COURT OF APPEAL FOR ONTARIO

CITATION: Metro Ontario Real Estate Limited v. Hillmond Investments Ltd. (Central Parkway Mall), 2026 ONCA 370
DATE: 20260527
DOCKET: M56690 & COA-24-CV-0623

Gillese, Coroza and Osborne JJ.A.

BETWEEN

Metro Ontario Real Estate Limited

Plaintiff
(Responding Party/Respondent)

and

Hillmond Investments Ltd. carrying on business as
Central Parkway Mall

Defendant
(Moving Party/Appellant)

AND BETWEEN

Hillmond Investments Ltd.
carrying on business as Central Parkway Mall

Plaintiff by Counterclaim
(Moving Party/Appellant)

and

Metro Ontario Inc. and Metro Ontario Real Estate Limited

Defendants to the Counterclaim
(Responding Parties/Respondents)

Melvyn L. Solmon and James P. McReynolds, for the moving party/appellant

Linda Galessiere, for the responding parties/respondents

Heard: February 11, 2026

On appeal from the judgment of Justice Robert Centa of the Superior Court of Justice, dated May 6, 2024, with reasons reported at 2024 ONSC 2625 and 2024 ONSC 6670.

Gillese J.A.:

I. OVERVIEW

[1] This appeal arises from a commercial lease between the parties. Hillmond Investments Ltd. is the landlord and appellant (the "**Landlord**"). Metro Ontario Inc. and Metro Real Estate Limited are the respondents and tenants (the "**Tenant**").

[2] The Tenant operated a Food Basics grocery store on the leased premises. It sued the Landlord for, among other things: (1) overpayment of rent during the lease extension periods from 2003 to 2023 (the "**Additional Rent**"); (2) the cost of replacing the roof over the leased premises; and (3) overpayment of common area maintenance ("**CAM**") charges.

[3] The trial judge found in favour of the Tenant on all three claims (the "**Claims**"). He ordered the Landlord to pay the Tenant damages of $1,359,799.88 and costs of $690,000, all inclusive.

[4] The Landlord appeals. It contends the trial judge erred in his determination of all three Claims. Its appeal relating to the CAM overpayment charges centers

on the trial judge's exclusion of the Landlord's claim for underpayment of CAM charges for the years 2009-2011 because he found that claim was statute barred. In so finding, the trial judge applied the six-year limitation period in s. 17(1) of the *Real Property Limitations Act*, R.S.O 1990, c. L.15 (the "***RPLA***").

[5] The Landlord also moved for leave to amend its amended notice of appeal (the "**Motion**") so it could argue that the exercise of an option to renew in 2008 was an amendment to the Lease, and that the trial judge had failed to consider this "amendment" as part of the surrounding circumstances when interpreting the lease. The court heard and dismissed the Motion before the oral hearing of the appeal. Brief reasons for its dismissal are set out below in these reasons.

[6] For the reasons that follow, I would dismiss the appeal.

II. BACKGROUND

[7] The Landlord was the owner of a shopping plaza in Mississauga, Ontario (the "**Shopping Plaza**"). The Tenant was the Shopping Plaza's anchor tenant from 1978 to 2023.

[8] The lease between the parties was executed in December of 1978 (the "**Lease**"). The leased premises were 32,126 square feet in the Shopping Plaza (the "**Lease Premises**"). The initial term of the Lease was 20 years; it was renewed five times, each for an additional five-year term.

[9] The corporate tenant changed over the life of the Lease due to a series of amalgamations. The original tenant was part of the Dominion grocery store chain. In 1986, the corporate tenant became The Great Atlantic & Pacific Company of Canada, Limited ("**Great Atlantic**") due to an amalgamation. In 1987, Great Atlantic assigned the lease to a related company, A&P Properties Limited, and entered into a sublease with that entity while continuing to operate the store. Great Atlantic ultimately became Metro Ontario Inc. and A&P Properties Limited became known as Metro Ontario Real Estate Limited.

