CITATION: Stanyar v. Kearley, 2026 ONSC 3406
COURT FILE NO.: CV-23-00704655-0000
DATE: 20260609

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
TANYA STANYAR	)	*Candice Malan*, for the Plaintiff
Plaintiff	)	
– and –	)	
	)	
STACY KEARLEY	)	*Nasyr Asmi*, for the Defendant
Defendant	)	
	)	
	)	
	)	**HEARD:** March 17, 2026

PAPAGEORGIOU J.

REASONS FOR DECISION

Overview

[1] This case is about whether the plaintiff, Tanya Stanyar, a salesperson with a Re/Max brokerage, Re/Max All-Stars Realty Inc., was also simultaneously the employee of another salesperson who worked at the same Re/Max brokerage, the defendant Stacey Kearley.

[2] The plaintiff says that she worked for the defendant at a Re/Max brokerage for 17 years. She says that in 2023 the defendant terminated this employment.

[3] The defendant says that both she and the plaintiff were merely sales agents who worked together at the same Re/Max brokerage where they both worked as independent contractors. They did work together and share commissions. She says she decided to stop working with the plaintiff because the plaintiff was harassing her about matters related to vaccination during the COVID-19 pandemic. The plaintiff denies these allegations.

[4] The defendant brings a motion for summary judgment.

Decision

[5] For the reasons that follow, I grant the defendant's motion and dismiss this case.

Issues

- Issue 1: Is it legally permissible for a salesperson working for a brokerage to be the employer of another salesperson working at the same brokerage?

- Issue 2: Would the facts and circumstances of this case satisfy the test for employment or being a dependant contractor if this was legally permissible?

Analysis

The Summary Judgment Test

[6] In accordance with r. 20.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "*Rules*"), the court shall grant summary judgment if:

> a. the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[7] In determining whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and a judge may exercise any of the following powers under r. 20.04(2.1): (1) weighing the evidence; (2) evaluating the credibility of a deponent; and (3) drawing any reasonable inference from the evidence.

[8] The Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 at para. 49, explained:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process: (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[9] In order to defeat a motion for summary judgment, the responding party must put forward some evidence to show that there is a genuine issue requiring a trial. A responding party cannot rest solely on allegations in a pleading. Each side must "put their best foot forward" with respect to the existence or non-existence of material issues to be tried: *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, 271 A.C.W.S. (3d) 735 at para. 9. Furthermore, "a summary judgment motion cannot be defeated by vague references as to what may be adduced if the matter is allowed to proceed to trial": *Diao v. Zhao*, 2017 ONSC 5511, 283 A.C.W.S. (3d) 735 at para. 18.

[10] The plaintiff argues that there are credibility issues, and in particular, issues regarding contract formation which require a trial.

[11] However, I disagree.

[12] Using the powers in r. 20.04(2.1), I am able to make the necessary findings of fact and arrive at a just and fair determination.

[13] While there are some factual disputes, and some credibility issues, most of the important facts are not disputed. Those factual disputes that exist either do not have significant relevance, or I am able to resolve them by weighing the evidence.

[14] Additionally, the factual dispute related to why the defendant decided to stop working with the plaintiff is not required for resolution of the issues before me. These factual issues would only need to be resolved if, in law, the plaintiff had a legal basis to claim that she was entitled to reasonable notice, and the issue was whether or not there was just cause.

Issue 1: Is it legally permissible for a sales agent working for a brokerage to simultaneously be the employer of a salesperson at the same brokerage?

[15] I conclude that it is legally impermissible for a salesperson at one brokerage to be the employer of another salesperson at the same brokerage.

[16] Real estate transactions are heavily regulated in the public interest.

[17] The *Trust in Real Estate Services Act, 2002*, S.O. 2002, c. 30, Sch C, formerly known as the *Real Estate and Business Brokers Act*, (the "Act"), is consumer protection legislation that governs the conduct of real estate sales agents and brokerages trading in real estate in Ontario.[1]

[18] The Act sets out a comprehensive scheme for the registration and supervision of parties involved in real estate transactions: brokerages, brokers and salespeople.

[19] Section 4 provides as follows:

> **4** (1) No person shall,
>
> (a) trade in real estate as a brokerage unless the person is registered as a brokerage;
>
> (b) trade in real estate as a broker unless he or she is registered as a broker of a brokerage;
>
> (c) trade in real estate as a salesperson unless he or she is registered as a salesperson of a brokerage; or
>
> (d) trade in real estate unless registered under this Act.

