

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *ADP Financial Ltd. v. AWM Financial
Services Inc.*,
2026 BCCA 297

Date: 20260710
Docket: CA50723

Between:

ADP Financial Ltd.

Appellant
(Plaintiff)

And

AWM Financial Services Inc.

Respondent
(Defendant)

Before: The Honourable Madam Justice Fisher
The Honourable Justice Iyer
The Honourable Justice Warren

On appeal from: An order of the Supreme Court of British Columbia, dated
May 5, 2025 (*ADP Financial Ltd. v. AWM Financial Services Inc.*,
2025 BCSC 836, Vancouver Docket S238491).

Counsel for the Appellant: J. Shewfelt

Counsel for the Respondent: A. Doolittle
C. Gallant

Place and Date of Hearing: Vancouver, British Columbia
January 20, 2026

Place and Date of Judgment: Vancouver, British Columbia
July 10, 2026

Written Reasons by:
The Honourable Justice Warren

Concurred in by:
The Honourable Madam Justice Fisher
The Honourable Justice Iyer

Summary:

The appellant appeals the dismissal of its action arising out of an agreement between it and the respondent governing their insurance broker/managing agency relationship. The appellant contends the summary trial judge made extricable errors of law by interpreting the critical phrase in the agreement in isolation and by drawing inferences about the appellant's subjective intentions. Held: Appeal dismissed. The judge interpreted the critical phrase in the context of the agreement as a whole and consistent with the surrounding circumstances known to the parties at the time of its formation and she did not stray from an objective analysis. She did not make the extricable errors of law alleged and the appellant has identified no palpable and overriding error in her analysis.

Reasons for Judgment of the Honourable Justice Warren:**Introduction**

[1] ADP Financial Ltd. ("ADP") appeals the dismissal of its action against AWM Financial Services Inc. ("AWM") arising out of an agreement governing their insurance broker/managing agency relationship. ADP, the broker, alleged that pursuant to the agreement, it was entitled to transfer its business to another managing agency and, in the event of such transfer, AWM, the managing agency, relinquished its right to receive future service fees from the insurance carrier in relation to that business and waived any compensation for doing so.

[2] When ADP transferred its business to a new managing agency, the new managing agency paid AWM a substantial transfer fee to compensate AWM for its interest in the business and, as between ADP and the new agency, ADP agreed to assume responsibility for that payment. In the action, ADP sought a declaration to the effect that, as a result of the agreement between ADP and AWM, AWM was not entitled to the transfer fee, an order compelling AWM to return the transfer fee to the new managing agency, and related relief.

[3] In dismissing the action, the summary trial judge held that AWM had not agreed to relinquish its right to future service fees from the insurance carrier in relation to the business in question, assign that right to ADP, or waive any associated right to compensation. On appeal, ADP argues the judge made extricable errors of law in interpreting the agreement.

[4] For the reasons that follow, I would dismiss the appeal.

Background

[5] The relevant background is fully described in the reasons of the summary trial judge indexed at 2025 BCSC 836 (“RFJ”).

[6] ADP is an independent insurance broker. Allen Dai is ADP’s principal.

[7] Amy Tong is the principal of AWM, which was formerly known as Amy B.B. Tong Insurance Ltd. AWM is a managing general agency, referred to in the insurance industry as an “MGA”. AWM works exclusively with Canada Life Assurance Company (“Canada Life”).

[8] For most of the time between 1999 and 2023, ADP sold Canada Life policies as an independent broker through AWM as its MGA.

[9] Before describing the events giving rise to the dispute, it is helpful to highlight certain aspects of the commercial context in which the relationship between ADP and AWM existed.

[10] Canada Life, as an insurance carrier, develops and owns life insurance policies. Independent brokers, like ADP, sell policies and maintain relationships with policy holders. MGAs, like AWM, service and administer the policies sold by brokers, functioning as intermediaries between Canada Life and the brokers they manage.

[11] The collection, or portfolio, of active or “in-force” policies sold by an independent broker is referred to as a “book of business” or “block of business”. It appears the terms are used interchangeably.

[12] Each of the carrier, broker, and MGA has an interest in the in-force policies managed by an MGA. Canada Life, as carrier, owns the policies and receives the premiums. ADP, as broker, receives commissions and renewal fees from Canada Life on the policies it sells and maintains (that is, on its book of business). AWM, as MGA, receives service fees from Canada Life for servicing in-force policies. These

service fees, known as “MGA Service Fees”, are a component of the compensation received by AWM pursuant to its agreement with Canada Life. AWM’s value is based in part on its ongoing entitlement to MGA Service Fees on the book of business it services for each of its brokers.

