

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Khangura v. Lumberwest Building
Supplies Inc.*,
2023 BCSC 1053

Date: 20230620
Docket: S219335
Registry: Vancouver

Between:

Gurpaul Khangura

Plaintiff

And

Lumberwest Building Supplies Inc.

Defendant

Before: The Honourable Mr. Justice Brongers

Reasons for Judgment

Counsel for the Plaintiff:

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Place and Date of Trial:

Vancouver, B.C.
January 3-6, 19, February 3
and March 3, 2023

Place and Date of Judgment:

Vancouver, B.C.
June 20, 2023

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INTRODUCTION

[1] Gurpaul (Paul) Khangura (“Mr. Khangura”) is a building supply and lumber salesperson. Lumberwest Building Supplies Inc. (“Lumberwest”) is a corporation that used to operate a building supply and lumber yard in Surrey.

[2] Mr. Khangura worked for Lumberwest from December 2020 until September 2021. The parties had a formal employment contract. It provided that Mr. Khangura would work as a salesperson for Lumberwest and receive a remuneration package that included salary, a vehicle allowance, and the opportunity to earn sales commissions.

[3] In August 2021, Mr. Khangura received email communication from Lumberwest regarding his employment status. Mr. Khangura interpreted it as notice that he was being terminated without cause. However, Lumberwest denies that this was its intention. From Lumberwest’s perspective, it simply wanted to communicate concerns with Mr. Khangura’s performance and its expectation that he would address them shortly.

[4] Subsequently, Lumberwest expressly told Mr. Khangura that it wanted him to continue his employment in accordance with their contractual agreement. However, the feeling was not mutual. Mr. Khangura stopped working for Lumberwest in early September 2021. Later that month, Mr. Khangura began employment with another lumber and building supply company – the same one he had worked for prior to joining Lumberwest.

[5] Mr. Khangura now brings a wrongful dismissal action against Lumberwest. He claims that he was terminated without cause. He asks the Court to order Lumberwest to pay him damages in respect of the remuneration he says he is owed under the terms of their employment contract.

[6] Lumberwest disagrees. It says that Mr. Khangura either resigned or abandoned his job with Lumberwest. Accordingly, Lumberwest argues that

Mr. Khangura is not entitled to any damages arising from his own decision to quit and work for a different employer.

[7] On my review of the evidence, I find that it does not demonstrate objectively that Mr. Khangura was dismissed by Lumberwest. Instead, I find that Mr. Khangura left his job voluntarily knowing that Lumberwest wanted to maintain their employment relationship. Mr. Khangura's claim will therefore be dismissed. My reasons for this decision are set out below.

BACKGROUND

Factual Background

Lumberwest Hires Mr. Khangura

[8] Lumberwest's principal and owner is Joginder (Joe) Dhaliwal ("Mr. Dhaliwal").

[9] In early 2020, Mr. Dhaliwal was in the process of establishing a building supply and lumber yard business to be operated through Lumberwest on premises located in Surrey. While Mr. Dhaliwal had significant experience in the construction industry, he had no real background in selling lumber and building supplies. Accordingly, Mr. Dhaliwal made efforts to engage a team of experienced professionals to work at Lumberwest. One of the people Mr. Dhaliwal decided to contact for this purpose was Mr. Khangura.

[10] At the time, Mr. Khangura was working as a sales manager for Dick's Lumber & Building Supplies ("Dick's Lumber") at its Surrey store. Mr. Khangura had been employed there since 2012. He was being paid an annual base salary of \$60,000, plus monthly sales commissions, and a \$1,000 monthly vehicle allowance. Mr. Dhaliwal was a longstanding customer of Dick's Lumber, and the person responsible for his account, Tajinder Nijjar, recommended Mr. Khangura as a colleague of hers who might be a suitable hire for Lumberwest.

[11] Mr. Dhaliwal and Mr. Khangura then had four separate meetings in the spring of 2020. Mr. Dhaliwal also took Mr. Khangura on a tour of Lumberwest's business premises.

[12] These meetings included discussions of Mr. Dhaliwal's plans for the Lumberwest store and Mr. Khangura's expectations should he agree to work there. In particular, Mr. Khangura indicated that he wanted a guaranteed annual base salary of \$120,000, double what he was receiving from Dick's Lumber. Mr. Khangura made this request partly to address his concern that he might not be able to earn as much in commission income at the new Lumberwest store as he had been earning at the established Dick's Lumber store. Mr. Dhaliwal agreed, and at their fourth meeting on June 23, 2020 a document titled "Employment Agreement" was signed by Mr. Khangura as the employee and by Mr. Dhaliwal on behalf of Lumberwest as the employer.

The Parties' Employment Agreement (the "Contract")

[13] The Contract's preamble indicates that Lumberwest had offered to employ Mr. Khangura as a full-time "Sales Position/Accounts Manager", and that Mr. Khangura had accepted this offer. The Contract's heading states that their agreement is made effective June 23, 2020.

[14] The Contract is a detailed one, although it suffers from a number of drafting deficiencies. Many of its terms and conditions are vague, some are confusing, and others are plainly contradictory. Four examples are of particular relevance to this action.

[15] First, the Contract contains two sections that purport to address termination of employment: (1) "Article 2 Termination of the Employment Agreement" and (2) "Article 6 Termination". Article 2 begins with a curious clause (article 2.1) stating that "The Employment Agreement be, and it is hereby terminated effective immediately and is of no further force or effect". However, the three following clauses (articles 2.2, 2.3, and 2.4) then indicate that the "Employee" is hereby engaged to perform certain "Services" for the "Company", with Services being defined in a schedule to the Contract. As for article 6, it seems to contain the actual provisions that are

intended to address how the Contract may be terminated by either party in the future. It reads as follows:

**Article 6
Termination**

- 6.1 Automatic Termination upon Death.** This agreement shall terminate immediately upon The Employee’s death.
- 6.2 Termination for Cause by the Company.** The Company may immediately terminate this Agreement at any time by written notice to the Employee if any one or more of the following events shall occur:
 - (a) any failure by the Employee to perform or observe any of the provisions of this Agreement where such failure is not cured within thirty (30) days of written notification to the Employee.
- 6.3 Termination for Cause by the Employee.** The Employee may immediately terminate this Agreement at any time by written notice to the Company if any one or more the following events shall occur:
 - (a) The Employee has suffered a Disability.
- 6.4 Termination “Not for Cause” by the Company.** Notwithstanding the provisions of Sections 6.2 or 6.3, the Company may terminate this Agreement at any time “not for cause” by giving the Employee written notice of termination.
- 6.5 Termination “Not for Cause” by the Employee.** Notwithstanding the provisions of Sections 6.2 or 6.3, the Employee may terminate this Agreement at any time “not for cause” by giving the Company Twelve (12) months’ prior written notice of termination.
- 6.6 Termination by the Company.** If the agreement is terminated by the Company not for cause, the Company will pay as per annual salary in monthly installments. Divided by the remainder of the contract value.