[1] Amendments that included renaming the Act were passed by the Ontario legislature on February 28, 2020, and came into effect on December 1, 2023. All of the sections of the Act that I quote below were in effect at the relevant time.

> Unregistered persons
>
> (2) A person who is not registered as a brokerage, broker or salesperson shall not,
>
> (a) directly or indirectly hold himself, herself or itself out as being a brokerage, broker or salesperson, respectively; or
>
> (b) perform any of the functions of a brokerage, broker or salesperson as provided in this Act.

[20] It is the brokerage who shall ensure that every salesperson and broker that the brokerage employs carry out their duties in compliance with the Act and the regulations: s. 26 of the Act.

[21] O. Reg. 567/05 (the "Regulation") sets out detailed requirements as to how brokerages, brokers and salespersons must conduct themselves related to matters including advertising (s. 12.1), information guides that must be given to the public (s. 13-13.1), the legibility of agreements (s. 13.2), the contents of representation agreements, trust accounts, conflicts of interest, disclosure requirements, what must be disclosed to clients (s. 22), and the management of brokerages (ss. 30-31.2).

[22] Notably, throughout the Regulation, all references to who employs the salesperson is the brokerage. There are 32 such references: ss. 1(1)(b)(i) and (ii); 1(6), 2(1) (where there are two such references); 9(4), 9(5)(b); 9(7) (where there are two such references];10(1) [where there are two such references);12.(3); 13(2)6; 13(2)11; 13(2)14; 13(2)15; 13.3(2); 22(5); 22.02(3)1; 22.02(5); 22.0.4(a); 22.0.4(d); 22.0.5; 30(1)(b) and (c); 31(1)(a) and (b); 31.1(1)(b); 31.1(2)(b); and 32(1), 33(1) and (2).

[23] There is no reference anywhere in the Act or Regulation that references the ability or permissibility of a salesperson to employ another salesperson.

[24] Indeed, pursuant to s. 31 no broker or salesperson shall trade in real estate on behalf of any brokerage other than the one that employs the broker or salesperson:

> Restrictions re: brokers and salespersons
>
> **31** (1) No broker or salesperson shall trade in real estate on behalf of any brokerage other than the brokerage which employs the broker or salesperson.
>
> Same
>
> (2) Except if the regulations provide otherwise and subject to the regulations, no broker or salesperson is entitled to or shall accept any remuneration for trading in real estate from any person except the brokerage which employs the broker or salesperson.

[25] The following definitions apply (s. 1(1)):

> "broker" means an individual who has the prescribed qualifications to be registered as a broker under this Act and who is employed by a brokerage to trade in real estate;
>
> "brokerage" means a corporation, partnership, sole proprietor, association or other organization or entity that, on behalf of others and for compensation or reward or the expectation of such, trades in real estate or holds himself, herself or itself out as such;
>
> **"salesperson"** means an individual who has the prescribed qualifications to be registered as a salesperson under this Act **and who is employed by a brokerage to trade in real estate**; [Emphasis added].
>
> "employ" means to employ, appoint, authorize or otherwise arrange to have another person act on one's behalf, including as an independent contractor; ("employer")
>
> "trade" includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for purchase and sale, exchange, option, lease, rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition, acquisition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt, and the verb "trade" has a corresponding meaning.

[26] When one puts all of this together it is clear that the legislative intention is that only brokerages can employ salespeople, which they can do either as employees or independent contractors.

[27] If a salesperson employed with a brokerage could employ another salesperson to conduct sales, that other salesperson would be engaged in trading of real estate. And yet, pursuant to s. 31(1), that other salesperson would not be permitted to engage in any such trading other than for the brokerage that employs that salesperson.

[28] In this case, the plaintiff was registered as a salesperson with Re/Max. The plaintiff claims to have traded real estate as an employee of the defendant who was not licensed as a brokerage. However, pursuant to the Act, the plaintiff was only allowed to trade in real estate on behalf of Re/Max. Sections 4(1)(c) and 31(1) would statutorily bar the defendant from employing the plaintiff.

[29] Further, pursuant to ss. 4(2)(b) and 31(2), it would have been illegal for the defendant to remunerate the plaintiff as her employer contrary to the claims in this proceeding: *Hammet v. Wilson*, [2025] O.J. No. 5737 (Ont. S.C.)

[30] Payment for services is a fundamental aspect of any legal employment relationship.

