

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ROBERT PAUL DAVID BRUNETTE and 360 PROPERTY MANAGEMENT INC., Plaintiffs/Defendants by Counterclaim

AND:

GUYCAN LTD., Defendant/Plaintiff by Counterclaim

BEFORE: Paul Schabas J.

COUNSEL: *Jason Huang-Kung and Arsalan Wancho*, for the Plaintiffs/Defendants by Counterclaim

Gregory Govedaris, for the Defendant/Plaintiff by Counterclaim

HEARD: May 11 – 14, 19 – 22, June 18, 2026

REASONS FOR JUDGMENT

Overview

- [1] The plaintiffs, Robert Paul David Brunette (“Brunette”) and his personal service company, 360 Property Management Inc. (“360”, collectively, “Brunette”), claim that Brunette was an employee of the defendant, Guycan Ltd. (“Guycan”), and that he was wrongfully dismissed by Guycan effective August 12, 2020. In the alternative, Brunette submits that he and/or 360 was a dependent contractor and is owed damages for breach of contract.
- [2] Guycan is a roofing company, largely servicing the commercial and industrial sector’s need for flat roofs. It was established by Randy Deonarain in 1975, who is still active in the business. Randy Deonarain runs the business together with his son, Jason Deonarain (“Deonarain”).
- [3] In December 2017, Guycan offered Brunette employment as an account executive. His main responsibility was to be a sales representative, looking for and obtaining roofing jobs for Guycan. Brunette accepted the position and worked with Guycan in this role until the summer of 2020. Later in 2020, Brunette commenced this action for wrongful dismissal and/or breach of contract, which was tried before me in May and June 2026.

Issues

- [4] The following issues require resolution:

- (a) whether Brunette was an employee or a dependent contractor;
- (b) if Brunette was an employee, whether he was constructively dismissed or resigned; and
- (c) whether Brunette is entitled to damages and, if so, in what amount.

Employee or a dependent contractor?

- [5] Determining whether a person is an employee or a dependent contractor depends on several factors. The issue arose in this case because, among other things, Guycan paid Brunette for his services through Brunette's personal corporation, 360.
- [6] In *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59, [2001] 2 S.C.R. 983, at para. 46, the Supreme Court of Canada observed that there is no one conclusive test to determine whether a person is an employee or an independent contractor.¹ Rather, the Court stated, at para. 47:

The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.

- [7] Subsequently, in *Belton v. Liberty Insurance Co. of Canada* (2004), 72 O.R. (3d) 81, at para. 11, the Court of Appeal for Ontario identified five points to distinguish employees and independent contractors:

- 1. whether or not the agent was limited exclusively to the service of the principal;
- 2. whether or not the agent is subject to the control of the principal, not only as to the product sold, but also as to when, where, and how it is sold;
- 3. whether or not the agent has an investment or interest in what are characterized as the "tools" relating to his service;

¹ The case law refers to contractors as "dependent" and "independent", and even to contractors between the two categories: *Keenan v. Canac Kitchens*, 2015 ONSC 1055 at para. 17, aff'd 2016 ONCA 79. Given my findings that Brunette was an employee, and that he resigned, nothing turns on the distinction.

4. whether or not the agent has undertaken any risk in the business sense or, alternatively, has any expectation of profit associated with the delivery of his service as distinct from a fixed commission; and

5. whether or not the activity of the agent is part of the business organization of the principal for which he works (in other words, whose business is it?).