[16] Second, the Contract’s duration is ambiguous. In the “Definitions” section, the word “Term” is defined as “the period commencing on the date this Agreement [sic] and ending on the date this Agreement is terminated”. However, the Contract also has a section titled “Article 3 Term”. It indicates that while the Contract has no explicit expiry date, it is a fixed-term employment contract which commences for a period of three years:

**Article 3
Term**

- 3.1 Term.** This agreement shall commence on the date first written above, and unless modified by mutual agreement of the Parties, extended pursuant to the terms of this Agreement or terminated earlier pursuant to the terms of this Agreement, shall have no explicit expiry date.

- (a) This is a fixed-term employment contract. The Employee's employment will commence for a period of 3 year (the "Term").

[17] Third, the Contract contains a section titled "Article 4: Salary" which sets out Mr. Khangura's remuneration package. It, too, contains ambiguities and reads as follows:

**Article 4
Salary**

4.1 Salary. For the Services rendered hereunder, the Company agrees to pay to the Employee following salary:

- (a) an annual base salary equal to:
 - (i) for the period September 1st, 2020 to August 31st, 2021, One Hundred Twenty Thousand (\$120,000) Dollars per annum; and after 6 months of employment, the Commission Payment Structure, as described in Schedule 2 hereto (the "Commission Payment Structure") will apply;
 - (ii) after September 1st, 2021 to August 31st, 2022 One Hundred Twenty Thousand (\$120,000) Dollars per annum and based on the Commission Payment Structure, as described in Schedule 2 hereto (the "Commission Payment Structure");
 - (iii) after September 1st, 2022 to August 31st, 2023, One Hundred Twenty Thousand (\$120,000) Dollars per annum and based on the Commission Payment Structure, as described in Schedule 2 hereto (the "Commission Payment Structure");
 - (iv) The Company shall provide the Employee with a monthly travel allowance of One Thousand Dollars (\$1,000). – the Employee is to provide their own vehicle, gas, and insurance.
 - (v) payable in equal bi-monthly instalments.
- (b) after the first year of employment, the second year and thereafter the Employee will be based on the Employee Commission Payment Structure. As Ascribed in Schedule 2 hereto (the "Commission Payment Structure").
- (c) start date: The start date of your compensation adjustment will be September 1st, 2020.

4.2 Expense. Out of Pocket cost for Business (To be Discussed by the Board of Directors).

[18] It therefore appears that, notwithstanding the “Article 3 Term” provision implying that Mr. Khangura’s employment at Lumberwest commences on June 23, 2020 (the date indicated on the Contract’s heading), the “Article 4 Salary” provision indicates a start date of September 1, 2020. Article 4 further provides that Mr. Khangura is to receive an annual salary of \$120,000 from September 1, 2020 to August 31, 2023, as well as a monthly travel allowance of \$1,000 per month. The provision also allows for the possibility that Mr. Khangura may earn sales commissions in accordance with a schedule to the Contract. However, it is unclear whether this entitlement begins after six months of employment (as per article 4.1(a)(i)), or after the first year of employment (as per article 4.1(b)).

[19] Finally, the Contract also contains a broad and expansive non-competition and non-solicitation clause. Its wording includes the following:

**Article 7
Restrictive Covenants**

- 7.1 Non-Competition and Non-Solicitation.** The Employee agree that, at any time during the Term and for a period of One (1) years thereafter, he or she shall not, directly or indirectly, in any manner whatsoever (including , without limitation either individually or in partnership or jointly or in concert with any Person or as principal agent, consultant, lender, contractor, employer, employee, investor or shareholder, or in any other manner).
- (a) advise, manage, carry on, establish, acquire control of, be engaged in, invest in or lend money to, have any financial interest in or in respect of guarantee the debts or obligations of, offer financial assistance or service to or merit his/her name or any part thereof to be used or employed by any business or any Person that operates, is engaged in or has an interest in, a business anywhere within the Province of British Columbia which is the same as or substantially similar to or competes with any of the Company or any part thereof (a “**Competing Business**”);
 - (b) directly or indirectly, hire as an employee or the Employee or offer employment or otherwise entice away and Person who is employed by the Company;
 - (c) directly or indirectly, canvass or solicit the business of, accept any business from, supply and goods or services to otherwise deal with, any past or present customers or clients of any of the Company or any part thereof or procure or assist any person to do same;

- (d) directly or indirectly, solicit or deal with any past or present service provider, supplier, contractor, agent, or Person under contract or otherwise associated or doing business with any of the Company or any part thereof or procure or assist any person to do same; or
- (e) otherwise directly or indirectly interfere with any of the contractual, business, or economic relationships or prospect of any of the Company or any part thereof or procure or assist any person to do same;

....

Mr. Khangura's Employment at Lumberwest Begins

[20] Regardless of what is stated in the Contract, both parties agree that they initially expected Mr. Khangura to begin working at Lumberwest on September 1, 2020. However, his first day of work was in fact December 7, 2020 – approximately two weeks after Mr. Khangura gave Dick's Lumber notice that he was leaving its employment to join Lumberwest.

[21] The reasons for this delay are disputed. Mr. Khangura claims that Mr. Dhaliwal told him at the end of August 2020 that Lumberwest was not ready for Mr. Khangura to start working on September 1. Mr. Dhaliwal claims that it was Mr. Khangura who wanted to delay the start date so that he could finish up his outstanding work at Dick's Lumber.

[22] Once Mr. Khangura did start working at Lumberwest, he understood that its management team would consist primarily of president Kevin Dhaliwal (Mr. Dhaliwal's son) and general manager Ryan Johal (Mr. Dhaliwal's son-in-law). Mr. Khangura testified that he was generally content with his new job during the first few months, in spite of some frustrations and challenges stemming from the fact that Lumberwest was a new company. In particular, Mr. Khangura expected that Lumberwest would have more product to sell, and that more of the customers he had been servicing at Dick's Lumber would follow him and bring their business to Lumberwest. Mr. Khangura was nevertheless prepared to give the new job a chance, and there were no indications that Lumberwest had any real concerns with Mr. Khangura's workplace performance initially.

Mr. Khangura and Lumberwest's Relationship Deteriorates

[23] Changes to the nature of the parties' employment relationship began to occur in or around March 2021. At that time, both Kevin Dhaliwal and Ryan Johal largely stopped working at Lumberwest. The former had fallen ill, and the latter had taken paternity leave. Mr. Dhaliwal then became more directly involved in Lumberwest's daily management. From Mr. Khangura's perspective, these events coincided with a deterioration in Lumberwest's operations and his working conditions. In particular, Mr. Khangura felt that Lumberwest had an inadequate inventory of product available for sale, and he found it difficult to offer price quotes and credit terms to customers.

