NOVA SCOTIA COURT OF APPEAL

Citation: *Pothier v. Parkland Fuel Corporation*, 2022 NSCA 9

Date: 20220121
Docket: CA 504822
Registry: Halifax

Between:

Hubert J. Pothier and Phyllis M. Pothier

Appellants

v.

Parkland Fuel Corporation

Respondent

Judge: The Honourable Justice David P. S. Farrar

Appeal Heard: September 27, 2021, in Halifax, Nova Scotia

Subject: Contractual interpretation, extension of lease agreement, options to renew

Summary: The parties entered into a lease agreement with an original term of five years from January 1, 2008 to December 31, 2012. The lease granted the respondents an option to renew for an additional five years. The parties extended the lease beyond December 31, 2012 by way of letter agreements. The final letter agreement extended the lease to December 31, 2019. The appellants advised the respondents they were not going to extend the lease beyond that date.

On December 4, 2019, the respondent purported to exercise the option to renew. The appellants took the position that the option had expired at the end of the original term.

The appellants applied to the Supreme Court for a declaration that the option to renew had lapsed.

The application judge found the option to renew had been extended and had been validly exercised by the respondents.

The appellants appeal from his decision.

Issues: Did the application judge err in finding the time for exercising the option to renew had been extended by the parties beyond December 31, 2012?

Result: Appeal dismissed. The application judge properly found that the letter agreements had extended the term of the lease to December 31, 2019 including the option to renew. He found the original option to renew remained unaltered aside except for the time when it could be exercised. In so doing, he did not err.

The appeal is dismissed with costs to the respondent in the amount of $3,000.00, inclusive of disbursements.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 14 pages.

<u>NOVA SCOTIA COURT OF APPEAL</u>
Citation: *Pothier v. Parkland Fuel Corporation*, 2022 NSCA 9

Date: 20220121
Docket: CA 504822
Registry: Halifax

Between:

Hubert J. Pothier and Phyllis M. Pothier

Appellants

v.

Parkland Fuel Corporation

Respondent

Judges:	Beveridge, Farrar and Bourgeois, JJ.A.
Appeal Heard:	September 27, 2021, in Halifax, Nova Scotia
Held:	Appeal dismissed with costs, per reasons for judgment of Farrar, J.A.; Beveridge and Bourgeois, JJ.A. concurring
Counsel:	Charles Demond, for the appellant Michelle Kelly, Q.C., and John Boyle for the respondent

Reasons for judgment:

Introduction

[1] Hubert and Phyllis Pothier are the owners of a commercial property in Tusket, Nova Scotia (the Property). The Property was leased to Ultramar, a predecessor to Parkland Fuel Limited, by way of a Head Lease. The Pothiers' land was then leased back to them by way of a Sublease to allow them to operate a gas station and convenience store on the Property.

[2] The Head Lease sets out the commencement date of January 1, 2008 and that the term of the lease was for five years from the commencement date, expiring on December 31, 2012. The Sublease expired on December 30, 2012.

[3] The Head Lease contained an option to renew for five years on the same terms and conditions with the exception of the rent rate, promotional allowances and loans.

[4] The parties, by correspondence, extended the original term of the Lease Agreements a number of times.[1] This continued until December 2019 when the Pothiers decided they did not wish to extend the Head Lease any further.

[5] On December 4, 2019, Parkland purported to exercise the option to renew. The Pothiers took the position the option had expired at the end of the original term.

[6] On February 19, 2020, the Pothiers filed an Application in Court pursuant to *Civil Procedure Rule* 5.07 seeking a declaration that the option to renew had lapsed.

[7] The matter was heard on February 1, 2021 by Justice Kevin Coady.

[8] On February 5, 2021, he issued a written decision finding the option to renew had been validly exercised by Parkland and was binding on the parties (2021 NSSC 41). The Pothiers appeal from his decision.

---

[1] The Lease Agreements are referred to in the correspondence between the parties as the "Cross-Lease Agreements". Nothing turns on this terminology. At issue was the option to renew in the Head Lease.

[9] For the reasons that follow, I would dismiss the appeal with costs to Parkland in the amount of $3,000, inclusive of disbursements.

Background

[10] On November 3, 2009, Ultramar Ltd., Hubert J. Pothier and Phyllis M. Pothier entered into the following agreements regarding the Property:

(a) a Notice of Lease and Confirmatory Lease in relation to the Head Lease;

(b) a Head Lease;

(c) a Notice of Lease and Confirmatory Lease in relation to the Sublease; and

(d) a Sublease.

