COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Access West Holdings Inc. v Central College Healthcare Centre Inc.,* 2026 BCCA 411

Date: 20261009
Docket: CA51222

Between:

Access West Holdings Inc. and Quantum Parcel Services Ltd.

Appellants
(Defendants)

And

Central College Healthcare Centre Inc.

Respondent
(Plaintiff)

Before: The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Madam Justice Horsman
The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated November 21, 2025 (*Central College Healthcare Centre Inc. v Access West Holdings Inc.*, 2025 BCSC 2292, Vancouver Docket S229497).

Oral Reasons for Judgment

Counsel for the Appellants:	A. Mathur
Counsel for the Respondent:	D. Kang
Place and Date of Hearing:	Vancouver, British Columbia October 9, 2026
Place and Date of Judgment:	Vancouver, British Columbia October 9, 2026

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Summary:

The appellants appeal the finding of a summary trial judge that the appellant, Quantum Parcel Services Ltd., entered into a binding indemnity agreement with the respondent in relation to a commercial sub-lease. The appellants allege that the summary trial judge's analysis reflects legal error and/or palpable and overriding error. HELD: Appeal dismissed. The appellants have not demonstrated that the summary trial judge made any reversible error in his interpretation of the indemnity agreement.

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[1] **HORSMAN J.A.**: The appellants appeal the finding of a summary trial judge that the appellant, Quantum Parcel Services Ltd. ("Quantum"), entered into a binding indemnity agreement with the respondent, Central College Healthcare Centre Inc. ("Central College").

[2] In the underlying proceeding, Central College sought damages from the appellant, Access West Holdings Ltd. ("Access"), for its alleged breach of a sublease agreement. Central College also alleged that Quantum—a company related to Access—was jointly and severally liable for damages pursuant to an indemnity agreement. At trial, the appellants argued that Access had not breached the sublease and there was no binding indemnity agreement.

[3] The summary trial judge found against the appellants on both issues. He concluded that: (1) Access had breached the sublease; and (2) pursuant to an indemnity agreement, Quantum was jointly and severally liable to Central College for damages in the amount of $280,933.23.

[4] No appeal is taken from the summary trial judge's finding that the sublease was breached or from his assessment of damages. The only issue on appeal is whether the summary trial judge made any reversible error in concluding that there was an enforceable indemnity agreement between the appellants and Central College.

Background

[5] I will briefly address the background concerning the sublease to provide context to the one issue on appeal.

[6] Central College was a tenant under a commercial lease agreement relating to units in a building on Keefer Street in Vancouver (the “Premises”). The head lease ran for a period of five years, commencing on November 1, 2018.

[7] In early 2022, Central College and Access commenced negotiations, through their respective real estate agents, for the sublease of the Premises.

[8] On May 9, 2022, Central College and Access entered into a sublease agreement dated for reference May 4, 2022 (the “Sublease”). The Sublease ran from August 1, 2022, to October 30, 2023. Term 4 of the Sublease provided that Access could occupy the Premises starting June 1, 2022, if certain conditions were met, including that Access provided Central College with proof of insurance.

[9] On May 11, 2022, Central College’s realtor emailed the appellants’ realtor to request copies of the incorporation documents for Access and Quantum, and to inquire as to whether Quantum would be willing to provide an indemnity.

[10] On May 17, 2022, Access and Quantum signed a document (the “Indemnity Document”) containing the following provision:

> In consideration of $10.00 non-fundable paid by the Subtenant to the Sublandlord and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged between the parties, the parties hereto agree as follows:
>
> Further to the Offer to Sublease dated May 4th, 2022 (the "Offer"), the Subtenant and the Sublandlord acknowledge and agree to amend the offer by inserting the following Indemnity Clause:
>
> Indemnity:
>
> In consideration of the sum of One Dollar ($1.00) now paid to Quantum Parcel Services Ltd. (the "lndemnifier") by the Sublandlord (the receipt and sufficiency of which is hereby acknowledged) and in further consideration of the Sublandlord accepting this Offer to Sublease, the lndemnifier hereby agrees to indemnify the Sublandlord for the due performance of all of the covenants and agreements of the Subtenant under this Offer to Sublease and the Sublease. The lndemnifier shall execute and deliver to the Sublandlord on the earlier of the date the Subtenant executes and delivers the Sublease or the date the Subtenant takes possession of the Premises, an agreement in form satisfactory to the Sublandlord confirming such indemnity. If the agreement referred to above has not been executed and delivered to the Sublandlord on or before the date set out above, then the Sublandlord may,

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> at its option and in its sole discretion, terminate this Offer to Sublease and the Sublease by delivering written notice thereof to the Subtenant. In the event that the Indemnifier consists of more than one person, the indemnity referred to above shall be a joint and several indemnity.