[10] In 2009, the Tenant changed how it calculated rent owing under the Lease during Lease renewal periods, leading to a major dispute between the parties. The Tenant then started this action and the Landlord launched counterclaims. As the trial judge noted, by the time the matter reached trial in 2024, the parties' pleadings and amendments spanned tabs A to Q of the trial record.

[11] A brief summary of the factual background to the Claims follows. It draws heavily on the trial judge's undisputed findings of fact.

Replacement of the Roof

[12] In 2008, the Tenant repeatedly complained to the Landlord about the frequency and severity of the roof leaks over the Lease Premises. At that time, the parties recognized that the 30-year-old roof was badly compromised, a matter of

great concern to the Tenant, particularly because it intended to renovate the store in 2009.

[13] In early November 2008, the Landlord wrote to the Tenant, acknowledging the roof was old, had suffered a “rash of leaks over the past year”, and that the Tenant’s anticipated store renovation in 2009 “would be the appropriate time for us to do a complete roof replacement”.

[14] In March 2009, the Tenant changed how it calculated rent payable under the Lease. At this point, the Landlord’s position began to shift.

[15] In May 2009, in anticipation of the renovation, the Tenant again wrote to the Landlord asking it to replace the roof over the Lease Premises so that could be completed before it began renovations in August 2009 and sought a timeline for the roof replacement. The Landlord told the Tenant that before the roof could be replaced, there were “some issues related to property taxes and rent” that “needed to be worked out”.

[16] In June 2009, the Landlord accepted that it had responsibility to repair the roof but rejected responsibility for replacement, contrary to what it had agreed to in November 2008. In July and August 2009, in correspondence with the Tenant, the Landlord explicitly linked the roof issues to resolution of the issues around rent, CAM charges, and other matters in dispute. At the end of August 2009, the

Landlord's position again changed, and it took the position that it was responsible for neither replacing nor repairing the roof.

[17] The Tenant ultimately replaced the roof before it renovated the interior space, while continuing to assert that the cost of replacement should be borne by the Landlord.

Calculation of Additional Rent

[18] Pursuant to Arts. II and III of the Lease, the Tenant was to pay annual minimum rent of $265,039.50 and additional rent calculated on a percentage of sales. This additional rent was to be calculated by the Tenant and required the Tenant to furnish the Landlord with a certified statement of the previous fiscal year's sales at the Lease Premises. The additional rent, under Art. III, would then be 1.25% of the amount by which sales at the Lease Premises exceeded $10,000,000. The rental payments applied for the duration of the initial 20-year term.

[19] In 2009, the Tenant disputed the amount of Additional Rent it had paid the Landlord from the start of the second renewal period in 2003 to the end of the Lease in 2023. The Tenant maintained that s. 38 of the Lease modified the calculation of percentage rent so that, during renewal periods, it was required to only pay 1.25% of the amount, if any, by which annual sales from the Lease

Premises exceeded the greater of the average annual sales during the three fiscal years preceding the commencement of each successive term or $10 million.

[20] The Landlord took the position that the calculation of "percentage rent" was not amended by s. 38. In effect, its position was that s. 38 created a new type of rent – "premium rent" – which the Tenant had to pay in addition to the existing percentage rent.

Calculation of CAM charges

[21] Section 22 of the Lease provides that the Tenant shall pay, to the Landlord, its "proportionate share" of the Landlord's "costs of maintaining the common areas and facilities". The third Claim arose from the Tenant's contention that the Landlord had overcharged it for its share of the CAM charges.

[22] In its pleading amended March 1, 2019, for the first time, the Landlord claimed for unpaid CAM charges for the years 2009-2011. It claimed at trial that because it did not invoice the Tenant for those charges until 2013, the six-year *RPLA* did not start to run until 2013.

III. THE TRIAL DECISION

[23] I summarize below the trial judge's reasons for deciding each of the Claims. Three general points inform this summary.

[24] First, the trial judge expressly rejected the evidence of the Landlord's main witness, John Sorokolit, whom he found to be neither credible nor reliable.

However, he found Dennis O'Neil, the witness who gave evidence on behalf of the Tenant, to be credible.

