



P. MACAULAY & ASSOCIATES INC.

130 King Street West, Suite 1800, Toronto, ON M5X 1E3

P 416.642.6010 E pmacaul@pmacaulay-assoc.com

My Testimony on Damages Helped Win this Case

My testimony as an expert on damages before The Superior Court of Justice helped the defendants to win this case. Madame Justice McKinnon found that:

“The fact is, as was demonstrated by Mr. Macaulay, that the Tenth Line store is very profitable and has increased its profitability year over year.”

Madame Justice McKinnon further found that:

“Despite Mr. Siegel’s [John Siegel of PwC] efforts since June 2005 to quantify damages by an approach that stands up to scrutiny, I find that he has not been able to do so.”

John Siegel prepared five reports on Farm Boy’s damages, each of which I rebutted. He testified on his fifth report. The Judge accepted my testimony and found that the tenant had not proved their damages. The action was dismissed.

Background

Farm Boy Inc. v Mobius Corp. 2011 ONSC 2877

Farm Boy Inc. operated a grocery store in a mall developed and owned by Mobius Corp. and 2030 Tenth Line Developments Inc., with about 400 parking spaces in the mall overall.

The lease included a clause specifying the number of parking spaces to be provided using a formula driven off the area of the grocery store. The judge’s conclusions can be summarized as follows:

“Based on my interpretation of the parking clause, Farm Boy has established a breach of the contract. ... I find that the breach is the provision of 12.2 parking spaces less than contractually required, for Farm Boy’s use on a non-exclusive basis.

“Mr. Brownlee was the plaintiff’s main witness with respect to causality. I find that his testimony did not establish a deficiency in the parking provided for Farm Boy’s non-exclusive use.

“... although I have found a breach of contract, I have not found that the breach caused a loss.

“Had I, I would not have accepted Mr. Siegel’s opinion of quantification of damages.

“I accept Mr. Macaulay’s testimony that no direct correlation was shown between parking provided and sales per square foot in the Farm Boy stores.

To get my help with your case involving damages, please contact me.