisa purchased the building in 2022, it sought to negotiate a lease termination with CFI as it wished to use the property for its own business. When negotiations with CFI failed, Anisa terminated CFI’s access to the loading docks, a step confirmed in writing by Anisa on October 21, 2022.

[4] On November 2, 2022, CFI started legal proceedings seeking, among other things, a declaration of the rights and obligations of Anisa and CFI pursuant to the Lease and unfettered access to the loading docks. The matter quickly proceeded to a case conference, held on November 4, 2022, which resulted in timelines for the hearing of the application in March 2023, and a temporary without prejudice consent order. That temporary consent order restored CFI’s access to the loading docks for approximately two weeks, until November 20, 2022. Shortly thereafter,

CFI entered into a lease for other premises and vacated the unit. On December 2, 2022, CFI amended its application to seek a declaration that Anisa had repudiated¹ the Lease, causing CFI irreparable harm.

[5] The application judge determined that:

- Anisa had breached the Lease by eliminating CFI's access to the loading docks and North driveway to receive deliveries;
- Anisa breached the duty of good faith;
- Anisa's breach was fundamental, entitling CFI to treat the Lease as at an end and sue for damages; and
- A trial should be ordered on the issue of damages.

[6] Only the aspects of the application judge's decision that are under appeal are discussed below.

[7] Anisa makes three arguments on appeal, none of which we accept. First, Anisa argues that the application judge erred in her interpretation of the Lease in finding that CFI was entitled to use the loading docks and the rear yard "where no

¹ Although the parties and the application judge use the term "fundamental breach" in our view the more appropriate term for a breach so fundamental that it amounts to repudiation of the contract is "repudiatory breach" or simply "repudiation". The Saskatchewan Court of Appeal recently addressed the rationale behind this shift in terminology as follows: "I use the term "repudiatory breach" [in place of "fundamental breach"] because the term "fundamental breach" relates to a separate doctrine concerning exclusion clauses, which the Supreme Court of Canada "laid to rest" in *Tercon Contractors Ltd. v British Columbia (Transportation and Highways)*, 2010 SCC 4 at para 108]. See: *Khaira v. 102007987 Saskatchewan Ltd.*, 2024 SKCA 78, at para. 21. This shift in terminology is consistent with other decisions of this court after *Tercon*: see for e.g. *Brown v. Belleville (City)*, 2013 ONCA 148, 114 O.R. (3d) 561; *Leeder Automotive Inc. v. Warwick*, 2023 ONCA 726, 168 O.R. (3d) 702; *Gloger v. Evans*, 2025 ONCA 730.

such right existed under the terms of the Lease.” Second, Anisa asserts that the application judge erred in finding that it had fundamentally breached the Lease where the consent order remedied access to the loading docks. Third, Anisa submits that the application judge erred in finding that CFI was entitled to treat the Lease as at an end in circumstances where it had affirmed the Lease through its application and the consent order. According to Anisa, by electing to affirm the Lease, CFI gave up the right to subsequently accept Anisa’s purported repudiation.

II. NO ERROR IN INTERPRETATION OF THE LEASE

[8] Anisa asserts that the Lease did not provide CFI with any guaranteed right to use the common areas, including the loading docks, and that it had the right to redesignate common areas from time to time in its sole discretion. Anisa argues that contrary to established principles of contract interpretation, the application judge allowed evidence of surrounding circumstances to overwhelm the clear wording of the Lease. Anisa emphasizes the inclusion of a “no representations” clause and an “entire agreement” clause in support of its position. Anisa further argues that because Anisa was permitted to redesignate use of the loading docks under the Lease, the application judge’s finding of bad faith also cannot stand.

[9] In her careful treatment of this issue, the application judge correctly set out the applicable principles of contract interpretation. She reviewed the Lease in detail, including clause 2 (the “permitted use” of the leased unit being “flower storage/warehouse/distribution”); clause 20 (specifying that the landlord would

make the improvements as set out in the schedule appended to the Lease); the definition of “Common Areas and Facilities” (including entrances, exits, and the loading docks); and clause 38 (providing that the landlord could establish rules and regulations governing use and occupancy of the premises, including common areas, in its sole discretion). Citing this court’s decision in *Goodlife Fitness Centres Inc. v. Rock Developments Inc.*, 2019 ONCA 58 and *Primo Poloniato Grandchildren's Trust (Trustee of) v. Browne*, 2012 ONCA 862, 115 O.R. (3d) 287, she explicitly declined to admit evidence of surrounding circumstances related to the negotiation of the Lease as an interpretive aid.

[10] The application judge found as a fact that, in the context of this leasing arrangement, the improvements, were to satisfy the particular needs of CFI so that it could receive its flower deliveries. Further, she found that even if some parts of the Lease gave Anisa discretion to alter the common areas, it could not do so in a manner that would alter or eliminate CFI’s use of the negotiated improvements to the property which were a term of the Lease.

