CITATION: Qureshi v. Zeema Investments Incorporated, 2024 ONSC 5855
COURT FILE NO.: CV-20-1987
DATE: 20241022

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
Nadeem Qureshi	)	
Plaintiff	)	Shahzad Siddiqui and Jonathan Rosenstein for the Plaintiff
– and –	)	
Zeema Investments Incorporated, Nik Handa and Re/Max Realty Services Inc.	)	No one appearing for the Defendant, Zeema Investments Incorporated
Defendants	)	Jeffrey S. Klein, for the Defendants, Nik Handa and RE/MAX Realty Services Inc.
	)	**HEARD:** September 23, 2024

REASONS FOR DECISION

CHARNEY J.:

[1] This is a motion for summary judgment under Rule 20.01(3) of the *Rules of Civil Procedure* brought by the Defendants, Nik Handa and Re/Max Realty Services Inc. ("Re/Max"), for judgment allowing their counterclaim against the Plaintiff, Nadeem Qureshi, in the amount of $650,000. These Defendants claim the commission that they allege is owed in relation to an aborted real estate transaction in which Re/Max acted as the real estate agent for Mr. Qureshi, who was the prospective purchaser of the property. Re/Max claims the payment of commission it would have earned had the sale been completed.

[2] Mr. Qureshi has brought a cross-motion for summary judgment, arguing that the Re/Max counterclaim should be dismissed. He argues that there was no written agreement between the parties providing for the payment of commission, and that alleged oral discussions between the parties do not create any such agreement.

[3] Their dispute relates primarily to the interpretation of a single paragraph in the Buyer's Representation Agreement ("BRA") signed by Mr. Qureshi when he retained Mr. Handa and Re/Max to act as his agents. The key parts of that paragraph reads:

> The Buyer agrees the Brokerage is entitled to be paid a commission of TBD…
>
> The Buyer agrees to pay such commission as described above even if a transaction contemplated by an agreement to purchase agreed to or accepted by the Buyer or anyone on the Buyer's behalf is not completed, if such non-completion is owing to or attributable to the Buyer's default or neglect.

Facts

[4] The Defendant Mr. Handa is a real estate sales person who, in 2019, was affiliated with the Defendant Re/Max. In August 2019, Mr. Qureshi contacted Mr. Handa to discuss potential investment opportunities within the GTA. Mr. Qureshi is a sophisticated business person with a number of real estate investments locally and internationally.

[5] Mr. Handa suggested that Mr. Qureshi consider the Vaughan Inn Motel, a property situated at 6700 Highway 7, Vaughan, Ontario (the "Property"). The Property was not listed for sale. Mr. Handa arranged for Mr. Qureshi to visit the Property, and Mr. Qureshi was interested in purchasing it.

[6] Mr. Handa then contacted Norm Pejkovic, the principal of Zeema Investments Incorporated ("Zeema"), which owned the Property. Mr. Pejkovic told Mr. Handa that he wanted $11,000,000 for the Property. Pejkovic told Handa that he would not sign any commission agreement for Re/Max's services until he received a formal offer.

[7] Qureshi subsequently instructed Handa to prepare a conditional offer for the Property of $10,600,000 (the "Offer").

The Buyer's Representation Agreement (BRA)

[8] On October 29, 2019, Mr. Handa electronically sent to Mr. Qureshi four documents to review and sign: the Offer, OREA Form 815 (Working with a Commercial Realtor), OREA Form 320 (Confirmation and Cooperation of Representation) and a Buyer Representation Agreement (BRA) with Re/Max.

[9] That same day, Mr. Qureshi electronically signed the four documents.

[10] The BRA is a standard form contract prepared by the Ontario Real Estate Board, referred to as a Form 540. It is drafted so that the parties must insert the commission to be paid to the Brokerage. The commission is usually a percentage of the sale price, but it could also be a fixed dollar amount. In this case, the parties did not insert a percentage or fixed amount, but inserted the letters "TBD", which both parties agree stood for the term "To Be Determined".

[11] Handa takes the position that he advised Qureshi of his previous discussion with Pejkovic, specifically that upon successful completion of the transaction, Zeema would pay Re/Max

its commission for the transaction and that, for the time being, the BRA would list the commission as "TBD", until the negotiations with Zeema were complete.

[12] Mr. Qureshi denies that this conversation ever took place. Since the seller was to pay the commission, he was not concerned with the amount of commission to be paid and had no discussions with Mr. Handa about that.