[31] Here, the plaintiff argues that payment was always made by Re/Max and as such, this does not result in a breach of s. 4(2)(b) and 31(2). However, this is to miss the point that these sections prohibit the salesperson from accepting compensation for trading from anyone other

than the brokerage. The very nature of a claim for reasonable notice damages implies that the compensation was received from the defendant which is not permissible.

[32] There are no cases where any salesperson has successfully sued another salesperson for breach of an employment or independent contractor relationship relating to the trading of real estate on behalf of another salesperson who "employed" that salesperson. This is because as per *Sutherland v. Toronto Regional Real Estate Board*, 2023 FC 1293, 485 D.L.R. (4th) 302, the trading of real estate is structured around the brokerage as the central legal entity. Salespeople are employed by a brokerage; all client relationships are formed with the brokerage and not with individual salespersons: *Sutherland*, at paras. 19-28.

[33] In particular, *Sutherland* confirms that listing agreements are between the brokerage and the client and not between the client and a particular salesperson or broker. Similarly, clients seeking assistance from a particular salesperson to sell their property also enter into a contract with the brokerage and not with the particular salesperson: *Sutherland*, at para. 28.

[34] The case *Re/Max Ontario-Atlantic Canada Inc. v. Registrar of Real Estate & Business Brokers et al.* (1986), 57 O.R. (2d) 354, 33 D.L.R. (4th) 125 (H.C.) does not assist the plaintiff. In that case, Re/Max brought an application seeking an order that the terms of the Act did not preclude the establishment of an independent contractor relationship between a broker and a salesperson. The court found that even though the Act uses the word "employer" and "employee", other provisions show that the words employer and employee are used in broad terms and could include an independent contractor relationship. As well, the court held that salespersons in nearly all facets of commercial life are not precluded from being engaged as independent contractors. It is unclear how this case assists the plaintiff. It did not relate to salespersons employing other salespersons at a brokerage, but rather the legal status of those persons "employed" by a brokerage *vis a vis* that brokerage.

[35] The case *Khouri v. The Agency Brokerage Inc*., 2023 ONSC 3927, 2023 A.C.W.S. 3088 also does not assist the plaintiff. In that case, the plaintiff was a salesperson who had an independent contractor relationship with a brokerage. He entered into an agreement to split commissions with a more established salesperson, who was also a managing partner of the brokerage. The defendant indicated that he had entered into this agreement because he needed help with his busy schedule. This agreement would permit the plaintiff to share in his luxury listings, make connections, and earn significant commissions. The plaintiff became dissatisfied with the brokerage, resigned, and joined another one. He then sought to invalidate the agreement to split his commissions because he wanted to make a claim for higher commissions with respect to two transactions in which he was involved before he resigned. The plaintiff argued there was no consideration, and the agreement was in restraint of trade. The court held that the agreement to split the commissions was enforceable.

[36] *Khouri* did not involve any finding that the plaintiff was an employee or independent contractor entitled to reasonable notice damages, nor did the court consider any of the legislative provisions above. *Khouri* involved only the enforcement of an agreement between the two agents to split commissions which is a common practice in the industry as confirmed by the evidence before me. This case is not analogous. There is nothing in the Act that prohibits splitting commissions.

[37] What is particularly important is the court's view in *Khouri* that once the plaintiff left the brokerage, the commission split agreement was spent because commission splitting was not possible if a salesperson went to another brokerage by virtue of s. 31:

> [48] The conclusion that the Split Agreement is spent is supported by section 31 of the Act. Under this provision, a salesperson can only accept payment of commission from the brokerage that employs them. As a result, commission splitting is not possible if a "team member" is at a different brokerage. Given that the entire object of the Split Agreement is commission splitting, it could not have been intended that it would continue to apply after a team member joined a different brokerage.

[38] See also *Forest Hill Real Estate v. Harvey Kalles Real Estate Limited*, 2010 ONCA 884, 196 A.C.W.S. (3d) 697. In that case, two real estate agents who worked on a transaction together agreed to a commission split wherein one agent received 70% of the commission and the other agent received only 30% of the commission. While the court upheld the commission split agreement, it did not indicate that this created any employment relationship.

[39] Thus, while it is certainly permissible for salespeople to enter into agreements with other salespeople at their brokerage to work together on their listings and then split their commissions, neither *Khouri* nor *Forest Hill Real Estate* nor *Re/Max Ontario-Atlantic Canada Inc.* stand for the proposition that such agreements result in one salesperson becoming an employee of the other, with a right to sue for wrongful dismissal if the parties ultimately cannot work together.

