

COURT OF APPEAL FOR ONTARIO

CITATION: Augusta Studios Inc. v. 8699011 Canada Inc., 2024 ONCA 906

DATE: 20241213

DOCKET: COA-24-CV-0528

Brown, Huscroft and Miller JJ.A.

BETWEEN

Augusta Studios Inc.

Applicant (Respondent)

and

8699011 Canada Inc.

Respondent (Appellant)

Sara J. Erskine and Adrienne Zaya, for the appellant

Dylan Baker and Rauf Azimov, for the respondent

Heard: December 11, 2024

On appeal from the order of Justice Loretta P. Merritt of the Superior Court of Justice, dated April 2, 2024.

REASONS FOR DECISION

[1] The appellant appeals the application judge's order granting a declaration that the basement unit is part of the premises leased by the respondent.

[2] There is no dispute that the respondent had been leasing the entire premises including the basement pursuant to the original lease agreement, which defined the leased premises as "the whole of the premises". This definition did not change in the amended lease agreement, but the rent was changed from a flat rate to a calculation based on square footage. The appellant, who purchased the building from the original landlord, argues that the application judge erred in failing to give effect to the rental price calculation in the amended lease agreement, which it says establishes that the basement was not included.

[3] We do not agree.

[4] It was open to the application judge to find that the parties had simply changed the way in which rent for the entire building was to be calculated. The original landlord knew that the basement was being sublet and had been sublet during the term of the original lease. It made no sense that the rent would increase under the amended lease agreement while the space rented would decrease dramatically if, as the appellant argues, the respondent was giving up the basement.

[5] The appellant's submissions essentially invite the court to revisit the application judge's findings. That is not our role. The application judge made no

error in principle and we see no palpable and overriding error in her analysis. Her interpretation of the lease is entitled to deference.

[6] The appeal is dismissed. The respondent is entitled to costs in the agreed amount of \$15,000, all inclusive.

“David Brown J.A.”
“Grant Huscroft J.A.”
“B.W. Miller J.A.”