- [8] The Court of Appeal has since stated that “the question posed at the end of the fifth principle – whose business is it? – lies at the heart of the matter. Was the individual carrying on business for him or herself or was the individual carrying on the business of the organization from which he or she was receiving compensation?”: *Braiden v. La-Z-Boy Canada Limited*, 2008 ONCA 464, 238 O.A.C. 71, at para. 34.
- [9] In this case, there are factors going both ways.
- [10] Guycan and Brunette signed an “Employment Agreement” at the outset of their relationship, on December 11, 2017, which looks very much like a contract of employment, not a contract for services by an independent company. Guycan was described as the “employer” and Brunette was described as the “employee.” Brunette was given the title of “account executive” and was to perform duties set out in the agreement and “such other and unrelated service and duties as may be assigned to Employee from time to time by Employer.” The employee was to be paid a base salary of \$865.00 per week. He was to be paid statutory holidays following a 3-month probationary period and was entitled to two weeks vacation and three unpaid sick days per year. The employee was to submit his sales activities to Guycan on a weekly basis. The employee was also to be paid commissions and incentive bonuses on sales.
- [11] The Employment Agreement stated that “the contractor” would receive a cell phone and laptop and would have the use of Guycan’s office and staff, as well as a company car for work-related activities “as deemed by supervisors.” Guycan provided all marketing activities, as well as tools and other items necessary to assess roofs and make estimates of costs of repairs and the replacement of roofs. The agreement also stated that Guycan would reimburse the employee for reasonable expenses. The agreement specified that the employee could not enter into any agreements for Guycan without approval from Guycan’s President. The “roles and responsibilities” made clear that the job was to grow Guycan’s business.
- [12] The occasional use of the term “contractor,” rather than “employee,” was put in by Deonarain due to Brunette’s request that his salary be paid to 360. As the Employment Agreement stated: “Employer will pay Employee an annual salary of \$865.00 per/week, paid on a biweekly [basis] to 360 Property Management Inc....”
- [13] Paying the salary and, as the evidence showed, any commissions and bonuses, to 360, provided Brunette with, among other things, tax benefits, including the ability to write off

various expenses. In fact, all payments until the last month or so of the relationship were made by Guycan to 360. Invoices for commissions and incentive payments were provided by 360 to Guycan. As a result of this arrangement, no statutory deductions were made by Guycan. 360, not Guycan, paid WSIB premiums for Brunette. Brunette chose to use his own car and was able to write it off along with other expenses through 360. However, Brunette accepted and used the laptop, cellphone, and tools provided by Guycan.

- [14] On August 30, 2018, at Brunette’s request, Guycan signed a letter, stating, among other things, that Guycan had hired 360 as a “consultant,” which is “not an employee of Guycan” and that 360 was paid \$40,000 per year. In cross-examination, Brunette agreed that he required this letter for family law proceedings to “prove [his] income.” As the evidence disclosed, the commissions and incentive bonuses resulted in Guycan paying 360 quite a bit more than \$40,000 per year; however, Brunette may have wanted to understate his income to the Court in the family law proceeding—a question he avoided answering in cross-examination. Receiving his pay through 360 clearly suited him at the time.
- [15] Receiving income through a personal company is not determinative of whether one is an independent contractor: see e.g., *Braiden*, at para. 30. Rather, one must consider all the circumstances to determine the crux of the issue—whose business is it?
- [16] In my view, Brunette was an employee of Guycan. He received a regular base salary, and he was trained and supervised by Guycan employees. Although there was evidence that Brunette was not paid for vacations, this may have suited both parties at the time. This may have also been the case with 360 paying WSIB, rather than Guycan, and allowing 360 to deduct other expenses. Regardless, Brunette was working full-time for Guycan.
- [17] Brunette had no discretion in the pricing of roofing contracts, all of which had to be prepared in accordance with a Guycan formula and approved by Guycan officers. Furthermore, counsel for Guycan acknowledged that Brunette “had no discretion to choose suppliers or even refer another supplier if the price was less expensive” and “definitely had no discretion to question or change True Seal as the roof membrane supplier.” Brunette had the opportunity to earn limited commissions and “incentive bonuses” based on a formula established by Guycan and subject to Guycan’s approval on each sale. While Brunette had, in this sense, an upside to make more money if a sales contract turned out to be profitable, he was at no risk of not being paid his commission and base salary. Risk of loss on sales was only assumed by Guycan. In short, Brunette was working for Guycan; it was Guycan’s business.
- [18] This arrangement continued until, like other sales representatives, Brunette was “laid off” in March 2020 when the COVID-19 pandemic impacted Ontario. Brunette then faced difficulties in obtaining the emergency relief benefit offered by the federal government because he had not been receiving employment income. Consequently, when Brunette returned to work with Guycan in June 2020, the arrangement changed—he was paid directly by Guycan and source deductions began.