[13] The business model for the sale of life insurance evolved significantly since the late 1990s. Before then, insurance carriers, like Canada Life, employed their own agents to sell life insurance. These “career agents” did not retain an interest in the policies they sold and when they left their employment with a particular carrier, they lost all rights to any income associated with their book of business.

[14] In the late 1990s, the industry shifted to the current model whereby carriers sell life insurance using independent brokers working through MGAs. This new model created the distinct compensation streams noted above.

[15] In the 1990s and early 2000s, the presumption was that MGA Service Fees would continue to be paid by the carrier to the MGA that initially serviced a policy, even if the broker moved to a different MGA. The MGA had control over whether to relinquish its rights to the MGA Service Fees associated with a broker’s book of business if and when a broker decided to switch MGAs.

[16] If a broker wished to switch MGAs, the original MGA could refuse to transfer the broker’s book of business to the new MGA. Alternatively, the original MGA could agree to transfer the broker’s book of business and the associated future MGA Service Fees, generally in exchange for compensation paid by the new MGA. These compensation arrangements were not standardized and were generally negotiated between MGAs without the broker’s involvement. A third option developed over time whereby the MGA would agree to the transfer of the broker’s book of business to a new MGA and the new MGA would assume responsibility for servicing the in-force policies comprising the book of business but the original MGA would retain the MGA Service Fee income stream associated with those in-force policies.

[17] In the mid-2000s to early 2010s, carriers began instituting policies requiring MGAs to move a broker's book of business and the MGA's right to future MGA Service Fees on that book of business to a new MGA if the broker wanted to change MGAs. These policies also required the new MGA to pay the original MGA a standardized transfer fee to compensate the original MGA for the loss of the future MGA Service Fee income stream. Canada Life implemented this type of policy on March 14, 2011 (the "Transfer Policy").

[18] Under the Transfer Policy, brokers gained the right to transfer their Canada Life book of business, including the right to future MGA Service Fees, between MGAs without the permission of the original MGA. In exchange, the new MGA was required to pay the original MGA a transfer payment in an amount determined by a set formula (the "Transfer Payment"). However, the Transfer Policy did not override any pre-existing contractual arrangements between a broker and an MGA dealing with the transfer of the broker's book of business.

[19] I return now to the relationship between ADP and AWM and the events giving rise to the dispute.

[20] Mr. Dai was a career agent employed by Canada Life prior to October 1999 when he transitioned to an independent broker working with AWM (then known as Amy B.B. Tong Insurance Ltd.). On October 15, 1999, ADP, AWM, and Canada Life entered into a standard form producer agreement establishing ADP as a broker selling Canada Life products through AWM as its MGA (the "Producer Agreement"). The same day, Ms. Tong wrote a letter to Mr. Dai (the "1999 Letter") containing the first iteration of what would become the disputed transfer provision (the "Transfer Provision"). The Transfer Provision in the 1999 Letter provided that on the termination of their relationship, "Amy B.B. Tong Insurance Ltd. will transfer all the business under ... [ADP] ... back to ADP ...".

[21] A few months later in 2000, ADP left AWM and moved its book of business to a different MGA known as TORCE Financial Group Inc. ("TORCE"). At trial, Mr. Dai testified that AWM did not seek compensation for this transfer. Ms. Tong had no

recollection of any compensation being paid to AWM at the time. David Ho, who operated TORCE, also did not recall TORCE paying compensation to AWM.

[22] A year or so later, on June 1, 2001, ADP transferred its book of business back to AWM from TORCE. Ms. Tong admitted in discovery that AWM did not pay any compensation to TORCE in relation to this transfer. There was no evidence regarding the value of the book of business ADP transferred to AWM at this time.

[23] Also on June 1, 2001, Ms. Tong wrote a new letter to Mr. Dai/ADP (the “2001 Letter”) which contained the second iteration of the Transfer Provision in these terms:

This is to confirm that Amy B.B. Tong Insurance Ltd. agrees that upon your written request at any time and for any reason whatsoever, to release you from Amy B.B. Tong Insurance Ltd. Also upon your release, all your block business [sic] which has been submitted through Amy B.B. Tong Insurance Ltd. will be transferred back to you.

[24] When ADP returned to AWM in 2001, in addition to the terms contained in the 2001 Letter, the parties agreed that AWM would pay ADP 50 percent of the MGA Service Fees that AWM received from Canada Life on ADP’s book of business (the “MGA Service Fee Sharing Agreement”).