[24] Mr. Khangura also testified that he had a meeting with Mr. Dhaliwal in or around April 2021 at which Mr. Dhaliwal said that he was looking to wind down the company. Mr. Dhaliwal only acknowledges that he spoke of having to restructure the company as a result of the departures of his son and son-in-law. Mr. Dhaliwal also testified that he proposed that Mr. Khangura become a "partner" in the company, but that Mr. Khangura was not interested.

[25] Another meeting took place on May 17, 2021 at which the future of Lumberwest was discussed. It was attended by Mr. Dhaliwal, Mr. Khangura, Anoop Khosla (Lumberwest's controller), and Minder Bhullar (Lumberwest's purchaser and sales consultant). Mr. Khangura understood Mr. Dhaliwal to have said then that he would be shutting down Lumberwest. This understanding was shared by Mr. Bhullar who wrote the following in a May 20, 2021 email that was copied to Mr. Dhaliwal:

On May 17, 2021 we were made aware from Jogwinder (Joe) Dhaliwal that Lumberwest Building Supplies Ltd was in the midst of a 3 month shutdown due to unforeseen reasons and was ceasing operations in the near future. ...

[26] However, both Mr. Khangura and Mr. Bhullar acknowledge that Mr. Dhaliwal subsequently would use the term "restructuring" to describe his plans for the company, although neither of them knew precisely what Mr. Dhaliwal had in mind.

[27] In any event, by this time Mr. Khangura had become increasingly dissatisfied with his employment at Lumberwest. In his view, he was losing existing customers

and had to turn away new customers because of the actions and decisions of Mr. Dhaliwal, who was now heavily involved in Lumberwest's day-to-day operations. Mr. Khangura was also displeased because he was not permitted to have an individual office. Instead, he had to work in a shared enclosed space with Mr. Bhullar and others in Lumberwest's central shipping office, notwithstanding the ongoing COVID-19 pandemic.

[28] From June 8 to July 17, 2021, Mr. Khangura sent a series of emails to Mr. Dhaliwal expressing his apprehension and stress pertaining to the state of Lumberwest's operations. The following extracts from Mr. Khangura's messages are illustrative:

[June 8, 2021] Mixed messages are being given myself. I have had major client impact because of this situation. Relationships that I have built over years in lumber sales are being lost. My ability to earn now and in the future as an Account Manager is in jeopardy because of all the uncertainty.

...

[June 13, 2021] These issues have been occurring to often, along with having no product, not being able to quote and take on new sales and getting no clear instruction on what direction your taking this company is resulting in me losing all my business and causing me a lot of stress. The anxiety and the sleepless nights knowing that I could be jobless is weighing very heavy on my head. Each week you say you will have a plan. None of my emails are being replied to nor have I been given a response in person about them. Can you please have a clear answer Monday on what's happening with your plans to wind down.

...

[June 15, 2021] Again I have got no response to my email or in person regarding these requests. I was recruited by you and Tajinder Nijjer out of a position that I was very secure in and had built up a large book of business at. I can't stress enough how all this uncertainty is affecting my relationships with these customers. They are moving on to other companies as they don't have the time to waste and need to keep there projects going. This is my livelihood . I have a family to provide for and a mortgage to pay. Again please let me know what your plan is moving forward.

...

[June 23, 2021] All my customers are losing faith in me because of the way your running this company. I can't keep putting them off. If they haven't already gone somewhere else its just a matter of time before they do. Please advise asap how to handle these customer requests.

...

[July 7, 2021] It seems to me you are deliberately trying to sabotage my reputation with my customers and causing me unneeded stress by your actions. Your forcing me into a different role, you have no product to service my customers, your not opening accounts , your not allowing us to quote, everything has to be on a cash sale(which doesn't work in this industry), you've told me your closing the business, you've emptied out the back of the yard and I'm told by colleagues at Lumberwest that it's rented out for truck parking. Four of my best customers have closed there accounts in just the last week and went elsewhere because of the way your credit department and yourself have dealt with them. You have seen the letters. This was very embarrassing on my part as I bring the business and you deliberately shut it down.

...

[29] From Mr. Dhaliwal's perspective, however, there were problems with Mr. Khangura's work performance at Lumberwest. In particular, Mr. Dhaliwal stated he was concerned that:

- a) many of Mr. Khangura's customers were exceeding their credit limits and were not paying their accounts on time;
- b) customers were complaining about Mr. Khangura's failures to return their calls;
- c) Mr. Khangura was not completing administrative tasks in a timely manner;
- d) Mr. Khangura was not attracting a significant amount of sales or expanding his client base; and
- e) Mr. Khangura was demonstrating an unwillingness to take direction from Mr. Dhaliwal and to address these performance issues.

[30] Examples of specific directions provided to Mr. Khangura by Lumberwest included those set out in emails dated June 28, June 30, and July 6, 2021. They were apparently sent by an assistant, Rajinder Mander, as instructed by Mr. Dhaliwal. Indeed, Mr. Dhaliwal testified that he did not generally read or write his

own emails, and had others do so on his behalf while nevertheless being aware of their content. In any case, the three emails stated:

[June 28, 2021] Good Morning Paul,
As per Joe instruction please see below:
1. Work schedule:
• Your company work hrs from 8:00 to 4:30.
• 30 min lunch break from 12:00 to 12:30.
• Working days are from Monday to Friday except statutory holidays.
• Subject to change as per Company requirements.
2. Provide a weekly summary report to the Director for each of the following by no later than Friday at 4:00 Pm each week.
• Job tracking including lost sales, earned sales and pending sales.
• Building permits.
• Delivery exceptions including errors and late deliveries.
3. You have been assigned a company cellular telephone with which to conduct business.
Company cellular telephone is specifically for business use.
No personal phone to be use during business Hours.
No office phone to be forwarded on their cell phone.
4. Vehicle company logo need to be placed.
...

[June 30, 2021] Hello Paul,
As per regarding email which sent on 28th of June , we were given your work schedule and we will expect from you to follow that work schedule.
On 29th and 30th of June ,you were late for both days from work and haven't spent time that been schedule for you.
...