- [19] Accordingly, I conclude that Brunette was an employee of Guycan commencing in December 2017 until the summer of 2020. I address the precise dates for the end of his employment below.

Termination or resignation?

- [20] Counsel for Brunette submits that he was constructively dismissed due to the failure to properly pay commissions and bonuses in accordance with the Employment Agreement. I address the issue of what Brunette was paid later in these reasons when discussing damages. While I ultimately find that Brunette is owed money for the underpayment of commissions and incentive bonuses earned during his employment, I reject his position that the commissions and bonuses ought to have been much larger based on an interpretation of the Employment Agreement that was never asserted or applied in the two and a half years of Brunette's employment. Nor do I accept that Guycan's alleged failure to honour the Employment Agreement caused him to leave Guycan.
- [21] In my view, Brunette resigned in July 2020.
- [22] Brunette became displeased with Guycan due to a lack of transparency regarding costs of projects and their impact on the "overage," which affected Brunette's bonus on projects which he had sold. In October 2019, Brunette purported to resign by giving two weeks notice—as provided in the Employment Agreement. He gave three reasons for his resignation: (1) taking too long to get paid; (2) not wanting to split commissions on "gray accounts" (contracts provided to him by Guycan); and (3) not liking reductions to his "overage", or incentive bonus, payments. However, Brunette was "talked down" and kept working after Guycan agreed that he would not have to split commissions.
- [23] On July 16, 2020, Brunette again gave two weeks notice in a text to Jason Deonarain, which stated:
- Hi Jason, unfortunately, I've decided that Guycan isn't the right place for me any longer. I'm giving my 2 weeks notice as of today. I thank you for the opportunity I've had working for your family and wish you all the best moving forward.
- [24] Deonarain did not want Brunette to leave. On July 20, 2020, Deonarain offered Brunette an opportunity to sell a roofing contract on which he could earn a commission. Brunette turned it down. Guycan stopped paying Brunette on July 26, 2020. However, Brunette and Deonarain kept talking.
- [25] On about August 3, 2020, Deonarain sent Brunette a draft revised employment agreement. Brunette reviewed it with his lawyer and sent back a draft containing many changes, noting that "we are still way too far apart on many issues." Deonarain and Brunette met to discuss the draft agreement on August 11, 2020, and Brunette sent notes to Deonarain the following day, proposing further changes. Deonarain responded that he could "not agree to fundamental changes that we didn't discuss" and attached his comments. Brunette responded as follows on August 12, 2020:

Hi Jason,

The adjustments to the contract were necessary to make the employment agreement fair and equitable. I'm sorry you don't see that and it's the main reason Guycan is not the place for me.

I'll be in touch shortly in order to settle any remaining loose ends.

- [26] Deonarain responded on August 13, 2020, saying he was “sorry” that Brunette felt that way and that if Brunette wanted to “work things out” in the future to call him, as “[w]e would gladly accept you back to Guycan with open arms.” Thereafter, Brunette arranged to return his phone and laptop to Guycan.
- [27] A resignation must be clear and unequivocal. The evidence must objectively reflect an intention to resign, through words or conduct. Context is important. The totality of the circumstances must be considered. See *Kieran v. Ingram Micro Inc.* (2004), 189 O.A.C. 58 (C.A.), at para. 27, citing *Skidd v. Canada Post Corp.* (1993), 47 C.C.E.L. 169, aff'd [1997] O.J. No. 712 (C.A.); *Nagpal v. IBM Canada Ltd.*, 2021 ONCA 274, 2021 C.L.L.C. 210-047, at para. 31; and *Gebreselassie v. VCR Active Media Ltd.*, 2007 CanLII 45710 (Ont. S.C.), at paras. 43-44.
- [28] I find that Brunette clearly and unequivocally resigned from his employment with Guycan on July 16, 2020, when he provided two weeks notice in accordance with the Employment Agreement. He confirmed this resignation by declining to take on a new matter when it was offered to him on July 20, 2020. Brunette agreed in cross-examination that he wanted to renegotiate the Employment Agreement, which he attempted to do up until August 12, 2020. When Brunette rejected Guycan's offer, Brunette walked away, as was made clear in his communication of August 12, 2020, quoted above.
- [29] At no time did Guycan say or do anything that could be interpreted as a termination of Brunette's employment, nor did Guycan impose any substantial or unilateral changes to the Employment Agreement or to Brunette's work that could constitute a constructive dismissal. Guycan wanted Brunette to stay. Brunette grudgingly admitted on cross-examination that it was open to him to continue to be employed under the original Employment Agreement or the new agreement proposed by Guycan following Brunette's resignation, but neither was acceptable to him. In fact, in his email dated August 12, 2020, Brunette made clear that Guycan's failure to accept his proposed contract amendments was the “*main reason* Guycan is not the place for me” (emphasis added). There is no evidence supporting Brunette's position that he was constructively dismissed: See *Chapman v. GPM Investment Management*, 2017 ONCA 227, 2017 C.L.L.C. 210-033, at paras. 13-17, 29-38.
- [30] Counsel for Brunette submitted that the termination clause in the Employment Agreement is unenforceable as it seeks to avoid the mandatory provisions of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 (the “ESA”). I do not have to address this argument