[25] Eight years later, on June 2, 2009, Mr. Dai negotiated an improvement to the MGA Service Fee Sharing Agreement. By letter dated June 2, 2009 (the “2009 Letter”), Ms. Tong confirmed that ADP’s share of the MGA Service Fees received on ADP’s book of business would increase from 50 percent to two-thirds. The 2009 Letter also contained the third iteration of the Transfer Provision in these terms:

At any time regardless of the reason, upon written request AWM ... agrees to release ADP ... and [ADP] is free to transfer out from our MGA. At the same time, all the block of business which has been submitted through AWM ... will be released and transferred back to ADP ...”.

[26] In March 2023, Mr. Dai decided to switch MGAs again, this time to an MGA known as “Financial Horizons”. He asked Ms. Tong to sign a letter addressed to him and backdated to September 2022. The letter stated that its purpose was “to clarify” the 2001 Letter and it expressly provided that “if [ADP sells its] block of business or

switch[es] to another MGA ... [AWM] will release [ADP's] block of business at no cost, and [AWM] will not be entitled to any transfer payment from the new acquiring entity or MGA ... as any such transfer payment would belong to Allen Dai and ADP ...". Ms. Tong refused to sign the letter, her position being that its terms were not consistent with the agreement between AWM and ADP.

[27] In August 2023, ADP sent a letter to AWM again asking AWM to confirm that ADP and AWM had an agreement, reflected in the 2001 Letter and the 2009 Letter, that upon ADP's request AWM would "release ADP and transfer back to ADP all the block of business" and "[f]or greater certainty, and in keeping with the terms of the Agreement, AWM is not entitled to fees associated with ADP's release and the transfer of ADP's block of business". Ms. Tong did not respond to this request.

[28] ADP's book of business was subsequently transferred to Financial Horizons. ADP did not provide the 1999 Letter, 2001 Letter, or 2009 Letter to Canada Life as proof that AWM had relinquished its right to a Transfer Payment, and in accordance with the Transfer Policy, AWM received a Transfer Payment of \$886,392.08 via Canada Life from Financial Horizons. As between ADP and Financial Horizons, ADP agreed to assume responsibility for that Transfer Payment.

[29] In its notice of civil claim, ADP pleaded that AWM breached its agreement with ADP in August 2023 by failing to confirm that it was not entitled to a Transfer Payment. ADP's pleadings asserted that absent AWM's written acknowledgment, ADP could not direct Canada Life to transfer its book of business without triggering a Transfer Payment to AWM.

[30] ADP applied by way of summary trial for various forms of relief, including an order requiring AWM to cause the \$886,392.08 to be returned to Financial Horizons. No issue was taken with the suitability of the summary trial procedure for disposition of the action.

[31] ADP's position on the summary trial was that the case turned on "the contractual interpretation of a single clause of a written commercial agreement";

namely, the Transfer Provision in the 1999 Letter, as confirmed in the 2001 Letter, and confirmed again in the 2009 Letter. It argued that the Transfer Provision precluded the application of the Transfer Policy and the continued receipt by AWM of MGA Service Fees related to ADP's book of business upon ADP moving its book of business to Financial Horizons.

Reasons of the Summary Trial Judge

[32] The summary trial judge referred to the 1999 Letter, 2001 Letter, and 2009 Letter as the "Side Agreements" because they existed alongside the Producer Agreement, which initially established the relationship between Canada Life, AWM, and ADP. She characterized the primary issue as "whether AWM, through the Side Agreements, relinquished its presumptive right to continue to receive compensation from Canada Life on the insurance policies sold by ADP, and serviced by AWM, during the life of ADP's contractual relationship with AWM", upon ADP moving its book of business to another MGA: RFJ at paras. 3–5.

[33] The judge found that the 2001 Letter overtook the 1999 Letter and the 2009 Letter overtook the 2001 Letter but nothing turned on that: RFJ at paras. 44, 50. These findings are not challenged. There is no dispute that the specific language to be interpreted was the phrase "all the block of business which has been submitted through AWM ... will be released and transferred back to ADP" in the 2009 Letter but that the parties' intentions remained the same despite the minor changes in wording as between the 1999 Letter, the 2001 Letter, and the 2009 Letter.

[34] Early in the RFJ, at paras. 6–7, the judge set out the legal principles governing contractual interpretation, quoting key passages from *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*] and this Court's more recent decision in *Hardy v. Graham*, 2024 BCCA 67.