[11] Access was not given early occupancy of the Premises on June 1, 2022. The communications between Access and Central College regarding the fulfillment of the conditions for Access's early occupancy are reviewed in detail in the trial judgment. For present purposes, it is sufficient to note that the condition in Term 4 of the Sublease requiring that Access provide proof of insurance was not satisfied until July 18, 2022.

[12] By letter to Central College dated July 29, 2022, Access took the position that Central College had breached the Sublease by not providing access to the Premises on June 1, 2022. Access requested that it be given possession of the Premises on a rent-free basis for the months of August and September. Central College did not accede to this request, and took the position that Access was responsible for the delays in satisfying the conditions for early occupancy.

[13] Access subsequently advised that it was electing to terminate the Sublease. It requested the return of its deposit and the rent payment it had made for August. Central College accepted Access's repudiation of the Sublease, while reserving its right to claim indemnity and damages.

The Chambers Judgment

[14] The focus of the summary trial was the issue of whether Access breached the Sublease. The summary trial judge rejected the appellants' argument that the Sublease obliged Central College to either provide Access possession of the Premises on June 1, 2022, or, alternatively, to provide two months' free rent from the time Access took possession of the Premises. He found that Access breached the Sublease when it wrongfully purported to terminate it.

[15] The summary trial judge then turned to the issue of the Indemnity Document. The appellants argued that it was not an agreement but rather an "agreement to

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agree" that had no legal force. The appellants contended the language of the Indemnity Document showed it was intended only to provide a basis for a future agreement because it anticipated that Quantum would "execute and deliver … an agreement" in a form satisfactory to Central College "confirming" such an indemnity.

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[16] The summary trial judge cited *Salminen v Garvie*, 2011 BCSC 339 for the principles that apply in distinguishing binding contracts from mere agreements to agree. The essential question, as framed by the summary trial judge, was whether the parties reached an agreement on all matters vital to the agreement or merely intended to defer legal obligation until a final agreement had been reached.

[17] The summary trial judge rejected the appellants' argument that the requirement in the Indemnity Document that Quantum must execute and deliver a confirmatory agreement signified that the parties had not reached a final agreement. He reasoned as follows:

> [85] I again agree with the plaintiff and disagree with the defendants. The first sentence of the indemnity clause is a clear and unequivocal agreement to indemnify. The use of the word "agreement" in the second sentence is unfortunate as it does suggest the parties will execute a separate agreement. However, it is wrong to focus on the word "agreement" in isolation, as the defendants do. The second sentence refers to "an agreement … confirming such indemnity". Read in context, the second sentence is merely a requirement that Quantum provide a separate document confirming the indemnity given in the first sentence. Accordingly, in my view, the latter part of the indemnity clause does not detract from the clear words of indemnity in the first sentence.

[18] On this basis, the summary trial judge found that Quantum was jointly and severally liable for Central College's damages.

On Appeal

[19] The appellants allege that the summary trial judge erred by:

a) Ignoring the express wording of the Indemnity Document, which constitutes either a legal error or a palpable and overriding error of fact;

b) Disregarding that the Indemnity Document left essential terms of the indemnity undefined, including the "scope, limitations, and financial obligations of the indemnifier";

c) Disregarding that the Indemnity Document was drafted by, or for the benefit of, Central College, and therefore any ambiguity had to be resolved against Central College; and

d) Disregarding that the conduct of Central College in permitting the Sublease to proceed without requiring the execution of a formal indemnity agreement constituted waiver.

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Discussion

[20] A trial judge's finding that the requirements for the formation of a contract are met involves the application of a legal standard to a set of facts. As such, it is a finding of mixed fact and law reviewable for palpable and overriding error, unless the trial judge commits an extricable error of law: *Thomson v Thomson (Estate)*, 2026 BCCA 142 at para 55 [*Thomson*], citing *Angus v CDRW Holdings Ltd.,* 2023 BCCA 330 at para 31.

