

CITATION: *Royal Family Realty Inc. v. Juanli Liu*, 2026 ONSC 3172
COURT FILE NO.: CV-19-00620126-0000
DATE: 20260604

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
ROYAL FAMILY REALTY INC.	)	<i>Calvin Zhang</i> , for the Plaintiff
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
JUANLI LIU	)	
	)	
Defendant	)	<i>Rebecca Huang and Simon Cameron</i> , for the
	)	Defendant
	)	
	)	
	)	
	)	HEARD: March 16-23, 2026

REASONS FOR DECISION

CALLAGHAN J.

[1] In this action, Royal Family Realty Inc. (“Royal” or the “plaintiff”) seeks judgment for an unpaid real estate commission pursuant to a Buyer Representation Agreement (“BRA”) signed by the defendant, Juanli Liu (“Ms. Liu”), on March 26, 2017, who failed to close on the purchase of a farm property. The plaintiff claims a commission of 2.5% on a purchase price of \$8,400,000, being \$237,300 inclusive of HST, together with pre-judgment and post-judgment interest and costs.

[2] For the reasons that follow, I am dismissing the action.

Background

[3] Ms. Liu and her husband, Gui Zhao (“Mr. Zhao”), reside in China. Neither speak English. At the recommendation of their friend, Vicky Hui (“Ms. Hui”), the couple came to Canada in 2017 to find a school for their teenaged son. Ms. Hui was the only person the couple knew in Canada.

[4] Ms. Hui had emigrated to Canada in 2009. She had success in business while in China. After arriving in Canada, she spent time taking English language training. She obtained her real estate license in 2015, although she had not been involved in many sales as of 2017.

[5] Ms. Liu is a university graduate who worked in various roles at one of China's largest banks. It was suggested by the plaintiff that she was an "auditor" but that is not the case. In any event, it was unclear what was meant by her being an auditor. Regardless, as explained below, she was not familiar with buying property in Ontario and was acting on her husband's instructions.

[6] Mr. Zhao is described as an entrepreneur. The evidence was not clear as to exactly the scope of his business interests. He did have an interest in one of the largest malls in China. In his short time in Canada, he and Ms. Liu made offers to buy three properties, at a total cost of \$65 million. Like his wife, he had no experience in buying real estate in Ontario prior to his visit in 2017.

[7] Ms. Hui knew Mr. Zhao from China. She had rented space in Mr. Zhao's mall for her business. He reconnected with Ms. Hui regarding his son going to school in Canada. She agreed to assist and located a school in Thornhill. She also assisted the family with finding a place to stay while visiting and spent time assisting the couple with day-to-day activities because of the language barrier.

[8] While in Canada, Mr. Zhao expressed interest to Ms. Hui about buying property. Ms. Hui gave him advice about the prospects of buying land in the Niagara Peninsula. Mr. Zhao was keen to also buy a farm. Ms. Hui sent him listings for farm properties and took him to see some available farms.

[9] The property at the centre of this case was a farm property on Weston Rd. (the "Farm Property") that Mr. Zhao found searching on-line and that he was keen to buy. Mr. Zhao used Ms. Hui as his agent for this purchase.

[10] Ms. Hui was working as an independent agent through Royal. While Ms. Hui was not an employee of Royal, there is no issue that when acting on the Farm Property transaction, she represented Royal. Ms. Hui was entitled to half of any commission on any purchase and is entitled to 50% of any judgment in favour of Royal in this case.

[11] As the result of his brother's untimely death, Mr. Zhao had to return to China on March 21, 2017. By this time, Mr. Zhao had located the Farm Property. He was keen to pursue the possible purchase of the Farm Property and, as mentioned, enlisted Ms. Hui for this purpose.

[12] While Mr. Zhao was in China, Ms. Hui conducted due diligence on the Farm Property and communicated her findings to Mr. Zhao. Mr. Zhao gave instructions to Ms. Hui regarding the purchase. The offer price for the Farm Property was \$8.9 million. In a WeChat communication, Ms. Hui suggested that Mr. Zhao offer \$8.3 Million. Mr. Zhao replied that he "would like to just offer the asking price" as he did not think it right to "slash the asking price if it is a reasonable price". Mr. Zhao was keen to make a successful offer on the Farm Property.

[13] Notwithstanding those instructions, Ms. Hui negotiated a price of \$8.4 million. At one point in the negotiations, Ms. Hui wrote the opposing agent asking if she could get 3% commission for an offer at \$8.4 million. She said this was a tactic to see if there was room to negotiate. The response was that she could have 3% commission if the offer was the asking price of \$8.9 million.