[13] Paragraph 3 of the BRA, quoted in part above, stated:

> **The Buyer agrees the Brokerage is entitled to be paid a commission of TBD.**
>
> The Buyer authorizes the Brokerage to receive payment of commission from the seller of the property or the seller's agent. Should the Brokerage be unable to obtain an agreement in writing from the seller or the seller's agent to pay the full commission described above, the Buyer will be so informed in writing prior to submitting an offer to purchase and the Buyer will pay the commission for the transaction, or any deficiency in the amount of commission described above, directly to the Brokerage.
>
> **The Buyer agrees to pay such commission as described above even if a transaction contemplated by an agreement to purchase agreed to or accepted by the Buyer or anyone on the Buyer's behalf is not completed, if such non-completion is owing or attributable to the Buyer's default or neglect**. The Buyer understands that a failure to negotiate and submit offers through the Brokerage as described herein will make the Buyer liable for payment of commission to the Brokerage. The payment of commission by the seller to the Brokerage will not make the Brokerage the agent for the seller. All amounts set out as commission are to be paid plus applicable taxes on such commission. [Emphasis added.]

[14] Also relevant to this case is para. 9 of the BRA, which is commonly referred to as an "entire agreement" clause. It states:

> This Agreement, including any provisions added to this Agreement, shall constitute the entire Authority from the Buyer to the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.

[15] Qureshi also signed an OREA Form 320 (Confirmation of Cooperation and Representation) (the "Co-op Agreement"). The Co-op Agreement listed Re/Max and Handa as representing both Zeema and Qureshi, referred to as a "Multiple Representation" agreement. While there is a place in the Co-op Agreement to indicate who will pay the brokerage, these paragraphs were left blank and there is no reference in the Co-op Agreement to the commission or who will pay it. This Co-op Agreement was superseded by a later agreement signed in November of 2019.

[16] Mr. Handa takes the position that he explained the BRA to Qureshi in a telephone conversation after he sent him the BRA on October 29, 2019. Mr. Qureshi disputes this, and denies ever reviewing the BRA agreement with Mr. Handa, or that this clause was ever brought to his attention.

The Commission Agreement

[17] After considering Mr. Qureshi's Offer, on November 5, 2019, Zeema executed a Commission Agreement to pay a commission to Re/Max in the amount of $650,000 inclusive of HST in the event that the parties entered into a binding Agreement of Purchase and Sale for the Property. The Commission Agreement states that the commission shall be paid by the Owner (Zeema). Nothing in the Commission Agreement states that any commission shall be paid by the buyer (Qureshi). The Commission Agreement was signed by Mr. Pejkovic on behalf of Zeema, and by Mr. Handa on behalf of Re/Max.

[18] Mr. Qureshi was not a party to the Commission Agreement and did not sign it.

[19] Mr. Handa takes the position that he met with Mr. Qureshi in Mr. Handa's office on November 7, 2019, and showed the Commission Agreement to Mr. Qureshi and explained it to him. He alleges that Mr. Qureshi expressly acknowledged that "if he as the buyer defaulted or did not close the transaction, he would be liable to pay my commission".

[20] Mr. Qureshi denies that this meeting ever took place, or that he was ever shown the Commission Agreement.

The Revised Co-op Agreement

[21] Mr. Pejkovic made several changes to Qureshi's initial offer. A counteroffer was presented by Zeema. Zeema further advised Mr. Handa that its real estate lawyer would take over Zeema's representation in the transaction moving forward. As a result, the original Co-op Agreement was amended on November 7, 2019, so that Re/Max and Handa no longer represented both Zeema and Qureshi, but only Qureshi. Re/Max was now referred to as the "Co-operating Brokerage", and paragraph 3 of the new Co-op Agreement stated:

> a) The Co-operating Brokerage represents the interests of the Buyer in this transaction.
>
> b) The Co-operating Brokerage will be paid as follows: By the seller, as per the terms of the commission agreement dated November 5, 2019.

[22] The revised Co-op Agreement was signed by Mr. Qureshi. Although signed, his signature is not dated.

[23] The revised Co-op Agreement was signed by Mr. Handa and dated November 21, 2019, even though that postdates the date of the Agreement of Purchase and Sale.

