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CASE SUMMARY: INSURER SUCCESSFUL AGAINST BROKER IN BREACH OF CONTRACT

Insurance law – Agents and brokers – Breach of contract – Practice – Summary judgments

Canadian Northern Shield Insurance Co. v. 2421593 Canadian Inc., [2018] O.J. No. 5879, 2018 ONSC 3627, Ontario Superior Court of Justice, November 13, 2018, L.A. Pattillo J.

The insurer sought damages for breach of contract against an insurance broker in respect of an exclusive issuer agreement.

The insurer and broker negotiated an exclusive agreement to develop a new home insurance product. They agreed all the broker's existing home insurance would be rolled-over into the new product. The parties agreed on certain terms and the broker advised staff and other insurers of the agreement. The insurer provided a draft agreement to the broker. Throughout the negotiations, the broker and insurer worked to expedite the rollover, with the insurer taking steps such as hiring additional staff to accommodate new business.

The broker's parent company decided to sell the brokerage. The insurer tendered a bid, but was unsuccessful. The insurer advised the broker's parent company it would suffer significant damages if the exclusive issuer agreement was cancelled. The broker's parent company took the position that the agreement was not signed, contained inaccuracies, and did not reflect the intended business arrangement. The brokerage was sold to the insurer's direct competitor.

The insurer argued that all essential terms of the contract were agreed upon and there remained only a small number to be negotiated that were not essential to the agreement. The broker argued that a large number of essential terms were yet to be determined, what the parties agreed upon was not certain, and the parties had agreed there would be a non-binding letter of intent followed by a legally enforceable contract. The Court found that the essential terms of the exclusive issuer agreement had been agreed upon and thus the parties had entered into a legally enforceable contract and the broker breached that contract by purporting to terminate it without the required two year notice period. The insurer was awarded damages for breach of contract.

This case was digested by [Paul R. Saunders](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Paul R. Saunders at psaunders@harpergrey.com.