as it was Brunette who resigned by providing two weeks notice, which was acceptable to Guycan. Below, in discussing damages, I address the impact of the *ESA*.

Damages

- [31] As Brunette resigned, he is not entitled to pay in lieu of reasonable notice. Therefore, it is not necessary to determine a reasonable notice period, nor is it necessary to address Brunette's apparent inability to mitigate his losses or his claim for aggravated and punitive damages.
- [32] There are, nevertheless, two other categories of damages claimed by Brunette that have some merit.

Statutory entitlements

- [33] The first category relates to payments that ought to have been made to him as an employee. Brunette is entitled to payment for public holidays, which was provided in the Employment Agreement and required by the *ESA*, but not paid. Due to the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, and the suspension of that legislation for a period of time due to the pandemic, Brunette is only entitled to public holiday pay from March 18, 2018 to the end of his employment, at a rate of \$173.00 per day.
- [34] Brunette submits that his employment ended on August 12, 2020. This is disputed by Guycan. Brunette gave two-weeks notice on July 16, 2020. He turned down work after that date and focused on attempting to renegotiate his contract. It is not clear what else Brunette was doing after July 16, 2020, although he obtained a signed proposal for a roofing contract on Rabbit Lane on July 31, 2020—a project he had sold—and Deonarain picked up a client cheque from him on August 7, 2020. On July 29, 2020, Brunette sent an email to Guycan saying he would be off work on August 6 and 7 and would return on August 10, 2020. As noted above, Brunette met with Deonarain on August 11, 2020, and ended discussions on a new contract on August 12, 2020.
- [35] In my view, Brunette's employment ended on July 30, 2020. He did not retract his notice at any time following July 16, 2020, and turned down a new sales opportunity during his notice period. As the sales representative for the Rabbit Lane project, he received the signed proposal, but there is no evidence that he was continuing to do work for Guycan after July 30, 2020 or that Guycan was aware of him doing any work for the company. To the extent Brunette may claim otherwise, relying on the email sent to Guycan on July 29, 2020, that he would be "off next week from August 6th and 7th for safety training and will be returning the following week August 10th, 2020", this was a unilateral email to which Guycan did not respond. Nor was it a retraction of his clear and unequivocal resignation which he confirmed on August 12, 2020, when he broke off negotiations and had no further contact with Guycan.
- [36] Accordingly, Brunette is entitled to public holiday pay through July 30, 2020. Brunette's calculation would have included the public holiday in early August, which must be

deducted from his total amount of \$3,633.00. This results in the sum of \$3,460.00 owing for public holiday pay.

- [37] In addition, as Brunette's base pay stopped on July 26, 2020, Guycan owes an additional four days' pay to July 30, 2020, or \$692.00.
- [38] Brunette also claims vacation pay which was not paid during his employment. He properly claims 4% of all income earned, including his base salary, public holiday pay, commissions, and incentive bonuses. The determination of this amount requires consideration of the other category of damages claimed by Brunette, which is based on his position that he was underpaid commissions and incentive bonuses throughout his employment.

