IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bagai v. Chroma Global Technologies Ltd.,* 2025 BCSC 2230

Date: 20251027
Docket: S235314
Registry: Vancouver

Between:

Abhimanyu Bagai

Plaintiff

And

Chroma Global Technologies Ltd.

Defendant

Before: The Honourable Justice Crerar

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	P. Kressock
Counsel for the Defendant:	J. Shields
Place and Date of Hearing:	Vancouver, B.C. October 27, 2025
Place and Date of Judgment:	Vancouver, B.C. October 27, 2025

[1] **THE COURT:** These are my oral reasons for judgment in this summary trial. I make the usual reservations to edit or expand them if a transcript is ordered, or for any other reason. The substance of the reasons and the result will not change, however.

[2] In the course of these oral reasons, I will make reference to various cases and documents before me. I will not necessarily read them out in their entirety, in the interests of time. However, those passages, citations, and quotations will be incorporated in the official reasons for judgment.

[3] The parties generally agree that the matter is suitable for summary disposition. I agree. In reaching this conclusion, I note that only about $40,000 is at stake. When I say “only”, I appreciate that that is a lot of money for both parties. But in light of the cost of a conventional trial, this matter is suitable for summary trial. It primarily concerns a matter of contractual interpretation with respect to the context and intention of the parties. Credibility is not at issue. Indeed, the affidavit evidence before the Court does not clash in a material way.

[4] The plaintiff, Mr. Bagai, seeks payment from the defendant, Chroma Global Technologies Ltd. of $38,500 plus GST (“**deferred fees**”), as well as just over $1,000 in unreimbursed expenses arising from his work for Chroma as an independent contractor in 2022 and 2023.

[5] Chroma is a technology company that describes itself as working to optimise the yield and extraction of cannabinoids from cannabis plants by licencing patented processes to cannabis producers. Its principals are Rene David, the chief executive officer, and Willy Kwun, the general manager.

[6] The plaintiff, Mr. Bagai, is a chemist with experience in the cannabis industry. Between January 1, 2021 and May 31, 2023, Mr. Bagai worked for Chroma, initially as a project coordinator, and later with the title of Director of Science.

[7] The present trial requires the interpretation of two contractual documents: the primary contract as well as an addendum.

[8] Chroma hired Mr. Bagai under the terms of a consulting services agreement dated January 1, 2021. The key terms of that contract were as follows:

> **2.1 Fees**: During the term of this Agreement, the Company shall pay to the Consultant a monthly fee of:
>
> **$5,000.00 Cdn** (the "Monthly Fee"), plus applicable GST.
>
> **2.21 Termination by Consultant**. The Consultant can terminate this Agreement for any reason on the earlier of: (a) the date that is two weeks following the written submission of the Consultant's resignation to the Company or (b) the earlier date such resignation is accepted by the Company should a suitable replacement be hired by the Company and trained by the Consultant. ***All obligations of the Company to the Consultant hereunder will immediately terminate and cease as of the date of the termination of the Consultant's services. The Company will only be obliged to pay the Monthly Fees earned and accrued but not paid, due up to the date of termination.***
>
> **…**
>
> **2.2.4 No Additional Payments**. The Consultant acknowledges and agrees that, unless otherwise expressly agreed in writing between the Consultant and the Company, ***the Consultant shall not be entitled, by reason of its engagement with the Company or by reason of any termination of such engagement, howsoever arising, to any remuneration, compensation or other benefits other than as expressly provided for in this Agreement***.
>
> [emphasis added]

[9] In early 2022, Mr. David for Chroma, told Mr. Bagai that Chroma was experiencing cash flow problems. He said that if Mr. Bagai were to keep working for Chroma, the company would need to defer payment of a portion of his monthly fees; otherwise, it would not be able to afford to keep him. Mr. David indicated to Mr. Bagai that he was hoping to take Chroma public one day, although he was not sure when that would specifically occur. He stated that if Chroma did go public, the company wanted the option to pay the deferred portion of Mr. Bagai's fees in the form of voting shares rather than cash.

[10] The parties accordingly signed an addendum dated for reference February 1, 2022. It is a very brief document, with the following four terms:

> ***Regarding Consulting Services Agreement*** dated 01st day of January 2021 (the "Agreement")
>
> As of February 01, 2022, ***the Agreement shall be amended*** with the following terms and conditions until further notice.