[40] It is notable that the plaintiff agrees in her factum that it is not legally permissible for one salesperson at a brokerage to employ another salesperson at that brokerage. However, she says that this does not bar this action because all this means is that if the parties had entered into a legally impermissible employment relationship, this would simply entail issues as to how they should be disciplined for violating the Act and Regulation. She argues that the Act and Regulation do not impact whether there can be a common law relationship whereby a salesperson at a brokerage becomes the employee of another salesperson.

[41] I disagree.

[42] In *Still v. M.N.R. (C.A.)*, [1998] 1 F.C. 549, 154 D.L.R. (4th) 229 (F.C.A.), the court stated:

> It is said that if the contract is expressly or impliedly prohibited by statute, the court will not enforce it regardless of whether the parties intended to break the law. That is to say it is immaterial whether the illegal actions were accidental, deliberate, serious or trivial. Above all the argument is that ignorance of the law is not an acceptable reply to a defence of illegality.

[43] See also *Horizon Resource Management Ltd. v. Blaze Energy Ltd*., 2011 ABQB 658, 526 A.R. 206, at para 516.

[44] Here the plaintiff argues that even if the alleged employment relationship violated the Act, the alleged contract should not be void or voidable because enforcement of such an agreement would not undermine the Act's purpose of ensuring that real estate transactions are completed through registered brokerages in a transparent manner that protects the public.

[45] Again, I disagree.

[46] As set out above, pursuant to s. 26 it is the brokerage who has the responsibility to ensure that brokers and salespeople comply with the Act. This is also set out in ss. 30 and 31 of the Regulation which requires the brokerage to designate a broker of record to actively participate in management, ensure the proper level of supervision for brokers and salespeople and take reasonable steps to deal with failures to comply with the Act or the Regulation. Overall, this is to ensure legal accountability, mandatory supervision, consumer protection, and ultimately to prevent illegal activities like fraud, misrepresentation, and breach of trust.

[47] If a salesperson within a brokerage could directly employ another salesperson, they would be usurping the brokerage's statutory duty to supervise and be responsible for the "employed" salesperson's actions because as employer, the salesperson would also have control over their "employee salesperson". It would mean that there are two different entities responsible for such supervision, one statutorily mandated and the other pursuant to a private arrangement. It would mean that the chain of accountability would be broken, potentially making it difficult to hold anyone responsible for any breaches.

[48] Any such finding in this case would also have significant and far-reaching ramifications for the industry. It would mean that the court is blessing the ability of all salespeople to employ other salespeople at their brokerages, contrary to the express legislative intention.

Issue 2: Would the facts and circumstances of this case satisfy the test for employment or being a dependant contractor if this was legally permissible?

Intention to Create Either an Employment or Contractor Relationship

[49] In her Statement of Claim, the plaintiff alleged that her relationship with the defendant was an employment relationship. She also alleged that she was "employed" by Re/Max but then amended her claim to remove that allegation. Then, at the return of the motion for summary judgment, she argued that in the alternative, the relationship was a dependant contractor relationship. She did not amend her Statement of Claim to make that argument.

[50] The plaintiff initially relied only upon caselaw where the issue was whether the contract entered into was one of employment or an independent or dependant contractor relationship.

[51] The cases cited were not entirely determinative because the defendant in this case disputes altogether the existence of any legal relationship apart from the parties' agreement to share commissions on listings where they worked together. There are no written agreements of any sort and no direct evidence of an offer and acceptance with respect to any employment or contractor relationship or the express terms of any such relationship.

[52] In response to the court's questions in this regard, the plaintiff referenced *O'Reilly v. ClearMRI Solutions Ltd*, 2021 ONCA 385, 460 D.L.R. (4th) 487 at para. 52, where the court confirmed that the common law's approach to contractual formation is objective and that the requisite intention to create legal relations can be inferred from the parties' conduct. What is relevant is how each party's conduct would appear to a reasonable person in the position of the other party: *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29, [2020] 3 S.C.R. 247 at para. 33.