[25] Second, the trial judge's reasons span 85 well-reasoned pages.[1] He made extensive factual findings and thoroughly explained the basis for them. Those findings are unassailable. The following example is sufficient to demonstrate this. The trial judge found that no later than June of 2009, the roof of the Lease Premises needed to be replaced, not simply repaired. He accepted the position contained in the Ontario Roof Consultants' "thorough" report, adduced by the Tenant and confirmed through oral testimony. As the trial judge noted, the Landlord filed no competing expert report so that evidence stood unchallenged. Moreover and in any event, the trial judge found the Landlord knew and accepted, in writing, as early as November 2008 that the roof needed to be replaced and later that it was responsible for the cost of repairing the roof.

[26] Third, given the large number of factual findings, I include only those most germane to responding to the issues raised on appeal.

[1] The trial judge's initial reasons are dated May 6, 2024; they are 62 pages in length (the "**Initial Reasons")**. In the Initial Reasons, the trial judge directed the parties to address the calculation and finalization of certain damages. The parties were unable to reach agreement on all such matters so filed further submissions. The trial judge decided those matters and issued a set of supplemental reasons dated November 28, 2024 (the "**Supplementary Reasons**"). The supplemental reasons are 23 pages in length and specify they must be read in conjunction with his original reasons.

Replacement of the Roof

[27] Based on extensive factual findings and his interpretation of the relevant Lease provisions, the trial judge found that: no later than June 2009, the roof had to be replaced, not simply repaired; the state of the roof was interfering with the Tenant's use and enjoyment of the Lease Premises; the Landlord knew and accepted that the roof had to be replaced and not merely repaired; and, the Landlord was responsible for replacing the roof at its own cost. The trial judge also found the Landlord's resistance to replacing the roof was driven by its desire to put pressure on the Tenant to settle its dispute over CAM charges and rent, not on a good faith assessment of the state of the roof or the viability of repairs. He concluded that the Landlord had improperly refused to fulfil its responsibility to replace the roof in a timely way and the Tenant was entitled to replace the roof and be reimbursed by the Landlord.

[28] In interpreting the Lease, the trial judge first considered s. 9, which is entitled "Lessee's Responsibility for Repairs". Section 9 provides that, as the Lessee, the Tenant "shall maintain the interior of the leased premises in a good and substantial state of repair" (emphasis added) and, without limiting the generality of the foregoing phrase, makes the Tenant responsible for interior painting and decorating, and flooring of the Lease Premises.

[29] The trial judge interpreted s. 9 as making the Tenant responsible for maintaining the interior of the Lease Premises. He noted the Landlord's

concession that s. 9 does not make the Tenant responsible for any repairs to the exterior of the Lease Premises.

[30] The trial judge then considered s. 10 of the Lease, which is entitled “Lessor’s Responsibility for Repairs”. Section 10(i) provides that the Landlord “shall make all needed repairs and replacements to and of … the exterior of the leased premises including the exterior walls, roof, canopies, skylights, foundations and bearing structure of the leased premises” (emphasis added).

[31] In light of his factual findings and the clear wording of ss. 9 and 10 of the Lease, the trial judge concluded the Landlord was required to replace the roof in 2009, at its own cost and, having refused to fulfill that responsibility, the Tenant was entitled to effect the necessary roof replacement at the Landlord’s expense. The Tenant’s ability to do so was found in s. 14 of the Lease, which gave each party the right to “carry out and make such repairs and replacements at the expense of the [other party]”, where the counterparty had failed to meet its obligations under ss. 9 and 10.

Calculation of Additional Rent from 2003 to 2023

[32] Article II of the Lease established the “minimum” annual rent of $265,039.50. Article III stipulates that the Tenant shall pay the Landlord as “additional rent”, 1.25% of the amount, if any, by which the sales for the prior year exceeds $10

million. Section 38 of the Lease is entitled “Options for Renewal”. The relevant part of s. 38 provides that the calculation of Additional Rent during the renewal terms:

> [S]hall be 1.25% of the amount, if any, by which annual sales from the leased premises exceeds the greater of the average annual sales during the three (3) fiscal years … preceding the commencement of each successive additional term or TEN MILLION ($10,000,00 [*sic*] million) DOLLARS. [Emphasis in original.]