[11] The provision at issue before the application judge was s. 4 of the Head Lease, titled Renewal, which provided:

> 4. Renewal
>
> Ultramar shall have the option, on written notice to the Lessor not later than the last day of the Term, to renew this lease for a further term of five (5) years on the same terms and conditions as contained herein, except the Volumetric Rent Rate, promotional Allowances and loans. In the event the parties are unable to agree on the Volumetric Rent Rate, the Volumetric Rent Rate will be determined by a single arbitrator pursuant to the *Commercial Arbitrations Act* (Nova Scotia). The parties acknowledge that any promotional allowances and loans shall only be granted by Ultramar at Ultramar's sole discretion.

[12] On December 11, 2012, Mr. Pothier sent Mr. McQuillan, the Retail Sales Manager at Ultramar Ltd., an email seeking to extend the Lease Agreements under the "same current terms" until the parties negotiated a new agreement:

> Warren, we would like to request an extension to our existing lease agreement, per the option on page 6 Overholding 6. Could we continue to operate under the same current terms, until we negotiate a new agreement, please? Hopefully that will be within a few months.
>
> I presume that by now, Ray Hiltz has informed you of the contamination and remedial work assessment. That's a very unfortunate position to be in at this time, especially considering all the expenses that we, especially Ultramar have incurred to date. I do believe that Ray was going to request a meeting for us in

> the immediate future, and that would be find with me. Whenever it's convenient for you, I will drive to Dartmouth.
>
> Please let me know if the above is acceptable.

[13] On January 4, 2013, Ultramar responded to the Pothiers, proposing an extension of the Lease Agreements on a month-to-month basis from January 1, 2013 to June 30, 2013 on the same terms and conditions, pending negotiation of a five-year renewal as defined in the Head Lease. This proposal was accepted by the Pothiers. It provided:

> We refer to the Head and Sub Lease dated November 3, 2009, between Hubert J. Pothier and Phyllis M. Pothier and Ultramar Ltd. for the five year term commencing January 1, 2008 and expiring on December 31, 2012.
>
> This is to confirm Ultramar's proposal for this cross-lease to continue on a month-to-month basis from January 1, 2013 to June 30, 2013, upon the same terms and conditions including rental rate, pending negotiations of a five year renewal as defined in Section 4 of the Head Lease.
>
> As discussed, you will retain the option to purchase the pumps owned by Ultramar for the price of $5 each upon renewal of this cross lease for a five year term, as stated in Section 10.3 of the Head Lease.
>
> If you agree with this proposal, kindly sign the bottom of this letter indicating same. Please note that this proposal is subject to Ultramar Management approval.

[14] On cross-examination at the application, Mr. Pothier gave the following evidence regarding the initial extension letter:

> Q. No, well I … as of January 4th, 2013
>
> A. Yes. Yes.
>
> Q. **… did you understand that the five-year renewal period continued to exist for the benefit of Ultramar?**
>
> A. **Yes, at that time I did.**
>
> Q. Okay. And you were signing off in this letter to continue that option to renew for a further five years.
>
> A. Well the letter says that we're month to month until we could ... incremental rates, until we could agree on the term, yes.
>
> Q. Sorry. So I want to be a little more specific, Mr. Pothier. On ... and I'm just going to assume that you signed it on January 14th, 2013 because that's the date below. So I'm not going to hold you to that being the actual date you signed it but let's assume that it is. So on January 14, 2013, when you signed this ...

A. Yes.

Q. ... extension letter ...

A. Yes.

Q. **... did you understand that you were agreeing that the five-year renewal option continued to exist ...**

A. **Yes, I did.**

Q. **... for the benefit of Ultramar?**

A. **Yes, I did. Yes. Yes, we did. Yes, we knew it was there.**

[Emphasis added]

[15] Between 2013 and 2019, there were nine other letters of extension bringing the expiration of the Head Lease to December 31, 2019. The last letter of extension was dated May 23, 2019 and stated:

