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Court of Appeal for Ontario

My Testimony on Damages Helped Win this Case on Appeal

My testimony as an expert on damages before The Superior Court of Justice helped the defendants to win this case. The Appeal by the plaintiff (appellant) was dismissed by the Court of Appeal in a decision dated October 16, 2012.

“The appellant, a retail tenant in a shopping centre, claimed damages from the respondents, as landlord, for breach of contract by failing to provide an additional 12 parking spaces as required by the lease. The trial judge found the respondents breached the lease, but went on to conclude that the appellant had failed to show the respondents’ breach probably caused it to suffer a loss.

“The trial judge properly set out the governing principles and reviewed the relevant evidence. The respondents were not obliged to provide the additional spaces in the section of the parking lot preferred by the appellant’s customers. The appellant’s evidence of customer complaints did not clearly relate to the entire parking lot as opposed to the preferred section. There was expert evidence that even at the peak periods observed, a large number of vacant parking spaces were available in the parking lot. In our view, it was open to the trial judge to find that the appellant had not shown that the breach caused it to suffer a loss and such a finding was consistent with a common sense approach to the evidence.

“The appeal is dismissed.”

Citation: Farm Boy Inc. v. Mobius Corp.

2012 ONCA 692

Date: 20121016

Docket: C53982

Peter Macaulay is a CA designated specialist in Investigative and Forensic Accounting. His practice focuses on damage quantification in commercial disputes. www.pmacaulay-assoc.com