[33] The trial judge accepted the Tenant’s interpretation of the relevant provisions, finding that s. 38 modified the calculation of rent contained in Art. II. As the parties’ intentions were clearly expressed in s. 38, the trial judge declared that the disputed rent was to be calculated according to its terms.

[34] In so finding, the trial judge rejected the evidence of the Landlord’s witness, Mr. Sorokolit, who testified about a phone call in which he said the parties had agreed that percentage rent would not change upon option renewal. As noted previously, the trial judge did not accept Mr. Sorokolit’s evidence because he found it was neither credible nor reliable.

[35] The trial judge also declined to draw adverse inferences from the fact that the Tenant did not call certain witnesses whom the Landlord alleged possessed important evidence about the Lease negotiations.

[36] Further, the trial judge declined to admit evidence about the Tenant’s subsequent conduct in paying the rent according to the Landlord’s interpretation

because he found the Lease language was not ambiguous and the Tenant's conduct in paying the rent was equivocal.

[37] The trial judge concluded that because s. 38 modified the calculation of Additional Rent upon Lease renewal and average annual sales were over $10 million, the Tenant had overpaid Additional Rent each year of each renewal period. The trial judge then went on to explain why he found the Tenant was entitled to restitution from the Landlord of the amounts it had paid in excess of those required by the Lease.

Calculation of CAM charges

[38] The trial judge found that the Landlord knowingly inflated the invoices it sent the Tenant for CAM charges in three ways: (1) by including the cleaning costs of the passport office, which was not a common area; (2) by artificially reducing the gross leasable area of the Shopping Plaza, which had the effect of increasing the proportion of the CAM charges for which it billed the Tenant; and (3) by charging a management fee that was not properly recoverable under the Lease. The trial judge ordered that the CAM charges be recalculated, specifying that the Landlord was not entitled to interest on any unpaid amounts because it had knowingly delivered false invoices to the Tenant.

[39] In his Supplementary Reasons, the trial judge dealt with the Landlord's claim relating to CAM charges for the years 2009-2011. He found the Landlord did not

deliver invoices to the Tenant for those years until July 31, 2013, despite the fact the Tenant had started this litigation in 2009.

[40] Both parties submitted that the six-year limitation period in s. 17(1) of the *RPLA* applied to the Landlord's claim. However, the Landlord submitted that the limitation period did not start to run until it delivered the invoices to the Tenant in 2013.

[41] The trial judge rejected the Landlord's submission. Relying on *G.J. White Construction Ltd. v. Palmero* (1999), 2 C.P.C. (5th) 110 (Ont. S.C.), he explained that to accept the Landlord's submission would "allow the [L]andlord to engage in entirely self-serving strategic and tactical behaviour".

IV. THE MOTION

[42] Prior to the oral hearing of the appeal, the Landlord brought the Motion in which it sought leave to amend its amended notice of appeal (the "**ANOA**"). The ANOA included, as a ground of appeal, that the trial judge made an extricable error of law in failing to consider all the surrounding circumstances when interpreting the Lease. The proposed amendment would "explicitly" allow the Landlord to refer to the circumstances surrounding the "third amendment to the Lease" as part of the surrounding circumstances which it contends the trial judge failed to consider when interpreting the Lease provisions. By the "third amendment to the Lease", the Landlord was referring to the third exercise of the renewal option.

[43] The Tenant submitted the Motion should be dismissed because the proposed amendment would allow the Landlord to change the position it had taken at trial. The Tenant pointed to two parts of the record to demonstrate this. First, the Landlord's pleadings describe the options to extend the Lease as extensions, not amendments. Second, in closing submissions at trial, counsel for the Landlord stated: "this is really just subsequent conduct … this isn't surrounding circumstances" and "[t]here was no new agreement made at this point in time. All they were doing was exercising an option".

