Drafters Beware! The growing importance of a commercially reasonable result in the interpretation of leases and other contracts

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Where is the line between a plain reading of a contract and one that is "overly technical"?

In *Pinnacle International (One Yonge) Ltd. v Torstar Corporation*[1], the majority for the Court of Appeal for Ontario (the "**Court**") explored that question as it set aside the lower court's decision for apparent errors in the interpretation of two Leases (defined below). The decision includes a persuasive dissent by The Honourable Justice Brown, which takes issue with the methodology employed by the Court in interpreting the provisions at issue. Importantly, this case demonstrates the uncertainty that can be created if parties are not crystal clear in their drafting. The case also raises interesting questions about the interpretation of "rent" under Ontario's *Real Property Limitations Act*.

Issue and procedural history

At its heart, the appeal concerns a commercial lease issue between Torstar Corporation ("**Torstar**"), as tenant, to pay to Pinnacle International (one Yonge) Ltd. ("**Pinnacle**"), as landlord, net "profit" earned from the Boreal Sublease (defined below).[2]

Pinnacle sued Torstar for alleged profit Torstar made on the Boreal Sublease. Torstar maintained that it made no profit and, in fact, incurred a loss by paying Pinnacle more rent than it received

[1] 2024 ONCA 755.
[2] *Ibid* at para 1.

from the Subtenant (defined below). The parties bought "duelling" summary judgment motions. Torstar was ordered to pay Pinnacle $1.1 million plus interest and cost.

Torstar successfully appealed.[3]

Background

Torstar began occupation of 1 Yonge ("**Building**") in 1971. The Building consists of two connected, adjacent sections: (i) a 25-storey "tower" (the "**Office Tower**") (as shown in the image below on the right) and (ii) a six-storey "Podium" that includes a three-storey open space warehouse extending from the ground to the ceiling of the third floor (the "**Warehouse**") (as shown in the image below on the left).[4]

The configuration of the Warehouse, particularly the 3rd floor, is pertinent to the Court's decision. Although the Warehouse consists of "three-storeys", the 2nd and 3rd floors are open air space without floors[5], such that, the only means of access to these floors is from the ground floor of the Warehouse. This 3rd floor of the Warehouse (the "**Open Air Space**") is also inaccessible from the 3rd floor of the Office Tower. It "consists only of air" and is incapable "of occupation or use"[6].

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[3] *Ibid* at para 110.

[4] *Ibid* at para 9.

[5] The Warehouse was designed to accommodate Torstar's printing operations. Cranes were suspended from the ceiling of the 3rd floor.

[6] *Ibid* at para 13.

From 1971 to 1995, Torstar subleased the 1st and 2nd floors of the Warehouse to Canada Post. In 2000, Torstar entered into a lease with Pinnacle's predecessor (the "**Lease**"). Torstar surrendered the 1st and 2nd floors of the Warehouse upon the expiration of the Canada Post sublease in 2010. The lower court found that the 3rd floor of the Warehouse was never surrendered; Torstar continued to pay rent for this 3rd floor.[7]

In 2011, Torstar entered into a sublease with College Boreal (the "**Subtenant**") (collectively, the "**Boreal Sublease**", together with the Lease, the "**Leases**"), commencing January 2012. In mid 2012, Pinnacle bought the Building and assumed the Lease and the Boreal Sublease.

[7] *Ibid* at para 11.

Notably, since 2012 Pinnacle rented the Warehouse for private events, such as weddings and corporate events.[8] It marketed the space as an "Event Space" with 46-foot ceiling (which necessarily includes the Open Air Space); Pinnacle rented out the Warehouse, including the Open Air Space, to Lighthouse Immersive Inc. ("**Lighthouse**") on two occasions, one of which was the "Immersive Van Gogh" exhibit.[9] Prior to the opening of this exhibition, Lighthouse (a) installed a floor-to-ceiling wall (covering the Open Air Space) to divide the exhibition space, (b) projected digital images on the walls covering the height of the Warehouse (again, including the Open Air Space), and (c) installed speakers from the 3rd floor ceiling. Pinnacle did not seek Torstar's permission to use the Open Air Space in such manner. The Court found these facts to be relevant when interpreting the Lease in light of the "factual matrix" that surrounded it.