> 1. Fees – 50% ($2,500 monthly) to be paid in cash
>
> 2. Fees – ***50% deferred*** ($2,500 monthly) ***to be paid in future cash or voting shares in Chroma Global if company goes public, at the option of the Company***
>
> 3. Title of position shall now be Director of Science
>
> 4. Car Allowance to be paid by the Company
>
> [emphasis added]

[11] That contractual arrangement proceeded from February 1, 2022 until May 2023.

[12] Mr. Bagai states that he was finding it increasingly difficult to make ends meet working for Chroma, with half of his monthly fees being deferred. Accordingly, on May 15, 2023, Mr. Bagai emailed Mr. David and Mr. Kwun to advise that he was resigning from his position with Chroma, effective May 31st, 2023. Mr. Bagai asked to be paid out on his last day of work. In that email communication, he specifically asked for a time-frame for the payment of his deferred fees.

[13] For the defendant, Mr. Kwun responded to accept Mr. Bagai's resignation. He advised with respect to the deferred fees:

> I have attached the addendum to your agreement for clarity on the deferred fees. ***Our goal continues to move the company public*** and are taking steps to move forward in this process. ***Unfortunately, your deferred fees cannot be paid out at the end of May, but these will continue to be carried on our records.***
>
> [emphasis added]

[14] On May 23, Mr. Bagai asked for further clarity about when those deferred fees would be paid. Mr. Kwun responded on May 24:

> Hi Abhi
>
> Yes, we are continuing our efforts at Chroma and ***one of the potential strategies is becoming public***. Unfortunately, we don't have a time frame that we can say for certain especially as we are in the midst of restructuring and refinancing.
>
> ***Your deferred fees as stated in your agreement are to be paid either by shares or cash at the option of Chroma.***
>
> ***We hope to have a clearer picture moving forward in the next few months*** and we will stay in touch with you as to our progress.

> Thanks.
>
> [emphasis added]

[15] When Mr. Bagai started this proceeding, on July 27, 2023, the defendant had not paid the deferred fees; nor had it "gone public." That status remains today, over two years after the start of these proceedings and two-and-a-half years after Mr. Bagai's departure from the company.

[16] The parties are in general agreement on the applicable law. In *Sattva Capital Corp v Creston Moly Corp,* 2014 SCC 53, the leading authority on contractual interpretation, the Supreme Court of Canada affirmed the following essential principles of contractual interpretation:

> (a) The interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction.
>
> (b) The overriding concern is to determine "the intent of the parties and the scope of their understanding."
>
> (c) The trial judge 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.
>
> (d) 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.
>
> (e) The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement.

[17] *Sattva* also confirmed at para 59 that:

> The parol evidence rule precludes admission of evidence outside the words of the written contract that would add to, subtract from, vary, or contradict a contract that has been wholly reduced to writing.

[18] The parol evidence rule thus precludes evidence of the subjective intentions of the parties. The purpose of the rule is to prevent the use of fabricated or unreliable extrinsic negotiations or communications, particularly those purportedly

recalled after the start of litigation that would attack or derogate from the language of written contracts: *Sattva* at para 59.

[19] *Sattva* also confirmed that the surrounding circumstances cannot overwhelm the words of the agreement:

> [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 (*Hayes Forest Services*, at para. 14; and *Hall*, at p. 30). 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 (*Hall*, at pp. 15 and 30-32).

[20] The purpose of contractual interpretation is not to rewrite the parties' contract or to relieve one of them from the consequences of an improvident contract: *1050438 B.C. Ltd*., 2019 BCSC 2138 at para 32.

[21] Where ambiguity remains despite efforts to search for an interpretation that reflects the true intent and reasonable expectations of the parties when they entered into the contract, the Court may resort to the principle of *contra proferentem* to resolve the ambiguity against the party that drafted the agreement: *Catherwood Towing Ltd*., 2024 BCCA 348 at para 82.

[22] I will briefly set out the defendant's arguments. This description will not do justice to Mr. Shields's vigorous and inspired submissions. I appreciate that Mr. Shields was only retained last week to respond to this summary trial application. Accordingly, he is stuck with the affidavit evidence before him.