[July 6, 2021] Dear Paul Khangura,

I have reviewed your correspondence with Rajinder Mander, In regards to your duties as a salesperson/Account Manager for Lumber west Building Supplies Ltd. To clarify certain items, I will be referring to some of the previsions and /or terms set out in accordance with the instructions and directions of the Board of Directors.
1. An email was sent to you on June 30, 2021, you are required to work a minimum of 8 hrs. a day and five days a week on site (except for absences for illness or for statutory Holiday). your hours of workplace are the direction of the Board of Directors. As a director of lumber west building supplies ltd, I have set your working hours from 8:00am to 4:30 pm from Mondays to Fridays. You will have 30 minutes for your lunch break each day. There will be sign in sheet on site that needs to be signed in on daily basis, you are required to adhere to these working hours.
2. Pursuant to the schedule you are also responsible for communicating with existing customers and potential customers, regardless of whether they are assigned or unassigned accounts. When a customer referred to you , you are to ensure that the customer's needs are taken care of as per your responsibilities.

I remind you that the terms and schedule are very specific, and you have read and reviews the conditions. If you do not follow the direction of the Director of Lumber west building supplies ltd. The company have the right to take an action. We will trust that you will continue to follow the directions of the President and / Director of the Lumber west building supplies Ltd. Any questions can be directed to my attention.

[31] Mr. Dhaliwal and Mr. Khangura also met on July 28, 2021 for the purpose of discussing their respective concerns with the parties' employment relationship. However, neither were satisfied with the inconclusive outcome of the meeting, and each blamed the other for being intransigent and unreasonable.

Mr. Khangura's Employment at Lumberwest Ends

[32] In August 2021, three significant emails were sent from Lumberwest to Mr. Khangura with respect to his employment status.

[33] The first was dated August 4, 2021. It was sent from the email account of Mr. Dhaliwal to that of Mr. Khangura, and reads as follows:

Dear Paul Khangura,

As per our meeting on 28 July, 2021, Attendants Joe, Paul, Jag, and Rajinder.

This is the 3rd warning in regarding to your duties, work time schedule and daily sign in/out. I have been informed that you are not abiding by the time schedule, not signing in and out, and not providing weekly summary report as per the direction of the Director of the company. To clarify certain items, I will be referring to some of the provisions and/or terms set out in the signed Employment agreement between you and Lumberwest Building Supplies Ltd dated June 23, 2020.

1. Pursuant to Article 2.4(a), you are required to work a minimum of eight hours a day and five days a week (except for absences for illnesses or for statutory holidays). Your hours of work are at discretion of the Board of Directors and the President of the Company. Pursuant to Article 2.4(c). As the President and Director of Lumberwest Building Supplies Ltd, I have set your working hours from 8:00 am to 4:30 pm from Mondays to Fridays. You will have 30 minutes for your lunch break each day. Given that you have duly read and signed the employment contract, you are required to adhere to these working hours;
2. Pursuant to Schedule 1 (Services) of the said Employment Agreement, you are also responsible for communication with existing customers and potential customer, regardless of weathers they are assigned or unassigned accounts.

When customer is referred to you, you are to ensure that the customer's need is taken care of as per your responsibilities in the Employment Agreement;
3. Pursuant to Schedule 1 (Services) of the said Employment Agreement, you have been assigned cellular telephone with which to conduct business. Cellular Telephone is specifically for business use. As per the record you are not using the company cellular telephone to conduct business;
4. Pursuant to Schedule 1 (Services) of the said Employment Agreement, you have been instructed to provide a weekly summary report to the Director, for each of the following by no later than Friday at 4:00 pm each week. You have not been submitting the weekly summary reports.

- Job tracking include lost sales, earned sales and pending sales .
- Building Permits.
- Copies of Quote/terms sent to customer.

I remind you that the terms of the Employment Contract are very specific, and you have read and reviewed the contract before signing it. If you do not follow the directions of the President and/or the Director of Lumberwest Building Supplies Ltd., the company will then have a right to terminate your Employment Agreement for cause as per Article 6.2(a). We trust that you will continue to follow the directions of the President and/or Director of Lumberwest Building Supplies Ltd as listed in items above.

[Emphasis added.]

[34] The second was dated August 11, 2021. It was also sent from the email account of Mr. Dhaliwal to that of Mr. Khangura, and states:

Hi Paul,

As per your previous correspondence, you have stated that you have a copy of the Employment Agreement and now you are requesting for another copy.

Please find our attached Lumberwest Employment Agreement. The Employment Agreement has specific terms and conditions about the employment. Provided we have shown you the copy at the previous meeting.

We have provided enough warning to follow the terms of your Employment Agreement. You have continued to refuse to do so. As such please consider this as our 30 days written notice to terminate our Employment Services Agreement.

[Emphasis added.]

[35] The third was dated August 12, 2021. It, too, was sent from the email account of Mr. Dhaliwal to Mr. Khangura. It reads:

Hi Paul,

As per my email that was sent to you on August 04, 2021, I have made it very clear regarding to your duties, work time schedule and daily sign in/out.

Again, you have continued to refuse instructions set out by the Director of the Company.

Also, as per our meeting on July 28, 2021. We asked you to report the building permits issued, need a report on number of permits, information of owners and their contact information, copy of quotes sent to customers, and job tracking including lost sales, earned sales and pending sales.

The report that you sent last week will not be accepted as it does not meet the criteria as per the instructions that were sent to you. Please refer to the attached email from August 04, 2021.

[Emphasis added.]

[36] As noted in its last sentence, the August 12 email was accompanied by another copy of the August 4 email quoted above.

[37] Mr. Khangura understood this communication to indicate that Lumberwest had terminated his employment with 30 days' notice, in accordance with the final paragraph of Mr. Dhaliwal's August 11, 2021 email. As for the email sent by Mr. Dhaliwal the next day on August 12, 2021, Mr. Khangura testified that he found it confusing and did not take it seriously because he had already been terminated. However, Mr. Khangura did not make any direct inquiries of Mr. Dhaliwal to address this confusion. Instead, Mr. Khangura arranged for his lawyer to send on his behalf a letter to Lumberwest dated August 19, 2021. While this letter was not entered into evidence, there is no dispute that it effectively asserts Mr. Khangura's understanding that Lumberwest was terminating his employment.

[38] In September 2021, Lumberwest responded to the August 19, 2021 letter from Mr. Khangura's lawyer. These responses included emails from Lumberwest's lawyer dated September 3 and 10, 2021, as well as a letter from Mr. Dhaliwal himself dated September 23, 2021. This communication states that Lumberwest did not intend to terminate Mr. Khangura's employment, and that it wants to maintain the parties' employment relationship under the terms of the Contract. Relevant extracts from this communication include the following:

[September 3, 2021] Further to our discussion, I've now had an opportunity to speak with my client in relation to your letter of August 19, 2021.

As I understand the situation, it was not Mr. Dhaliwal's intention to terminate Mr. Khangura's employment, but to provide a period of 30 days in which to

address the concerns set out in their meetings, and the email dated August 4, 2021.