> We refer to the Head and Sub Lease dated November 3, 2009, between Hubert J. Pothier & Phyllis M. Pothier and Ultramar Ltd. (now Parkland Fuel Corporation) for the five year term commencing January 1, 2008 and expiring on December 31, 2012, the six month lease extension ending June 30, 2013, the one year extension ending June 30, 2014, the one year extension ending June 30, 2015, the one year extension ending June 30, 2016, the six month extension ending December 31, 2016, the one year extension ending December 31, 2017, the six month extension ending June 30, 2018, the six-month extension ending December 31, 2018 as well as the six month extension ending June 30, 2019 (hereinafter referred to as the 'Cross-Lease').
>
> This is to confirm Parkland's proposal to extend the Cross-Lease for an additional six (6) months effective from July 1, 2019 to December 31, 2019, upon the same terms and conditions including rental rate and any option to renew in favor of Parkland, pending negotiations of a five year renewal as defined in Section 4 of the Head Lease.
>
> As well, you will retain the option to purchase the pumps owned by Parkland for the price of $5 each upon renewal of this cross lease for a five year term, as stated in Section 10.3 of the Head Lease.
>
> If you agree with this proposal, kindly sign the bottom of this letter indicating same.
>
> *[Emphasis in Original]*

[16] This letter is in substance the same as previous letters with the exception of the underlined phrase "and any option to renew in favor of Parkland" which is highlighted in the original. The Pothiers agreed to the extension.

[17] Mr. Pothier was questioned about this difference in wording. In cross-examination at the application he testified that he did not pay any attention to it:

> **Q.** Okay. And so this one, you know, the first paragraph references all of these extension agreements and then the second paragraph says: "This is to confirm Parkland's proposal to extend the cross lease for an additional six months, effective from July 1, 2019 to December 31, 2019, upon the same terms and conditions, including rental rate and any option to renew in favor of Parkland, pending negotiations of a five-year renewal." And it continues on. And that language, for the first time, is a little bit different from the previous letters. Correct?
>
> **A.** Yes, it is.
>
> **Q.** And that language that differs is, in fact, underlined and there's a score beside the paragraph identifying the change. Correct?
>
> **A.** Yes.
>
> **Q.** And did you see that when this letter was delivered to you in May of 2019?
>
> **A.** No.
>
> **Q.** You did not pay any attention to that.
>
> **A.** No. No.
>
> **Q.** And you did not appreciate the difference in wording.
>
> **A.** No.
>
> **Q.** And you did not seek advice from anyone with respect to those changes. Correct?
>
> **A.** No.
>
> **Q.** Instead you and your wife sign off on the extension letter and we see your signatures at the bottom of the page. Correct?
>
> **A.** Yes.

[18] Justice Coady did not accept Mr. Pothier's evidence on this point. In his decision, he found:

> [16] The final executed extension letter, dated May 23, 2019, was drafted by Ultramar and accepted by the Pothiers. It contained the added phrase "and any option to renew in favor of Parkland". The inclusion of this phrase indicates that Parkland was very "tuned in" to the importance of the renewal clause to their longstanding business relationship with the Pothiers. Mr. Pothier discussed this additional language at paragraph 29 of his affidavit:

> When I received and signed the letter dated May 23, 2019 attached as Exhibit 'M', I did not notice that the section in paragraph 2 which is underlined was added. No one brought this to my attention or suggested in any way that this was an obligation that I was agreeing to. All that I understood the letter to mean was that Parkland Fuel Corporation could continue to lease the Pothier lands until December 31, 2019. I certainly never understood that the letter gave Parkland Fuel Corporation a right to renew the Head Lease for 5 years. I never would have agreed at the time to giving Parkland Fuel Corporation such a right.

> **I find this difficult to accept. Mr. Pother, at every step, agreed to continue negotiations for a five-year renewal.** He understood the importance of that clause to the business relationship with Parkland. Mr. Pothier is a longstanding and successful businessman. He acknowledged that he negotiated many leases and contracts over the years.
>
> [17] The renewal clause was a critical part of the Head Lease in that both parties were committed to a long-term business relationship. This is further confirmed in each extension letter. **If I were to accept that Mr. Pothier did not notice the added phrase, such a conclusion would be of little significance to the interpretation of clause 4.** It is significant only in that it indicated the importance of renewals to Parkland. The inclusion of the added phrase amounts to an alert that the renewal clause was critical to their business arrangements. I accept Parkland's submission that the addition of the phrase is not evidence that Parkland viewed the original extension letters as unclear. It is evidence that it believed that its option to renew continued to be available.
>
> [Emphasis added]

[19] On October 19, 2019, Parkland sent a letter to the Pothiers proposing a six-month extension to June 30, 2020. The Pothiers did not accept the offer. Mr. Pothier's affidavit on the application explained that he did not wish to extend the arrangement with Parkland beyond December 31, 2019 and that he planned to shut down the gas station at that time.