[23] Mr. Shields, for the defendant, envisions the purpose of the addendum as creating a contingency of sorts. In short, post-addendum, it was solely the option of the defendant to determine whether remuneration would be paid out in a cash form, representing half of the $5,000 monthly fee, or, if the defendant does become a public company, at the company's option, it may remunerate the plaintiff in the form of voting shares.

[24] Accordingly, until the company goes public, or until it is clear that the company will go public, there is no triggering event that would oblige the defendant to remunerate the plaintiff for the deferred fees, either in the form of those actual deferred fees, as calculated based on the time he spent with the company after the signing of the addendum, or in the form of voting shares, which, presumably, would be valuated if and when the company proceeds to become a public company.

[25] The defendant argues that the plaintiff in its present submissions and applications is seeking to unilaterally amend the addendum. The defendant argues that the plaintiff is seeking to unilaterally resign from the company and demand payment in the form of cash. According to the defendant, the plain language and intention of the addendum would be abandoned through the unilateral actions of the plaintiff resigning.

[26] The defendant further argues that the plaintiff ignores the plain language and intent of the addendum. It argues that the plaintiff ignores the word “defers” which indicates a future not present payment. He seeks unilaterally to force the immediate payment of the deferred payments: at the time of his resignation, or at the end of the month of his resignation, or, now, here today at the summary trial.

[27] The defendant also argues that, by extension, the plaintiff seeks to replace the plain language of the addendum reference to “future cash” with the phrase “on demand”: that is, future cash must be paid today at the summary trial or at the time of resignation or at the end of the resignation month.

[28] Finally, the defendant argues that the plaintiff’s position ignores the express option given to the company to elect whether the plaintiff would be remunerated in the form of cash or in the form of voting shares.

[29] As an overarching submission, the defendant argues that article 2 of the addendum creates a condition precedent. In effect, it makes the future remuneration of the plaintiff a contingency. The defendant argues that the plaintiff agreed, in this short agreement, that the deferred compensation would be paid only “if the company

goes public." Until and unless that occurs, the plaintiff will not be compensated, and if it does not occur, he will not be compensated. Until that occurs the company, is not in a position to exercise its option and election of deciding how to compensate the plaintiff.

[30] The defendant puts the triggering sequence as follows. Not only would the defendant have to apply to go public, but such would have to be approved by the shareholders and the appropriate regulators.

[31] The defendant argues that this interpretation reflects the agreement between the parties. The plaintiff cannot now attempt to rewrite that precondition. According to the defendant, the plaintiff formally agreed in writing that half his remuneration for his work going forward, as set out in the addendum, was subject to the company going public.

[32] Despite these able and inspired submissions, I am in agreement with the plaintiff's interpretation of the agreement, read in light of the surrounding circumstances, the communications between the parties, the express evidence of those communications provided by both sides in this summary trial, as well as the plain language and context of both the consulting services agreement and the addendum.

[33] I will start with the context of the addendum itself. It is not a new comprehensive, independent consulting services agreement meant to displace and replace the detailed and comprehensive terms of the consulting services agreement under which the parties had operated for some 16 months. Rather, by the addendum's express title and its express reference to the consulting services agreement, it is indeed an addendum to the consulting services agreement. In other words, all terms in the consulting services agreement, except those expressly or implicitly modified by the addendum, will continue to operate in full force.

[34] I will expand on this interpretation momentarily. But in the interests of clarity, I will set out the proper interpretation of the consulting services agreement, as revised

by the addendum. Specifically, while payment was to be temporarily deferred in order to accommodate the defendant's cash flow problems, it was never the intention of either party that the plaintiff would not be compensated for his services. The objective purpose of the addendum was not to half the plaintiff's remuneration for all time, or to make that remuneration contingent upon the company going public. Rather, the payment would be deferred in order to assist the company with its immediate cash flow problems in early 2022.

[35] The use of the word "deferred" in itself serves as a confirmation that the payment was not contingent, and that payment would, in fact, occur in the future, albeit later than it ordinarily would be paid under the existing consulting services agreement. Categorically, with an eye to the two contractual documents read together, and all of the communications and circumstances leading to the addendum, the addendum did not create a new system of remuneration that is contingent or discretionary on actions and decisions entirely within the defendant's volition and control.