Mr. Dhaliwal wants Mr. Khangura to continue his employment in accordance with the terms of his agreement and the duties and responsibilities set out therein.

...

[*September 10, 2021*] My client intends to make it very clear to Mr. Khangura that Lumberwest wants him to continue his employment.

Lumberwest did not intend to express or imply a termination, but rather a period of performance improvement on the basis of the items previously discussed with Mr. Khangura. The intention of the August 11 email was to provide a period of 30 days in which to address the concerns set out in their meetings, and those that were set out in the email dated August 4, 2021.

Mr. Dhaliwal will meet with Mr. Khangura to express this to him, in person, at the next earliest opportunity (presumably on Monday).

...

[*September 23, 2021*] I am writing this letter in order to make it very clear to you that we want you to continue working at Lumberwest. Your position remains available for you, and we have not terminated your employment.

As stated previously, you will have the same salary, duties, responsibilities, and terms and conditions of employment as previously applied.

I understand how my e-mail of August 11, 2021 could have been misconstrued, but I want to emphasize again that it was not my intent to terminate your employment.

In recognition of this error in communication, Lumberwest is prepared to make good on any lost salary sustained between your last day of active work and the date of your return, which we suggest could be on Friday, October 1. If that date does not work, please let me know and we can discuss alternative dates.

If (when) you return, there will be no hard feelings or ill will toward you, and you will not suffer any discipline, deduction or retaliation in relation to raising your concerns about the August 11, 2021 email etc., or stepping away from work while this matter was sorted out.

From your lawyer's letter of August 19, 2021, we understand that you have some operational concerns with respect to the workplace. We want to ensure that your concerns are heard and addressed, and we are open to discussing them with you upon your return, and working out a resolution on those matters. By the same token, we want you to be open to resolving our concerns, which we have tried to communicate to you previously. Perhaps we communicated them to you ineffectively, and for that we apologize – we will do better.

You are a valued employee whose efforts and contributions to Lumberwest are appreciated. We want you to remain part of the team, and we want to work together in harmony going forward. We think it would be most

unfortunate if you choose to bring an end to your employment relationship with us.

If you have any questions with respect to a return to work, please reach out to me directly for further discussion and assurances.

[39] However, Mr. Khangura never met or otherwise communicated directly with Mr. Dhaliwal following receipt of the August emails. Mr. Khangura also maintained his view that he had been given 30 days' notice of the termination of his employment further to the August 11, 2021 email.

[40] According to Mr. Khangura's testimony, he then continued to work at Lumberwest during what he thought was a 30-day notice period following the August 11, 2021 email. However, this is disputed by Lumberwest. According to the testimony of Mr. Dhaliwal and two Lumberwest employees who worked in its credit department (Jagpal Sidhu and Simranjit Sidhu), Mr. Khangura never returned to the office or submitted any work-related communication to Lumberwest after August 11, 2021. That said, a Lumberwest employee sign-in sheet was entered into evidence indicating that Mr. Khangura was in the office most workdays from August 11 until September 10, 2021.

[41] Lumberwest also issued a Record of Employment ("ROE") for Mr. Khangura dated September 20, 2021. The ROE states that the last day for which Mr. Khangura was paid was September 17, 2021. Under the section "Reason for Issuing this ROE" a "K" code (i.e., "Other") is entered, with the word "Resigned" noted in the Comments section.

[42] On September 20, 2021, Mr. Khangura returned to his old job at Dick's Lumber. He did so on the same employment terms he had previously, including being paid a base salary of \$60,000 per year rather than the \$120,000 Mr. Khangura was being paid at Lumberwest. Mr. Khangura was still working at Dick's Lumber at the time of the trial.

[43] As for Lumberwest, it did not hire anyone to replace Mr. Khangura after his departure. The business continued to operate for approximately one more year, but was shut down completely in or around August 2022.

Procedural Background

The Pleadings

[44] On October 26, 2021, Mr. Khangura filed the notice of civil claim that commenced the present action against Lumberwest. Lumberwest filed its response to civil claim on November 18, 2021.

Mr. Khangura's Position

[45] Mr. Khangura's position as set out in his pleadings and closing argument can be summarized as follows.

[46] First, Mr. Khangura submits that his employment was terminated without cause by Lumberwest. Accordingly, Mr. Khangura says that he is entitled to be paid the balance of the remuneration owing to him for the remainder of the three-year term under his Contract with Lumberwest. That remuneration includes Mr. Khangura's unpaid salary and vehicle allowance, as well as sales commissions.

[47] Second, Mr. Khangura asserts that since the Contract specifies how damages are to be calculated in the event of termination by the employer without cause, no mitigation issues arise in this case. As such, the damages award payable by Lumberwest ought not to be reduced by Mr. Khangura's post-termination earnings from Dick's Lumber. Furthermore, Mr. Khangura says that he was under no duty to mitigate by returning to work for Lumberwest as proposed by Mr. Dhaliwal in September 2021. Mr. Khangura had lost all trust in Mr. Dhaliwal and their relationship was now irremediably spoiled, making continued employment at Lumberwest untenable.

[48] Third, Mr. Khangura calculates his entitlement to damages on the basis that he worked at Lumberwest from December 7, 2020 until September 9, 2021. He therefore says that he had 27 months and 27 days remaining on his three-year fixed-

term Contract which ends on December 6, 2023. Mr. Khangura claims that during this period he would have earned \$279,000 in base salary and received a \$27,900 vehicle allowance. Mr. Khangura also argues that the three-year (i.e., 36-month) Contract provided that he would receive commissions 6 months after starting work at Lumberwest, and that he therefore should be compensated for 30 months' worth of unpaid anticipated commissions. As for quantification, Mr. Khangura points to evidence of the commissions he earned at Dick's Lumber as a proxy for what he might have earned at Lumberwest. Specifically, Mr. Khangura notes that his monthly average commission earnings at Dick's Lumber was \$4,577.64 in 2020 and \$4,303.86 in 2022.

[49] Mr. Khangura therefore requests the Court to order Lumberwest to pay him a total of either \$451,095.60 or \$442,471.50 in damages, depending on how Mr. Khangura's commission losses are calculated:

Loss Claim	Scenario A (commission loss based on an average of \$4,577.64/mo.)	Scenario B (commission loss based on an average of \$4,303.86/mo.)
Base Salary	\$ 279,000.00	\$ 279,000.00
Vehicle Allowance	\$ 27,900.00	\$ 27,900.00
Sales Commissions	\$ 144,195.60	\$ 135,571.50
TOTAL:	\$ 451,095.60	\$ 442,471.50

[50] Finally, it should be noted that in his reply argument, Mr. Khangura denies having fundamentally breached the Contract's non-solicitation and non-competition provisions. He also argues that they are overly broad and therefore unenforceable as an unreasonable restraint of trade.