[20] On December 4, 2019, Parkland wrote to the Pothiers as follows:

> The letter is to inform you that Parkland Fuel Corporation is exercising its option to renew in its favour as described in the Lease/Sub-lease agreement dated December 3, 2009, effective as of January 1, 2008 and expiring on December 31 as amended.
>
> Our representative, Mr. Ken Bona, will contact you shortly, if he has not already done so, to discuss with you the conditions of this renewal.
>
> We look forward to continuing our mutually beneficial relationship as we negotiate the terms of this renewal.

[21] As noted earlier, the Pothiers took the position the option to renew had expired. Justice Coady disagreed and found Parkland had properly exercised it.

Issues

[22] In the Notice of Appeal, the Pothiers identify nine issues with the application judge's decision. In their factum, they reduce the issues as follows:

> (A) Did the Trial Judge misinterpret the Head Lease?
>
> (B) Did the Trial Judge fail to consider relevant factors?
>
> (C) Did the Trial Judge misapprehend the surrounding circumstances?

[23] Although the Pothiers address these as three separate issues, they are really one issue as follows:

> Did the application judge err in finding the time for exercising the option had been extended by the parties beyond December 31, 2012?

Standard of Review

[24] This Court in *Royal & Sun Alliance Insurance Company of Canada v. Snow*, 2016 NSCA 7, confirmed appellate courts are to apply a deferential standard when reviewing decisions on contractual interpretation where the issue is not an extricable question of law:

> [10] The standard of review in relation to interpretation of contracts was recently considered in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53. In *Sattva* the Court noted that historically courts approached the interpretation of written contracts as a question of law. The Supreme Court of Canada rejected this approach holding:
>
> > 50. ...Contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix.
>
> [11] The Supreme Court concluded a deferential standard of review is appropriate unless there is a legal error with respect to an extricable question of law. Legal errors made in the course of contractual interpretation include the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor. (*Sattva*, ¶52-54 citing *Housen v. Nikolaisen*, 2002 SCC 33; see also *Industrial Alliance Insurance and Financial Services Inc. v. Brine*, 2015 NSCA 104, ¶40).

Analysis

Did the application judge err in finding that the extension letters extended the renewal option beyond December 31, 2012?

[25] For ease of reference, I will repeat s. 4 of the Head Lease:

> **4. Renewal**
>
> Ultramar shall have the option, on written notice to the Lessor not later than the last day of the Term, to renew this lease for a further term of five (5) years on the same terms and conditions as contained herein, except the Volumetric Rent Rate, promotional allowances and loans. In the event the parties are unable to agree on the Volumetric Rent Rate, the Volumetric Rent Rate will be determined by a single arbitrator pursuant to the *Commercial Arbitration Act* (Nova Scotia). The parties acknowledge that any promotional allowances and loans shall only be granted by Ultramar at Ultramar's sole discretion.

[26] In total, there were ten letters extending the Lease Agreements to December 31, 2019. All of the extensions were for either six months or a year. All included the words "upon the same terms and conditions" and "pending negotiations of a five-year renewal as defined in Section 4 of the Head Lease".

[27] The final letter, again as noted earlier, is the same as the other letters with the addition of an underlined phrase "and any option to renew in favor of Parkland". The Pothiers accepted all of the extensions.

[28] In considering the evidence, the application judge concluded:

> [14] The Pothiers argue the renewal option was lost in 2012 when the first extension letter was provided after the first five-year term had expired. I am not persuaded that such is the case. The Pothiers were aware that the Head Lease was reaching its maturity date when they sent the December 11, 2012 email to Ultramar. They were seeking an extension "to our existing lease agreement". They proposed that the extension would "operate under the same current terms, until we negotiate a new agreement". The Pothiers' letter asked Ultramar to "please let me know if the above is acceptable". Ultramar's first extension was in response to the Pothiers' proposal of December 11, 2012. Clause 4 of the Head Lease is captured by the words "under the same current terms". The evidence satisfies me that the parties contemplated a five-year renewal when the first extension letter was inked in January, 2013. Each time an extension letter was agreed upon, the renewal option was extended for either six months or 12 months. These letters of extension stated that negotiations would continue in an effort to

> achieve a five-year renewal. The option to renew had to exist if negotiations were to continue.