In 2018, Pinnacle and Torstar engaged in protracted lease renewal discussions. In 2019, for the first time ever, Pinnacle alleged that Torstar breached its Lease obligations by failing to remit profits earned on the Boreal Sublease. In 2020, Pinnacle issued its claim.[10]

The Lease

Under the Lease, Torstar pays "Basic Rent" and "Additional Rent" on per square foot basis. Throughout the term of the Lease, the leased premises included the entirety of the 3rd floor of the Building, consisting of 65,534 square feet (as described in Article 1.4 of the Lease); the floor plan appended to the Lease shows the 3rd floor consisting of (i) the 3rd floor of the Office Tower (46,707 square feet) and (ii) the Open Air Space of the Warehouse (18,827 square feet).[11]

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[8] *Ibid*.
[9] *Ibid* at para 26.
[10] *Ibid* at paras 28 - 32.
[11] *Ibid* at para 13.

Article 8.1, which underlied the appeal, provides Torstar the right to sublet the leased premises, provided Torstar pay Pinnacle, as additional rent, any profit net of all reasonable costs Torstar incurred in connection with the sublease. Article 8.1, in part, reads as follows[12]:

> Any profit (net of all reasonable costs incurred by the Tenant in connection therewith) earned by the Tenant in assigning this Lease or subletting or licensing all or any part of the Premises…shall be paid by the Tenant to the Landlord as Additional Rent…

The Boreal Sublease

The 3rd floor plan appended to the Boreal Sublease has the same "footprint" as the plan appended to the Lease.[13] In other words, the plan showed the "identical usable and unusable areas of the third floor of the Building…". "Premises" is defined in the recitals of the Boreal Sublease as including the "3rd Floor … of the Building". Recital C of the Boreal Sublease reads as follows[14]:

> … Torstar … agree[s] to sublease to [Boreal] and [Boreal] agrees to sublease commencing January 1, 2012 that part of the Premises outlined in red on Schedule "A" such part being the entire 3rd Floor of the Building and comprising an area of approximately forty-six thousand seven hundred and seven square feet (46,707 sq. ft.) (the Sublet Premises") for part of the remainder of the term of the Head Lease on the terms and conditions contained herein. The parties agree that the area of the Sublet Premises has been deemed to be forty-six thousand seven hundred and seven square feet (46707 sq. ft.) (the "Deemed Rentable Area) and shall not be subject to re-adjustment by any of the parties hereto; [Emphasis added.]

Importantly, throughout the duration of the Boreal Sublease, neither Torstar or the Subtenant "had access to, or use of, the Open Air Space."[15]

The Claim

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[12] *Ibid* at para 15.

[13] *Ibid* at para 18.

[14] *Ibid* at para 20.

[15] *Ibid* at para 21.

Pinnacle alleged that Torstar was in breach of its obligations under the Lease because, among other things, Torstar improperly deducted rent payable for the Open Air Space under the Lease, from the revenues it collected under the Boreal Sublease, such that, Torstar owed Pinnacle over $2 million in profit.

Torstar maintained that the aggregate rent it paid to Pinnacle for the entire 3rd floor of the Building exceeded the aggregate rent Torstar received from the Subtenant, such that, Torstar incurred an annual loss since 2012.

The Lower Court's Judgment

In her judgment, the motion judge focused on the terms of article 8.1 of the Lease, and found that the terms "net of all reasonable costs incurred by [Torstar] in connection therewith" [Emphasis added] precluded Torstar from deducting the rent it paid for the Open Air Space as "reasonable cost".[16] She found that the rent for the Open Air Space was not "reasonable costs incurred" in connection with the Boreal Sublease because Torstar chose not to sublease the Open Air Space to the Subtenant.[17] The motion judge found that permitting Torstar to deduct costs associated with the Open Air Space would be "inconsistent with the reasonable business expectations and the plain wording and purpose of section 8.1", which was to prevent profits arising from a sublease.[18]

Further, the motion judge found that the "appropriate and commercially sensible comparator"[19] to determine whether Torstar made a profit was to compare the rent Torstar paid to Pinnacle for the

[16] *Ibid* at para 35.
[17] *Ibid* at para 38.
[18] *Ibid*.
[19] Para 27 of the Lower Court's decision.

