
Court of Appeal for Saskatchewan
Docket: CACV4583

**Citation: *Good v Precision West AG Corp.*,
2026 SKCA 92**

Date: 2026-08-25

Between:

Lloyd Good and West Central Air Holdings Ltd.

*Appellants/Respondents by Cross-appeal
(Applicants)*

And

**Precision West AG Corp. operating as Provincial Airways and operating as West
Central Air (2013), and James Russell Wood and James Pottage**

*Respondents/Appellants by Cross-appeal
(Respondents)*

Before: Caldwell, Bardai and Kilback JJ.A.

Disposition: Appeal dismissed; cross-appeal dismissed

Written reasons by: The Honourable Justice Neal W. Caldwell
In concurrence: The Honourable Justice Naheed Bardai
The Honourable Justice Keith D. Kilback

On appeal from: 2025 SKKB 78, Saskatoon
Appeal heard: June 3, 2026
Counsel: Randy Klein, K.C. for the Appellants/Respondents by Cross-appeal
William Lane and MacKinley Sim for the Respondents/Appellants by
Cross-appeal

Caldwell J.A.

I. OVERVIEW

[1] Lloyd Good and West Central Air Holdings Ltd. appeal from a decision of the Court of King's Bench in *Good v Precision West AG Corp.*, 2025 SKKB 78 [*Decision*]. In the *Decision*, a judge interpreted a contract [Services Agreement] between the appellants and Precision West Ag Corp., dba *Provincial Airways* and *West Central Air (2013)* [Precision West], under which the appellants agreed to provide services for Precision West's crop-spraying business. Precision West, along with the respondents James Russell Wood and James Pottage, cross-appeal from the *Decision*.

[2] The parties' dispute relates to whether the term *Maximum Contract Amount*, which is defined in the Services Agreement, constitutes a \$2 million payment-ceiling or payment-floor. In their originating application, the appellants contended it was a payment floor and sought the difference between \$1,475,505.54, which Precision West had paid under the Services Agreement, and \$2 million. In the *Decision*, the judge interpreted the contract as providing for a per-acre calculation of annual amounts payable by Precision West to the appellants with a cap of \$2 million in the aggregate over the 10-year term of the agreement. He therefore dismissed the appellants' originating application on its merits.

[3] The appellants assert that the judge erred in law and in mixed fact and law when interpreting the Services Agreement (a) by failing to consider the complete factual matrix, (b) by misinterpreting the annual-payments clause (3.01) and the final-year clause (3.03) of the Services Agreement, and (c) by failing to consider a life-insurance clause (3.04). They have abandoned a ground of appeal framed under the doctrine of *contra proferentem*.

[4] I would dismiss the appeal because the judge applied the proper legal framework when interpreting the Services Agreement, and I am unable to conclude that he committed a palpable and overriding error in the interpretation exercise. The judge's interpretation of the meaning of *Maximum Contract Amount* as establishing a maximum amount payable under the contract withstands appellate scrutiny.

[5] The respondents cross-appeal because the judge, having dismissed the originating application on its merits, did not decide the respondents' application to have it dismissed on procedural grounds. As the respondents acknowledge, the dismissal of the appeal means that their cross-appeal is moot. I would therefore dismiss the cross-appeal without commenting on its merit.

[6] Given the outcome, I would order the appellants to pay one set of costs to the respondents on Column 4 of the Tariff of Costs in respect of the appeal but make no order as to costs in the cross-appeal.

II. BACKGROUND

[7] The appellants and the respondents are or were involved in the business of aerial crop-spraying. To expand its operations, Precision West acquired the assets of the appellants' crop-spraying business. As part of that arrangement, the appellants agreed to provide post-sale management and aircraft maintenance services for Precision West in the Rosetown area of Saskatchewan. Messrs. Wood and Pottage are parties to this litigation because they guaranteed Precision West's obligations under the Services Agreement.

