

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Mr. Justice Marc M. Monnin  
Mr. Justice William J. Burnett  
Mr. Justice Christopher J. Mainella

***BETWEEN:***

<b><i>DTZ BARNICKE WINNIPEG LTD.</i></b>	)	<b><i>C. D. Hadubiak, Q.C.</i></b>
	)	<i>for the Appellant</i>
<i>(Plaintiff) Respondent</i>	)	
	)	<b><i>R. S. Literovich and</i></b>
<i>- and -</i>	)	<b><i>D. E. Silver</i></b>
	)	<i>for the Respondent</i>
<b><i>BRANDT PROPERTIES LTD.</i></b>	)	
	)	<i>Appeal heard and</i>
<i>(Defendant) Appellant</i>	)	<i>Decision pronounced:</i>
	)	<b><i>October 1, 2018</i></b>

On appeal from 2017 MBQB 153

**BURNETT JA** (for the Court):

[1] The defendant appeals the decision of the trial judge, who found that an oral contract existed between the plaintiff and the defendant to pay commission in relation to a commercial lease.

[2] The defendant raises three main issues, namely:

1. Did the trial judge err in concluding that the plaintiff had established all the elements necessary for the existence and enforceability of an oral contract?

2. Does a contract for a commission require some evidence in writing in order to be enforceable?
3. Did the trial judge err in his application of *quantum meruit*?

[3] As to the first issue, we are not persuaded the trial judge erred when he found that an enforceable agreement existed between the plaintiff and the defendant. There is ample evidence to support the trial judge's finding that the defendant's land development manager (Lien) made the agreement with the plaintiff's leasing agent (Magnusson), and there has been no suggestion that Lien did not have authority to bind the defendant.

[4] While it is true that the trial judge erred when he found that the defendant and Brandt Tractor Properties Ltd. are subsidiaries of Brandt Developments Ltd., the error is of no significance. Simply put, the trial judge was satisfied on the evidence adduced at trial that there was an agreement between the plaintiff and the defendant. The corporate relationship between the defendant developer and other Brandt companies (including the owner, Brandt Tractor Properties Ltd.) did not affect that conclusion.

[5] We are also not persuaded that in this Province an agreement to pay commission in relation to a commercial lease requires some evidence in writing to be enforceable.

[6] As to the third issue, the trial judge said that he did not need to address the *quantum meruit* claim as a contract had been established. We agree.

[7] The appeal is therefore dismissed with costs payable to the plaintiff.

Burnett JA

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Monnin JA

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Mainella JA

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