[29] The Pothiers take issue with the application judge having considered the extension letters in his interpretation of the lease. They say he simply needed to look at the Head Lease to determine that the renewal option had expired on December 31, 2012. They say in their factum:

> 50. By looking at the unambiguous language of the Head Lease, the Letters need not be considered as part of the agreement between the Parties governing the Renewal Clause, because the first of the Letters was not given to the Appellants until after December 31, 2012. By then, any benefit of the Renewal Clause in favour of the Respondent had expired.

[30] The suggestion that because the extension letter was not signed until January 14, 2013, after the expiration of the original term it could not extend the period to exercise the option to renew is entirely without merit. If this was the case, all of the terms and conditions of the Lease Agreement would have expired and there would be nothing to extend. There is nothing in the letter to suggest that some terms and conditions of the Lease Agreements were continuing and others were not.

[31] With respect, the wording of the extension letters and the evidence of Mr. Pothier himself, that he understood that he was agreeing to the five-year renewal option continuing to exist when he signed the letter of January 14, 2013, were central to the issue of whether the terms of the Head Lease had been extended. Nothing occurred between that date and the date of the final extension letter which changed the circumstances between the parties. They continued to operate as they had before the original expiration date. If there was any doubt about the parties' intentions, they are removed by the option being clearly referenced and highlighted in the letter of May 23, 2019.

[32] The application judge concluded that the extensions continued all of the terms and conditions of the Head Lease, including the renewal option:

> [17] The renewal clause was a critical part of the Head Lease in that both parties were committed to a long-term business relationship. This is further confirmed in each extension letter. If I were to accept that Mr. Pothier did not notice the added phrase, such a conclusion would be of little significance to the interpretation of clause 4. It is significant only in that it indicated the importance of renewals to Parkland. The inclusion of the added phrase amounts to an alert that the renewal clause was critical to their business arrangements. I accept

Parkland's submission that the addition of the phrase is not evidence that Parkland viewed the original extension letters as unclear. It is evidence that it believed that its option to renew continued to be available.

[18] The legal differences between renewals and extensions is germane to this analysis. In *668892 N.B. Ltd. v. Parkland Fuel*, 2020 NBBR 91, Justice Doyle concluded that an extension agreement typically continues the existing terms of a contract over a long period of time, while not altering the original terms. He states at paragraphs 33-35:

> **33** The Respondent asserts that the right of a party to unilaterally cause the terms of an existing agreement to continue over a longer period of time than that originally intended is a right of extension and not of renewal. The Respondent refers this Court to paragraph 30 in ***Manulife Bank of Canada v. Conlin***, [1996] 3 S.C.R. 415, where Cory J. stated as follows:
>
> > ... an extension would not ordinarily involve an alteration of the original terms, but rather a continuation of the same terms over a longer time period.
>
> **34** The Respondent correctly notes that in a case directly analogous to the instant matter, ***Vancouver City Savings Credit Union v. New Town Investments Inc.***, 2008 BCSC 1617, the Court was asked to interpret a supplemental agreement which purported to "extend" the terms of a lease, which was the subject of a separate renewal period. The Court ultimately found that the agreement was an extension, and not a renewal, and in doing so, at paragraphs 13 and 14, relied on the definitions provided in Black's Law Dictionary as follows:
>
> > [13] ... Black's Law Dictionary, 8th ed., which defines "extension" in part as:
> >
> > > n. 1. The continuation of the same contract for a specified period.
> >
> > [14] This definition then directs the reader to compare the term with the word "renewal" which Black's Law Dictionary defines in part as:
> >
> > > n. 1. The act of restoring or re-establishing. . . 3. The re-creation of a legal relationship or the replacement of an old contract with a new contract, as opposed to the mere extension of a previous relationship or contract.
>
> 35 The Respondent correctly asserts that the right of a tenant to unilaterally cause the terms of an existing lease to continue over a longer period of time than originally intended is a right of extension and not of renewal.

The language used in the present case refers to extensions. Extensions were first broached by the Pothiers in the December 11, 2012 email.

> **Conclusion:**
>
> [19] I conclude that the extensions maintained the renewal option and that Parkland properly exercised that renewal option prior to the last extension expiring. In light of this conclusion, a declaration will issue to the effect that Parkland's 2019 renewal was validly effected and that the Pothiers are bound by that renewal.