[8] Clause 3.01 of the Services Agreement provides that the amounts payable to the appellants for their services would be calculated, over the 10-year term of the contract, on a per-acre basis at \$1.50/acre for the first 165,000 acres sprayed and at \$2.00/acre for any additional acres sprayed in each calendar year:

3.01 Compensation

In consideration of the Manager [i.e., the appellants, jointly] providing Management Services, the Corporation [i.e., Precision West] shall, annually on the Payment Date, pay to West Central Holding Ltd. the following sums:

- (a) For the first 165,000 acres of [sic] sprayed by the Manager on behalf of, and as directed by, the Corporation in the current Calendar Year \$1.50 per acre; and
- (b) For any acres sprayed by the Manager on behalf of, and as directed by, the Corporation in excess of 165,000 acres in the current Calendar Year, \$2.00 per acre.

[9] Clause 3.03 obliges the appellants to keep records of the acres sprayed and, in the last year of the 10-year contract term, to notify Precision West if the aggregate amount payable to them is near the *Maximum Contract Amount*:

3.03 Final Year of Contract

The Manager hereby covenants and agrees that he [sic] shall maintain accurate records of the total number of acres sprayed pursuant to this Agreement. The Manager further covenants and agrees that if and when the total compensation paid and owing (assuming that an amount becomes owing as soon as it is sprayed) to West Central Air Holdings Ltd. pursuant to this Agreement is equal to at least 95% of the Maximum Contract Amount he will promptly notify the Corporation, at which point the Corporation and the Manager shall determine if the total amount payable under this Agreement shall be increased to accommodate existing and/or planned work orders. In no circumstances shall the total amount payable under this Agreement be decreased below the Maximum Contract Amount or increased above 1.05 times the Maximum Contract Amount.

[10] Clause 1.01 of the Services Agreement defines the term *Maximum Contract Amount* in this way:

“Maximum Contract Amount” means the sum of \$2,000,000, or such other amount, between the sums of \$2,000,000 and \$2,100,000, as may be agreed upon by the parties pursuant to section 3.03.

[11] The parties agree that Precision West paid the appellants \$1,475,505.54 (exclusive of GST) in the aggregate over the 10-year term of the Services Agreement.

[12] Following the expiry of the Services Agreement, the appellants submitted an invoice to Precision West in the amount of \$551,518.54 (inclusive of GST). Precision West did not pay, and the appellants commenced their claim by originating application. Before the judge, the appellants submitted that, upon the expiry of the contract term, they were entitled to be paid \$2 million (less the amount previously paid) regardless of the aggregate acreage sprayed over the term. They asserted that the *Maximum Contract Amount* represented the absolute minimum Precision West was obliged to pay them under the Services Agreement.

[13] Interpreting the Services Agreement, the judge concluded that the amounts payable to the appellants under that contract were tied directly to the total acres sprayed in each calendar year and that the term *Maximum Contract Amount* operated as a 10-year ceiling on that amount. He rejected the appellants’ submissions that they were guaranteed at least \$2 million in compensation as being “unpersuasive in light of the contract’s express terms and commercial logic” (at para 35).

The judge concluded the *Decision* by stating, “[t]he interpretive approach propounded by the applicants cannot prevail in the face of the precise language used by the parties in creating the contract” (at para 36).

III. ANALYSIS

[14] In *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 [*Sattva*], Rothstein J. described the exercise of contract interpretation as follows:

[47] The overriding concern is to determine “the intent of the parties and the scope of their understanding” [citations omitted]. To do so, a 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. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:

No contracts are made in a vacuum: there is always a setting in which they have to be placed. ...In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.

(*Reardon Smith Line*, at p. 574, per Lord Wilberforce)

(Emphasis added)

[15] As this Court held in *Mosten Investments LP v The Manufacturers Life Insurance Company (Manulife Financial)*, 2021 SKCA 36 [*Mosten*]:

[73] The first principle of contract interpretation is that the parties to a contract are presumed to have intended what the text of the contract actually says [citations omitted]. This is the cardinal presumption of contract interpretation, and it places the written agreement of the parties at the core of the interpretive process.

[16] The appellants say that the judge erred in his interpretation of the Services Agreement by overlooking extrinsic evidence relevant to its interpretation and by failing to identify and resolve ambiguities in the relevant terms of that contract. The crux of the appellants’ argument is that the term *Maximum Contract Amount* must be interpreted as both a maximum and a minimum amount payable to them under the Services Agreement.

