

COURT OF APPEAL FOR ONTARIO

CITATION: Qureshi v. Zeema Investments Incorporated, 2026 ONCA 413

DATE: 20260612

DOCKET: COA-24-CV-1217

van Rensburg, Miller and Sossin JJ.A.

BETWEEN

Nadeem Qureshi

Plaintiff
(Respondent)

and

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

Defendants
(Appellants*)

Jeffrey Klein, for the appellants

Shahzad Siddiqui and Jonathan Rosenstein, for the respondent

Heard: November 28, 2025

On appeal from the order of Justice Robert Charney of the Superior Court of Justice, dated October 22, 2024, with reasons reported at 2024 ONSC 5855.

REASONS FOR DECISION

[1] This appeal addresses the entitlement of a realtor to a commission for a commercial real estate transaction that ultimately failed. The motion judge, on a motion for summary judgment, found there was no contractual obligation on the

part of the intended purchaser to pay the commission. The appeal requires this court to determine whether the motion judge made a reviewable error in interpreting the various contractual documents.

[2] For the reasons given below, the appeal is dismissed. The contractual interpretation required in this case is highly fact-specific. In such circumstances, a highly deferential standard of review is required: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 52. Applying this standard, the motion judge made no reviewable errors and came to a conclusion that was open to him.

Factual overview

[3] The respondent, Nadeem Qureshi, sought to purchase a commercial property as an investment. He approached the appellant, Nik Handa, a realtor affiliated with Re/Max Realty Services Inc. (“Re/Max”), for assistance. Mr. Handa suggested that Mr. Qureshi make an offer on a property owned by Zeema Investments Inc. (“Zeema”) that was not listed for sale.

[4] On October 29, 2019, Mr. Qureshi signed four documents that Mr. Handa had sent him to review: (1) the offer to purchase that would be sent to Zeema; (2) OREA Form 815 (Working with a Commercial Realtor); (3) OREA Form 320 (Confirmation and Cooperation of Representation); and (4) a Buyer Representation Agreement.

[5] The Buyer Representation Agreement (“BRA”) and Confirmation and Cooperation of Representation (the “Co-op Agreement”) were significant to the claim for a commission. The key provision in the BRA provides:

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.

Both parties understood that “TBD” stood for “to be determined.”

[6] The Co-op Agreement, characterized by the parties as a “multiple representation” agreement, stated that Re/Max and Mr. Handa would represent both the buyer and the seller in the proposed transaction. The Co-op Agreement was a standard form, with a blank space for the parties to indicate who would pay the commission. The blank was not filled in, and the Co-op Agreement did not refer to the BRA. The Co-op Agreement was later superseded by an amended agreement signed on November 7, 2019.

[7] The offer was prepared and delivered. On November 5, 2019, Zeema executed an agreement with Re/Max (the “Commission Agreement”) to pay a commission of \$650,000 (inclusive of HST) to Re/Max if the parties entered into a binding agreement of purchase and sale.

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

[9] After the initial offer was delivered, negotiations followed. During these negotiations, Zeema was represented by its solicitor rather than Re/Max, which necessitated changes to the original Co-op Agreement. On November 7, 2019, a new representation agreement (the “Revised Co-op Agreement”) was signed between Mr. Qureshi and Re/Max providing that Re/Max would represent the interests of Mr. Qureshi only. The Revised Co-op Agreement further provided that Re/Max would be paid its commission “(b)y the seller, as per the terms of the commission agreement dated November 5, 2019.”

[10] Zeema and Mr. Qureshi came to terms and an agreement of purchase and sale was executed on November 20, 2019. Mr. Qureshi paid deposits totaling \$750,000.

[11] Subsequently, Mr. Qureshi chose not to proceed with the purchase and on April 29, 2020, asked Re/Max to return the deposit. Re/Max invoiced Mr. Qureshi \$650,000 for a commission under the BRA, which Mr. Qureshi refused to pay. Zeema resold the property to a third party at a loss of \$667,635.

The motion judge’s reasons

[12] The parties agree that the motion judge stated the law correctly. He cited the leading contractual interpretation case, *Sattva Capital*, for the proposition that

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:” at para. 47.

[13] The motion judge found that when Re/Max indicated in the BRA that the amount of commission payable would be “TBD,” it failed to either provide an amount of commission or specify a mechanism by which the commission would be determined. The motion judge found there to be nothing in the BRA – which contained an entire agreement clause – to indicate that the amount of the commission would be set by agreement between Zeema and Re/Max, even though that was Re/Max’s subjective intention.

[14] The motion judge found that Mr. Qureshi was not a party to the Commission Agreement, and since there was nothing in the BRA that stated he agreed to be bound by the commission amount set out in the Commission Agreement, he could not be bound by it. Neither did the Revised Co-op Agreement provide any basis for the liability of Mr. Qureshi, the buyer, to pay the commission in the event that the transaction closed – only the seller, Zeema.

[15] Accordingly, the motion judge found that there was no contractual basis for a payment of commission by Mr. Qureshi and dismissed the motion for summary judgment brought by Re/Max and Mr. Handa.

Analysis

[16] The appellants argue, first, that there were factual determinations that required a trial, and the motion judge ought to have dismissed the motion for summary judgment. In particular, Mr. Handa's evidence is that he showed the Commission Agreement to Mr. Qureshi and Mr. Qureshi signed it. Mr. Qureshi denies this, and a trial was required to resolve the factual dispute.

[17] The problem with this submission is that this appeal arises from the appellants' own summary judgment motion. It is not open to the appellants to now argue that summary judgment was not appropriate.

[18] Second, the appellants argue that the motion judge misinterpreted the contract. The motion judge, the appellants argue, ought to have found that when the BRA specified that the commission was "TBD", it meant that the obligation to pay a commission would be determined by a future event. That event was the Commission Agreement between Re/Max and Zeema, which set the quantum. Furthermore, the Revised Co-op Agreement between Mr. Qureshi and Re/Max referenced the Commission Agreement when stating that the commission would be payable by Zeema. The motion judge therefore ought to have read these three

agreements together to conclude that Mr. Qureshi had agreed to pay the commission to Re/Max in the event the transaction did not close.

[19] We are not persuaded by this argument. Although, as the motion judge found, it may have been Mr. Handa's subjective understanding that Mr. Qureshi would pay Re/Max the commission that had been agreed between Re/Max and Zeema if the transaction did not close – and fairness may have recommended such an arrangement – the motion judge's interpretation of the contract was open to him. That is, the parties did not arrive at an agreement for Mr. Qureshi to pay the commission in the event that Mr. Qureshi failed to go through with the purchase. It is not enough, on appeal, for the appellants to argue that it was open to the motion judge to have inferred an additional term into the BRA or Revised Co-op Agreement to provide for the contrary. There is no extricable question of law, and deference is required.

DISPOSITION

[20] The appeal is dismissed. The respondent is awarded costs of the appeal in the amount of \$12,000, all inclusive, as agreed between the parties.

“K. van Rensburg J.A.”

“B.W. Miller J.A.”

“L. Sossin J.A.”