[35] Having set out the governing legal framework, the judge summarized the relevant commercial context: RFJ at paras. 19–32. She then addressed the 1999 Letter in light of the commercial context. At para. 39, she found:

- a) “the 1999 Letter was provided in the commercial context of many brokers being concerned about being able to move with their book of business, rather than having to relinquish that book if they moved insurance firms, as they did previously”;
- b) “the 1999 Letter was written in the early days of the insurance industry transitioning to the contractual model, in which MGAs acted for the carrier in its dealings with its brokers, and there was no guarantee that an MGA would allow a broker’s block of business ... to be moved to another MGA”; and
- c) at the time of the 1999 Letter, “there was no established practice for MGAs to relinquish or transfer MGA Service Fees already vested in that MGA, should a broker wish to deal with a new MGA going forward”.

[36] At paras. 40–41, the judge discussed ADP’s move from AWM to TORCE in 2000. She did not consider the absence of evidence of compensation paid to AWM in relation to that move to “helpfully elucidat[e] the meaning of the 1999 Letter with respect to AWM’s entitlement to MGA Service Fees on policies booked between AWM’s initial arrangement with ADP [in October 1999] and its move to TORCE [in 2000]”. She also noted that there was no evidence of any such policies being booked that might have attracted such an entitlement, in any event.

[37] The judge then addressed ADP’s move back to AWM in 2001. She discussed the 2001 Letter in light of the commercial context. She found that “the concept of transfer payments was in its nascence”; “MGAs had vested rights in the blocks of business they managed ... in terms of their compensation from the carriers”; and “the general practice and presumption was that an MGA was not required to relinquish its rights to continue to service this block of business, and could actually prevent a producer from moving a block of business to another MGA, or to demand payment from another MGA to do so”: RFJ at paras. 45–46. She also mentioned the MGA Service Fee Agreement that was formed when ADP returned to AWM in 2001

and noted that the sharing of MGA Service Fees was not standard in the industry: RFJ at para. 47.

[38] Next, the judge addressed the 2009 Letter in light of the commercial context. She found that in 2009, “ADP’s business was thriving, and Mr. Dai was able to negotiate improved terms with Ms. Tong to keep his Canada Life business with AWM”. The “improved terms” referred to the increase in ADP’s share of the MGA Service Fees from 50 percent to two-thirds: RFJ at paras. 48–49.

[39] The judge went on to summarize the events giving rise to the dispute, including Mr. Dai’s request in 2023 that Ms. Tong clarify that AWM would not be entitled to any compensation if ADP moved its book of business to another MGA. Based on this request and Mr. Dai’s failure to provide the Side Agreements to Canada Life as proof of AWM relinquishing its right to compensation in exchange for its presumptive entitlement to future MGA Service Fees on ADP’s book of business, she found that “Mr. Dai himself did not believe that the wording of the Side Agreements, on their face, were [sic] sufficient for him to proceed with the transfer of his Canada Life block of business to Financial Horizons without triggering transfer payments to AWM under the Transfer Policy”: RFJ at para. 61.

[40] Again, the judge characterized the main issue as “whether, by way of the Side Agreements, AWM agreed to release not only ADP’s block of business back to ADP, but also AWM’s entitlement to the MGA Service Fees”: RFJ at para. 78. She noted that ADP framed the same issue as “whether, by way of the Side Agreements, AWM agreed that ADP ‘owned’ the MGA Service Fee interest in its block of business, and that AWM was required to return the MGA Service Fee interest in its block of business to ADP upon demand”: RFJ at para. 79.

[41] The judge commenced her analysis of this issue by examining the text of the Side Agreements. First, she observed that none of the Side Agreements expressly provided that AWM would relinquish its right to future MGA Service Fees on ADP’s book of business. She noted that the 2009 Letter provided for the sharing of MGA

Service Fees “as opposed to an assignment of AWM’s rights to these fees to ADP”: RFJ at para. 84.

[42] Next, the judge considered the words used in the 2009 Letter; specifically, that AWM agreed it would “release” ADP, that ADP is “free to transfer out from [AWM’s] MGA”, and that “all the block of business which has been submitted through AWM ... will be released and transferred back to ADP”: RFJ at paras. 86–93. She concluded that, considered in the commercial context, these words did not indicate that AWM had agreed to assign or transfer its ownership of future MGA Service Fees to ADP.

[43] The judge noted that, despite ADP receiving a share of the MGA Service Fees through the MGA Service Fee Sharing Agreement, the MGA interest in a broker’s book of business did not belong to the broker and was not something that could be returned or transferred back to the broker. She found that in 1999 and 2001, MGAs could refuse to allow a broker to transfer its book of business to another MGA, or if they did allow the transfer of the book of business, could keep the MGA Service Fees associated with the book of business. In this context, she found the Transfer Provision in the “earlier Side Agreements” meant that AWM would not refuse to allow ADP to move its book of business to another MGA, “despite that being a real possibility in the commercial context of that time”: RFJ at para. 92. She then noted that, despite the fact that by 2009 the parties would have been fully aware of the value of the MGA Service Fees vested in AWM, the 2009 Letter did not address the key issue but rather “used the term ‘release’ very much in the same way as it was used in the 2001 Letter”: RFJ at para. 93.