[11] Reading the Lease as a whole in a commercially reasonable manner, the application judge concluded:

In conclusion on this issue, taking into account the surrounding circumstance that this was a multi-tenanted property, the definition of Common Areas, the schedule that set out the contractually agreed-upon Enlarged Door Improvement, and reading the Lease as a whole in a commercially reasonable manner, the objective intention,

as well as the reasonable expectations of the parties, was that the Tenant [CFI] would have access to the Loading Docks, and the North Driveway so that it could access the Enlarged Door improvement to receive deliveries. The New Landlord [Anisa] could not redesignate the North Driveway and Loading Docks to itself in such a manner that it rendered the contractually agreed upon Enlarged Door Improvement unusable by the Tenant.

[12] The application judge's interpretation of the Lease is comprehensive and entitled to deference. Anisa can point to no palpable and overriding error — as is required for this court to interfere: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 50. There is no question that the text of the Lease, including the schedule, can “reasonably bear” the interpretation given to it by the application judge: *Horn Ventures International Inc. v. Xylem Canada LP*, 2023 ONCA 408, 52 R.P.R. (6th) 171, at para. 18. This ground of appeal cannot succeed.

III. NO ERROR IN FINDING REPUDIATORY BREACH

[13] Anisa asserts that the application judge erred in finding that it had fundamentally breached the Lease given that the consent order remedied access to the loading docks. It says that the application judge undertook her analysis of the seriousness of Anisa's breach without regard to the corrective action taken by Anisa restoring access during the period of importance to CFI, namely, from November 4 to 20, 2023. It submits that the evidence does not support a finding that Anisa no longer intended to be bound by the Lease.

[14] We see no error in the application judge's analysis of the repudiatory breach. She correctly recognized that only when a breach is repudiatory is a tenant entitled to do what CFI did, "which is to treat the contract as at an end and sue for damages." She distinguished between a breach that is merely "material" and one that deprives the innocent party of substantially the whole benefit of the contract: *Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.*, 2008 ONCA 92, 88 O.R. (3d) 721, at paras. 38-39, leave to appeal refused, [2008] S.C.C.A. No. 151.

[15] The application judge considered the question of repudiatory breach recognizing that the parties' reasonable expectations were that CFI would be receiving perishable flowers from large vehicles (hence the requirement for a larger opening) through the loading docks. She stated:

The ability of the Tenant [CFI] to use the Leased Premises to warehouse these flowers was premised on its ability to receive them in the manner contractually agreed upon, which was a manner that permitted the flowers to be received efficiently, without the risk of spoilage.

[16] Assessing the facts of this case against the relevant factors described by this court in *Spirent*, the application judge found: that both the breach and its consequences were serious; that because it was a permanent change in access to the loading docks, it would by definition be repeated continually; and that the loss of the loading docks and thereby the negotiated enlarged door improvement

to the property “changed the entire performance of the Lease and created significant risks” to CFI. She properly rejected Anisa’s submission that the restoration of CFI’s access to the loading dock on a temporary basis under the without prejudice consent order nullified CFI’s entitlement to treat the Lease as at an end. Indeed, we note that the opposite conclusion would render the phrase “without prejudice” meaningless.

[17] The application judge’s analysis of repudiation is thorough and entitled to deference. We see no error in her conclusion that on this record, CFI was “entitled to call it what it was – a repudiation – rather than continuing to try to make it work with the significant risk of adverse consequences for its business as a whole.”

IV. NO ERROR IN FINDING CFI COULD ACCEPT ANISA’S REPUDIATION

[18] For the first time on appeal, Anisa submits that even if it did repudiate the Lease, CFI was not entitled to accept Anisa’s repudiation and treat the Lease as being at an end because CFI had already elected to affirm the Lease. Anisa says that CFI did so by commencing an application seeking a declaration of rights and obligations under the Lease (rather than seeking termination) and by entering into the consent order, which temporarily restored access to the loading docks.

[19] We agree with CFI’s argument that this court should not entertain this issue on appeal, which could have been raised below: *Wasauksing First Nation v. Wasausink Lands Inc.* (2004), 43 B.L.R. (3d) 244 (Ont. C.A.) at p. 102,

leave to appeal refused, [2004] S.C.C.A. No. 200; *Lu v. Wang*, 2025 ONCA 702. We have in any event already expressed our view that Anisa cannot rely on the without prejudice temporary consent order in support of its position that it did not repudiate the lease. We note further that where, as here, the court has found that the breach would be repeated continually, a party is at liberty to subsequently choose to accept repudiation and treat the contract as at an end. A party does not lose its right to terminate a contract merely because it seeks temporary relief or takes reasonable time to decide how to respond to the breach: *Ching v. Pier 27 Toronto Inc.*, 2021 ONCA 551, 460 D.L.R. (4th) 678, at paras. 39, 46; *Dosanj v. Liang*, 2015 BCCA 18, 380 D.L.R. (4th) 137, at paras. 37, 43.

V. DISPOSITION

[20] The appeal is dismissed.

[21] Costs are awarded in favour of CFI in the agreed upon amount of \$12,500, all inclusive.

“L. Favreau J.A.”
“J. Copeland J.A.”
“L. Madsen J.A.”