Breach of contract—the claim for increased commissions and incentive bonuses

- [39] When Brunette was hired by Guycan he had little knowledge of the roofing business. He had run a small contracting business previously and had spent several years selling copiers and office equipment for Canon. Brunette had studied small business and entrepreneurship at Seneca College. He was contacted by an old friend, Darren Parker, who worked at Guycan, about a job there, and then met two or three times with Deonarain.
- [40] Brunette claims to recall little of his pre-employment discussions with Deonarain; however, his emails at the time show that there were detailed discussions, and proposals by Brunette, concerning the potential for him to earn at least \$100,000 per year. When confronted with his emails, Brunette was evasive and unforthcoming. This is inconsistent with Brunette's level of sophistication and what reasonably would have transpired. His claim that discussions were simply at a "high level" is not credible.
- [41] Deonarain, on the other hand, testified that he and Brunette had detailed discussions, including reviewing the Quote Calculator, an internal spreadsheet used by Guycan to develop quotes for customers. This spreadsheet was a major focus of the trial. It was used for all Guycan sales and seems to have been central to its business. It included line items for the calculation of commissions and potential incentive bonuses, or "overages", for the sales representatives.
- [42] Deonarain's position, as stated in his testimony at trial, was that he reviewed the Quote Calculator in detail with Brunette during their contract discussions and took Brunette through hypothetical calculations. Brunette was not confronted with this position in cross-examination. However, Brunette said that he believed Deonarain showed him the "5% and the 50% overage." Brunette, while claiming not to recall "exact details," also conceded that he understood that if the estimate is accurate and there is revenue left over in the "buffer", he would get to split that revenue. This evidence can only be understood by reference to the Quote Calculator.
- [43] Both Brunette and Deonarain were challenging witnesses. On some issues both were evasive and attempted to avoid answering questions where they thought the answer would hurt their case. Among other things, Brunette claimed ignorance of the amount of his

losses, deferring to his expert for any calculations of damages. In my view, he understood more than he wanted the Court to think he understood. He failed to give straightforward answers to many straightforward questions that were supported by the documentary record or where the answer was obvious, even after being warned by me to answer the questions put to him. Sometimes in cross-examination he simply said nothing in response to questions.

- [44] Deonarain was also admonished by me during his cross-examination for not answering questions put to him. He was impeached on some issues, including those related to his calculations of costs provided to Brunette in this action, the lack of full disclosure of all data regarding every relevant sales contract, and the interaction between Guycan and Deonarain's related company, True Seal, which supplied materials to Guycan. However, I found Deonarain's evidence on contract formation and later interactions with Brunette (especially around the time Brunette resigned in the summer of 2020) to be credible and reliable. Questions on these issues were frankly answered, made sense, and were supported by contemporaneous records.
- [45] Having considered the evidence of both Deonarain and Brunette, and the central role of the Quote Calculator, I conclude that they would have reviewed the Quote Calculator during their discussions and negotiations prior to Brunette signing the Employment Agreement, and that Brunette fully understood how his commissions and incentive bonus were to be calculated.
- [46] This is important in interpreting the two terms of the Employment Agreement which Brunette claims were not properly applied by Guycan, resulting in underpayment of commissions and incentive bonuses.
- [47] The provision dealing with commissions states:
- New Sales Revenue is defined as roofing contracts secured by the "employee" within the fiscal year with customers on business he or she directly opened or was specifically provided as a lead by the Sales Manager. 5% Commission will be calculated from the Gross hard cost of the project.
- [48] The provision addressing incentive bonuses states:
- The contractor will receive 50% of all revenue generated on sales marked up from the standard pricing model (all markups must be approved in writing)
- [49] The parties agreed at trial that these terms are ambiguous. "Gross hard cost" in the commissions provision is not defined, nor is "standard pricing model" in the incentive bonuses provision. As noted earlier, Deonarain said he changed "employee" to "contractor" in some places after Brunette asked that money be paid to 360 but acknowledged that he "didn't change every word."