[14] Because Mr. Zhao was in China, he asked his wife, Ms. Liu, to execute any documents necessary to complete the transaction. As Mr. Zhao testified, in his view there was no difference between him and his wife when purchasing the Farm Property. He asked his wife to cooperate with Ms. Hui to conclude the purchase. He continued to instruct Ms. Hui who communicated with him throughout.

[15] It is clear that Ms. Liu was acting on her husband's behalf and that she relied upon Ms. Hui, who she understood was communicating with her husband regarding the purchase of the Farm Property. Ms. Liu signed the various documents related to the offer to purchase the Farm Property, including the Agreement of Purchase and Sale (APS) and BRA.

[16] As she did not speak or read English, Ms. Liu could not read the transaction documents, including the BRA. Aside from the fact that they were needed for the purchase of the Farm Property, she did not appreciate what she signed. She said that Ms. Hui told her that everything had been discussed between Ms. Hui and Mr. Zhao. Ms. Liu testified that Ms. Hui never translated or explained the contents of the documents but merely had her sign the documents.

[17] Ms. Liu testified that paying a commission is not part of buying a property in China. She did not appreciate that she may be responsible for a commission if the sale did not proceed.

[18] In contrast to Ms. Liu's evidence, Ms. Hui says she reviewed and translated the APS, the BRA and other transaction documents for Ms. Liu. She says her nephew was present. However, her nephew was not called as a witness, notwithstanding that this is the central issue in this litigation.

[19] After signing the documents, Ms. Hui referred Ms. Liu to Mr. Pak, a solicitor. Ms. Hui only did so after confirming with Mr. Zhao via WeChat. Ms. Liu met with Mr. Pak once or twice. Mr. Pak also met Mr Zhao on one occasion.

[20] Ms. Hui says she sent Mr. Zhao the APS, BRA and other transaction documents, although not a translation of those documents. In her exchange with Mr. Zhao, she referred to the documents as standard form and advised that she added four pages of addendum regarding the septic, environmental issues, swimming pool and other issues. Ms. Hui, however, never translated or explained the documents to Mr. Zhao. She did not explain to Mr. Zhao that a commission may be owed if the transaction did not close. Mr. Zhao says he was unaware of the terms of the BRA and the alleged commission until this lawsuit started almost two years after the documents were signed.

[21] This case involves a claim for commission. Signed with the APS, the Confirmation and Cooperation and Representation form provided that on a completed sale, the seller's broker would pay the commission of the buyer's agent. These are agreements between the buyer and seller's agents and are acknowledged by the buyer.

[22] In contrast to those documents, the BRA is a contract between the buyer and its own agent. It provides that in certain circumstances the buyer may be responsible to pay the agent where the sale does not proceed. Like the other documents related to the sale, the BRA is a standard form document issued by the Toronto Real Estate Board. The key portion of the BRA provided, in part, that:

...the buyer enters into an agreement to purchase any property of the general description indicated above, the Buyer agrees that the Brokerage is entitled to be paid commission of 2.5% of the sale price of the property... the buyer agrees to pay the brokerage such commission as described above even if a transaction contemplated by an agreement to purchase or lease 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...

[23] Mr. Zhao and Ms. Liu concluded two other property transactions. One transaction involved the purchase of land for development purposes (the "Land Property"). This transaction was in the amount of \$55 million. As explained in further detail below, Ms. Hui acted as a translator on the transaction, not as the real estate agent. Mr. Zhao was the prospective purchaser.

[24] In the Land Property transaction, Mr. Zhao was also represented by a lawyer, Mr. Kligerman. As the translator, Ms. Hui communicated with both Mr. Kligerman and Mr. Zhao. Mr. Kligerman had all sales documentation translated and sent to Mr. Zhao. At almost the same time as the Farm Property transaction, Ms. Hui gave direction to Mr. Zhao to sign the English version of the Land Property transaction documents sent by Mr. Kligerman.