[53] While it is true that intention to contract can be inferred from conduct, I note that the case *O'Reilly v. ClearMRI* involved a group of companies and whether the company at the top, Tornado Medical Systems, could be considered a common employer even though the plaintiff did not have a written contract with that company. The plaintiff did have an express contract of employment with another company in the group. In considering whether there was an intention to contract between the plaintiff and Tornado Medical Systems, the court noted that there was a variety of conduct that could be relevant to whether there was an intention to contract, but in that case the most important considerations were where effective control over the alleged employee resided and the existence of an agreement specifying an employer other than the alleged common employer: *O'Reilly v. ClearMRI* at paras. 53-59.

[54] The court indicated that the circumstances must reasonably permit the inference that there was an intention that the alleged common employers would also be parties to the employment agreement. And to do this the court must further consider whether the individual had a reasonable expectation that he was in an employment contract with the purported employer. Again, all of this is to be determined objectively, and the parties' subjective intentions are irrelevant.

[55] Ultimately the court reversed the summary judgment decision and concluded that Tornado Medical Systems was not a common employer. The evidence did not demonstrate an intention to contract on an objective basis even if the employee did have some dealings with Tornado Medical Systems.

The Objective Facts Support the Conclusion that the Agreement Between the Plaintiff and Defendant is that they Would Share Commissions on any Listings they Worked on Together

[56] The objective facts before me do not support the existence of any intention that the plaintiff and defendant form any contract apart from sharing commissions as coworkers while they were both employed with the same brokerage and worked on the same transactions.

[57] I take into account the following in arriving at this conclusion:

- The most significant fact relevant to the parties' objective intentions is s. 31 of the Act which precludes a broker or salesperson from trading in real estate except for with a brokerage that employed them and which also precludes a salesperson from accepting remuneration except from the brokerage that employs them. This applies whether or not the salesperson is an employee or independent contractor. The parties' reasonable expectations and objective intention must incorporate the legislative provisions that bind them.

- Despite over 17 years of dealings, there are no emails or other communications where the defendant offers to employ or retain the plaintiff as a contractor or where she accepts any offer of such nature. There are no emails where the defendant asks the plaintiff to work "for" her or seeks to negotiate the terms of such an arrangement.

- In fact, in an email dated November 28, 2008, which would have been around the beginning of the relationship, the plaintiff referred to her relationship with the defendant as a partnership:

  > I truly want nothing more than to help make this partnership between Stacy and I work to for her, and me, and Remax!

  Calling their relationship a partnership is significant. Even colloquially the concept of partnership connotes a relationship of working together, rather than one of subservience.

- While an old business card prepared by the plaintiff did identify the plaintiff as a Buyer Representative for the defendant, a more recent one the plaintiff prepared herself in 2020 identified both the plaintiff and defendant as sales representatives for Re/Max. Additionally, even the business card that showed her as a Buyer Representative for the defendant showed that they also both worked under Re/Max.

- The broker of record for the Re/Max brokerage, Ms. Keen, gave evidence that it is common in the industry for salespeople to work together at a brokerage and share commissions in this way. The Re/Max brokerage's sole owner and President, Daniel Sarafian, also gave similar evidence. This practice is even set out in Re/Max's standard real estate agent contract for services. Specifically, the defendant's contract permits her to share her commission with another Re/Max sales agent. The contract also provides that all commissions are to be held in trust and paid directly to the applicable Re/Max agent. While the plaintiff did not have a formal written agreement with Re/Max, this is not relevant as she admits that she was employed with Re/Max and that she and the defendant both worked under the umbrella of Re/Max as independent contractors.

- The plaintiff also confirmed that the practice of sharing commissions exists in this industry.

- The representation agreements entered into by clients are with Re/Max, not with either the plaintiff or the defendant. Thus, in law the commission was payable by the clients directly to Re/Max not to either the plaintiff or defendant.

- After a property was sold the plaintiff and defendant would together submit a document to Re/Max which set out how the commission would be paid out. Then Re/Max would pay them each their commission as jointly requested. Thus, the defendant did not even remunerate the plaintiff which is a key element of an employment relationship or a contract for services.

- While the evidence presented by the plaintiff may demonstrate long-term performance, it is long-term performance of an agreement to work together and share commissions when they did. As noted in *Khouri*, at paras. 59 to 60, the opportunity to participate in an established salesperson's listings, develop relationships with high-value clients, and earn commissions constitutes a benefit to a junior agent. In this case, the plaintiff benefitted from this relationship with the defendant. Again, in *Khouri*, this was found to be an agreement to share commissions while at the same brokerage, which was then spent once one of the salespeople left the brokerage, not an agreement that resulted in a dependent contractor categorization or employment relationship where reasonable notice had to be given: *Khouri*, at para. 44.