Lumberwest's Position

[51] Lumberwest's position as set out in its pleadings and closing argument can be summarized as follows.

[52] First, Lumberwest denies that Mr. Khangura's employment was terminated. Instead, Lumberwest says that Mr. Khangura either voluntarily resigned or

abandoned his employment. He therefore is not entitled to any award of damages for wrongful dismissal.

[53] Second, if Mr. Khangura's employment was terminated on August 11, 2021, Mr. Khangura had a duty to mitigate by accepting Lumberwest's reasonable offer of re-employment. Mr. Khangura's unreasonable refusal to do so disentitles him to any damages award.

[54] Third, if Mr. Khangura is entitled in principle to wrongful dismissal damages, they must be reduced to account for the fact that Mr. Khangura fully mitigated his loss by going to work for Dick's Lumber instead. Lumberwest denies that the Contract provides that Mr. Khangura is to be paid the remuneration owing for the balance of the Contract's three-year term regardless of his other earnings, and says that to find otherwise would result in an unjustified windfall for Mr. Khangura.

[55] Fourth, Mr. Khangura committed two fundamental breaches of the Contract: (1) directing customers to Dick's Lumber while he was still employed by Lumberwest; and (2) commencing employment with Dick's Lumber soon after leaving Lumberwest. As Dick's Lumber is a direct competitor of Lumberwest, Mr. Khangura's actions violated the non-solicitation and non-competition provisions contained within the Contract. These fundamental breaches also disentitle Mr. Khangura to an award of damages.

[56] Finally, Lumberwest takes issue with the quantum of damages claimed by Mr. Khangura in the event his wrongful dismissal claim is found to be substantiated.

[57] With respect to lost salary, Lumberwest says that the three-year term of the Contract was always from September 1, 2020 to August 31, 2023. It was never extended, notwithstanding Mr. Khangura's choice to delay his start date until December 7, 2020. Accordingly, he would only be entitled to compensation for the base salary owing from September 10, 2021 (his last day of work) to August 31, 2023. That amount is \$236,700 (\$10,000 per month X 23.67 months).

[58] With respect to lost commission income, Lumberwest says that the Contract only provided for the possibility of earning commissions after the first year of employment, not after six months. The parties shared this understanding as shown by the fact that Mr. Khangura was not paid any commissions after having worked at Lumberwest for six months, and because he did not complain about this. Lumberwest further notes Mr. Khangura's own evidence regarding his dismal sales performance, which suggests that he would have earned little, if any, commissions in any event. Lumberwest also argues that it would be wrong to value Mr. Khangura's lost commissions at Lumberwest by reference to his earnings at Dick's Lumber given that the latter is a larger business that has an established customer base for Mr. Khangura to draw upon. As such, no damages should be awarded to Mr. Khangura in respect of lost commissions.

[59] With respect to lost vehicle allowance, Lumberwest argues that this is a fringe benefit. Damages to compensate for its loss must therefore be calculated by reference to what Mr. Khangura actually spent to replace the benefit, and not simply the amount promised. Mr. Khangura failed to lead any evidence in this regard. On the other hand, there was evidence that Mr. Khangura is receiving a comparable vehicle allowance from Dick's Lumber. Accordingly, he should not be awarded damages under this heading either.

The Trial

[60] The trial of this matter was initially scheduled for four days during the first week of January 2023. However, Lumberwest presented an application to adjourn the trial on December 30, 2022 – the very last business day before the trial's scheduled start date. The application was denied by Master Robertson in reasons for judgment indexed as *Khangura v. Lumberwest Building Supplies Inc., 2022 BCSC 2329 [Khangura Adjournment Decision]*. Accordingly, the trial did commence on January 3, 2023, although it ultimately required seven days of hearing time in order to be completed.

[61] The evidence at trial consisted of various documents, read-ins from the examination for discovery of Lumberwest's representative (Mr. Dhaliwal), and the testimony of five witnesses.

[62] Two of those witnesses were called by Mr. Khangura. They were (in order of appearance):

- 1) Gurpaul (Paul) Khangura: plaintiff;
- 2) Minder Bhullar: employee of Lumberwest.

[63] The remaining three witnesses were called by Lumberwest. They were (in order of appearance):

- 3) Joginder (Joe) Dhaliwal: principal, owner, and director of Lumberwest;
- 4) Jagpal Sidhu: employee of Lumberwest; and
- 5) Simranjit Sidhu: employee of Lumberwest.

[64] At the end of the fourth day of trial (January 6, 2023), after all of the witnesses had completed their testimony, counsel for Lumberwest requested leave to bring an application for further document disclosure. Lumberwest was specifically interested in obtaining Mr. Khangura's personal phone records. The request was opposed by counsel for Mr. Khangura. With some hesitation given its timing, I granted Lumberwest's request.

[65] Lumberwest's document disclosure application was then heard and adjudicated on January 19, 2023. I allowed the application as I was satisfied that Mr. Khangura's phone records may be relevant to a number of issues arising in this proceeding, notably in relation to allegations that Mr. Khangura was soliciting customers for Dick's Lumber while still working for Lumberwest. I also directed Mr. Khangura to re-attend and testify with respect to the newly disclosed documents. He did so on February 3, 2023.

[66] Finally, closing submissions were presented orally on March 3, 2023. The parties also filed written representations in support of their respective positions, which I found to be thorough and helpful.

ISSUES AND FRAMEWORK FOR ANALYSIS

[67] As noted above, the claim as pleaded and argued by the parties raises a number of disputed issues.

[68] The most significant one is whether Mr. Khangura was terminated without cause, as he argues, or whether Mr. Khangura resigned or abandoned his employment, as Lumberwest argues. The issue is potentially dispositive since, if the Court agrees with Lumberwest’s position, the claim must be dismissed. Accordingly, it will be addressed first.

[69] On the other hand, if the Court concludes that Lumberwest did dismiss Mr. Khangura from his employment without cause, the following issues may have to be addressed:

1. Did Mr. Khangura have a duty to mitigate his damages by returning to his employment at Lumberwest and, if so, should his failure to do so disentitle him to a damages award?
2. Should Mr. Khangura’s damages award be reduced to account for the mitigation he effected by going to work for Dick’s Lumber following his dismissal from Lumberwest?
3. Did Mr. Khangura commit a fundamental breach of the Contract, thereby disentitling him to damages, by either:
 - a. soliciting business for Dick’s Lumber while working for Lumberwest; or
 - b. commencing employment with Dick’s Lumber shortly after the end of his employment at Lumberwest?