[36] The addendum did create a contingency, but the contingency is not that argued by the defendant. The contingency arises if and when the company decides to go public. If and when the company does go public, it does open up the option that hitherto did not exist for the company: to compensate the plaintiff through voting shares rather than through cash. If the company never goes public or does not go public within a reasonable time -- and I will return to this in a moment -- the company does not have the shares option open to it. In short, the company going public does not trigger a right of the plaintiff to compensation. The company going public merely triggers the option to the company to decide the form of compensation it shall provide to the plaintiff.

[37] To reiterate, some form of remuneration in the future was to occur, either in the form of future cash payment or voting shares to the plaintiff. This interpretation is reinforced by the reading of the addendum in conjunction with the remuneration provisions of the consulting services agreement to which it serves as an addendum.

[38] Once again, the addendum is only an addendum to the existing and continuing terms of the consulting services agreement. Apart from that contractual role, the consulting services agreement also speaks to the mutual understanding of the parties about the compensation that would be provided to the plaintiff.

[39] I start with section 2.1 of the consulting services agreement. That was the baseline under which the plaintiff entered into his relationship with the defendant and under which he worked for 16 months. That section confirms the initial presumption of $5,000 cash paid monthly to the plaintiff.

[40] Section 2.2.1 governs termination by the consultant. I have already cited those provisions before: here, I will focus in on a few specific terms.

[41] First, section 2.2.1 expressly contemplates and permits the consultant --- that is, the plaintiff--- to terminate the agreement for any reason. It also contemplates an orderly itemisation of obligations that will remain on the company's shoulders if the plaintiff chooses to resign. The final sentence of 2.2.1 expressly contemplates that if the plaintiff resigns from the company, the company's sole remaining obligation will be to pay the monthly fee earned and accrued but not paid, due up to the date of termination. The final sentence emphasises that this obligation to pay remains on the company after the plaintiff's resignation.

[42] This conclusion is reinforced by the penultimate sentence in 2.2.1: that all obligations of the company to the consultant hereunder will immediately terminate and cease *as of the date of the termination of the consultant's services*. In other words, the section contemplates the company owing remunerative obligations to the plaintiff upon the plaintiff's resignation. I interpret the final two sentences of 2.2.1 --- neither of which have been expressly displaced by the addendum --- as putting the focus of the obligations of the company to the plaintiff at the point of termination. In short, if the plaintiff terminates the agreement, the company will only be obliged to pay the monthly fees earned and accrued but not paid, due up to the date of termination.

[43] Of course, at the date of termination in May 2023, the company had not gone public, although it had already enjoyed the contractual benefit of the addendum, with deferred payment, between February 2022 and May 2023. On the date on which the termination provisions are engaged, the company, which was largely in control of whether it tried to become public that year, had not, in fact, gone public. Accordingly, the option of remuneration through shares was not open to the defendant at the time of the termination, and section 2 of the addendum was not triggered.

[44] To a similar effect is section 2.2.4 of the consulting services agreement ("No Additional Payments"). Again, this section was not expressly or implicitly amended by the addendum. That provision, again, confirms that "the Consultant shall not be entitled, by reason of its engagement with the Company or by reason of any termination of such engagement, howsoever arising, to any remuneration, compensation or other benefits other than as expressly provided for in this Agreement." Again, that section emphasises the baseline presumption of payment of that monthly fee.

[45] While that monthly fee had been deferred as per the terms of the addendum, as the trigger of the company going public had not occurred by the operative time of the termination by the consultant, that option was not triggered. Accordingly, the fees, while they had been deferred, were only deferred up to the point of exit for the plaintiff and became due and owing at that time.

[46] This interpretation is generally confirmed by Mr. Kwun's communications after the resignation, quoted earlier in these reasons. In Mr. Kwun's first communication he confirmed that the deferred fees would continue to be carried in the defendant's records, indicating an expectation of eventual payment.

[47] This interpretation of the contract is also confirmed in the affidavit of Mr. David:

> 5. In early 2022, Chroma experienced a ***temporary*** cash flow shortfall due to suspended investment activity and project delays. In addition, the world-wide Covid issue impacted Chroma's business substantially.