Agreement of Purchase and Sale (APS)

[24] Several counteroffers were exchanged throughout November 2019, and the parties eventually entered into a final Agreement of Purchase and Sale (APS) for the Property on November 20, 2019. Mr. Qureshi provided an initial deposit of $250,000.

[25] The APS granted Qureshi until December 20, 2019, to conduct necessary investigations. On December 22, 2019, Mr. Qureshi waived the conditions outlined in the APS through an Amendment, which also introduced additional terms. The APS mandated a further deposit of $500,000 upon condition waiver. Qureshi provided the additional deposit as stipulated.

Failure to Close

[26] In mid-March 2020, Mr. Qureshi indicated that he intended to extend the closing date from April 30, 2020, to August 31, 2020. Through subsequent communication, Mr. Qureshi informed Mr. Handa that due to his concerns about the onset of the COVID pandemic, he had decided to cancel the agreement.

[27] On April 29, 2020, Qureshi's lawyer wrote to Re/Max, requesting the return of the deposit "in light of COVID-19 related events. The transaction will not be proceeding on April 30, 2020.". The transaction did not close.

[28] On May 1, 2020, Re/Max sent an invoice to Mr. Qureshi's lawyer, requesting payment of the $650,000 commission it claimed was owing under the BRA.

[29] On July 26, 2020, Zeema resold the Property to a third party and incurred a loss of $667,635.00. Mr. Handa and Re/Max were not involved in this sale.

Procedural History

[30] On July 20, 2020, Mr. Qureshi issued a Statement of Claim against Zeema, seeking, *inter alia*, a declaration that the APS was null and void, and a direction that the deposit held in trust by Re/Max be returned to Qureshi, or in the alternative deposited into Court to the credit of the action.

[31] On August 19, 2020, Zeema issued a Statement of Defence and Counterclaim, seeking a declaration that the APS was valid and anticipatorily breached by Qureshi. Further, Zeema sought a declaration that the deposit held in trust by Re/Max be forfeited and made payable to it.

[32] Handa and Re/Max issued a Statement of Defence, taking the position that they had no claim with respect to the deposit. They also Counterclaimed against Qureshi, seeking commission in the sum of $650,000.00.

[33] Zeema brought a motion for summary judgment on its claim to the deposit. The motion was heard on December 16, 2021. On January 19, 2022, Sosna J. granted Zeema's motion and dismissed Qureshi's claim against the defendants. Sosna J. found that Qureshi had breached the APS. There was no genuine issue for trial. Certain of his findings are directly relevant to the summary judgment motion before me:

> [29] There is no issue that on April 6, 2020, the plaintiff served the defendant with notice of his intention to consider the Agreement null and void and not to close on the scheduled closing date April 30, 2020.\
>
> …
>
> [34] The pandemic fallout is not a justification for breaching the Agreement as submitted by the Plaintiff.

[34] Accordingly, Sosna J. granted Zeema's motion for summary judgment and ordered the $750,000 deposit paid by Qureshi forfeited to Zeema. He also dismissed Qureshi's claim against Zeema.

Motions for Summary Judgment

[35] Rule 20.04(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 provides: "The court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence."

[36] Rule 20.04(2.1) sets out the court's powers on a motion for summary judgment:

> In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:
>
> 1. Weighing the evidence.
>
> 2. Evaluating the credibility of a deponent.
>
> 3. Drawing any reasonable inference from the evidence.

[37] These powers were extensively reviewed by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, where it laid out a two-part roadmap for summary judgment motions at para. 66:

> On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, without using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead

> to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.

[38] Even with these extended powers, a motion for summary judgment is appropriate only if the material provided on the motion "gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute" (*Hryniak*, at para. 50).

[39] In *Hryniak*, the Supreme Court held (at para. 49) that there will be no genuine issue for trial when the summary judgment process "(1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result."

[40] To defeat a motion for summary judgment, the responding party must put forward some evidence to show that there is a genuine issue requiring a trial. A responding party may not rest on mere allegations or denials of the party's pleadings, but must set out—in affidavit material or other evidence—specific facts establishing a genuine issue requiring a trial.

[41] The motion judge is entitled to assume that the record contains all of the evidence that would be introduced by both parties at trial. A summary judgment motion cannot be defeated by vague references as to what may be adduced if the matter is allowed to proceed to trial: *Toronto-Dominion Bank v. Hylton*, 2012 ONCA 614, at para. 5.