[21] On the first ground of appeal, I am not persuaded that the summary trial judge ignored the express wording of the Indemnity Document, thereby committing an extricable error of law or a palpable and overriding error. Rather, he explicitly addressed the language the appellants relied on to support their argument that there was only an agreement to agree. He explained his reasons for rejecting the appellants' interpretation, and for his finding that the parties' intention to create a binding agreement was clear. The fact that the summary trial judge may not have addressed every word in the Indemnity Document is not reversible error. The summary trial judge interpreted the Indemnity Document contextually, as he was required to do.

[22] The appellants assert in their factum that the requirement for the execution of a formal contract was, in effect, a condition precedent to a binding agreement.

However, that is not what the summary trial judge found. It is also not what the Indemnity Document states. As Central College argues, to accept the appellants' interpretation, one would have to read words into the text, such as: "subject to the execution of a formal agreement". There is no such language in the Indemnity Document. In my view, the summary trial judge made no reversible error in his interpretation of the text that was contained in the Indemnity Document.

[23] On the second ground of appeal, the summary trial judge did not make an explicit finding that the essential terms of the Indemnity Document were sufficiently certain to establish a binding contract. However, such a finding is implicit in his reasoning. On appeal, the appellants have not identified what they allege is lacking in the Indemnity Document that prevents the creation of a binding agreement. The Indemnity Document provides that Quantum agreed to indemnify Central College "for the due performance of all the covenants and agreements of the Subtenant under this Offer to Sublease and the Sublease". The identity of the parties and the scope of the indemnification was clear. The "scope, limitations, and financial obligations" were co-extensive with Access' obligations under the Sublease, as explicitly stated in the Indemnity Document.

[24] The appellants advance a related argument that, because the Sublease was not attached to the Indemnity Document, there was no way for the signing party (Quantum) to understand its purported obligations. This argument is meritless. The Indemnity Document and the Sublease were signed on behalf of Quantum and Access by the same person: Daljeet Singh, who was a director of both companies. There can be no question that the Sublease obligations were known to Quantum.

[25] On the third ground of appeal, the appellants rely on the *contra proferentem* rule, which requires that ambiguity in a contract be resolved against the drafter. However, before the *contra proferentem* rule is applied, the court must first find genuine ambiguity upon its interpretation of the contract in accordance with the usual principles of contractual interpretation: *Vernon Vipers Hockey Club v Canadian Recreational Excellence (Vernon) Corporation*, 2012 BCCA 291 at para 50. Here,

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the summary trial judge did not find the Indemnity Document to be ambiguous. On the contrary, he found it was “clear”.

[26] On the fourth ground, the appellants did not plead waiver or raise the issue before the summary trial judge. In any event, even assuming the waiver argument is properly before this Court, it is premised on a fundamentally flawed interpretation of the Indemnity Document. The Indemnity Document provided that Central College could, at its sole discretion, terminate the Sublease if Quantum did not execute and deliver the confirmatory agreement. I agree with Central College that its choice not to exercise its discretionary option to terminate the Sublease cannot conceivably be construed as a voluntary relinquishment or waiver of its existing right to be indemnified by Quantum.

[27] In summary, this appeal appears to turn on the appellants’ contention that it was impossible for the summary trial judge to conclude that the Indemnity Document created a binding agreement when it expressly anticipated the execution of a confirmatory agreement. However, this is not the law. Parties often agree on the terms to be incorporated in an intended written document before it is prepared, and they may express their agreement orally or by informal writing. Where the parties have agreed to all the essential terms to be later incorporated into a formal document, and intend to be bound by this agreement, they have fulfilled the requisites for contract formation: *Thomson* at para 49, citing *Bawitko Investments Ltd. v Kernels Popcorn Ltd*., 1991 CanLII 2734, 79 DLR (4th) 97 (ONCA).

[28] It was for the summary trial judge to interpret the Indemnity Document and determine whether it was an agreement or simply an agreement to agree. I see no reversible error in his conclusion that the Indemnity Document created a binding agreement.

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Disposition

[29] I would dismiss the appeal.

[30] **DEWITT-VAN OOSTEN J.A.**: I agree.

[31] **MAYER J.A.**: I agree.

"The Honourable Madam Justice Horsman"

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