> 6. To allow the company to continue operating while retaining key personnel, I met with Mr. Bagai and Willie Kwun, Chroma's General Manager, ***to discuss temporarily deferring part*** of Mr. Bagai's monthly fee.
>
> 7. We explained that Chroma's ***goal was to go public*** and that, ***if this occurred***, the Chroma could pay the deferred portion in voting shares instead of cash, at Chroma's option.
>
> [emphasis added]

[48] Mr. David's affidavit, which I understand was provided before Mr. Shields was retained, sets out the reason for the addendum. That reason matches that set out in the plaintiff's affidavit. Specifically, in early 2022 the defendant was experiencing a *temporary* cash flow shortfall due to suspended investment activities and project delays. It was also affected by Covid. To allow the company to continue operating while retaining key personnel, Mr. David met with the plaintiff and Mr. Kwun to discuss *temporarily* deferring part of Mr. Bagai's monthly fee. Mr. David explained that it was the defendant's *goal* to go public and that *if* this occurred, Chroma could pay the deferred portion in voting shares instead of cash at Chroma's option.

[49] In addition to setting out the reason and context for the addendum, the wording in paragraph 7 is critical. Chroma's *goal* was to go public. It was not a certain outcome: "*if* this occurred." Mr. David's own affidavit reflects the possible contingent trigger of Chroma's option of providing voting shares instead of cash, paralleling the language of the addendum. In short, that option would only be triggered if Chroma did, in fact, realise its goal of going public.

[50] What is more important is what the affidavit does not say. There is nothing in the affidavit to support the remarkable proposition now argued by the defendant that the plaintiff would receive half of his entire compensation only if the company went public. Mr. David's affidavit provides no discussions leading to the addendum indicating that the payment could be deferred indefinitely: potentially forever, as the company might always contemplate going public. Indeed, the company, if successful, could survive the lifespan of its principals. Thus if this company remained in existence a century from now, still as a private company, it might well still be sitting on its laurels and saying that its obligation to remunerate the

presumptive next-of-kin of the plaintiff had yet not been triggered because it had not yet made up its mind about whether or not it would go public.

[51] The defendant did take the Court to paragraph 19 of the David affidavit, which asserts that the company continues to plan toward a public offering or similar liquidity event, and until that occurs the deferred fees remain unrealised and not due. That final phrase, of course, is impermissible argument: that in itself weakens the court's reception of the David affidavit. That all said, one could not think of a more vague statement about what steps and intentions the company presently holds, and in the past, held to bring the company to a public offering.

[52] It is trite law that in a summary trial a party must put its best foot forward. It is also trite law that the court is entitled to attach minimal weight to blanket or vague or uncorroborated assertions, especially self-serving assertions put forward in an affidavit by a party with its back against the wall, facing a summary trial. This is particularly so where the party has in its power, indeed in its unique power, to provide corroborated evidence supporting its assertions.

[53] Again, Mr. David's affidavit contains no background information that would indicate that it was the mutual intention of the parties, or that it was ever discussed between the parties, that the deferred payments could be deferred into the indefinite future: potentially years and centuries and millennia in the future. Nor does that affidavit provide any sort of indication that the purpose of the addendum was to modify the consulting services agreement that provided for guaranteed monthly fees of $5,000 into some sort of contingent agreement or discretionary agreement.

[54] In effect, the defendant is arguing that payment of the deferred fees remained entirely at its discretion, as, indeed, the decision to go public was entirely at the discretion of those defendants. To change the contract and amend the baseline existing comprehensive consulting services agreement so fundamentally would require much more clear language than that contained in the extreme paucity of the four-point addendum.

[55] Again, I agree with the plaintiff's submission that the terms "defer" and "deferral", by definition, confirms an anticipation and an agreement between the parties that those payments or compensation in lieu of those payments would, in fact, ultimately, and within a reasonable time, be paid. The terms "defer" and "deferred" certainly do not indicate that compensation would be entirely contingent on the discretion of the defendant or the triggering event of the company opting to take the company public in the indeterminate.

[56] The weakness of the defendant's evidence in this regard highlights the absurdity of its argument and the absurdity of its interpretation of the consulting services agreement read together with the addendum. In this, I rely upon *Zeitler v Zeitler (Estate)*, 2010 BCCA 216:

> [25] Courts must be cautious not to rewrite contracts for the contracting parties. Interpretation of a contract, however, is not restricted to consideration of those terms that are explicit. The law recognizes that sometimes, to avoid an absurd result, the court will find an implied term in the contract if the implied term is not in conflict with an express term. In my opinion, this is such a case.