[44] The court heard argument on the Motion before the oral hearing of the appeal. At that time, it dismissed the Motion explaining that, as a court of record, its function is to review the decision under appeal - not to embark on a fresh determination based on new arguments and issues: *Kaiman v. Graham*, 2009 ONCA 77, 345 O.A.C. 130, at para. 18; *Ontario Energy Savings L.P. v. 767269 Ontario Ltd.*, 2008 ONCA 350, at para. 3.

V. THE ISSUES

[45] The Landlord submits the trial judge erred in:

(1) his interpretation of the Lease with regard to the calculation of Additional Rent;

(2) finding the Tenant had the right to replace the roof of the Lease Premises at the Landlord's expense; and

(3) finding the Landlord's claim for underpaid CAM charges for the years 2009-11 was statute-barred.

VI. ANALYSIS

[46] As I explain below, I see no basis for appellate intervention with the trial judge's determination of the Claims. On the contrary, in my view, on a full and fair reading of his reasons for decision, the trial judge's determinations are inescapable.

Issue 1 No error in the trial judge's interpretation of how Additional Rent was to be calculated during the renewal periods

[47] The Landlord submits the trial judge erred in his interpretation of how Additional Rent was to be calculated by failing to: (1) find that s. 38 was ambiguous; (2) apply the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B; (3) apply the adverse inference principle; and (4) consider the Landlord's "rent paid" theory.

[48] I do not accept this submission.

1. No error in failing to find s. 38 is ambiguous

[49] The Landlord contends that the trial judge erred in failing to find s. 38 ambiguous because, it says, for years the Tenant interpreted s. 38 in the same way as it did. The fact the trial judge interpreted it otherwise must mean that s. 38 is ambiguous.

[50] The basis for the Landlord's submission is erroneous, so I reject it. There is no basis for contending that the parties interpreted s. 38 in the same way for many years. Indeed, the evidence is to the contrary. Mr. Sorokolit conceded in cross-examination that the Landlord conceived of its new interpretation of s. 38 after this litigation commenced. And the trial judge found the Tenant's conduct in respect of historical rent payments was "ambiguous or equivocal".

2. The trial judge's failure to apply the *Limitations Act, 2002*

[51] On this matter, the Landlord contends that the trial judge should have applied the two-year limitation period in the *Limitations Act, 2002*, and barred the Tenant's claim for damages for overpayment of rent made within two years of the issuance of its proceeding on the basis of unjust enrichment and mistaken payment. It says that since the Tenant miscalculated rent starting in February 1999, and the Tenant was responsible for calculating the additional rent payable under the lease, the limitation period began running in February 1999 as the error was discoverable at that time.

[52] For the limitation period to commence, there must be an act or omission of the person against whom the claim is made (the "**defendant**"): *Apotex Inc. v. Nordion (Canada) Inc.*, 2019 ONCA 23, 431 D.L.R. (4th) 262, at para. 86. As this court held in *McConnell v. Huxtable,* 2014 ONCA 86, 118 O.R. (3d) 561, at para. 52, a claim of unjust enrichment requires that the defendant retain a benefit without a juristic reason in circumstances where the claimant suffers a corresponding

deprivation. Thus, the relevant act of the defendant is simply the act of keeping the enrichment.

[53] As the trial judge found, the Tenant first noted the error in 2009, immediately before it started this action, and the Landlord kept the overpayments, without juristic reason. The limitation period began to run when the Landlord retained each overpayment. The trial judge made no error in finding that the Tenant was entitled to damages for unjust enrichment for the two-year period prior to the date the action was commenced.

3. The trial judge's refusal to draw adverse inferences

[54] At paras. 261-270 of the Initial Reasons, the trial judge explains why he refused to draw adverse inferences from the Tenant's failure to call certain people as witnesses. In my view, the trial judge's reasons are a full answer to the Landlord's complaint on this matter and I see nothing in them that attracts appellate interference.