46,707 square feet portion of the 3rd floor of the Building against the rent Torstar received from the Subtenant for the same 46,707 square feet portion of the 3rd floor.[20]

The Court's Decision

Torstar appealed on the following basis, among other things:

a) the motion judge failed to interpret the words of the Lease and the Boreal Sublease in their plain meaning, in harmony with the contracts as a whole and with the purpose of Article 8.1 of the Lease;

b) the motion judge failed to interpret the Leases in a manner consistent with the factual matrix and the parties' commercial expectations; and

c) the motion judge erroneously rejected the Subtenant's five-month rent free period as a reasonable cost incurred by Torstar.[21]

Because the foregoing issues involved the interpretation of the Lease and the Boreal Sublease, the Court reviewed the motion judge's interpretation of these Leases in accordance with *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53 ("***Sattva***"). As the interpretation of a contract involves questions of mixed fact and law, "absent an extricable question of law which attracts a correctness standard, the standard of review is palpable and overriding error".[22]

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[20] *Ibid* at para 39.

[21] *Ibid* at para 50; Because the Court found that Torstar was entitled to deduct rent for the Open Air Space, and Torstar incurred a $2.6 million loss, it did not find it necessary to decide this issue.

[22] *Ibid* at para 51.

Extricable errors of law in contractual interpretation include a "…failure to properly, accurately, and fully consider the context in which a contract was made, and the failure to consider the contract as a whole by focusing on one provision without giving proper consideration to other relevant provisions".[23]

The Court found that the motion judge erred in law in her interpretation of article 8.1 of the Lease for the following reasons:

1. she failed to interpret the Boreal Sublease in a manner consistent with the factual matrix;

2. she failed to consider the Boreal Sublease as a whole in light of the factual matrix when deciding whether the subleased premises included the Open Air Space; and

3. her interpretation resulted in a commercial absurdity.[24]

Relying on *Sattva*, the Court emphasized that the modern interpretation of contracts is rooted in "practicalities and common-sense" and "not dominated by technical rules of construction".[25] The focus is to determine the intent of the parties and the scope of their understanding, which necessarily requires the review of the contract as a whole and by "giving the words their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of the formation of the contract" [Emphasis added].[26] "Surrounding circumstances" requires an understanding of the factual matrix to ascertain the parties' intentions beyond what is expressed in the words, which, on their own, do not have an "immutable" or "absolute" meaning.[27]

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[23] *Ibid* at para 52.
[24] *Ibid* at para 57.
[25] *Ibid* at para 59.
[26] *Ibid*.
[27] *Ibid*.

Importantly, commercial contracts must be interpreted in accordance with "commercial reasonableness, sound commercial principles, and good business sense, and in a manner that "avoids a commercial absurdity"".[28]

Failure to consider the factual matrix

A review of the factual matrix requires a review of the "objective evidence of the background facts at the time of execution of the Leases", being knowledge that was known or ought to have been known to both parties at the time of entering into the contract.[29] The motion judge failed to identify this knowledge as between Torstar and the Subtenant when they entered into the Boreal Sublease.[30] The Court found that Torstar's "reasonable costs" incurred in connection with the sublet premises necessarily required consideration of the Boreal Sublease and, in particular, whether the sublet premises consisted of the entire 3rd floor of the Building or only the usable part (excluding the Open Air Space).[31]

In this respect, the Court considered the following factual matrix:

(i) When Torstar surrendered the 1st and 2nd floors, it knew that the 3rd floor Open Air Space was under the landlord's sole control and neither it nor the Subtenant could access or use that space;[32]

(ii) Torstar knew or ought to have known the financial significance of article 8.1 of the Lease when it entered into the Boreal Sublease *i.e.* that article 8.1 gave it the right to

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[28] *Ibid* at para 60.
[29] *Ibid* at para 61.
[30] *Ibid* at para 62.
[31] *Ibid* at para 63.
[32] *Ibid* at para 64.

sublease the full 3rd floor of the Building but required that it pay the landlord any profit it earned in subletting such premises net of reasonable costs;[33]

(iii) Torstar knew when it entered into the Boreal Sublease that it remained obligated to pay rent on the whole of the 3rd floor of the Building (including the Open Air Space);[34]

The Court found that in light of the foregoing factual matrix, "it made no commercial sense for Torstar to sublet only the usable third-floor space".[35]

This is an important point. The Court used the factual matrix to inform its opinion of what *must have been intended* by the parties given what it deemed to be a commercially unreasonable result, had a "technical" reading been preferred.