[44] The judge ultimately found that “ADP’s claim ... that it ‘owned the MGA interest’ in ADP’s block of business as a result of the Side Agreements [was] not supported by the language of the Side Agreements, the parties’ subsequent conduct, or the commercial context ...”: RFJ at para. 94. She then referred to Mr. Dai’s “tacit admission” that the Side Agreements would not have been sufficient to establish to Canada Life that AWM had released its interest in the MGA Service Fees or compensation for same as “[a]lso fatal” to ADP’s position: RFJ at para. 95.

She characterized ADP's pleading that it was a breach of contract for Ms. Tong, in 2023, to refuse to sign a letter containing explicit language that differed from the Side Agreements as "tend[ing] to undermine ADP's argument that the [Side Agreements] are clear, and address the issue ...": RFJ at para. 98.

[45] Finally, at para. 99, the judge concluded:

- a) AWM was not bound by the Side Agreements "to transfer to ADP its vested interests in the MGA Service Fees earned from Canada Life through the servicing of ADP's block of business";
- b) the Side Agreements did not "require AWM to 'transfer back' the MGA Service Fees to ADP, or to a third-party MGA in the future"; and
- c) the Side Agreements "did not contemplate the release of rights to transfer payments or transfer fees, not yet known or crystallized in 1999 and 2001 and not addressed in 2009, related to the vested MGA interest in the MGA Service Fees related to those policies".

On Appeal

[46] ADP characterizes the business relationship between it and AWM as governed by a contract, partly oral and partly written, formed in June 2001 when ADP moved from TORCE back to AWM, which had three components:

- a) ADP and AWM would equally share the MGA Service Fees generated from ADP's book of business (revised in 2009 to increase ADP's share to two-thirds);
- b) ADP's book of business would be transferred to AWM from TORCE without AWM having to pay any compensation to TORCE; and
- c) upon ADP's request, AWM would release ADP, leaving ADP free to transfer out from AWM, and ADP's book of business would be "released

and transferred back to ADP” as documented by the 2001 Letter and the 2009 Letter.

[47] On appeal, ADP contends that the judge erred in law in interpreting the critical phrase “the block of business ... will be released and transferred back to ADP” by reading that phrase in isolation and not in the context of the contract as a whole and the surrounding circumstances known to the parties at the time the contract was formed. Specifically, ADP submits the judge:

- a) interpreted the critical phrase in isolation from the other two components of the contract;
- b) failed to interpret the critical phrase in light of the surrounding circumstances; specifically, the agreement between ADP and AWM to share the MGA Service Fees payable by Canada Life on ADP’s book of business and the transfer of ADP’s book of business to AWM in 2001, without AWM making a payment to TORCE; and
- c) failed to give meaning to the words “back to ADP” in the critical phrase.

[48] ADP also contends that the judge erred in law by drawing inferences about Mr. Dai’s subjective belief concerning the efficacy of the language in the Side Agreements and holding it to be a “tacit admission” that was fatal to ADP’s position.

Standard of Review

[49] Questions of contractual interpretation, which involve questions of mixed fact and law, are ordinarily afforded deference on appeal and subject to the palpable and overriding error standard of review: *Sattva* at paras. 50–52. The exception set out in *Sattva* is for errors on extricable questions of law, which are reviewable on the more exacting correctness standard: *Sattva* at para. 53; *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20 at para. 27 [*Earthco*].

[50] Examples of legal errors made in the course of contractual interpretation include the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor: *Sattva* at para. 53.

[51] The Supreme Court of Canada has repeatedly emphasized that extricable questions of law will be “rare” and “uncommon” because ascertaining the mutual and objective intention of the parties, which is the goal of contractual interpretation, is an inherently fact specific exercise: *Sattva* at para. 55; *Corner Brook (City) v. Bailey*, 2021 SCC 29 at para. 44; *Housen v. Nikolaisen*, 2002 SCC 33 at para. 36; *Earthco* at para. 28.

Discussion

[52] There is no dispute that the judge correctly set out the legal principles governing contractual interpretation, which are well established.