4. What is the quantum of wrongful dismissal damages to which Mr. Khangura is entitled for his loss of:
 - a. salary;
 - b. vehicle allowance; and
 - c. opportunity to earn commissions?

[70] Those issues that require analysis will be considered below after a brief discussion of the credibility and reliability of the witnesses who testified at trial.

WITNESS CREDIBILITY AND RELIABILITY

[71] The accepted principles for assessing witness credibility and reliability are well established (see, for example, the helpful summary of Justice Mayer in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 at paras. 87–93, and that of Justice Hori in *Allen v. Figueira*, 2020 BCSC 1864 at paras. 91–94) and need not be restated here.

[72] Beginning with Mr. Khangura, I found his testimony to be forthright, clear, and not prone to exaggeration. He listened carefully to the questions he was asked, and provided direct answers in response. He readily admitted when he could not recall a particular fact, such as when he did not know the specific dates on which particular events took place. Mr. Khangura was not evasive, argumentative, or combative, even while he was under cross-examination by counsel for Lumberwest. In sum, I have no concerns with the credibility or reliability of Mr. Khangura’s testimony.

[73] Mr. Dhaliwal, on the other hand, was a difficult witness. He had a tendency not to wait for counsel to finish their questions before attempting to answer them. He was not always responsive, particularly when asked questions by counsel for Mr. Khangura about matters that Mr. Dhaliwal may have perceived as being unhelpful to Lumberwest’s case. On several occasions, Mr. Dhaliwal would persistently avoid answering straightforward factual questions, providing a contextual explanation in relation to the underlying issue instead. That said, I do not

infer from the frustrating and regrettable manner by which Mr. Dhaliwal provided his testimony that he was being untruthful. Rather, I felt that Mr. Dhaliwal had a genuine belief that he was simply providing the information he thought was necessary to adjudicate this case, while not always appreciating his obligation to also answer the specific questions he was being asked. While such an approach to testifying ought not to be encouraged, I nevertheless generally accept the veracity of Mr. Dhaliwal's factual testimony as well.

[74] There were a few contradictions between the facts as testified to by Mr. Khangura and Mr. Dhaliwal, such as the reasons for Mr. Khangura's delayed start date, and the extent to which Mr. Khangura attended Lumberwest's offices after August 11, 2021. However, as will be seen from my analysis below, I do not find it necessary to resolve them in order to adjudicate this particular claim. Furthermore, I accept both Mr. Khangura and Mr. Dhaliwal's subjective assertions of their own opinions, intentions, and expectations regarding the employment relationship between the parties. I felt that they were expressed honestly and not with a view to simply bolster their legal positions.

[75] As for the secondary witnesses – Mr. Bhullar, Ms. Sidhu, and Mr. Sidhu – I had no concerns with their credibility or reliability either, particularly since they did not provide critical testimony with respect to the issues ultimately in dispute.

ANALYSIS

Was Mr. Khangura dismissed or did he voluntarily leave Lumberwest?

[76] In *Beggs v. Westport Foods Ltd.*, 2011 BCCA 76, our Court of Appeal set out the principles that a trial court must apply when deciding whether an employment relationship has been terminated through dismissal by an employer or through a voluntary resignation by an employee:

[36] It is common ground that both a dismissal by an employer and a voluntary resignation by an employee require a clear and unequivocal act by the party seeking to end the employment relationship. There is a distinction, however, in the tests to be met in order to establish each of these methods for ending the employment relationship. A finding of dismissal must be based on an objective test: whether the acts of the employer, objectively viewed,

amount to a dismissal. A finding of resignation requires the application of both a subjective and objective test: whether the employee intended to resign and whether the employee's words and acts, objectively viewed, support a finding that she resigned.

[37] David Harris summarizes the distinction between the two methods in his text *Wrongful Dismissal*, loose-leaf (consulted on 13 January 2011), (Toronto: Thompson Canada Ltd. 1989) at pages 3-4, 3-5 and 3-9:

§3.0 Dismissal

Summary: Dismissal is a matter of substance, not form. It is effective when it leaves no reasonable doubt in the mind of the employee that his or her employment has already come to an end or will end on a set date

...

The crucial factor in assessing the effectiveness of a dismissal is the clarity with which it was communicated to the employee. Mr. Justice Macfarlane of the British Columbia Court of Appeal stated the law in this regard as follows in *Kalaman v. Singer Valve Co.* (1997), 1997 CanLII 4035 (BC CA), 31 C.C.E.L. (2d) 1, 93 B.C.A.C. 93, 151 W.A.C. 93, 38 B.C.L.R. (3d) 331, [1998] 2 W.W.R. 112, 97 C.L.L.C. 210-017, 1997 Carswell BC 1459, [1997] B.C.J. No. 1393:

A notice must be specific and unequivocal such that a reasonable person will be led to the clear understanding that his or her employment is at an end at some date certain in the future. Whether a purported notice is specific and unequivocal is a matter to be determined on an objective basis in all the circumstances of each case. (p. 11 [C.C.E.L.]; emphasis added)

...

§3.0A Dismissal versus Voluntary Resignation

Summary: The test for voluntary resignation (as opposed to dismissal) is objective, focusing on the perceptions of a "reasonable employer" of the intentions of the employee based on what the employee actually says or does or, in some cases, on what he or she fails to say or do. Among the relevant circumstances are the employee's state of mind, any ambiguities in relation to the conduct which is alleged to constitute "resignation" and, to a certain degree, the employee's timely retraction, or attempted retraction, of his or her "resignation."

[77] In other words, the test to be applied when considering whether an employer has dismissed an employee is a purely objective one, and the parties' subjective understanding of the employer's intention is not determinative. Simply put, there must be a clear and unequivocal act by the employer that, objectively viewed, amounts to a dismissal and which would be understood as such by a reasonable

person. Furthermore, evidence of surrounding circumstances may be considered in determining whether notice is clear and unequivocal: *Kalaman v. Singer Valve Co. Ltd.*, (1997), 38 B.C.L.R. (3d) 331, 1997 CanLII 4035 (C.A.) at paras. 43 and 44.

[78] Turning to the case at bar, the issue of whether Lumberwest terminated Mr. Khangura's employment must be assessed by reference to the communication that took place between the parties in August and September 2021 in relation to Mr. Khangura's employment status. That communication is discussed above at paragraphs 32 to 39 of these reasons. It was effected in writing, and there is no indication that any relevant oral communication between Mr. Khangura and Mr. Dhaliwal (or any other representative of Lumberwest) took place at that time.

[79] On my review of this communication, read collectively and objectively, I am not persuaded that Lumberwest clearly and unequivocally dismissed Mr. Khangura from his employment.