- [50] The “standard pricing model”, however, is found in the Quote Calculator, and the relation of commissions to gross hard costs is also addressed in it.
- [51] The Quote Calculator is a spreadsheet developed by Guycan, which requires entering various cost items estimated to be necessary for a roofing job in order to calculate the price to be quoted to a customer. The costs include labour, materials, and a range of other items which are totalled in a line item called “Hard Cost.” The Quote Calculator then adds a 25% markup to the hard cost. The next item on the form is “Commission”, which, in Brunette’s case, was usually 5% of the “Hard Cost”, which is consistent with the 5% commission set out in the Employment Agreement.²
- [52] The next item on the Quote Calculator is called “overage”—usually a round number reflecting an additional premium that Guycan may be willing to put in the quote to the customer in order to make an additional profit (of course, there is also the risk that the “overage,” if too large, might make a quote uncompetitive). Brunette was to receive 50% of the overage, which is what the provision addressing incentive bonuses in the employment contract also stipulated.
- [53] For the first several months of his employment with Guycan, in early 2018, Brunette was being trained by Deonarain, Randy Deonarain, and Darren Parker. This involved, among other things, going to job sites, learning how to assess and measure what is needed, and learning how to prepare estimates and input the data into the Quote Calculator.
- [54] Brunette agreed that every quote he prepared throughout his employment was reviewed by and discussed with Deonarain, Randy Deonarain, or, perhaps in a few instances, with Darren Parker. Those individuals would insert estimates for labour and would carefully review each cost item. They would also insert the overage amount.
- [55] Once he started obtaining sales, Brunette, through 360, issued invoices for his commissions and incentive bonuses (or overage) based on the Quote Calculator for the job. Over the course of his employment, Brunette was responsible for closing approximately 26 projects. It is important to note, however, that once a sales contract was signed, Brunette had little ongoing involvement in the project. The work was done by others. Variances in costs due to unexpected problems, or advantages, were dealt with by others at Guycan.
- [56] As discussed, in late 2019, Brunette became unhappy with this arrangement and purported to resign. He complained that there was a long delay between landing a sale and getting paid, as he would only receive his commission and share of overage once the project was completed and Guycan was paid. In some cases, he was asked to amend his invoice to reduce the amount because of cost overruns which resulted in a lower, or no, overage. Brunette was not, however, given details of those cost overruns and complained of a lack of transparency from Guycan. He complained that where costs were lower than expected, and the profit was larger, his share of the “overage” did not change. However, Brunette

² In some cases, Brunette was paid 6% commission.

agreed that he always received his 5% commission on the calculated costs in the Quote Calculator, even if the project lost money.

- [57] Brunette renewed his complaints in the summer of 2020, when he resigned again and attempted, unsuccessfully, to negotiate a new agreement with Guycan. In those negotiations, Brunette sought an increased base commission of 6% of “gross project costs” which would be based on actual costs incurred by Guycan as determined at the end of the project and not limited to costs estimated in the Quote Calculator. This was not acceptable to Guycan.
- [58] Brunette’s position at trial was that his commission and overages should be recalculated to reflect actual costs incurred by Guycan and the actual profit earned by Guycan. On this basis, according to Brunette’s expert who had access to Guycan’s financial data on the projects, Guycan owes Brunette \$521,816.00 before taxes for commissions and incentive bonuses. Brunette also claims 4% vacation pay on this amount, as well as pre-judgment interest of over \$100,000.

Contract interpretation

- [59] The principles governing the interpretation of contracts are well-settled. The task is to ascertain the objective meaning of the words chosen by the parties, read in their proper context and in light of the contract as a whole. The starting point is the language of the agreement. See: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 47, 57, and *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20, 492 D.L.R. (4th) 389, at para. 63.
- [60] The Court “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.” The surrounding circumstances, or factual matrix, include the genesis of the agreement, its commercial purpose, and contemporaneous communications, but not the parties’ subjective intentions. However, the surrounding circumstances should not overwhelm the words of the agreement: *Sattva*, at paras. 47-48, 55-58.
- [61] The Court should only rely on “objective evidence of the background facts at the time of the execution of the contract”, including “knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting”: *Sattva*, at para. 58.
- [62] “Commercial reasonableness is a crucial consideration in interpreting a contract...courts seek to reach a commercially sensible interpretation, since doing so is more likely than not to give effect to the intention of the parties” and avoids constructions that are absurd or arbitrary: *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60, [2019] 4 S.C.R. 394, at para. 142, *per* Côté and Brown JJ. (dissenting in part, but not on this point).
- [63] Finally, post-contract conduct is admissible only if the contract remains ambiguous after considering the text and factual matrix: *Prism Resources Inc. v. Detour Gold Corporation*,

2022 ONCA 326, 162 O.R. (3d) 200, at para. 18, citing *Shewchuk v. Blackmont Capital Inc.*, 2016 ONCA 912, 404 D.L.R. (4th) 512, at para. 46.