[17] The appellants frame much of their arguments around what they say are legal errors that attract the correctness standard of review. In general, the correctness standard applies to questions pertaining to the identification of the governing law, including its selection and interpretation, and

also to “extricable questions of law” pertaining to the application of the law to the facts as properly determined (*Housen v Nikolaisen*, 2002 SCC 33 at paras 31-35; *Sattva* at paras 52-53). In *Sattva*, Rothstein J. wrote that errors of law committed in the course of interpreting a contract, which interpretation is itself a matter of fact, 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” (at para 53, quoting *King v Operating Engineers Training Institute of Manitoba Inc.*, 2011 MBCA 80 at para 21).

[18] However, “absent an extricable question of law” (*Sattva* at para 53), in an appeal involving a review of the judicial interpretation of a private contract, this Court must take a deferential approach wherein the judge’s interpretation must be accepted until the appellant establishes that it is based on a palpable error of fact or of mixed fact and law that, when corrected, would compel a different outcome in the litigation.

A. Alleged failure to properly consider the factual matrix

[19] As stated in *Sattva*, the failure to consider a required element of a legal test is an error of law. Here, the appellants argue that the judge “erred in law by failing to consider the factual matrix set out in the extrinsic materials filed and relied upon by the Appellants”. The extrinsic evidence in question includes negotiation, financing and transaction documents related to the asset purchase arrangement, which were put before the judge.

[20] First, the *Decision* makes it clear that the judge understood that the factual matrix was relevant in the interpretation exercise:

[13] Further, the Saskatchewan Court of Appeal has recently indicated in *Mosten Investments LP v The Manufacturers Life Insurance Company (Manulife Financial)*, 2021 SKCA 36 at para 73, [2021] 9 WWR 1 [*Mosten*], that “the first principle of contract interpretation is that the parties to a contract are presumed to have intended what the text of the contract actually says”. The decision in *Mosten* at para 75 then goes on to say that the Court may look “outside the text of the contract to objective evidence of the mutual intention of the parties to assist with the interpretation of the text”.

[14] The Court was clear in *Mosten* that any reliance on extrinsic evidence was not to be used to overwhelm the words of the contract itself, but rather to deepen the understanding of the words for the decisionmaker. Any interpretation must still be grounded in the text.

[21] Moreover, the *Decision* establishes that the judge did not commit the legal error of *failing to consider* relevant extrinsic evidence. He did not, however, see that evidence as being probative of the meaning of *Maximum Contract Amount*:

[31] Applying the established principles of contractual interpretation, I find that the definition of “Maximum Contract Amount” in clause 1.01 was intended as a cap on aggregate compensation, not as a guaranteed minimum. In accordance with *Sattva*, the Court’s task is to give effect to the plain and grammatical meaning of the contract, read as a whole in its commercial context.

[32] The extrinsic materials relied upon by the applicants, including the proposal and loan documents, were neither incorporated into the Services Agreement nor necessary to interpret its clear terms. Those documents cannot be used to vary or contradict the parties’ written agreement and accordingly do not assist the applicants’ claim.

[22] In their notice of appeal, the appellants further state under this ground that the judge “erred in holding that the extrinsic materials... were not necessary to interpret the Contract’s ‘clear’ terms”. However, it is evident that what the appellants are most troubled by is the fact that the judge did not accept that the evidence of their subjective intention at different times during negotiations was probative of the parties’ common objective intention at the time they entered into the contract.

[23] As Rothstein J. instructed in *Sattva*, evidence of surrounding circumstances “is used as an interpretive aid for determining the meaning of the written words chosen by the parties, not to change or overrule the meaning of those words. The surrounding circumstances are facts known or facts that reasonably ought to be known to both parties at or before the date of contracting, therefore, the concern of unreliability does not arise” (at para 60). This Court echoed that instruction in *Mosten*:

[69] However, and this must be kept front of mind at all times, the issue is not what the parties subjectively understood or intended, or later came to think the agreement was (see, for example, *Halifax (Regional Municipality) v Canadian National Railway Company*, 2014 NSCA 104 at paras 57 and 63, 353 NSR (2d) 18; see also *Eli-Lilly* at para 54). Unlike statutes or constitutional documents, the meaning of a contract is fixed at the time of its formation — it does not come to mean something else over time. As the learned author states in the *Hall Text* (at 50–51):