[42] It is well settled that "both parties on a summary judgment motion have an obligation to put their best foot forward" (see *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, at para. 9). Given the onus placed on the moving party to provide supporting affidavit or other evidence under Rule 20.01, "it is not just the responding party who has an obligation to 'lead trump or risk losing'" (see *Ipex Inc. v. Lubrizol Advanced Materials Canada*, 2015 ONSC 6580, at para. 28).

[43] Thus, if the moving party meets the evidentiary burden of producing evidence on which the court could conclude that there is no genuine issue of material fact requiring a trial, the responding party must either refute or counter the moving party's evidence or risk a summary judgment.

[44] While Rule 20.04 provides the court hearing a summary judgment motion with "enhanced forensic tools" to deal with conflicting evidence on factual matters, the court should employ these tools and decide a motion for summary judgment only where it leads to "a fair process and just adjudication": *Mason v. Perras Mongenais*, 2018 ONCA 978, at para. 44; *Eastwood Square Kitchener Inc. v. Value Village Stores, Inc.*, 2017 ONSC 832, at paras. 3-6 (and cases cited therein).

[45] On a motion for summary judgment, the judge may grant judgment in favour of a responding party, even in the absence of a cross-motion for such relief, so long as it is within the scope of the motion: *Singh v. Trump*, 2016 ONCA 747, at para. 147 and cases cited therein.

[46] In the present case, both parties have brought a motion for summary judgment. They each argue that the legal issue in this case can be resolved without a trial, on the basis of the interpretation of the various contracts presented in court.

[47] While there are factual disputes regarding purported discussions between Mr. Handa and Mr. Qureshi, I do not have to resolve these disputes in order to interpret the contracts. As will be discussed below, the contractual intent of the parties is determined by the words used in their agreement, not their subjective intentions nor their negotiations leading up to the agreement. Interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract.

[48] This conclusion is reinforced in this case by the inclusion of an entire agreement clause in the BRA. As the Court of Appeal explained in *Soboczynski v. Beauchamp*, 2015 ONCA 282, at paras. 43-44:

> An entire agreement clause is generally intended to lift and distill the parties' bargain from the muck of the negotiations. In limiting the expression of the parties' intentions to the written form, the clause attempts to provide certainty and clarity.
>
> In *Inntrepreneur Pub Co. v. East Crown Ltd*., [2000] 41 E.G. 209, [2000] Lloyd's Rep. 611 (U.K. Ch.), Lightman J. colourfully described the purpose of an entire agreement clause as follows:
>
> > The purpose of an entire agreement clause is to preclude a party to a written agreement threshing the undergrowth and finding in the course of negotiations some (chance) remark or statement (often long forgotten or difficult to recall or explain) on which to found a claim such as the present to the existence of a collateral warranty . . . For such a clause constitutes a binding agreement between the parties that the full contractual terms are to be found in the document containing the clause and not elsewhere.

[49] Accordingly, I agree with both parties that this is an appropriate case for summary judgment.

Position of the Parties

[50] There is no dispute that the failure to complete the APS was due to Mr. Qureshi's default. That has already been determined by Sosna J. in the first summary judgment motion. There is no dispute that if the amount of commission to be paid had been filled in at para. 3 of the BRA, Mr. Qureshi would be liable to pay that commission to Re/Max.

[51] The dispute in this case comes down to the interpretation of the BRA and the other agreements executed by Mr. Qureshi. The BRA stated that the commission was "to be determined". The issue in this case is whether it was determined by agreement.

[52] Although the BRA did not fix the commission to be paid, Re/Max argues that the BRA must be read together with the Commission Agreement and the second Co-op Agreement. Reading these agreements together, Mr. Qureshi's obligation to pay the $650,000 commission on default is clearly established by the terms of their contracts. The BRA obligated Mr. Qureshi to pay a commission that was "to be determined" if he defaulted on the APS. The commission was determined by the Commission Agreement between Re/Max and Zeema. Although Mr. Qureshi was not a party to the Commission Agreement, he did sign the revised Co-op Agreement, which referentially incorporated the Commission Agreement by stating "The Co-operating Brokerage will be paid as follows: By the seller, as per the terms of the commission agreement dated November 5, 2019." By signing the revised Co-op Agreement, Mr. Qureshi agreed to the incorporation of the terms of the Commission Agreement into the BRA.