Failure to consider the Boreal Sublease as a whole in light of the factual matrix

In determining whether Torstar could deduct as "reasonable costs" the rent for the Open Air Space for the purpose of determining whether it made a profit, the following two questions needed to be answered: (1) what does "profit" mean for the purposes of Article 8.1 of the Lease, and (2) could Torstar deduct the full rent for the 3rd floor of the Building as reasonable costs in connection with the Boreal Sublease?[36]

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[33] *Ibid* at para 65.
[34] *Ibid* at para 66.
[35] *Ibid* at para 67.
[36] *Ibid* at para 68.

With respect to the first question, which the motion judge did not address, the Court found that "profit" should be given its ordinary meaning *i.e.* the "excess of revenue over expenses incurred in obtaining that revenue".[37]

With respect to the second question, the motion judge made a palpable and overriding error. The motion judge found that the plan appended to the Boreal Sublease did not include the Open Air Space as part of the sublet premises. This was a palpable error, which the motion judge relied upon. The plans appended to the Lease and the Boreal Sublease both showed the full 3rd floor of the Building, including the Open Air Space, though in different orientations.[38]

The motion judge failed to consider the whole of the Boreal Sublease in light of the factual matrix. In particular, the definition of "Premises" in recital A of the Boreal Sublease includes "…3rd Floor…".[39]

Recital C provides as follows:

> … Torstar … agree[s] to sublease to [Boreal] and [Boreal] agrees to sublease commencing January 1, 2012 that part of the Premises outlined in red on Schedule "A" such part being the entire 3rd Floor of the Building and comprising an area of approximately forty-six thousand seven hundred and seven square feet (46,707 sq. ft.) (the Sublet Premises") for part of the remainder of the term of the Head Lease on the terms and conditions contained herein. The parties agree that the area of the Sublet Premises has been deemed to be forty-six thousand seven hundred and seven square feet (**46707** sq. ft.) (the "Deemed Rentable Area) and shall not be subject to re-adjustment by any of the parties hereto; [Emphasis added.][40]

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[37] *Ibid* at para 69.

[38] *Ibid* at para 71.

[39] *Ibid* at para 73.

[40] *Ibid* at para 74. The Court acknowledged that the first sentence of this paragraph created some ambiguity, in that, "[i]t states that Torstar and Boreal agree that Boreal will sublease "that part of the Premises outlined in red on Schedule 'A' such part being the entire 3rd Floor of the Building". The ambiguity arises because the portion of the third-floor space outlined in red was the usable space in the Office Tower – but immediately thereafter, the sublet premises are described as "being the entire 3rd Floor of the Building". In my view, the balance of recital C resolves this ambiguity by stating that the parties "agree that the area of the Sublet Premises has been deemed to be forty-six thousand seven hundred and seven square feet (46,707 sq. ft.) (the 'Deemed Rentable Area')" (emphasis added). In other words, the sublet space was the full third floor of the Building, but the parties deemed

The plan appended to the Boreal Sublease and referenced in recital C above showed the same footprint for the 3rd floor as the plan appended to the Lease.

The Court found that articles 1 and 6 of the Boreal Sublease were helpful. Article 1 provides that the defined words used in the Boreal Sublease have the meanings given to them in the Lease except as provided therein. Article 6 confirmed basic rent under the Boreal Sublease was calculated on the "Deemed Rentable Area".[41] Importantly, if the "Deemed Rentable Area" was used to calculate Boreal's rent, the result is that Boreal paid rent for the usable portion of the third floor only. This is noteworthy because under the Lease, Torstar paid rent on the entire third floor (including the "unusable area"), which was comprised of **65,534** square feet.

Accordingly, notwithstanding the use of what is arguably clarifying language by the parties (*i.e.* "deeming" the rentable area to be a certain size), the Court found that the motion judge had erred by using that language to confirm the intent of the parties. The Court found that the sublet premises was the full 3rd floor, including the Open Air Space, with the rent to be calculated only on the usable space. The Court appears to have preferred this interpretation after concluding that it made "no commercial sense that Torstar intended to sublet only the usable third-floor space".[42] Justice Brown disagreed:

> ….The definition of "Deemed Rentable Area" clearly reflected a key agreement reached by the parties to the Boreal Sublease, as Boreal paid Torstar rent calculated using the Deemed Rentable Area. Torstar's submission that the Deemed Rentable

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it to be only the 46,707 square feet of usable space in the Office Tower." This interpretation accorded with the floorplan appended to the Boreal Sublease and article 1 of the Boreal Sublease. [Para 78]

[41] *Ibid* at para 76.