[25] The purchase agreement for the Land Property transaction contained various buyer's conditions which had to be satisfied or waived by the buyer in order to close the transaction. Mr. Kligerman retained environmental and planning experts to address some of the conditions. Ms. Hui provided instructions, ostensibly on behalf of Mr. Zhao, to Mr. Kligerman to waive the buyer's conditions on the purchase of the Land Property. Mr. Zhao states he never gave those instructions. When he learned that the buyer's conditions had been waived, Mr. Zhao felt that he had been betrayed by Ms. Hui. Ms. Hui denies the allegations and says that she received instructions from Mr. Zhao but has no written confirmation from or to Mr. Zhao of those instructions. Because he deemed Ms. Hui's conduct to be deceitful, Mr. Zhao refused to close any transaction in which Ms. Hui had been involved, including the Farm Property transaction.

[26] Ms. Hui introduced Mr. Zhao to Ms. Tan who was the seller's agent in the Land Property transaction. There was an agreement by the seller of the Land Property to pay a million dollars to a consultant group which included Ms. Tan who had facilitated the sale with Mr. Zhao. The fee was only payable upon the successful closing of the sale of the Land Property. On April 4, 2017, Ms. Hui signed a "Service Agreement" with Ms. Tan whereby she was to receive a fee of \$225,000 of the million dollars. It was never explained by Ms. Hui why Ms. Tan would pay her \$225,000 in respect of this transaction but, in my view, it was because Ms. Hui was the one who introduced Mr. Zhao to the Land Property transaction.

[27] Mr. Zhao says he did not know that Ms. Hui was to be paid a service fee on the successful closing of the Land Property transaction until after this matter became litigious. Ms. Hui states that Mr. Zhao was aware of the fee and that he had no issues as he wanted to recognize Ms. Hui's efforts as a translator and all the effort she put in to assist Mr. Zhao and his wife while they were in Canada, including locating a school for their son. This explanation is not persuasive.

[28] I accept that Mr. Zhao wanted to reward Ms. Hui for her assistance; however, he had already used Ms. Hui for the purchase of the Farm Property for which she was to receive half the commission, being half of \$237,000. It is not clear why Mr. Zhao would feel compelled to provide Ms. Hui with a further benefit of almost double that amount. Given the existing agency relationship, the lack of written confirmation with Mr. Zhao of any commission on the Land Property transaction is inexplicable and problematic. If Ms. Hui was to receive \$225,000, being double the amount she was to benefit from the purchase of the Farm Property, I would expect that agreement to be in writing, particularly as she was already in a client/agent relationship in relation to the Farm Property. In my view, the money payable to Ms. Hui on the close of the Land Property was an undisclosed commission for referring Mr. Zhao as a potential buyer to Ms. Tan.

[29] There was a third property which was a house purchase on Bronte Road. That transaction also involved Ms. Hui and did not close, ostensibly for the same reason; that is, Mr. Zhao deemed that Ms. Hui had been deceitful. There was little evidence of this transaction in this proceeding.

[30] As one might anticipate, the failure to close these three transactions led to a series of lawsuits by the sellers against Mr. Zhao and Ms. Liu. There were third party actions, and a direct action by Mr. Zhao and Ms. Liu against Royal and Ms. Hui. All these actions have been settled. Royal and Ms. Hui were represented in those actions by counsel for the insurer of Royal, not the same counsel as appearing in this proceeding. In those actions, Royal paid sums to resolve those proceedings. An agreement between counsel limited the evidence before this Court regarding the Land Property and Bronte Road transactions.

The Parties Positions

[31] Royal's position is that it is entitled to its commission as Ms. Liu did not close the transaction. Royal states that the provision of the BRA entitled it to the commission because the sale did not close due to the fault of Ms. Liu.

[32] Ms. Liu has several arguments in defence of this action. First, she asserts that Ms. Hui did not translate or explain the APS, BRA and other documents to her. She claims she was solely dependent on Ms. Hui. Ms. Liu states Ms. Hui was aware that Ms. Liu did not understand the terms of the BRA, including the requirement that a sales commission may be owing if the Farm Property transaction did not close. She relies on the fact that Ms. Hui was a fiduciary and had an obligation to make disclosure of the potential commission owing if the sale did not close. It is alleged that in failing to translate and advise Ms. Liu of the terms of the APS and BRA, Ms. Hui breached her fiduciary obligations as an agent for Ms. Liu. She relies on the doctrine of *non-est factum*. Ms. Liu was not aware that she would owe a commission if the Farm Property did not close.

[33] Ms. Hui responds by saying she translated and explained the sales documents, including the BRA. It is asserted that the defence of *non-est factum* is not open to Ms. Liu because she was careless, as she took no steps to protect her interest in the transaction by asking questions about the sales documentation, including the BRA.