- As well, s. 9(1) of the Regulation specifically provides that a salesperson's registration must include information as to the sales agent's "employer". The definition of "employ" in the Act includes both the classic definition of employee as well as independent contractors. Despite the obligation to put her best foot forward, the plaintiff provided no evidence that she provided the registrar the defendant's identity as her employer or that the registration reflects this.

The Plaintiff Was Not the Defendant's Employee

[58] If I am wrong and the facts support the conclusion that the parties' intention was to go beyond the mere agreement that they work together as a team and share commissions, under the rubric of Re/Max, I would conclude that the plaintiff was not an employee or dependant contractor. The most that she could be considered to be is an independent contractor not entitled to any reasonable notice.

[59] The central question in determining whether an individual is an employee or a contractor is whether the person who has been engaged to perform the services is performing them as a person in business for their own account or on behalf of the purported employer. In that context, a significant factor is the level of control the purported employer has over the worker's activities. Other factors include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks: *671122 Ontario Ltd. v. Sagaz Industries Inc.*, 2001 SCC 59, [2001] 2 S.C.R. 983 at para. 47.

[60] Ms. Keen was the broker of record. By law, it was Re/Max and Ms. Keen who were in the position to control the plaintiff's activities. See ss. 26, 30, and 31 of the Act. The plaintiff herself agreed that Re/Max had the authority to discipline her.

[61] Further, the evidence does not support the conclusion that the defendant controlled the plaintiff.

[62] If the defendant was indeed controlling what the plaintiff did with respect to listings, one would have expected that there might be at least one or two emails over the course of 17 years where the defendant provided the plaintiff with explicit instructions on how to deal

with customers or how to do showings or what she was and was not allowed to do. However, there are none. There is no evidence that the defendant controlled her hours of work, or about what holidays she was permitted to take, how she expected the plaintiff to do her work, or how her work would be reviewed.

[63] The defendant did convey complaints from clients, but this makes sense because these were the defendant's clients and it would be natural for a client to reach out to the defendant, whom they had been dealing with, instead of Re/Max management.

[64] With respect to her income, as a Re/Max sales agent, the plaintiff was free to seek to obtain her own listings and earn her own commissions which she could have done apart from the defendant. There are no contemporaneous documents at all showing that the defendant or Re/Max tried to restrict what the plaintiff could do.

[65] Although the plaintiff says the defendant determined the commission split on listings where they worked together, the plaintiff agreed that it would be normal practice for the person who brought in the listings to determine the commission split on them. As noted, the defendant brought in most of the listings and so was in a position to determine the commission split. The plaintiff brought in some listings, which means that no one was stopping her from doing so. Thus, the plaintiff had control over her income to the extent that she could have been bringing in her own listings and could determine any commission split for any such listings if she had the defendant or anyone else assist. It was the plaintiff's responsibility to develop her own clientele independent of the defendant.

[66] As well, it was the work that both the plaintiff and defendant did on the listings and sales together that resulted in commission that they shared. That is, the plaintiff did showings and otherwise sought to sell the properties. Thus, she had control over her own income because through her own work, she influenced the outcome of the listings and sales that they shared.

[67] While the defendant said that the compensation and commission structure was established and updated from time to time by the defendant, there are few particulars to support this. The only document or details that she has provided that set out any commission structure appears to be attached to an email dated February 9, 2019. The email exchange shows that there was a collaborative discussion about the commission split and referenced what would happen in a variety of circumstances. In most instances, the commission split in this document was exactly the same. The exceptions appear to be those situations where one of the parties was away and the other listed it, or if one party was away and their listing was sold to someone who was not their buyer.

[68] Other relevant factors that show this was not objectively an employment relationship are as follows:

- The defendant did not provide the plaintiff with a place of work, a desk, a laptop, cellular phone, or other tools to conduct business.

- There is no evidence of any performance reviews.

- The plaintiff complained to the defendant about her contractual terms with Re/Max and how much they were taking from her at the beginning of every year. This shows that she understood her contractual relationship with Re/Max and that remuneration was from Re/Max.

- When the defendant no longer wished to work with the plaintiff on listings, the defendant sought permission from Ms. Keen. The defendant would not have done this if the plaintiff were her own employee. Ms. Keen told her that as they were both independent contractors they could both continue working for Re/Max, but that she would not expect them to work with each other on any future sales. This was not the first time Re/Max had dealt with a situation where salespeople could no longer work together cooperatively. Ms. Keen also indicated that it is common in the industry for salespeople at a brokerage to decide they will no longer work together.