[42] *Ibid* at para 81.

> Area is a mere "technicality" that the court should ignore in its interpretative exercise amounts to an effort to adjust the terms of the Boreal Sublease, an adjustment expressly prohibited by the terms of Recital C. Accordingly, the motion judge did not commit any error in using the Deemed Rentable Area for purposes of comparing the rent received by Torstar from Boreal for that space with the rent it paid Pinnacle for that same amount of space.[43]

The motion judge's interpretation resulted in a commercial absurdity

The Court found that the motion judge took an "overly technical approach" when determining if the Subtenant subleased the entire 3rd floor of the Building.[44] The motion judge gave weight to the *deemed* per square foot rent, over what the Court considered to be the relevant factual matrix surrounding the Boreal Sublease. For example, the Court observed that the "technical difference between the Boreal Sublease of the "entire third floor" and Torstar's own Lease of the third floor is that [the Subtenant] paid Torstar rent calculated at a higher rental amount per square foot" but on the lower "Deemed Rentable Area" reflecting the usable area. [45] The Court concluded that Torstar could have received the same rent from the Subtenant by simply using a lower rent rate per square foot but on the full 3rd floor area, allowing Torstar to deduct the entire rent it paid to Pinncle as a reasonable cost in connection with the Boreal Sublease.[46]

Second, Torstar had incurred a loss for subleasing space. Such loss could not be commercially interpreted as a "profit" as contemplated under article 8.1 of the Lease.[47]

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[43] *Ibid* at para 177.
[44] *Ibid* at para 84.
[45] *Ibid* at para 85.
[46] *Ibid* at para 86.
[47] *Ibid* at para 87.

"Torstar had no access of returns over expenditures" in these transactions and, therefore, made no profit.[48]

Third, and interestingly, the Court found that the motion judge's interpretation would give Pinnacle an unintended windfall, even though Pinnacle had full control of, and enjoyed the benefit of, the Open Air Space by renting it as an event space.[49] As such, in addition to receiving full rent for the 3rd floor from Torstar, Pinnacle also received the rent from its use of the Open Air Space for events. The Court held that "[t]he motion judge's failure to conduct a proper commercial reasonableness analysis, informed by the factual matrix, led to a commercially absurd result that includes a windfall to the landlord in the face of non-existent profits".[50] The Court concluded that "[t]he parties could not have intended that art. 8.1 would have this effect when they included it in the Lease".[51]

Dissenting Judgment

In his dissent, Justice Brown disagreed with the majority of the Court's treatment of the Lease. A main point of contention is described in the following paragraphs of the dissenting judgement:

> My colleagues are persuaded by Torstar's submissions, concluding that the trial judge erred in the use she made of the "Deemed Rentable Area" in the recital to the Boreal Sublease and that the motion judge's interpretation would result in a commercial absurdity.

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[48] *Ibid* at para 90.
[49] *Ibid* at para 91.
[50] *Ibid* at para 93.
[51] *Ibid*.

> I see no commercial absurdity resulting from the motion judge's interpretation. Indeed, I agree with her interpretation, especially when one takes into account the Lease's treatment of surrender rights enjoyed by Torstar, a provision not considered by my colleagues. Nor do I see any extricable question of law in the motion judge's interpretation of the Boreal Sublease recital.[52]

His Honour goes onto explain:

> When Torstar entered into the Lease, the third-floor warehouse space already was "orphan" or "ghost" space. Nevertheless, in the Lease Torstar agreed to pay rent on that "orphan" space and agreed that it would not have a unilateral right to surrender that space to the Landlord. **Both those commercial realities flowed from the plain language of the Lease**." [Emphasis added.][53]

This disagreement in approach and interpretation should give drafters pause. It is important to note that the drafters of the both the Boreal Sublease and the Lease made specific reference to the square footage of the third floor yet (arguably because of a misleading reference to the "entire third floor" in the Sublease), the majority of the Court preferred an interpretation that ignored those references because they concluded that the result would not have been commercially reasonable.

It is the author's view that the dissenting judgment gives more effect to a reading of the Lease as a whole. While that may have resulted in a payment to Pinnacle that led to a loss to Torstar, it is not clear why that result is commercially unreasonable.