[53] The fundamental task is to ascertain the mutual and objective intentions of the parties in a practical and common-sense manner, not dominated by technical rules of construction: *Sattva* at para. 47. To determine the objective intention of the parties, the decision-maker must read 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* at para. 47. The interpretation must be grounded in the text of the contract; that is, the words actually used. While surrounding circumstances should be considered, they cannot be allowed to overwhelm the wording of the agreement so that the court effectively creates a new agreement for the parties: *Sattva* at para. 57. Further, contractual interpretation being a search for objective intention, a party’s subjective understanding of the meaning of the words or subjective intention is irrelevant: *Eli Lilly & Co. v. Novopharm Ltd.*, [1998] 2 S.C.R. 129 at para. 54, 1998 CanLII 791; *S.A. v. Metro Vancouver Housing Corp.*, 2019 SCC 4 at para. 30.

[54] Again, ADP alleges the judge erred by interpreting the critical words in isolation and in light of Mr. Dai’s subjective belief about their meaning. In my view, the former would amount to the failure to consider a required element of a legal test

and the latter would amount to the application of an incorrect principle. Both are recognized errors of law that are subject to the correctness standard of review. However, in my view, the judge did not commit either of the errors alleged.

Interpreting the Critical Phrase in Context

[55] As mentioned, ADP identifies three specific ways in which it submits the judge erred by failing to interpret the critical phrase in the Transfer Provision in context:

- a) She interpreted the critical phrase in isolation from the other two components of the contract.
- b) She failed to interpret the critical phrase in light of the surrounding circumstances—specifically, the existence of the MGA Service Fee Sharing Agreement and the transfer of ADP’s book of business to AWM in 2001 without AWM making a payment to TORCE.
- c) She failed to give meaning to the words “back to ADP” in the critical phrase.

[56] In its factum, ADP addressed the first and second of these points together. That approach makes sense because, in my view, it is of no significance whether the critical phrase is characterized as one of three components of a single contract or as a stand-alone agreement formed in circumstances that include the facts characterized by ADP as the other two components. What matters is whether, in interpreting the critical phrase, the judge considered the words used by the parties in context, with the material context being the MGA Service Fee Sharing Agreement established in 2001 and revised in 2009 and the absence of any payment by AWM to TORCE when ADP’s book of business was transferred to AWM in 2001.

[57] In its factum, ADP concedes that the judge acknowledged the existence of the MGA Service Fee Sharing Agreement and the transfer of ADP’s book of business from TORCE to AWM without payment by AWM. However, it argues that these circumstances were given no role in her interpretation of the critical language in the Transfer Provision. I do not agree. To the contrary, it is apparent that the judge

considered these circumstances but concluded they did not support ADP's interpretation of the Transfer Provision.

[58] With respect to the MGA Service Fee Sharing Agreement, the judge noted that the Transfer Provision as articulated in the 1999 Letter and the 2001 Letter did not expressly mention MGA Service Fees. She was not persuaded that in 2001 (when the MGA Service Fee Sharing Agreement was formed) the release of a broker by an MGA to another MGA would ordinarily result in the release by the original MGA of the right to future MGA Service Fees on the broker's existing book of business. She also found that, at that time, MGAs could retain the right to future MGA Service Fees even if they allowed a transfer of the broker's book of business. She noted that despite ADP and AWM being fully aware of the value of the MGA Service Fees by 2009, the 2009 Letter provided for the sharing of MGA Service Fees as opposed to the assignment to ADP of AWM's rights to those fees. At para. 90 of the RFJ, the judge specifically found that despite the MGA Service Fee Sharing Agreement, AWM's interest in ADP's book of business (the right to MGA Service Fees) was not something that ever did or could belong to ADP, and as such, it was not something that could be returned or transferred back to ADP. In other words, she concluded that the existence of the MGA Service Fee Sharing Agreement did not support ADP's position.

[59] ADP argued that despite the judge finding that, in 2009, "ADP's business was thriving, and Mr. Dai was able to negotiate improved terms with Ms. Tong to keep his Canada Life business with AWM" (RFJ at para. 48) she "did not acknowledge the logical and legal significance of the reason why Mr. Dai was able to wield such negotiating power". ADP argued that the source of its negotiating power was its contractual right to move its book of business (including the right to future MGA Service Fees) to another MGA without compensation.

[60] I am not persuaded by this argument. The MGA Service Fee Sharing Agreement was formed in 2001, when ADP left TORCE and returned to AWM. At trial, ADP relied on Ms. Tong's testimony that she agreed to share the MGA Service Fees with ADP in 2001 "to incentivize ADP to join AWM". This statement alone does

not explain why Ms. Tong wanted ADP to return to AWM but it would be reasonable to infer that at least part of her motivation was the future MGA Service Fees that AWM would earn on policies sold by ADP after returning to AWM. If, in 2009, AWM had not agreed to increase ADP's share of the MGA Service Fees, and as a result, ADP joined another MGA, AWM would have forgone any MGA Service Fees associated with policies sold by ADP thereafter.