[53] Mr. Qureshi argues that while the BRA indicates that the commission was "to be determined", it is silent on **how** the commission was to be determined. It does not say, for example, that it is to be determined by an agreement between Re/Max and Zeema. The BRA was never amended to include a commission amount. The Co-op Agreement only states that the commission will be paid by the seller (Zeema) as per the commission agreement; it is silent with regard to Mr. Qureshi's obligation to pay any commission. The Co-op Agreement makes no reference to the BRA. Mr. Qureshi was not a party to the Commission Agreement. Moreover, the Commission Agreement states that the commission shall be paid by Zeema. Nothing in the Commission Agreement states that any commission will be paid by Qureshi. Accordingly, Mr. Qureshi takes the position that the commission was never determined in any agreement between Mr. Qureshi and Re/Max, and an essential term of the contract is therefore omitted.

Analysis

[54] When interpreting any contract, the "overriding concern is to determine the intent of the parties and the scope of their understanding": by reading "the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract.": *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, at para. 47. The primary object of contract interpretation is to give effect to the intention of the parties at the time of contract formation: *Bhasin v. Hrynew*, 2014 SCC 71, at para. 45.

[55] In *Plan Group v. Bell Canada*, 2009 ONCA 548, 96 O.R. (3d) 81, at para. 37, the Court of Appeal for Ontario held that a commercial contract should be interpreted: (i) as a whole, by giving meaning to all the terms of a contract to avoid an interpretation that would render any term ineffective; (ii) by determining the intention of the parties with reference to the words used in the contract; (iii) with regard to objective evidence of the factual matrix underlying the negotiation of the contract, but without reference to subjective intention; and (iv) to the extent that there is any ambiguity in the contract, in a fashion that accords with sound commercial principles and good business sense and that avoids a commercial absurdity.

[56] The Court of Appeal has cautioned against looking to negotiations to interpret a contract. The basic principles of commercial contract interpretation were summarized in *Salah v. Timothy's Coffees of the World Inc*., 2010 ONCA 673, 268 O.A.C. 279. At para. 16:

> When interpreting a contract, the court aims to determine the intentions of the parties in accordance with the language used in the written document and presumes that the parties have intended what they have said. The court construes the contract as a whole, in a manner that gives meaning to all of its terms, and avoids an interpretation that would render one or more of its terms ineffective. In interpreting the contract, the court must have regard to the objective evidence of the "factual matrix" or context underlying the negotiation of the contract, but not the subjective evidence of the intention of the parties.

See also: *Eli Lilly & Co. v. Novopharm Ltd*., [1998] 2 SCR 129, at paras. 54-55; *The Canada Trust Company v. Browne*, 2012 ONCA 862, 115 O.R. (3d) 287, at para. 71.

[57] In *Weyerhaeuser Company Limited v. Ontario (Attorney General)*, 2017 ONCA 1007, the Court stated, at para. 112:

> Canadian common law generally treats evidence of the parties' specific negotiations as inadmissible for purposes of interpreting a contract … evidence of the factual matrix cannot operate as a kind of alternate means by which an adjudicator constructs a narrative about what the parties *must have* discussed or intended in their negotiations. In other words, evidence of the factual matrix cannot be used to do indirectly that which the principles of contract interpretation do not permit doing directly. [Emphasis in original; citations omitted.]

[58] This principle was also affirmed by the Supreme Court of Canada in *Sattva Capital Corp*., at paras. 57 and 59, where the Court explained the limitation of "surrounding circumstances" as an aid to contractual interpretation:

> While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement... The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract... While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement. [Citations omitted.]

[59] Also instructive is Doherty, J.A.'s description of the interpretive process in *Dumbrell v. The Regional Group of Companies Inc*., 2007 ONCA 59, at para. 50:

> In my view, when interpreting written contracts, at least in the context of commercial relationships, it is not helpful to frame the analysis in terms of the subjective intention of the parties at the time the contract was drawn. This is so for at least two reasons. First, emphasis on subjective intention denudes the contractual arrangement of the certainty that reducing an arrangement to writing was intended to achieve. This is particularly important where, as is often the case, strangers to the contract must rely on its terms. They have no way of discerning the actual intention of the parties, but must rely on the intent expressed in the written words. Second, many contractual disputes involve issues on which there is no common subjective intention between the parties. Quite simply, the answer to what the parties intended at the time they entered into the contract will often be that they never gave it a moment's thought until it became a problem: see Kim Lewison, *The Interpretation of Contracts*, 3rd ed. (London: Sweet & Maxwell, 2004) at 18-31.