[80] It is true that the August 11, 2021 email from Mr. Dhaliwal to Mr. Khangura states that it is to be considered "as our [Lumberwest's] 30 days written notice to terminate our Employment Service Agreement". However, this email cannot be considered in isolation. It must be read along with Mr. Dhaliwal's email sent to Mr. Khangura the very next day on August 12, 2021, to which was attached an earlier email of August 4, 2021. The latter two emails set out a number of specific concerns with Mr. Dhaliwal's work performance and make reference to Lumberwest's right to terminate Mr. Khangura's employment agreement for cause as per article 6.2(a) of the Contract. That provision stipulates that Lumberwest may dismiss Mr. Khangura for cause if he is given written notice of a failure to abide by the terms of the Contract, and that failure is not then cured within 30 days.

[81] As was effectively noted by Mr. Khangura himself in his testimony, these three emails are confusing. The first and the last one appear to be an attempt by Lumberwest to say that it has identified deficiencies with Mr. Khangura's work performance, and is considering invoking the employer's right to dismiss him for cause if, after 30 days' formal notice is provided, these deficiencies are not cured.

The second one appears to be an attempt by Lumberwest to say that it is now commencing a 30-day notice period in respect of employment termination for Mr. Khangura, although it is not clear if it is being given pursuant to article 6.2(a) of the Contract (termination for cause if performance deficiencies are not cured within 30 days of notice being provided), or article 6.4 (termination not for cause by giving notice at any time).

[82] This confusion was, however, dispelled in September 2021 after Mr. Khangura's lawyer wrote to Lumberwest on August 19, 2021 to assert that Mr. Khangura understood that his employment had been terminated. This was done through the September 3 and 10 emails of Lumberwest's lawyer, and Mr. Dhaliwal's September 23 letter. The three pieces of correspondence all consistently state that Lumberwest had no intention of terminating Mr. Khangura's employment. The first two explain that the August emails were an imperfect attempt to convey Lumberwest's expectation that Mr. Khangura would address the employer's work performance concerns within 30 days, and the last one is a clear entreaty that Mr. Khangura return to work at Lumberwest under the terms of the Contract.

[83] In my view, a person in Mr. Khangura's position having received the August and September 2021 communication from Lumberwest could not reasonably conclude that their employment had been clearly terminated. In particular, the August 11, 2021 email was not specific and unequivocal notice that Mr. Khangura's employment is to come to an end on a certain date in the future, particularly given the temporal proximity of the August 4 and 12, 2021 emails, which suggested otherwise. A reasonable response to such communication by an employee would have been to make further inquiries of the employer, as Mr. Khangura effectively did through his lawyer's letter of August 19, 2021. However, I find that it was not reasonable for Mr. Khangura to then take the position that he was dismissed without cause by Lumberwest in the face of the clear and unambiguous statements to the contrary sent to him by the company's representatives in September 2021.

[84] On the other hand, there can be no doubt that Mr. Khangura effectively resigned by abandoning his employment at Lumberwest in September 2021.

[85] As noted in *Beggs* at para. 36, the test for assessing whether an employee has resigned is both subjective and objective. The question is whether the employee intended to resign and whether the employee's words and acts, objectively viewed, support a finding that the employee resigned. Mr. Khangura effectively testified that he no longer wanted to work at Lumberwest, even after Lumberwest clarified that it wanted to maintain their employment relationship. Furthermore, there is no dispute that Mr. Khangura chose not to present himself for work at Lumberwest after September 10, 2021, and that he began working at Dick's Lumber instead on September 21, 2021.

[86] Accordingly, I find that Mr. Khangura voluntarily left his employment at Lumberwest. He was not dismissed.

Other Issues and Conclusion

[87] It is well established that if an employee voluntarily resigns from employment, rather than being dismissed, the employee cannot then claim damages for wrongful dismissal: *Bishop v. Rexel Canada Electrical Inc.*, 2016 BCSC 2351 at para. 11. In light of my finding that this was the case here, Mr. Khangura's action cannot succeed.

[88] Furthermore, Mr. Khangura has not formally pleaded or otherwise argued that he was constructively dismissed by Lumberwest. Even if he had done so, it is not readily apparent that the objective test for establishing constructive dismissal is met in this case: *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 at paras. 30 to 45. In particular, it is not evident that Lumberwest unilaterally effected a change to Mr. Khangura's employment conditions thereby substantially altering the Contract, nor did Lumberwest engage in a course of conduct that showed objectively that it no longer intended to be bound by the Contract.

[89] Instead, Mr. Khangura steadfastly held to his position that he was dismissed without cause, although he did argue that he had lost all trust in Mr. Dhaliwal for having created a “toxic” environment and therefore should not be required to accept Lumberwest’s offer to return to work: *Evans v. Teamsters Local Union No. 31*, 2008 SCC 20 at paras. 28 to 30. However, as Mr. Khangura has not established that he was dismissed – either actually or constructively – the issue of whether he had a duty to mitigate his damages by working at Lumberwest need not be determined.

[90] That said, if this question did require an answer, I would not have been inclined to find that Mr. Khangura’s working conditions were such that it would be unreasonable to expect him to continue working at Lumberwest. While Mr. Khangura disagreed with many of Mr. Dhaliwal’s management decisions and felt that they impaired Mr. Khangura’s ability to sell product, the evidence presented does not substantiate his subjective opinion that Lumberwest’s environment was toxic, or presented “an atmosphere of hostility, embarrassment or humiliation”: *Evans* at para. 30. This was particularly the case given the significant base salary Mr. Khangura was being paid to account for his anticipated sales challenges at Lumberwest – a base salary twice that which he was receiving from Dick’s Lumber. I also note that Mr. Khangura’s reluctance to continue working at Lumberwest after the summer of 2021 was apparently not shared by any of his former colleagues who testified at trial – Mr. Bhullar, Ms. Sidhu, and Mr. Sidhu.

[91] As for the remaining issues of mitigation, fundamental breach, and quantification of damages, they clearly do not arise given my conclusion that Mr. Khangura was not wrongfully dismissed. I therefore see no need to address or comment upon them further.

DISPOSITION

[92] Mr. Khangura’s claim against Lumberwest is dismissed.

[93] With respect to costs, this issue is outstanding in respect of three aspects of this proceeding:

- (a) the action that I have dismissed as of the date of this judgment following the seven-day trial that I heard;
- (b) Lumberwest’s application to adjourn the trial that was heard and dismissed by Master Robertson on December 30, 2022 (*Khangura Adjournment Decision* at para. 54); and
- (c) Lumberwest’s application for further document disclosure that I heard and allowed on January 19, 2023.

[94] If the parties cannot agree on a costs order, they are at liberty to contact Trial Scheduling to schedule a hearing on the matter provided they do so within 30 days of this judgment.

“Brongers J.”