4. Trial judge's alleged failure to consider "rent paid" theory

[55] I understand the Landlord's "rent paid" theory to run as follows. Even if the Tenant's interpretation of s. 38 was correct, because the Tenant had paid incorrect amounts for years, it was bound to continue to pay rent on the incorrect basis that it had used in previous years. The Landlord raised this theory for the first time in closing submissions at trial. On appeal, it contends the trial judge failed to address

the theory. That is not correct. The trial judge addressed the Rent Paid theory in paragraphs 61 through 86 of the Supplementary Reasons.

[56] There is no need to repeat that reasoning as it is sound. I would however, point out as the trial judge did, that the Landlord led no evidence to support its "rent paid" theory.

Issue 2 No error in the trial judge's determination that the Tenant had the right to replace the roof over the Lease Premises at the Landlord's expense

[57] The Landlord maintains that the Lease required the Tenant to pay for the replacement of the roof and that the trial judge erred in finding otherwise by: (1) ignoring or failing to give effect to the phrase "land subsidence, structural defect or weakness" in s. 10 of the Lease; (2) finding the Tenant had proved its claim for damages related to the roof replacement despite having failed to lead admissible documentary evidence in support of it; and (3) failing to consider the parties' subsequent conduct in interpreting the Lease.

[58] I reject this submission and the three alleged errors on which it rests.

[59] **First alleged error** – the Landlord submits that correctly interpreted, s. 10 made it responsible only for repairs necessary by reason of land subsidence and structural effects or weaknesses. The first alleged error rests on the underlined words in the following excerpt from s. 10:

> … the Lessor <u>shall make all repairs to the leased premises necessary by reason of land subsidence and</u>

> structural defects or weaknesses, and without limiting the generality of the foregoing the Lessor shall make all needed repairs and replacement to and of
>
> (i) the exterior of the leased premises including the exterior walls, roof, canopies, skylights, foundations and bearing structure of the leased premises … [Emphasis added.]

[60] I reject this submission for two reasons. First, the Landlord's suggested interpretation renders meaningless the words that follow immediately after the underlined words which expressly require the Landlord to "make all needed repairs and replacement to" the exterior of the Lease Premises, including the roof. Second, as found by the trial judge, the Landlord conceded that s. 9 places no obligations on the Tenant in respect of the exterior of the Lease Premises. Thus, on the Landlord's interpretation of s. 10, it was either unclear which party had responsibility for repairs and replacements to the exterior of the building, apart from those arising from structural defects or it was to be implied that responsibility rested on the Tenant. In my view, that is a tortured reading of s. 10, fails to give effect to the plain meaning of ss. 9 and 10, and produces a commercially absurd result.

[61] There is no ambiguity in s. 10. Section 9 placed responsibility for the maintenance of the interior of the Lease Premises on the Tenant. And, properly interpreted, s. 10 placed responsibility for repairs and replacement of the exterior of the Lease Premises on the Landlord.

[62] Section 10 begins by requiring the Landlord (1) to “make all repairs to the leased premises necessary by reason of land subsidence and structural defects or weaknesses”. However, s. 10 goes on to also require the Landlord (2) to “make all needed repairs and replacements to and of” those things specified in ss. 10(i) to 10(iv). Section 10(i) specifies “the exterior of the leased premises including the exterior … roof”.

[63] Accordingly, the trial judge did not ignore or fail to give effect to the phrase “land subsidence, structural defect or weakness” as the Landlord contends. Rather, his interpretation recognizes that s. 10 does not limit the Landlord’s responsibility to making repairs arising by reason of land subsidence and structural defects and weaknesses. Why? Because that responsibility is only the first of two obligations that s. 10 expressly places on the Landlord. The second is the requirement that the Landlord “make all needed repairs and replacement to and of (i) the exterior of the leased premises including the …roof”.

[64] **Second alleged error** – I flatly reject this submission. The Landlord not only did not raise this issue at trial, it consented to the admission into evidence of the document briefs that contained the Tenant’s damages documentation. Further and in any event, the Tenant’s evidence regarding damages for the roof replacement was also tendered through the testimony of two of its witnesses.

[65] **Third alleged error** – this allegation falls because of my determination of the first alleged error: the trial judge did not err in finding that s. 10 is unambiguous.