- [64] In my view, these factors support Guycan's position.
- [65] Brunette acknowledged that he was an employee of Guycan. Consistent with that employment relationship, Brunette readily agreed that if Guycan lost money on a job, he would still get paid and not suffer any loss himself. Although the Employment Agreement is unclear on what constitutes "gross hard costs", I conclude that the commercially reasonable interpretation of the contract, and the parties' objective intention, was that the 5% commission was to be calculated on the estimated hard costs in the Quote Calculator. This is based on reading the contract "as a whole" and having regard to "the surrounding circumstances known to the parties at the time of formation of the contract," including the use of the Quote Calculator, the role of the sales representative who takes no risk, and the reasonable expectations of the parties.
- [66] Similarly, Brunette's claim for 50% of actual profits, rather than 50% of the overage specified on the Quote Calculator, is not commercially reasonable when he takes no risk. Brunette's risk is limited to whether the "overage" added to the price will be too high and, as a result, the sale is not closed as the customer goes elsewhere. The fact that Guycan may not have paid Brunette any overage when it failed to make a profit does not support Brunette's position that he should receive 50% of all profits, which is inconsistent with the factual matrix of the formation of the contract and the employment relationship it established.
- [67] While this factual matrix is enough to support my conclusion on the interpretation of the contract, such that post-contract conduct need not be considered, it may nevertheless be observed that the contract was interpreted and applied by Brunette in accordance with Guycan's position for the approximately two years in which Brunette was earning commissions and bonuses. Brunette issued invoices based on the Quote Calculator and did not assert at any time that the contract ought to have been paying him approximately \$250,000 per year in commissions and bonuses, as now claimed by Brunette. Even when Guycan clawed back Brunette's overage payments on some jobs where the overage was eaten up by cost overruns, Brunette never asserted that he was owed more than the overage stated on the Quote Calculator. Additionally, he always received his commission based on the costs set out in the Quote Calculator.

Conclusions on damages

- [68] Having rejected Brunette's interpretation of the contract, this leaves him entitled to statutory damages as found above, and for any unpaid commissions and incentive bonuses calculated based on the Quote Calculator.
- [69] Brunette did not submit invoices for seven projects, and a review of all 26 contracts shows that he was underpaid on some.

- [70] I accept the calculations in Brunette's expert report that he was paid incorrect amounts for overage on 12 projects, resulting in an underpayment of \$12,688.09.
- [71] As for the seven projects which Brunette failed to bill when he left, I agree with Guycan that Brunette should receive commissions on those projects totalling \$49,607.66. Guycan submitted that Brunette should not receive his 50% share of overage on those sales because he resigned and did not see the projects through to conclusion, requiring others to fill his role as the sales representative during that time. However, to the extent I heard evidence on this issue, the sales representative had little, if any, involvement with a project once the contract was signed. Accordingly, I find that Brunette should also receive 50% of the overage on those seven projects in the amount of \$26,339.56.
- [72] It follows that Brunette should receive 4% vacation pay on these additional amounts, as well as on the commissions and overage already paid. I leave those calculations to the parties.
- [73] I see no merit in Guycan's counterclaim, which was not seriously pressed before me. However, to the extent that the finding that Brunette was an employee and Guycan may be liable to the Canada Revenue Agency for deductions, those amounts should be taken into account in any damage award. Again, I leave that to the parties to work out.

Conclusion

- [74] Based on the Employment Agreement and the finding that Brunette was an employee of Guycan, there shall be judgment for Brunette awarding him damages in accordance with these Reasons. Should the parties be unable to agree on the precise amount of damages, or on costs, the parties may contact my assistant to obtain directions on making submissions on those issues.

Schabas J.

Date: September 14, 2026