It is a fundamental precept of the law of contractual interpretation that the exercise is objective rather than subjective. “The goal in interpreting an agreement is to discover, objectively, the parties’ intention at the time the contract was made.” The objective approach applies to both the words of the contract and their context. Therefore, the exercise is not to determine what the parties subjectively intended but what a reasonable person would objectively have understood from the words of the document read as a

whole and from the factual matrix. “Bearing in mind the relevant background, the purpose of the document, and considering the entirety of the document, what would the parties to the document reasonably have understood the contested words to mean?” Put another way, “[i]n interpreting a contract, what is relevant is the parties’ outward manifestations...”.

...

The objective nature of the endeavour affects the entire interpretive exercise. It defines the perspective for interpretation—the words in their context mean not what the parties subjectively believe them to mean but rather what a reasonable third party would take them to mean—and renders evidence of subjective intention absolutely inadmissible.

(Footnotes omitted; emphasis in original)

[24] Where a contract is ambiguous, extrinsic evidence of the circumstances surrounding its formation can often assist with divining, or may be probative of, the objective intentions of the parties. The factual matrix may lack interpretive usefulness, however, where the contested text of a contract is clear, unambiguous, and deals expressly with the matter in dispute. In such circumstances, the cardinal presumption of contract interpretation requires the interpreting court to give effect to the patent meaning of the disputed text itself. In this regard, Rothstein J. wrote in *Sattva*:

[57] 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)

[25] Therefore, once the interpreting court has situated a written agreement in the circumstances known to the parties at its formation (by keeping in mind, for example, “the purpose of the agreement and the nature of the relationship created by the agreement” (*Sattva* at para 48)), if the plain wording of the contract establishes the parties’ clear and unambiguous intent, the interpretive exercise is at an end. There is no reason to have further recourse outside the written document, whether to other written materials or to parol evidence, to explain or support what is patently contained in the written contract itself. As such, it was not an error of law for the judge to conclude,

in the circumstances of this case, that the factual matrix did not assist with the interpretation of the Services Agreement.

[26] I conclude, therefore, that the judge did not ignore the factual matrix or err in law when he found that it did not assist with interpretation of the Services Agreement. As a question of law, this ground of appeal must be rejected.

[27] I also reject the appellants' contention that the judge erred in fact or in mixed fact and law in his assessment of the probative value of the extrinsic evidence they had brought to the interpretation exercise.

[28] The principal document upon which the appellants rely is a so-called *Proposal*, made during the negotiation of the asset purchase transaction that ultimately led to the drafting of the asset purchase agreement and related documents. The appellants say the Proposal sets out "a clear outline of the material terms" of the Services Agreement. They also submit that the Services Agreement was intended "to give effect to" the Proposal. I cannot accede to this argument since it would require this Court to find that the judge erred because he did not rely on the subjective wording of one party's proposal made at the negotiation stage of the transaction and, instead, relied on the words of the executed Services Agreement. The argument places the negotiation documentation above the text of the contract, which, at minimum, would be contrary to the dicta of *Sattva*.

[29] The appellants also rely on a financing proposal that Precision West presented to its lenders in advance of its purchase of the appellants' business. That document refers to the proposed transaction as involving a management contract having a maximum value of \$2 million. It also mentions per-acre amounts identical to those set forth in clause 3.01 of the Services Agreement. In the financing proposal, Precision West represents to its lenders: "We are very confident that this transition period will not take the prescribed 10 years, and will be completed much sooner than that. Our numbers indicate we should have a 7 year pay-back period". In this regard, the financing proposal only supports the conclusion that the Services Agreement was, in commercial terms, an earn-out arrangement – just as the judge interpreted it. In an earn-out arrangement, part of the purchase price for a business is contingent on the post-sale achievement of specific performance targets, thereby allowing the buyer and seller to share the risk of future success and providing the

seller with an incentive to help the business succeed. So, while the financing proposal may be probative of the issue in play in this appeal, it does not support the appellants' interpretation of the Services Agreement as a fixed-price contract.