- The plaintiff admits that it was Ms. Keen who directed the plaintiff to remove any reference to the defendant from the plaintiff's emails. The plaintiff says she complied because Ms. Keen was the broker of record.

- The plaintiff confirmed that her employment with Re/Max did not end after she stopped working on transactions with the defendant.

- There is no evidence that she asked the defendant for a record of employment.

- The defendant made no deductions for CPP or EI.

[69] There is some dispute on the record as to whether the plaintiff was told to use the defendant's branding including on her website, business cards, and by identifying herself as a Buyer Representative for the defendant in emails that she signed as such.

[70] The defendant indicated that the branding "Stacey Kearley and Associates" was the branding and logo that she used and that she used the term associates as part of how she described and advertised those who worked with her including "team, associates, co-workers". The defendant agreed that the plaintiff was associated with the defendant's team and brand and had no objection to her using this brand.

[71] Even if the plaintiff was told to use the defendant's branding, website, and marketing materials, this objectively made sense because she was servicing clients that the defendant brought in. These facts, in the context of the industry practice of realtors to work together and share commissions, do not demonstrate that there was an employment relationship. Rather, they are consistent with the conclusion that the agreement between the plaintiff and defendant was that the plaintiff could work on the defendant's listings and share commissions, which is a common occurrence in the industry.

[72] Further, this branding was still under the rubric of Re/Max. The business cards noted that they both worked under Re/Max. The emails where the plaintiff identified herself in this manner also showed that she worked under the rubric of Re/Max.

[73] There is also some dispute on the record regarding certain facts alleged by the plaintiff that are not believable in the context of the facts before me.

[74] The plaintiff alleges that when she met with the defendant in July 2023, the defendant told her that she was being "terminated". She also says that the defendant threatened to fire her in the past and referred to herself as the plaintiff's boss. These allegations make little sense given the evidence before me from both the defendant and Ms. Keen that the defendant went to Ms. Keen to tell her that she no longer wished to work with the plaintiff and to essentially seek permission. She would not have done this if the defendant were her own employee.

[75] As well, there are no contemporaneous communications before me over the course of 17 years that support these allegations.

[76] While the plaintiff references the defendant's "incessant" and "unreasonable" demands that she complied with, which she says was to her own detriment, there are no particulars here of what she means or what demands these were.

[77] Finally, there are also some concerning aspects to what the plaintiff did following the defendant telling her that she no longer wished to work with her, which suggests that she was trying to retroactively build a record to establish documentation to support her claim.

[78] The defendant says that when she told the plaintiff that she no longer wished to work with her, the plaintiff began shouting profanities and said that the defendant would be sorry. Seven weeks following their conversation the plaintiff wrote to the Toronto Real Estate Board ("TREB") and advised that she no longer worked for the defendant. The defendant also gave evidence that the plaintiff later updated her LinkedIn profile to change her profile to state that she was a "Buyer Representative" for the defendant while also working at Re/Max.

The Plaintiff was not a Dependant Contractor

[79] If I am wrong, and the plaintiff could be considered a contractor for the defendant, that still would not entitle her to reasonable notice. She would have to be a "dependant" contractor.

[80] I find that she was not.

[81] In *McKee v. Reid's Heritage Homes Ltd*., 2009 ONCA 916, 315 D.L.R. (4th) 129, the court explained that the dependant contractor category typically arises where there is complete or near-complete exclusivity or a high degree of exclusivity in the relationship, such that the worker's livelihood is wholly or substantially reliant on a single source: paras. 24-30. Many of the cases cited involved permanency. This category exists to protect workers who may formally be "contractors", but who are in a position of economic vulnerability: para. 36.

[82] In *Keenan v. Canac Kitchens Ltd*., 2016 ONCA 79, 263 A.C.W.S. (3d) 395 the plaintiff husband and wife were full time employees for Canac who were then called into a meeting and told that they would have to continue as contractors but for all intents and purposes their working relationship with the employer and their duties remained unaltered. They began to do some work for another company because the work for Canac had declined. However,

their income continued to be primarily from Canac, and the company turned a blind eye to this other work they were doing. They were terminated without notice because Canac took the position that they were independent contractors. It had nothing to do with the other work they were doing.

