

certainty of contract prevails: trial judge erred in enforcing an implied contractual term

It should not come as a surprise to anyone that the terms of a contract matter. Courts, however, are sometimes inclined to base the obligations of contracting parties on what the court perceives to be "reasonable" or "fair" rather than on what the terms of the contract actually say. But a recent decision of the Divisional Court confirms that a party should not be held to account for obligations it did not accept, especially where such obligations conflict with what the parties have expressly agreed to in writing.

background

In *Zimon v Turnbull*¹, a homeowner hired an interior designer and project manager to design and oversee renovations to her home. The parties put their contract in writing. In the written contract, the parties agreed that no warranty would be provided against defects in products and workmanship supplied by contractors to the renovation.

The homeowner, Turnbull, refused to pay Zimon the \$20,000 balance owing at the end of the \$40,000 renovation. She was dissatisfied with some of the work and complained that the door of

¹ *Zimon v Turnbull*, 2012 ONSC 6650.

a custom-built armoire did not close properly and that one of the contractors had damaged certain carpet.

Zimon sued for the balance owed. Turnbull counterclaimed for the cost of the repairs.

the decision at trial

The trial judge dismissed both the claim and the counterclaim. She acknowledged that both parties agreed that Zimon did not warrant the supplied products or contractors' work. However, the trial judge implied a term into the contract requiring Zimon to provide warranties and information about the contractors to Turnbull. She held that Zimon breached the contract when he failed to provide this information, which would have enabled Turnbull to seek remedies under contracts made directly with the contractors.

The trial judge rationalized her decision as follows:

An appropriate result in this proceeding, in my view, is that the plaintiff receive no further money and that the defendants not be compensated in damages. I find that neither party has necessarily behaved in a reasonable way...

Zimon appealed.

the decision on appeal

The Divisional Court set aside the trial decision.

A unanimous Court held that it was an error in law to imply a term into the contract requiring Zimon to provide information about the contractors to Turnbull in face of clear language in the written agreement indicating that Zimon was not providing any warranty himself. Zimon was therefore entitled to be paid.

Zimon was awarded judgment for the unpaid balance of \$20,000 plus pre- and post-judgment interest.

contractual relationships are governed by the terms of the contract

This case serves as a reminder that the terms of a contract cannot be ignored. Along with the freedom parties have to govern their relationship by the terms of a contract should come some certainty that a court will enforce those terms. The result in *Zimon v Turnbull* bolsters that certainty. Courts are unlikely to weigh into a contract's perceived substantive fairness except in special cases, none of which appear to have been present here.

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a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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