[30] Lastly, the appellants rely upon a March 5, 2013, email from Mr. Good to Messrs. Wood and Pottage, which he sent six months prior to the asset purchase transaction, setting out “a list of some items that need to be incorporated into the legal documents” and referring to a “minimum annual management payment”. The appellants again suggest that this colours the interpretation of the contract and what the parties meant by the term *Maximum Contract Amount*. This argument must be rejected since it suggests that the judge erred because he failed to give full value to the less-than-clear-cut wording of Mr. Wood's negotiation email over the plain meaning of the words of the Services Agreement that was ultimately signed by the parties six months later. Moreover, as the respondents point out in this appeal, the appellants acknowledged in their affidavit evidence filed before the judge that Precision West had rejected paying a minimum annual payment during negotiations, which is extrinsic evidence that supports the judge's interpretation.

[31] In short, the judge did not ignore the factual matrix or err in law when he concluded either that resort to it was not necessary to properly interpret the Services Agreement or that it did not support the appellants' position.

B. Alleged errors in the interpretation exercise

[32] After briefly setting out the parties' respective positions on the proper interpretation of the Services Agreement, the judge began his analysis by quoting from Lewis Carroll, *Through the Looking-Glass*. In the passage quoted, Humpty Dumpty says, “When I use a word ... it means just what I choose it to mean – neither more nor less” (*Decision* at para 30).

[33] While the judge's reference to Lewis Carroll's work may seem sardonic, I do not read it that way. To my understanding, the judge was alluding rhetorically to the fact that the plain and grammatical meaning of the words of a contract cannot be overridden by extrinsic evidence of one party's subjectively held view that those words have an out-of-the-ordinary meaning (*Sattva* at paras 57 and 60; *Canada (Attorney General) v Fontaine*, 2017 SCC 47 at para 37; and *S.A. v Metro Vancouver Housing Corp.*, 2019 SCC 4 at para 30, citing *Eli Lilly & Co. v Novopharm Ltd.*, 1998

CanLII 791 at para 54, [1998] 2 SCR 129 (SCC)). The quote is an allegorical expression of that ratio.

[34] Given the jurisprudence, the dispute and the wording of the Services Agreement, the entirety of the judge's interpretation analysis is understandably terse, covering just six paragraphs of the *Decision*. Having reviewed the contract as a whole and the factual matrix, the judge found no ambiguity in what, at the time of contract formation, the parties had intended to occur under the Services Agreement. He held that they meant to cap the aggregate amount payable to the appellants at \$2 million, subject to the potential for a negotiated adjustment at the end of the contract term. I have already quoted portions of it, but the judge's full analysis follows:

[31] Applying the established principles of contractual interpretation, I find that the definition of "Maximum Contract Amount" in clause 1.01 was intended as a cap on aggregate compensation, not as a guaranteed minimum. In accordance with *Sattva*, the Court's task is to give effect to the plain and grammatical meaning of the contract, read as a whole in its commercial context.

[32] The extrinsic materials relied upon by the applicants, including the proposal and loan documents, were neither incorporated into the Services Agreement nor necessary to interpret its clear terms. Those documents cannot be used to vary or contradict the parties' written agreement and accordingly do not assist the applicants' claim.

[33] The applicants' reliance on clause 3.03 is similarly misplaced. That provision was designed solely to address a mid-season cap adjustment upon notice and to protect any earned entitlement from reduction; it does not create a contractual obligation to pay the full \$2,000,000.00 irrespective of performance metrics.

[34] The per-acre compensation structure set out in clause 3.01, confirmed by the actual payments made to date, is particularly persuasive evidence of the parties' intention to tie compensation strictly to performance. Had the parties intended a guaranteed payment of \$2,000,000.00, they could have easily drafted a fixed-sum payment mechanism rather than a graduated per-acre scheme.

[35] The applicants' submission that the payment structure served merely to reassure them of eventual receipt of \$2,000,000.00 is unpersuasive in light of the contract's express terms and commercial logic.