[66] The subsequent conduct of parties to a contract – in this case, the Lease – should be considered only if the Lease remains ambiguous after considering the text and its factual matrix: *Shewchuk v. Blackmont Capital Inc.*, 2016 ONCA 912, 404 D.L.R. (4th) 513, at para. 41. As the trial judge made no error in finding the relevant terms of the Lease unambiguous, there was no reason for him to consider the parties' subsequent conduct. Indeed, because there was no ambiguity, it would have been a legal error had the trial judge considered such evidence when deciding the matter.

Issue 3 No error in finding the Landlord's claim based on the period from 2009 to 2011 was statute-barred

[67] In its pleading amended March 1, 2019, for the first time, the Landlord added a claim for unpaid CAM charges for the years 2009-2011. It first issued invoices for those charges on July 31, 2013. It is noteworthy that the Landlord had amended its pleading in 2010 and 2011 and, while it updated the total amounts it was claiming for alleged underpayments of rent and percentage rent in those amended pleadings, it only claimed CAM charges for the period ending in 2008.

[68] At trial, the parties were agreed that the six-year *RPLA* limitation period applied to the Landlord's claim for CAM charges in the years 2009-2011. The Landlord submitted that since it did not issue invoices for those charges until 2013,

the six-year limitation period did not start to run until 2013. Accordingly, it maintained, the underpaid CAM charges for the years 2009-2011 should be set off against the amounts the Landlord owed the Tenant for it having overpaid CAM charges.

[69] The trial judge rejected this submission in his Supplementary Reasons, noting that calculating the limitation period from the date the Landlord chose to render its invoices would enable the Landlord to unilaterally "toll the limitation period for as long as it believed such delay to be to its advantage": *G.J. White*, at para. 20.

[70] The Landlord submits the trial judge erred in "imposing" a limitation period on the parties and, in so doing, "effectively rewrote the Lease".

[71] In making this submission, the Landlord argues as follows. There is no specific deadline in the Lease for the delivery of CAM invoices. However, it argues that s. 22 of the Lease addresses this matter. It relies on the following parts of s. 22 for this argument:

> 22. Lessee's Share of Expenses for Common Areas:
>
> The Lessee shall pay to the Lessor the Lessee's proportionate share of the Lessor's costs of maintaining and operating the common areas and facilities (including parking areas), including without limitation,
>
> …

> The Lessor shall forward to the Lessee at the end of each twelve (12) month period during the term hereof, an itemized statement of account showing the cost of said services for the previous period, the total thereof, the parking charges, if an collected, the net cost of such services, the areas used to calculate the Lessee's proportionate share thereof, and the proportion and amount of the Lessee's share thereof, supported by such evidence in verification thereof as the Lessee may reasonably require, and upon receipt of each such statement the Lessee shall pay its share of such net costs to the Lessor.

[72] The Landlord says that the Lease "clearly states that [CAM charges] are not actionable until billed", and the amounts were not billed until 2013. The Landlord further maintains that the Lease "offers a complete regime and sets out a penalty should the Landlord not deliver invoices as soon as possible such that collection of amounts owing are prevented" [*sic*].

[73] I reject this submission. In my view, the Landlord has not established any of the foundational points on which its submission rests.

[74] First, the Landlord has not pointed the court to a provision in the Lease which states that CAM charges are not actionable until billed and I see none. Second, I see nothing in the above extract from s. 22 relied on by the Landlord which addresses what is to happen when the Landlord fails to comply with its obligations created under that provision. Third, if there is a term in the Lease specifying a contractual interest rate for a breach of s. 22, the Landlord failed to identify it.

[75] Thus, in my view, the trial judge made no error in determining that the Landlord's claim based on CAM charges for the years 2009-11 was statute barred under the *RPLA*.

VII. DISPOSITION

[76] For these reasons, I would dismiss the appeal and order its costs and the costs of the Motion to the Tenant in the agreed-on sum of $50,000, all inclusive.

Released: May 27, 2026 "E.E.G."

"E.E. Gillese J.A."
"I agree. Coroza J.A."
"I agree. P.J. Osborne J.A."