



RealTalk® about Real Estate

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Topic: Tracking Changes to your Contract

In a recent decision involving a commercial real estate deal,¹ the parties started out with a “relatively standard form” contract that had been drafted by the Buyer’s lawyer. However, the parties struck out some of the provisions dealing with conditions precedent leaving what the Court described as “a remnant passage that no longer had the effect that was intended in the base draft before the strikeouts”.

The Seller ended up killing the deal and selling to another buyer. The first Buyer sued for specific performance of the initial agreement.

The Court noted that “The root problem would appear to be that the parties took a form of agreement, with many blanks in it, left many of them still blank, and marked it up with a pen, leaving the Contract in some confusion as to what was a condition, what was not, and what the Seller’s obligations were in the absence of a clear date for waiver of its obligations”.

In the end, the Court found that the Seller was wrong to have terminated the initial deal. As an aside, although the Court was not required to find any bad faith, it noted that the Seller’s conduct was “suspicious”.

My take away from this is that if changes are made to a contract, the changes must make sense in the context of the entire document. If you have any doubt when drafting the contract, please feel free to contact me for advice.

Finally, we welcome Brenda Alcantara to our firm! Brenda started with us in March and we look forward to her adding to our tradition of providing top level service to you and your clients.

We are a small, highly personalized law firm and take pride in providing a comfortable and positive experience for all our clients.

¹ *1613185 Alberta Ltd. v 837757 Alberta Ltd.*, 2015 ABQB 224
<http://www.canlii.org/en/ab/abqb/doc/2015/2015abqb224/2015abqb224.pdf>