[36] The interpretive approach propounded by the applicants cannot prevail in the face of the precise language used by the parties in creating the contract. For the above reasons, the applicants' originating notice is dismissed and the respondents shall have costs under column 1.

[35] The appellants primarily take issue with three aspects of the judge's analysis, namely, his interpretation or consideration of clauses 3.01, 3.03 and 3.04 of the Services Agreement. They argue that, properly understood, those provisions support their interpretation of the term *Maximum Contract Amount* as establishing the minimum amount payable under the contract. However, the

question is not whether those provisions, in light of the extrinsic evidence, *could be understood* as supporting the appellants' interpretation. To succeed, the appellants must establish that the judge palpably erred when he concluded that the term *Maximum Contract Amount* defined the maximum amount payable under the contract.

[36] To be clear about this, the standard of review does not require the appellants to demonstrate that the language of the contract does not support the judge's interpretation of it. Rather, given the judge's approach, the appellants must establish that he palpably erred when he found *no ambiguity* in meaning or the parties' intent based on the wording of the contract. If there was any ambiguity, that fact would have demanded that the judge conduct a more comprehensive interpretive exercise than what he performed, because the ultimate goal of the exercise is to ascertain the intention of the parties by resolving any ambiguities left by the text of a contract.

[37] In this regard, ambiguity in meaning does not exist simply because a party is able to put forward an alternative interpretation. However, because the judge in this case found no ambiguity, he must be taken to have concluded that there was only one plausible interpretation of the wording of the Services Agreement. In that context, the appellants' onus is to establish that ambiguity exists because it is plausible, based on the ordinary and objective meaning of the words of the contract when read as a whole by a reasonable person, to interpret its text in accordance with the appellants' interpretation of it (*Gilchrist v Western Star Trucks Inc.*, 2000 BCCA 70 at para 17). At bottom, although the appellants have made the best of possible arguments, they have not discharged their onus.

[38] Bluntly, the appellants' interpretation of the Services Agreement is not plausible. Giving the text of the contract its "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), and considering "factors such as the purpose of the contract, the nature of the relationship it creates, and the market or industry in which it operates" (*Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.*, 2016 SCC 37 at para 31; see also *Sattva* at para 48), leads inexorably to a single conclusion: the parties' common intention was to establish a maximum contract amount not a minimum.

1. Clause 3.01 – Compensation

[39] Under the Services Agreement, the appellants agreed to provide aerial crop-spraying business-management and aircraft-maintenance services to Precision West in exchange for compensation based on the number of acres sprayed in a calendar year (Clause 3.01). The term of the contract was 10 years (clause 1.01). No one challenges these facts.

[40] Commercial reasonableness requires the courts to interpret contracts in accordance with good business sense and sound commercial principles (see *Resolute FP Canada Inc. v Ontario (Attorney General)*, 2019 SCC 60 at para 79). The judge interpreted clause 3.01 of the Services Agreement as “particularly persuasive evidence of the parties’ intention to tie compensation strictly to performance” (*Decision* at para 34). He then made a particularly challenging statement for the appellants to overcome, namely, that, “[h]ad the parties intended a guaranteed payment of \$2,000,000.00, they could have easily drafted a fixed-sum payment mechanism rather than a graduated per-acre scheme” (at para 34).

[41] Drawing in commercial contextual factors such as the purpose of the contract, the nature of the relationship it creates, and the market or industry in which it operates, and reading the *Decision* as a whole, the judge’s statements at paragraph 34 indicate that he found part of the purchase price under the asset purchase arrangement involved an earn-out incentive whereby the appellants’ compensation was tied to their post-sale performance as the service provider under the Services Agreement, calculated on the basis of the acreage sprayed over ten years, but one that was capped at \$2 million.

[42] Having reviewed the extrinsic evidence, including that which the appellants submit was overlooked by the judge, I find that it only supports the judge’s conclusion about the meaning and purpose of clause 3.01. The factual matrix includes evidence known to both sides about the appellants’ operation of their business prior to its sale to Precision West. That evidence indicates that the parties could anticipate that the acreage sprayed post-sale would result in \$2 million in compensation being payable to the appellants under clause 3.01 prior to the expiry of the 10-year contract term. Nonetheless, by tying the appellants’ compensation to sprayed acreage, the Services Agreement holds the appellants to account for the maintenance of the pre-sale performance of the

business post-sale. That interpretation accords with good business sense and sound commercial principles.