[34] As submitted by Ms. Liu's counsel, if the *non-est factum* defence succeeds, there is no need to address the other defences advanced.

[35] Ms. Liu states, if the *non est factum* defence does not succeed, she is still not responsible to pay Royal a commission because the failure to close the Farm Property transaction was not her fault, but the fault of Ms. Hui. She states she was justified in not closing because Ms. Hui had acted deceitfully toward her husband in the Land Property transaction. As such, she asserts the failure to close the Farm Property transaction was not "owing or attributable to the Buyer's default or neglect", as required by the BRA.

[36] Furthermore, Ms. Liu states that Ms. Hui, by agreeing to receive a secret commission on the Land Property transaction, Ms. Hui breached her fiduciary duty, therefore disentitling Royal to a commission on the aborted Farm Property sale.

[37] Several ancillary issues were raised regarding the authenticity of documents and alleged forgeries. I need not resolve these issues to decide this case.

[38] In my view, this case may be decided on the issue of whether Ms. Liu has made out the defence of *non-est factum*. I have found that the defence of *non-est factum* has been made out.

Discussion

[39] *Non est factum* is a defence available to someone who, "as a result of misrepresentation, has signed a document mistaken as to its nature and character and who has not been careless in doing so": *Bulut v. Carter*, 2014 ONCA 424, at para. 18. The governing authority in Canada is *Marvco Colour Research Ltd. v. Harris*, [1982] 2 S.C.R. 774 (S.C.C.).

[40] As discussed in *Marvco*, the plea often arises where there is some element of fraud or other conduct that led a party to sign an agreement which that party did not truly comprehend. The defence has three elements. The onus is on the defendant to prove these three elements. First, Ms. Liu must prove that she was mistaken about the nature of the BRA. Second, she must prove that her mistake as to the nature of the BRA was the result of a misrepresentation by Ms. Hui who represented Royal. Finally, the third element addresses carelessness. As discussed below, I am not satisfied that this element of the test applies in this case. Nonetheless, if it does apply, Ms. Liu must prove that she was not careless in signing the BRA: *Carter*, at para. 18. If Ms. Liu proves each element of the defence, the BRA is deemed to be void *ab initio* and Royal is not entitled to a commission on the Farm Property transaction: *Marvco*, at p. 778. Of course, the application of the doctrine depends on the circumstances of each case.

[41] As real estate agents, Royal and Ms. Hui were fiduciaries to Ms. Liu and her husband. This is an important factor in this case. The BRA was an agreement between Royal and Ms. Liu.

The BRA identified Ms. Liu as the client, along with her husband. As discussed, Ms. Hui understood Mr. Zhao was the decision maker.

[42] As the BRA was an agreement requiring Ms. Liu to pay commission to Royal in circumstances where the sale did not proceed, the financial interest of Royal conflicted with Ms. Liu. That is, Royal stood to benefit at the expense of Ms. Liu. As such, Royal and Ms. Hui were in a position of potential conflict with their client.

[43] In *Raso v. Dionigi* (1993), 12 O.R. (3d) 580 (C.A.), the court addressed the fiduciary duty of a real estate agent. That case addressed an agent acting for a purchaser and buyer. It emphasised that an agent must not let its own or another's interests to come into actual or apparent conflict with the interest of its principal. If that were to occur, the agent is obligated to make full and frank disclosure to the principal, otherwise the fiduciary would be in breach of its obligation to the principal. The Court of Appeal cited the following as to the obligation of an agent faced with a conflict with its principal: “conduct on the part of an agent which *prima facie* constitutes a breach of his fiduciary obligations will not be treated as such if he has made full and timely disclosure to his principals that is, if he has complied with his obligation of disclosure.”: *Raso*, at pp. 9-10, citing W.F. Foster in “Dual Agency: Its Implications for the Real Estate Brokerage Industry”, Meredith Memorial Lectures, Current Problems in Real Estate (1989), at p. 76. The court further adopted the principle that the onus is on the agent to prove by “clear and affirmative proof” that there was such full and timely disclosure: *Raso*, at p. 10.

[44] Accordingly, *Raso v. Dionigi* stands for the proposition that an agent has the evidentiary onus to establish that the client is fully informed of the consequence of any potential or *prima facie* conflict. While the case referred to the agent having to adduce “clear and affirmative evidence”, I am cognizant that there is now only one standard of proof in a civil case, being the balance of probabilities and that the evidence must always be clear, convincing and cogent to satisfy that standard: *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at paras. 40 and 46.