[60] In analyzing this case, I do not doubt that Mr. Handa's subjective intention was to have the commission in the BRA determined by his commission agreement with Zeema. The issue for determination is whether that intention is reflected in the "the contract as a whole, giving the words used their ordinary and grammatical meaning".

[61] Nor do I doubt that, until he decided not to close the APS (sometime in March or April of 2020), Mr. Qureshi gave little or no thought to what the commission would be, because, until that time, the commission was to be paid by the seller.

[62] "A contract must contain all essential terms. If it does not, the agreement is neither enforceable nor binding. These essential terms must be certain": *Nijjar v. Feldman et al*., 2020 ONSC 552, at para. 75. "A document that omits essential terms, or that contains vague or incomplete material terms, will not constitute an enforceable contract.": *Consulate Ventures Inc. v. Amico Contracting & Engineering (1992) Inc*., 2007 ONCA 324, at para. 81.

[63] In the present case, the amount of commission to be paid by the buyer on default was an essential term of the BRA. Re/Max filled in the BRA but did not include the commission amount where indicated. Instead, Re/Max filled in "TBD", but did not indicate the mechanism to determine the commission. There is nothing in the BRA to suggest that the commission was to be determined by agreement between Re/Max and Zeema, although that was Re/Max's subjective intention. But it was not a term of the BRA, and the BRA was the "entire agreement".

[64] The commission to be paid by Zeema was set out in the Commission Agreement, but Mr. Qureshi was not a party to the Commission Agreement and could not be bound by it because there was nothing in the BRA that he did sign to indicate that he would be bound by the commission amount set out in the Commission Agreement.

[65] At this point, Re/Max should have asked Mr. Qureshi to sign a revised BRA that substituted the agreed commission amount of $650,000 for the "TBD" that was filled in at para. 3 of

the BRA. Had this occurred, Re/Max would have been successful on this motion for summary judgment.

[66] But Mr. Qureshi was asked to sign only a revised Co-op Agreement. There was nothing in the first Co-op Agreement that referenced or was in any way related to the amount of commission.

[67] If Mr. Qureshi is to be bound by the commission amount in the Commission Agreement, it can only be by virtue of his signing the revised Co-op Agreement. But the revised Co-op Agreement states only that "The Co-operating Brokerage will be paid as follows: By the seller, as per the terms of the commission agreement dated November 5, 2019" (emphasis added). It does not say "By the seller or the buyer, as per the terms of the commission agreement".

[68] Nor does the revised Co-op Agreement make any reference the BRA.

[69] The Commission Agreement, which is referenced in the revised Co-op Agreement, states only that the commission shall be paid by the Owner (Zeema). Nothing in the Commission Agreement states that any commission shall be paid by the buyer (Qureshi).

[70] Reading the revised Co-op Agreement "as a whole, giving the words used their ordinary and grammatical meaning", does not, as contended by Re/Max, incorporate the terms of the Commission Agreement into the BRA.

[71] The incorporation of the terms of Commission Agreement into the BRA was certainly Mr. Handa's subjective intention, but, in my view, that is not an interpretation that the words of the revised Co-op Agreement can bear.

[72] At the end of the day, there is simply no contract signed by Mr. Qureshi in which Mr. Qureshi agrees to pay Re/Max $650,000 if he defaults on the APS. There is nothing in either the BRA or the revised Co-op Agreement that informs Mr. Qureshi that he will be liable for $650,000 if he defaults on the APS.

Conclusion

[73] For the foregoing reasons, the Defendants', Handa and Re/Max, motion for summary judgment and counterclaim for commission is dismissed.

[74] Each party has submitted a bill of costs claiming approximately $30,000 on a partial indemnity basis.

[75] If the parties are not able to agree on costs, the Plaintiff may serve and file costs submissions of no more than 3 pages plus any offers to settle within 20 days of the release of this decision, and the Defendants may serve and file responding submissions on the same terms within a further 15 days.

Justice R.E. Charney

Released: October 22, 2024

CITATION: Qureshi v. Zeema Investments Incorporated, 2024 ONSC 5855

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Nadeem Qureshi

Plaintiff

– and –

Zeema Investments Incorporated, Nik Handa and Re/Max Realty Services Inc.

Defendants

REASONS FOR DECISION

Justice R.E. Charney

Released: October 22, 2024