[43] I note that the definition of the term *Termination Date* in clause 1.01 also supports the judge’s interpretation of the contract as establishing a \$2 million compensation cap because it provides that the contract is terminated once the aggregate compensation payable to the appellants has reached that amount:

“**Termination Date**” means the earliest of the following dates:

(a) 10 years from the Effective Date;

(b) the date that the total of all amounts paid and owing to the Manager pursuant to this Agreement is equal to the Maximum Contract Amount. The total amount paid and owing shall be determined by adding all payments made to the Manager pursuant to this Agreement in the current and all previous Calendar Years to the total amount owing to the Manager pursuant to this Agreement in the current Calendar Year, assuming, for the purposes of this paragraph only, that the Corporation becomes obligated to pay the Manger for each acre he has sprayed immediately after the acre is sprayed;

(Emphasis added)

[44] The appellants accept that the maximum amount payable under the contract is \$2 million (unless it is adjusted under clause 3.03). However, in their interpretation of clause 3.01, compensation payable under the Services Agreement was not only capped at \$2 million, but it was also fixed at a minimum of \$2 million. That interpretation is not commercially reasonable, notably because there is no minimum number of acres that must be sprayed under the contract. If this were a fixed-price contract as the appellants claim, that would mean they would be entitled to receive \$2 million at the end of the contract even if no acres had been sprayed over its 10-year term.

[45] In my view, the contract as a whole, and particularly clause 3.01, cannot be read as plausibly establishing a fixed-price arrangement whereby Precision West would pay \$2 million to the appellants no matter what occurred over its 10-year term. Which is to say the appellants’ arguments with respect to clause 3.01 fail to discharge their onus of establishing ambiguity in the Services Agreement that the judge failed to identify and resolve.

2. Clause 3.03 – Final Year of Contract

[46] Clause 3.03 of the Services Agreement also does not assist the appellants with establishing ambiguity in the meaning of that contract.

[47] The parties agree that the purpose of clause 3.03 was to address the possibility that sufficient acreage would be sprayed to oblige Precision West to pay \$2 million to the appellants prior to the expiry of the 10-year term. As such, with prior notice of that possibility, the parties could negotiate an increase in the *Maximum Contract Amount* from \$2 million to up to \$2.1 million. They could not, however, negotiate a decrease in the *Maximum Contract Amount*.

[48] The respondents' argument that, because the threshold in clause 3.03 had not been met, the provision had no place in the interpretive exercise, is misplaced: the terms of a contract must be read as a whole and harmoniously. Regardless, clause 3.03 is not supportive of the appellants' position that they were guaranteed \$2 million under the Services Agreement. It is supportive of the proposition that the appellants were guaranteed to be paid \$2 million if sufficient acres were sprayed – and more, if the parties negotiated an increase to the *Maximum Contract Amount*, presumably where the appellants provided more than \$2 million worth of services under the contract. This interpretation is entirely consistent with the definitions of *Maximum Contract Amount* and *Termination Date* in clause 1.01 of the Services Agreement whereas the appellants' interpretation of clause 3.03 is not.

[49] I would reject the appellants' arguments that the judge erred in his interpretation of clause 3.03. I find no ambiguity in the meaning of the Services Agreement arising from the wording of clause 3.03.

3. Clause 3.04 – Life Insurance

[50] Clause 3.04 of the Services Agreement similarly does not support the appellants' interpretation of that contract. The clause states:

3.04 Life Insurance

The Corporation agrees as of the Effective Date to purchase, from a corporation acceptable to the Manager, a contract or contracts of life insurance on the life of Lloyd Good and to maintain such life insurance contract in good standing until the Termination Date. The Parties agree such contract will have at least the following characteristics:

- (a) The proceeds payable under such contract in the event of the death of Lloyd Good will be paid to the Corporation;
- (b) The amount of the proceeds payable under such contract will be no less than the outstanding, unpaid balance of the Maximum Contract Price [sic] as that balance will stand as of December 31 of each year in which this services agreement is in force; and,

(c) The contract documents will be held in escrow for the Parties by the life insurance company from whom the Corporation shall from time to time have purchased the life insurance contract required hereunder.