[61] Finally, as AWM pointed out, ADP's position at trial was that the Transfer Provision was agreed to in 1999, confirmed in 2001, and confirmed again in 2009. ADP did not argue that the meaning of the Transfer Provision as articulated in the 2001 Letter was different from that articulated in the 1999 Letter, despite minor changes in wording. I fail to see how the MGA Service Fee Sharing Agreement, formed in 2001, could inform the parties' objective intentions about the meaning of the Transfer Provision in 1999.

[62] I turn now to ADP's submission that the judge erred in failing to interpret the critical words "released and transferred back" in the Transfer Provision in light of the transfer of ADP's book of business to AWM in 2001 without AWM making a payment to TORCE.

[63] ADP argues that the fact that, in 2001, AWM received "a valuable revenue-generating asset (the block of business) without payment" was a significant part of the surrounding circumstances that "would have affected the way in which the phrase 'released and transferred back to ADP' was understood by a reasonable person". As I understand it, ADP says this was significant because it demonstrates that, in 2001, ADP had the ability to direct the transfer of the right to future MGA Service Fees on its book of business from TORCE to another MGA without compensation to TORCE. ADP argues that the words "released and transferred back" must have contemplated the transfer back to ADP of all the rights it had when it moved its book of business to AWM in 2001, including the ability to move the right to future MGA Service Fees to another MGA without compensation.

[64] The difficulty with this argument is that the judge simply did not view the absence of a transfer payment in 2001 as supportive of ADP's interpretation of the Transfer Provision. At para. 92 of the RFJ, in the section containing her contractual interpretation analysis, the judge expressly noted that transfer payments from an original MGA to a subsequent MGA were rare at the material time, MGAs could refuse to allow a broker to move its business to another MGA, and these facts informed her interpretation that the words "transfer" and "release" in the Transfer Provision meant that AWM would not refuse to allow ADP to move its book of business to another MGA.

[65] Further, the significance of the absence of compensation paid by AWM to TORCE in 2001 depends on the value to AWM of the asset AWM received from TORCE. In its submissions, ADP characterized the asset AWM received as "valuable", but the judge made no finding as to its value and ADP pointed to no evidence of its value. Again, the judge accepted that AWM agreed to the MGA Service Fee Sharing Agreement in 2001 to induce ADP to move to AWM but it is not apparent that AWM's desire for ADP to move back to AWM was motivated by the value of ADP's then existing book of business as opposed to the prospect of ADP growing its book of business while working through AWM.

[66] I turn next to ADP's submission that the judge erred by failing to ascribe meaning to the words "back to ADP" in the critical phrase "the block of business ... will be released and transferred back to ADP".

[67] In interpreting the critical phrase, the judge found that the words used suggested "the return of something that at some point belonged to ADP". She then reasoned that AWM's interest in ADP's book of business (the right to MGA Service Fees) was not something that ever did or could belong to ADP, and as such, it was not something that could be returned or transferred back to ADP: RFJ at paras. 90, 94. In its factum, ADP equates this reasoning as equivalent to a finding that there was nothing that could be transferred back to ADP, which would deprive the words "back to ADP" of meaning.

[68] It is well established that words in a contract are presumed to have meaning and the court should reject an interpretation of a contract that would render one of its terms ineffective or mere surplusage: see, for example, *Sutter Hill Management Corporation v. Mpire Capital Corporation*, 2022 BCCA 13 at para. 34; and *Hanna Collision Repair (1984) Ltd. v. Insurance Corporation of British Columbia*, 2010 BCCA 490 at para. 56. However, in my view, ADP’s argument reflects a myopic view of the RFJ.

[69] It is apparent that the focus of the dispute was on whether the Transfer Provision encompassed the right to future MGA Service Fees and the judge’s analysis reflected that focus. However, her analysis does not suggest or compel the conclusion that *nothing* could be transferred back to ADP. In considering the commercial context within which the parties agreed on the Transfer Provision, the judge noted the distinct interests held by Canada Life, brokers, and MGAs in a book of business. She found that in 1999 and 2001, an MGA could refuse to permit a broker to transfer any aspect of its book of business to another MGA; could permit a broker to transfer the book of business including the original MGA’s right to the associated future MGA Service Fees; and could agree that the book of business could be transferred but without also transferring the original MGA’s right to the associated future MGA Service Fees: RFJ at paras. 25–28. Accordingly, the book of business ADP brought to AWM in 2001, and expanded while at AWM, could be transferred back to ADP without AWM also transferring its right to future MGA Service Fees on that book of business.