[45] In *Raso v. Dionigi*, the agent sought to act for the both the seller and buyer. The Court held that the disclosure of the conflict must occur before any transaction is entered into by the principal. The Court stated: “An agent must be able to prove that the transaction was entered into by his principal **after** the agent has made ‘full and fair disclosure of all material circumstances and of everything known to him respecting the subject matter of the contract which would be likely to influence the conduct of the principal’”; at p 10 (emphasis added). In this case, the terms of the BRA had to be disclosed and made known by Royal to Ms. Hui before she signed the BRA.

[46] In the circumstances of this case, whether the BRA was explained to Ms. Liu is central to the defence. On that point, the onus is on Royal to satisfy the court on a balance of probabilities with clear, convincing and cogent evidence that Ms. Hui made full and clear disclosure of the terms and importance of the BRA to Ms. Liu, particularly the payment of commission in the event a sale was not concluded. On that issue, I am not satisfied that Royal has met its onus.

[47] The evidence of Ms. Hui on this issue was rather brief. There was little detail of the nature of the meeting, length of the meeting or detail of what exactly she explained to Ms. Liu. Presumably, such a meeting would have taken a considerable amount of time as Ms. Hui is said to

have translated and explained all the documentation related to the sale, including the BRA. I would have expected some detail in Ms. Hui's evidence of her explaining to Ms. Liu the difference between the commission under the Confirmation and Co-operation and Representation form, which sets out how commission is to be paid in the event the sale closes, compared to the BRA, which provides a commission may still be owing where the sale has not been concluded. There was no such testimony.

[48] Ms. Hui testified that her nephew was present during this meeting with Ms. Liu. Inexplicably, the nephew was not called as a witness even though he was available. In addition, it was never put to Ms. Liu that the nephew was present during the explanation and translation of the transaction documents, including the BRA.

[49] As I have indicated, I accept Ms. Liu's evidence that she was signing the documents on behalf of her husband who had to return to China. She was of the understanding that Ms. Hui was keeping her husband apprised of the documents. In my view, this is consistent with the rest of the evidence. Indeed, Ms. Hui communicated throughout with Mr. Zhao including on key elements such as the price. There was an email to Mr. Zhao stating she added certain provisions to what she described as the standard purchase agreement but no comment about the BRA or that commission might be owing on a sale that did not close. After the signing, Ms. Hui sent the documents relating to the transaction to Mr. Zhao, although without any translation or explanation. It is hard to explain why a translation or explanation of the documents was not sent to Mr. Zhao who was clearly the directing mind of this transaction and, like his wife, spoke no English. In comparison, Ms. Hui was aware that Mr. Kligerman sent translated copies to Mr. Zhao of the sales documentation related to the Land Property transaction.

[50] Ms. Hui also demonstrated a habit of acting on her own without instructions. During her communications with Mr. Zhao, he instructed her to offer the asking price, and not to "slash the asking price". She eventually made an accepted offer of \$8,400,000. While this may demonstrate that Ms. Hui had significant negotiating skills, it also demonstrates a willingness not to follow the client's instructions. Similarly, the failure to sign the transaction documents also demonstrates a level of carelessness. By themselves, this conduct may not amount to much, but it does raise an issue as to her diligence as an agent. In my view, her conduct makes me question whether she took the time to translate and explain the BRA and other sales documentation.

[51] In addition, I accept that Ms. Hui did not disclose the commission she was to receive on the Land Property transaction. This calls into question Ms. Hui's credibility on financial issues, specifically her entitlement to commissions.

[52] Ms. Hui suggested that the lawyer, Mr. Pak, explained the sales documents, including the BRA, to Ms. Liu. Mr. Pak was not retained until after the BRA was signed. The disclosure obligation set out in *Raso v. Dionigi* requires an agent to ensure that the client reviews the BRA before signing, not afterwards, at p. 10. In any event, the evidence is not clear as to what Mr. Pak did or did not do.

[53] Given her lack of English, Ms. Liu was dependent on the explanation and translation of the terms of the BRA from Ms. Hui. In my view, Royal has not provided clear, convincing and cogent

evidence that Ms. Hui explained the BRA to Ms. Liu or otherwise made full, fair and complete disclosure of the terms of the commission now being sought.

[54] Returning to the test for *non-est factum*, I am satisfied that Ms. Liu did not appreciate that she may be responsible to Royal for a commission if the property did not close. I accept that she did not understand the commission structure in Ontario, was not informed of what was in the BRA and could not read the BRA as it was in English. As such, I am satisfied that she has met her onus that she was mistaken as to the nature of what she signed and, in particular, the obligation to pay a commission in the event a sale was not concluded.