The Parties further agree that if the Termination Date is the date of death of Lloyd Good then the Corporation will pay to West Central Air Holdings Ltd. the sum of money that will be the difference between the sums that have been paid to West Central Air Holdings Ltd. under Clause 3.01 and two million (\$2,000,000.00) dollars.

(Emphasis added)

[51] As is evident, clause 3.04 requires Precision West to purchase an insurance policy on the life of Mr. Good, and, if he had died during the term of the Services Agreement, Precision West would have been obliged to pay West Central the difference between the amounts it had already paid under clause 3.01 and \$2 million.

[52] In argument in this Court, the appellants submit that clause 3.04 is “not consistent” with the judge’s interpretation of the term *Maximum Contract Amount* operating only as a maximum and not also as a minimum. This is so, they say, because it is not reasonable to provide greater profit to the appellants if Mr. Good were to die before fulfilling the contract than if he were to provide services during the full term. The appellants take issue with the fact that “[t]his is not addressed at all” in the *Decision*.

[53] First, it is not correct to say that the judge did not address clause 3.04. He summarised the appellants’ argument and Precision West’s response to it in the *Decision* as follows:

[16] The applicants rely on clause 3.04, which provides that, in the event of Lloyd Good’s death, the respondents would pay his estate the remaining balance of the Maximum Contract Amount, as confirming the parties’ intent to guarantee full payment of \$2,000,000.00. As noted, the respondents say the insurance is a backstop to ensure payment of monies owed.

[54] Second, while it is true that the judge did not return to clause 3.04, that is understandable because clause 3.04 is not relevant to or probative of whether the parties’ common intention was to establish a maximum or a minimum amount payable for services rendered under the contract. While clause 3.04 confirms that the term *Maximum Contract Amount* means \$2 million, that does not speak to what is payable under the contract. Rather, clause 3.04 sets out what the appellants would receive under an insurance policy in the event of Mr. Good’s premature death during the term of the Services Agreement. Put another way, although clause 3.04 refers to a *Maximum*

Contract Price (incorrectly, because the defined term is *Maximum Contract Amount*) in the calculation of the minimum level of insurance to be obtained, the proceeds of that insurance are not payable as compensation for services rendered by the appellants under the Services Agreement.

[55] Lastly, as noted earlier, in the context of factors such as the purpose of the contract, the nature of the relationship it creates, and the market or industry in which it operates, it is not unreasonable for part of the purchase price of a business to involve an earn-out, whereby part of the value of the transaction is tied to post-purchase performance of the business being sold or of the seller themselves. Keeping that circumstance in mind, under the text of the contract in this case, life insurance proceeds are disconnected from the performance objectives of the Services Agreement and, as well, from being directly paid out of Precision West's pocketbook. As such, clause 3.04 does not assist with an understanding of whether the parties intended to place a cap and a floor, or just a cap, on the amounts payable by Precision West to the appellants as part of the asset purchase arrangement under the Services Agreement. However, clause 3.04 is entirely consistent with the notion that, so long as Mr. Good was alive, compensation for the services provided by the appellants was expected to reach the *Maximum Contract Amount* within the contract term, whereupon the Services Agreement would be at an end.

[56] In my assessment, clause 3.04 does not establish ambiguity in the Services Agreement in the context of this dispute because it does not assist in determining whether the parties intended to benchmark a minimum or maximum amount of compensation.

IV. CONCLUSION

[57] In summary, I conclude that the appeal must be dismissed because the appellants have not established an error of law or a palpable error of fact or of mixed fact and law in the judge's interpretation of the Services Agreement. As noted, I would also dismiss the cross-appeal.

[58] I would order that the appellants pay the respondents one set of costs on Column 4 of the Tariff of Costs.

“Caldwell J.A.”

Caldwell J.A.

I concur.

“Bardai J.A.”

Bardai J.A.

I concur.

“Kilback J.A.”

Kilback J.A.