[70] ADP also argues that the judge’s interpretation deprived the entire critical phrase of meaning, not merely the words “back to ADP”. ADP points out that the 2009 Letter contained two separate phrases: first, it provided that AWM agreed to “release ADP ... and [ADP] is free to transfer out from [AWM’s] MGA”; and second, it provided that “all the block of business ... will be released and transferred back to ADP ...”. ADP submits that the judge’s finding, in para. 92, “that AWM would ‘transfer’ and/or ‘release’ ADP in that it would not refuse to allow ADP to leave AWM and move to another MGA, despite that being a real possibility in the commercial

context of that time” referred to the first mentioned phrase, leaving the second “redundant surplusage”.

[71] I disagree. Again, the overarching principle of contractual interpretation is that the objective intentions of the parties are to be ascertained in a practical and common-sense manner, not dominated by technical rules of construction. This is particularly important when interpreting an informally documented agreement drafted by people who are not legally trained: *Earthco* at para. 86; *Hoban Construction Ltd. v. Alexander*, 2012 BCCA 75 at paras. 50, 55.

[72] The judge found that the first phrase simply confirmed ADP’s freedom to leave AWM (RFJ at para. 92), while, as discussed, the second phrase meant that ADP could take back its book of business if it left. It may have been unnecessary for the parties to expressly mention the former but the judge clearly found that is what these parties objectively intended by their informally documented agreement.

Mr. Dai’s Subjective Belief

[73] ADP contends that the judge strayed from an objective analysis and erred in law by drawing inferences about Mr. Dai’s subjective belief concerning the efficacy of the language in the 2009 Letter and holding it to be a “tacit admission” that was fatal to ADP’s position.

[74] I would not accede to that argument.

[75] As mentioned, based on Mr. Dai’s subsequent conduct, the judge found that Mr. Dai himself did not believe that the wording of the Side Agreements was sufficient for him to proceed with the transfer of his book of business without triggering a Transfer Payment to AWM: RFJ at para. 61. She referred to Mr. Dai’s “tacit admission” that the Side Agreements would not have been sufficient to establish to Canada Life that AWM had released its interest in the MGA Service Fees or waived compensation for same (RFJ at para. 95). She then characterized ADP’s pleading that it was a breach of contract for Ms. Tong, in 2023, to refuse to

provide clarifying language as “tend[ing] to undermine ADP’s argument that the [Side Agreements] are clear, and address the issue ...” (RFJ at para. 98).

[76] Of course, as already mentioned, contractual interpretation being a search for objective intention, a party’s subjective understanding of the meaning of the words used in the contract or their subjective intention is irrelevant. However, reading the judge’s comments about the 2023 events as set out above, it seems to me that she considered Mr. Dai’s tacit admission to be significant not because it was evidence of his subjective intention at the time the Transition Provision was agreed to but rather because it was subsequent conduct inconsistent with ADP’s argument that the words used in the Side Agreements clearly supported its position.

[77] Evidence of subsequent conduct is admissible where an agreement remains ambiguous after consideration of the text and the surrounding circumstances existing at the time of formation: *Creative Energy Vancouver Platforms Inc. v. Concord Pacific Developments Ltd.*, 2025 BCCA 52 at paras. 33–34. In referring to Mr. Dai’s “tacit admission” and ADP’s pleadings in that regard, the judge was merely making the point that if the language of the Side Agreements was as clear as ADP maintained it was, Mr. Dai would not have asked Ms. Tong to clarify the language.

Conclusion

[78] When applying the standard of review to a question of contractual interpretation, it is necessary to distinguish between disagreement about how the words in a contract were interpreted in light of the factual matrix and disagreement about whether the proper legal principles were applied: *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32 at para. 65. In my view, the judge applied the proper principles. The appellant merely disagrees with the conclusion she reached.

[79] In summary, in interpreting the critical phrase of the Transfer Provision, the judge expressly considered the existence of the MGA Service Fee Sharing Agreement, she did not overlook the absence of compensation paid by AWM to TORCE in 2001, her analysis did not deprive some of the words in the Transfer Provision of meaning, and she did not stray from an objective analysis. In other

words, she did not make the extricable errors of law that ADP alleges she made, and ADP has identified no palpable and overriding error in her analysis. The agreement between these parties, as properly interpreted by the summary trial judge, did not override the application of the Transfer Policy that came into effect in 2011 and was in effect at the time ADT terminated its relationship with AWM.

Disposition

[80] I would dismiss the appeal.

“The Honourable Justice Warren”

I AGREE:

“The Honourable Madam Justice Fisher”

I AGREE:

“The Honourable Justice Iyer”