[57] Thus, sometimes, to avoid an absurd result the court will find an implied term in the contract, so long as the implied term is not in conflict with an express term. Given my earlier finding that the deferred fees would become payable upon termination of the agreement, I do not believe it is necessary to do so. Alternatively, as per *Zeitler*, I would read into the addendum the phrase "within a reasonable time" or "at the point of the resignation", in order to avoid the unintended absurdity of infinite deferral and effective non-compensation.

[58] We are now three-and-a-half years after the departure of the plaintiff from the company. This is certainly well within the reasonable time of deferral of those payments. A reasonable person --- an officious bystander at the elbow of the drafter of the addendum --- would not find 100 years or an indefinite period to be the meaning of "deferred". Rather, a reasonable time, or, in this context, three-and-a-half years, would be a more sensible and reasonable objective term of the agreement. This is especially in light of the failure of the defendant in this summary trial to

provide any reassurance or evidence to the Court that there has been or there is any movement towards going public.

[59] Again, it would be an absurd interpretation that the deferred fees could be deferred indefinitely and would not be payable until and unless the company decided to, and, in fact, succeeded in taking all of the necessary steps to make the company public. Of course, until the company winds itself up or goes bankrupt, it is always conceivable that it might get around to a public offering if it ever becomes motivated to do so. That could not have been within the contemplation of the parties, absent express wording in the addendum. That interpretation cannot stand, in the face of the term “deferred” in the addendum. The Court cannot accept the interpretation put forward by the defendant.

[60] The onus would be on the defendant --- indeed, the defendant who is the drafter of both of the documents --- to use clear and unambiguous language if it wished to make the purported change. To amend the consulting services agreement in such an extreme manner as urged by the defendant --- to convert a guaranteed monthly payment to a contingent or discretionary payment that the defendant may well never receive --- would require clear and express language. And, indeed, given the passage of time since his departure from the company, it would appear that the fulfillment of the deferred payment, at least in the defendant’s mind, is on the never-never plan.

[61] In support of its argument, the defendant argues that the addendum’s terms provided a potential benefit ---potentially a lucrative benefit--- to the plaintiff: if the company went public and the company turned out to be successful. In this, the defendant argues that many employees, agents, consultants, lawyers, and professionals agree to be engaged “on spec.” Their upside if the precondition event happens, and only if it happens, is to receive compensation: that is what the plaintiff agreed to here.

[62] Here, the stock option is not a stock option in the classic Silicon Valley sense, where it vests in the employee as part of their contract of employment. Here, the

option to receive shares in lieu of compensation exists solely at the discretion of the company. If the company turned out to be enormously successful after its public offering, a cynic may well anticipate that the company, as a rational economic actor, would simply tally up the amount that it owes as deferred payments and opt to pay in cash rather than give the plaintiff the equity upside. That is especially so in the present circumstances, where the plaintiff has left the company.

[63] Of course, stock options in the classic Silicon Valley sense are usually structured to keep those employees at the company, and contain various provisions to incentivise that continued employment. There is no term like that here. And, again, the compensation in the form of stocks would solely be at the discretion of the defendant.

[64] The plaintiff advances an alternative ground based on *contra proferentem*. The plaintiff notes, and it is not disputed, that both the consulting services agreement and the addendum were drafted by the defendant.

[65] *Miller v. Convergys CMG Canada Limited Partnership*, 2014 BCCA 311 confirms that *contra proferentem* serves as a last resort to favour construction of the ambiguity against the party that drew the agreement:

> [15] The court should strive to give effect to what the parties reasonably intended to agree to when the contract was made. The starting point is the language of the contract, which should be given its plain and literal meaning, and be interpreted in the context of the entire agreement. Consideration may also be given to the factual matrix surrounding the creation of the contract. If the contractual language reveals two possible interpretations, the court should seek to resolve this ambiguity by searching for an interpretation that reflects the true intent and reasonable expectations of the parties when they entered the contract, and achieves a result consistent with commercial efficacy and good sense. Considerations of reasonableness and fairness inform this exercise. If these principles do not resolve the ambiguity, extrinsic evidence may be admissible to assist in ascertaining the parties' intent. As a last resort the principle of *contra proferentem* may be invoked to favour construction of the ambiguity against the party that drew the agreement. This principle may not be used, however, to create or magnify an ambiguity. As to employment contracts in particular, these will be interpreted in a manner that favours employment law principles, specifically the protection of vulnerable employees in their dealings with their employers. Nevertheless, the construction of an employment contract remains an exercise in contractual

> interpretation, and the intentions of the parties will generally prevail, even if this detracts from employment law goals that are otherwise presumed to apply ...