[33] The option to renew was a term of the Head Lease. The extension letters extended all the terms and conditions for the periods as set out in those letters. There is nothing in any of the correspondence that suggests the parties intended to exclude the option to renew.

[34] The application judge's reliance on *668892 N.B. Ltd. v. Parkland Fuel*, 2020 NBQR 91 and the authorities cited therein is well-founded.

[35] In *668892*, Kisco Convenience Inc. entered into five year cross-leases with Ultramar Ltd. in 2010. Those cross-leases contained virtually identical overholding and renewal provisions as in the Lease Agreements here (see *668892*, ¶5). In 2013, Ultramar Ltd. assigned its rights to CST, and Kisco Convenience Inc. assigned its rights to 668892 N.B. Ltd. At that time, CST sent a proposal to the applicant granting CST the "exclusive option to extend the existing cross lease for a three year term ... under the same terms and conditions including the rental rate" in return for a signing bonus and reimbursements for promotions.

[36] 668892 N.B. Ltd. agreed to the three-year extension, but no further extensions. In 2018, Parkland, who had taken over for CST, chose to exercise its option to renew. 668892 N.B. Ltd. argued that the three-year extension had eliminated Parkland's option to renew. Doyle J. concluded that the extension agreement created an option to extend the original term outlined in Article 2 of the Lease Agreement for a further three-year period to August 31, 2018, and did not create a right of renewal which replaced the existing right of renewal contained therein.

[37] In *668892*, the focus was on whether the extension agreement was truly an extension, thus extending the option to renew, or was in fact a renewal, thus replacing the original option to renew.

[38] After reviewing the applicable principles of statutory interpretation, Doyle J. considered the legal distinction between extension and renewal, and confirmed that

an extension agreement typically continues the existing terms over a longer period of time. An extension agreement generally does not alter the original terms:

> [33] […] The Respondent refers this. Court to paragraph 30 in ***Manulife Bank of Canada v. Conlin***, [1996] 3 S.C.R. 415, 1996 CarswellOnt 3941 (S.C.C.), where Cory J. stated as follows:
>
> > **… an extension would not ordinarily involve an alteration of the original terms, but rather a continuation of the same terms over a longer time period.**
>
> [34] The Respondent correctly notes that in a case directly analogous to the instant matter, ***Vancouver City Savings Credit Union v. New Town Investments Inc.***, 2008 BCSC 1617, the Court was asked to interpret a supplemental agreement which purported to "extend" the terms of a lease,which was the subject of a separate renewal period. The Court ultimately found that the agreement was an extension, and not a renewal, and in doing so, at paragraphs 13 and 14, relied on the definitions provided in Black's Law Dictionary as follows:
>
> > **[13] ... Black's Law Dictionary, 8th ed., which defines "extension" in part as:**
> >
> > > **n. 1. The continuation of the same contract for a specified period.**
> >
> > **[14] This definition then directs the reader to compare the term with the word "renewal" which Black's Law Dictionary defines in part as:**
> >
> > > **n. 1. The act of restoring or re-establishing... 3. The recreation of a legal relationship or the replacement of an old contract with a new contract, as opposed to the mere extension of a previous relationship or contract.**
>
> [35] The Respondent correctly asserts that the right of a tenant to unilaterally cause the terms of an existing lease to continue over a longer period of time than originally intended is a right of extension and not of renewal.
>
> [Emphasis added]

[39] Accordingly, here, given the parties' chosen language of extending the Lease Agreements on the same terms and conditions, there is no reason to conclude these parties did not extend the option to renew. As such, the original option to renew remained unaltered aside from extending the time in which it could be exercised.

[40] Parkland properly exercise that renewal option as of December 2019, prior to the expiration of the extended term.

[41] The Pothiers' arguments that the trial judge somehow failed to consider relevant factors or misapprehended the evidence are without merit. The application judge reviewed and considered all of the evidence before him in reaching his conclusion.

[42] Based on the principles of contractual interpretation and the nature of extensions, there is no reason to interfere with Justice Coady's finding that Parkland retained the renewal clause during the extensions, and therefore it was entitled to exercise its option to renew in December 2019.

[43] I would dismiss the appeal with costs to Parkland in the amount of $3,000.00, inclusive of disbursements.

Farrar, J.A.

Concurred in:

Beveridge, J.A.

Bourgeois, J.A.