What limitation period is applicable – the LPA or the RPLA?

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[52] *Ibid* at paras 128 and 129.

[53] *Ibid* at para 133.

Torstar argued that Pinnacle's claim is statute-barred.

Because the matter contemplated "rent" and net profits earned from a sublease as "additional rent" payable under a lease, the motion judge found that the *Real Property Limitations Act*'s[54] six-year limitation period was applicable, such that the case was not statute-barred.

Torstar appealed on the basis that the motion judge erred in applying this six-year limitation period in the RPLA rather than the two-year limitation period in the *Limitations Act*[55].

The Court agreed. Which limitation period applied was a question law and attracted a correctness standard of review. The Court found that Pinnacle's claim is "not based on an obligation to pay "rent", as that term if defined in the RPLA.[56] Rather, the [c]laim is for alleged breach of a term of the Lease that is governed by the LA 2002"[57] and, therefore, is subject to the two-year limitation period. Among other things, the Court considered that the obligation to remit profit under article 8.1 of the Lease was not an "annuity" or "periodical sum of money charged upon or payable out of land" (as defined in section 1 of the RPLA), rather, the profit contemplated under article 8.1 of the Lease was a variable amount.[58]

The Court also considered its decision in *Pickering Square Inc. v. Trillium College Inc.,* 2014 ONSC 2629, where Mew J. explained that the application of the *Limitations Act* should be interpreted broadly and the RPLA narrowly.[59] The legislative intent of the *Limitations Act* was to create "a single, comprehensive general limitations law that is to apply to all claims for injury, loss

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[54] RSO 1990, c L.15 ["***RPLA***"].
[55] ["***Limitations Act***"].
[56] *Ibid* at para 100.
[57] *Ibid*.
[58] *Ibid* at para 107.
[59] *Ibid* at para 103.

or damages except, in relevant part, when the RPLA specifically applies".[60] The Court found that the word "rent" in the RPLA has an objective meaning that cannot be nullified by contract and the sole use of the word "rent" in a contract does not in and of itself determine whether the matter is "rent" within the meaning of the RPLA. [61]

While Justice Brown does not take issue with the analysis set out in *Pickering Square*, he would have applied it differently to the provision at issue:

> Looked at in a slightly different fashion, the Profit Clause in art. 8.1 of the Lease reflected the bargain between the Building's landlord and its tenant, Torstar, that any compensation over the basic rent stipulated in the Lease that Torstar could secure from a third party for the use of subleased premises was to be paid to the landlord; Torstar as tenant could not retain that additional compensation for the use of the sublet part of the premises.
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> At its heart, the Profit Clause was all about allocating the benefit of the rent received for the use of the premises during the term of the Lease.
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> That the Profit Clause permitted Torstar, as tenant, to deduct its reasonable costs before remitting any excess of the sublease rent over the Lease rent does not change the nature of the payment obligation as one of "rent"….[62]

Conclusion

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[60] *Ibid* at para 103.
[61] *Ibid*.
[62] *Ibid* at paras 216 - 218.

The Court's decision emphasizes the relevance that a commercially reasonable result will play when interpreting the intentions of parties to an agreement. While it has long been recognized that courts can have regard for the factual matrix surrounding an agreement when interpreting it, that matrix has seldom been permitted to overtake a technical reading of the agreement itself.

In its decision, the Court identified extricable errors of law "such as the [i] failure to properly, accurately, and fully consider the context in which a contract was made, and [ii] the failure to consider the contract as a whole by focusing on one provision without giving proper consideration to other relevant provisions".[63] Such extricable errors of law attract a correctness standard. Importantly for lawyers, these extricable errors of law are broad and arguably malleable enough for interpretation and, clearly, the Court is prepared to intervene by conducting a deep review of the facts and the context, looking beyond the technical constructs of a contract and into the realities and practicalities of the matter at hand.

The case also raises questions regarding the difference between a "technical" reading of the contract and a "plain" reading of the contract. Arguably, what the Court considers a "technical reading" was a plain reading of the contract as required by the principles in *Sattva*.

From a practice point-of-view, the Court's decision also highlights that what limitation period applies is still a confusing area of the law, which requires careful attention when selecting the applicable limitation period.

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[63] *Ibid* at para 52.