[66] Again, I have not found there to be any ambiguity, when the addendum is read in the context of the consulting services agreement and the surrounding circumstances. But I would apply the principle of *contra proferentem* insofar as there is any ambiguity.

[67] As stated earlier, if the intention were to change remuneration guaranteed under the consulting services agreement into purely hypothetical contingent remuneration fully in the hands of the defendant, the drafter would have to say so through clear and unambiguous language. If it were necessary, which I conclude it is not, I would interpret the language of the contract against the drafter of the contracts: the defendant.

[68] The defendant argued that there was meaningful negotiation, thus negating the doctrine of *contra proferentem*. I do not find that there was any meaningful negotiation. The addendum was presented to the plaintiff on more or less a take it or leave it basis. I have already addressed the illusory potential upside: there is no potential upside where the stock option is solely held by the defendant.

[69] The defendant also points to the express reference to the car allowance in paragraph 4 of the addendum. That allowance, however, was the existing norm, albeit not one expressly written in the consulting services agreement. Formal reference to the car allowance neither represents negotiation, nor indeed consideration, for entering into this addendum, much less entering into an addendum with the extreme contingent terms advanced by the defendant here today.

[70] I grant summary judgment for the plaintiff, with the orders sought.

[71] All right. I thank counsel and madam registrar for staying late, but you have your answer here today. Anything arising?

[72] CNSL P. KRESSOCK: In light of your reasons, Justice, I do wish to make submissions on costs, but I wish to do so on materials, and so I'd ask for leave either to reappear or to make those submissions in writing.

[73] THE COURT: All right. On that preliminary point, Mr. Shields, do you have anything –

[74] CNSL J. SHIELDS: I don't know anything about this. I'm the new sheriff in town, just for this application.

[75] THE COURT: Yes.

[76] CNSL J. SHIELDS: I think my friend wants to bring to the court's attention just some correspondence or the like and he should do that in written submissions and I can respond, say, in 10 days. And if the court can deal with it that way that will save us all an attendance.

[77] THE COURT: All right. But let us, say, potentially save us even more time. Now I have issued reasons for judgment, it is contemplated that we are going into the cost phase. Are we talking about an offer to settle?

[78] CNSL P. KRESSOCK: Yes. It is also the case that in my view that the fast track costs rules apply and I do wish to seek double costs.

[79] THE COURT: All right. If that is the case, it would not be appropriate or fair to the defendant to argue this here today, especially given Mr. Shields' circumstances. So, shall we set out a timeline for that?

[80] CNSL P. KRESSOCK: Yes. I can certainly serve submissions and materials within seven days.

[81] THE COURT: All right. Mr. Shields: your reply.

[82] CNSL J. SHIELDS: I'm fairly chock-a-block at the moment, but if I could have 10 days to respond. I will try to do it in less, but I don't have the file.

[83] THE COURT: Let us do the timeline as counsel have set out. You can deliver them, of course, in electronic form to the Registry and we will proceed from there. I anticipate giving very brief oral reasons. I may well summon you back for a telephone hearing or a Teams meeting hearing at 9:00 a.m. some morning for that. Anything else, counsel?

[84] CNSL P. KRESSOCK: I would just like to thank you on behalf of myself for your detailed and cogent reasons and taking time to deal with this today and staying late, as the clerk has as well. So, we thank you for that.

[85] THE COURT: All right. Thank you very much. I got the sense that it would be better for the parties to get an answer here today over a $40,000 dispute rather than to wait indefinitely, to defer my reasons, and thus drive up the legal costs and/or come back for extensive litigation. So, thank you very much. I will look forward to those written submissions on costs.

"Crerar J"