[55] I am satisfied given the onus on Royal as a fiduciary that the misapprehension by Ms. Liu resulted from the omission of Ms. Hui to explain the nature of the BRA to her. This constitutes a misrepresentation by omission which meets the second element of the test: *Canada Trustco Mortgage Co. v. Bartlet and Richardes* (1996), 28 O.R. (3d) 768, at p. 8.

[56] The last element of the test is whether Ms. Liu was careless in signing the BRA. I do not believe so. Ms. Hui was aware that Ms. Liu was standing in for her husband. It was reasonable for Ms. Liu to believe that the documents were explained to Mr. Zhao. As it was, Ms. Hui did not explain the commission structure to Mr. Zhao although she communicated with him throughout.

[57] While Ms. Liu was not careless, I do not believe this third element of the test applies in the circumstances of this case. The concept of carelessness was a later refinement of the test of *non-est factum*. It was added to protect innocent third parties. The Supreme Court in *Marvco* adopted the element in 1982. Estey J. explained the rationale for this element of the test as follows at pp. 785-6:

In my view, with all due respect to those who have expressed views to the contrary, the dissenting view of Cartwright J. (as he then was) in *Prudential*, *supra*, correctly enunciated the principles of the law of *non est factum*. In the result the defendants-respondents are barred by reason of their carelessness from pleading that their minds did not follow their hands when executing the mortgage so as to be able to plead that the mortgage is not binding upon them. The rationale of the rule is simple and clear. As between an innocent party (the appellant) and the respondents, the law must take into account the fact that the appellant was completely innocent of any negligence, carelessness or wrongdoing, whereas the respondents by their careless conduct have made it possible for the wrongdoers to inflict a loss. As between the appellant and the respondents, simple justice requires that the party, who by the application of reasonable care was in a position to avoid a loss to any of the parties, should bear any loss that results when the only alternative available to the courts would be to place the loss upon the innocent appellant. In the final analysis, therefore, the question raised cannot be put more aptly than in the words of Cartwright J. in *Prudential*, *supra*, at p. 929: "...which of two innocent parties is to suffer for the fraud of

a third”. The two parties are innocent in the sense that they were not guilty of wrongdoing as against any other person, but as between the two innocent parties there remains a distinction significant in the law, namely that the respondents, by their carelessness, have exposed the innocent appellant to risk of loss, and even though no duty in law was owed by the respondents to the appellant to safeguard the appellant from such loss, nonetheless the law must take this discarded opportunity into account.

[58] In this case, Royal is not an innocent third party. Royal’s failure to meet its fiduciary duty is at the core of Ms. Liu’s mistaken understanding: see also *Isaacs v. Royal Bank of Canada*, 2011 ONCA 88, at para. 7. This is not a situation where this court is faced with two “innocent parties”. Instead, Royal is seeking to benefit in circumstances where it failed in its fiduciary obligation to Ms. Liu. In that sense, Royal is a wrongdoer and not an innocent party. To reward Royal because Ms. Liu was careless is contrary to the purpose of the third element of the *non-est factum* test. In my view, carelessness is not a consideration in this case. Although, if it were, I do not find Ms. Liu to be careless.

[59] In conclusion, I accept that Ms. Liu did not appreciate the terms of the BRA and was not aware that a commission may be owed even if the sale did not proceed. I therefore accept her defence of *non-est factum*. Accordingly, the BRA is void *ab initio* and, therefore, I dismiss the action.

[60] In light of my conclusion, I do not need to address the other issues raised by the parties, including the interpretation and application of the BRA. That issue is whether the Farm Property transaction was not completed “owing or attributable to the Buyer’s default or neglect”. The BRA is a standard form contract which would engage the principles set out in *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 238. As noted in that case, because it is a standard form, any interpretation has precedential value: *Ledcor*, at para. 4. Given I need not decide the interpretation issue to dispose of this case and its possible precedential impact, I do not think it necessary or wise to opine on the issue.

Disposition

[61] The action is dismissed.

[62] The parties have filed bills of costs. Any party seeking costs shall file submissions of no more than four pages, along with any offers within 7 days of receipt of this decision. Any party seeking to respond shall file responding submissions of no more than four pages within 7 days of the receipt of the requesting submissions.

Callaghan J.

Released: June 4, 2026