[83] The court indicated that exclusivity, while not determinative on its own, is a central factor in determining whether a contractor is dependent, together with the duration and permanency of the relationship, the worker's level of control and the extent to which the worker was integrated into the purported employer's business. It also held that exclusivity is not to be determined based on a snapshot, rather it is tied to economic dependency and must involve a full history where the court must assess whether the worker was economically dependent on the other party due to a high level of exclusivity: paras. 25-26.

[84] In *Keenan*, it was relevant that for more than 31 years, the plaintiffs worked exclusively for Canac even if they began doing some work in the final years for other companies. This work was for a short period only and because of a slowdown in the work being given to them by the employer. There was evidence that for that 31-year period, 97.5% of the plaintiffs' income was from employment with Canac. In all but two years they worked exclusively for Canac.

[85] The plaintiff did not plead that she was a dependant contractor. I agree that it is improper and unfair to advance this position in the factum alone: *Hav-A-Kar Leasing Inc. v. Vekselshtein*, 2012 ONCA 826, 225 A.C.W.S. (3d) 237 at para. 69; *Midland Resources Holdings Ltd. v. Shtaif,* 2017 ONCA 320, 135 O.R. (3d) 481 at para. 110. While the cases cited by the defendant relate to defences not pled, the same principle applies. That is, by failing to plead facts related to this issue, the plaintiff did not give notice to the defendant it had to lead evidence or cross examine to address the claim that the plaintiff was a dependant contractor.

[86] By failing to raise this in a timely manner, file her own evidence in support of this issue, and bring a motion to amend, the plaintiff has also failed to put her best foot forward.

[87] Even if this had been pled, the evidence and facts before me do not satisfy the test.

[88] The plaintiff says that she was dependent on the defendant because the defendant was the primary source of her work in terms of listings and clients and thus the primary source of her income.

[89] However, the plaintiff failed to provide any evidence other than the bald assertion that most of her income came from the defendant's listings. She did not provide tax returns, or specific evidence of the listings and what she earned from them over the years showing that the bulk of her income came from the defendant's listings. And she did not do this in the face of the defendant's evidence that the plaintiff worked with other agents, earning commissions and that she generated repeat and new business of her own accord.

[90] There is also not a single piece of contemporaneous written communication before me that supports the conclusion that the defendant prevented the plaintiff from developing her own brand or seeking listings on her own. Again, the plaintiff admitted that although it was

infrequent, she did obtain some of her own listings, which means there was no bar to her doings so.

[91] As well, while she says that she was not permitted to grow her own brand, there is no specific evidence that she ever tried to grow her own brand and was told to stop. It is also unclear how the defendant could have stopped her. Had she tried, the plaintiff could have complained to Ms. Keen, the broker of record or the registrar under the Act.

[92] There is also no evidence of exclusivity or guarantee of work. Again, the plaintiff was an independent contractor with Re/Max who could have sought to develop her own brand, obtain her own listings and earn her own commissions. She chose not to.

[93] In my view, the plaintiff preferred to rely on the defendant's brand and listings instead of doing the work to generate her own brand and generate listings of her own. She was free to do this, but she cannot after the fact complain that this entailed any unfairness to her or argue that this confers upon her the status of being a dependant contractor.

[94] If there was any dependency, it was self-imposed.

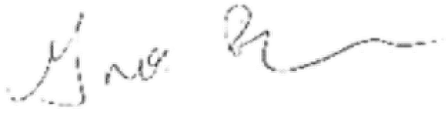
[95] In *Thurston v. Ontario (Children's Lawyer)*, 2019 ONCA 640, 437 D.L.R. (4th) 111, the court concluded that the plaintiff was not a dependent contractor for reasons including that the plaintiff's contract contemplated she would continue her private practice, she did continue to operate her private practice, and she was not guaranteed a minimum number of files or work. As well, while the defendant could control the work done for the defendant, the defendant could not control the general work done by the plaintiff that was not for the defendant.

[96] These factors all apply here too.

Disposition and Costs

[97] The motion is granted, and the case is dismissed.

[98] I encourage the parties to settle costs. If they cannot the defendant may make cost submissions within 7 days followed by the plaintiff within 7 days thereafter.



Papageorgiou J.

Released: June 9, 2026

CITATION: Stanyar v. Kearley, 2026 ONSC 3406
COURT FILE NO.: CV-23-00704655-0000
DATE: 20260609

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

TANYA STANYAR

Plaintiff

– and –

STACY KEARLEY

Defendant

REASONS FOR DECISION

Papageorgiou J.

Released: June 9, 2026