

## SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-17-035936-072

DATE: February 16, 2012

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**IN THE PRESENCE OF: THE HONOURABLE LOUIS-PAUL CULLEN, J.S.C.**

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**GROUPE SUTTON ROYAL INC.**

Plaintiff

v.

**9089-5004 QUÉBEC INC.**

and

**JIAN CHEN WANG**

Defendants

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### JUDGMENT

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[1] Groupe Sutton Royal Inc. ("Sutton") alleges that Mr. Jian Chen Wang failed to honour his promise to purchase a commercial property and claims its commission on the aborted sale.

[2] Mr. Wang denies liability, alleging that he refused to buy because the property's annual revenues were significantly less than what Sutton had indicated.

[3] Moreover, Mr. Wang seeks compensation for the costs and inconveniences that the principal demand has caused him.

## I- THE FACTS

[4] In April 2007, Mr. Wang sold the convenience store that he owned in Montreal.

[5] He was interested in buying a motel.

[6] He asked Mr. Pinto, a real estate agent with whom he was acquainted, to inform him if something interesting came up.

[7] In July 2006, 9089-5004 Québec inc. (the "Owner"), represented by Ms. Diane Godin, gave to Sutton an exclusive mandate for the sale of the "Complexe Rustique" motel in St-Adèle (the "Property").

[8] The Property included 51 rooms available for daily or monthly rent, a restaurant and a sport complex. In July 2006, the restaurant was in operation, but the sport complex was closed.

[9] The asking price was \$1,450,000. The commission was 5 % of the agreed sale price,<sup>1</sup> plus applicable taxes.<sup>2</sup>

[10] In September 2006, the Owner extended the term of Sutton's mandate to April 30, 2007.<sup>3</sup>

[11] In early October 2006, Mr. Pinto showed Mr. Wang a detailed report of the Property prepared by Sutton.<sup>4</sup> According to this report, the Property's *potential* gross annual revenues were \$435,000, whereas its annual expenses totalled \$232,730.

[12] Mr. Pinto explained the report to Mr. Wang who asked him for clarification when required. Although Mr. Wang read English, he testified that he did not understand what the word "potential" meant nor did he ask Mr. Pinto to explain its meaning.

[13] Mr. Giuseppe Geroue, Sutton's agent, testified that he had estimated the Property's potential gross annual revenues on the basis of an average of its annual revenues appearing in the Owner's annual financial statements for the previous three years,<sup>5</sup> plus a minimum of \$42,000 annually (or \$3,500 per month) for the rental of the restaurant, which was operated by a friend of the Property's previous owner without paying any rent.<sup>6</sup>

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<sup>1</sup> P-1, Clause 7.1.

<sup>2</sup> *Ibid.* Clause 7.3.

<sup>3</sup> P-1.

<sup>4</sup> D-9.

<sup>5</sup> D-2A, D-2B and D-2C.

<sup>6</sup> As we shall see, the Property's annual revenues as reported in the Owner's financial statements were of \$408,559, \$380,365 and \$353,929 respectively, or \$380,951 on average, for the years ending March 31, 2004, 2005 and 2006. Adding \$42,000 to such average equals \$422,951.

- [14] Mr. Wang asked Mr. Pinto to arrange a visit.
- [15] Mr. Wang and his wife, accompanied by Mr. Pinto, Ms. Godin and Mr. Geroue visited the Property in mid-October 2006.
- [16] The restaurant and sport complex were closed.
- [17] Mr. Wang visited five or six rooms and inquired about occupancy. Winter and Summer were the Property's high seasons. Mr. Geroue evoked potential additional revenues from the restaurant.
- [18] Mr. Wang was interested in buying.
- [19] Days later, the same persons returned for a second visit.
- [20] Mr. Geroue showed to Mr. Wang the Owner's annual financial statements for the years ending March 31, 2004, 2005 and 2006, and told him that he would be given a copy of these documents if he offered to purchase the Property.
- [21] According to Mr. Wang, Mr. Geroue also told him that in addition to the revenues indicated in the Owner's annual financial statements for the year ending on March 31, 2004, the Property had also generated that same year cash revenues of \$50,000. Mr. Geroue denied having ever made that statement.
- [22] On Mr. Wang's instructions, Mr. Pinto completed a printed form issued by the *Association des courtiers et agents immobiliers du Québec* for a promise to purchase.
- [23] The form's only sentence in bold type appears in paragraph 10.1:
- 10.1 The parties declare that their consent to this PROMISE TO PURCHASE is not the result of any representation or condition not contained herein. (...)**
- [24] Mr. Wang was thus alerted that the only binding representations or conditions were those stipulated on the printed form as completed by Mr. Pinto.
- [25] Pursuant to the completed form, Mr. Wang conditionally promised to purchase the Property at a price of \$1,250,000 (the "Conditional Promise").<sup>7</sup>
- [26] The method of payment was described in an annex: Mr. Wang would remit to Sutton a \$50,000 deposit, pay \$350,000 by cheque to the notary, assume a second mortgage for \$150,000 and pay to the Owner the balance of \$700,000 with interest at 7 % per year.

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<sup>7</sup> P-2.

[27] The deposit was to be made pursuant to the terms of paragraph 4.2 of the Conditional Promise:

4.2 **DEPOSIT** With this PROMISE TO PURCHASE, the BUYER remits to the intermediary referred to above [Les Immeubles Kronos Inc. represented by Mr. Pinto], as an instalment on the sale price to be paid, the sum of FIFTY THOUSAND dollars (\$50,000) by cheque payable to the order or "Groupe Sutton - Royal Inc. in trust" (hereinafter called the TRUSTEE). Following the acceptance of this PROMISE TO PURCHASE, the cheque may be certified and shall be given to the TRUSTEE, who shall deposit it into a trust account until the signing of the act of sale, whereupon that sum shall be applied against the purchase price. As soon as he has deposited that sum into a trust account, the TRUSTEE shall give the depositor a receipt. Should this PROMISE TO PURCHASE become null and void, the TRUSTEE shall immediately refund the deposit to the BUYER without interest. Otherwise, the TRUSTEE may use the deposit only in accordance with this PROMISE TO PURCHASE.

[28] The act of sale would be signed before the Owner's notary on or before December 11, 2006.

[29] The Conditional Promise was subject to the following conditions:

8.1 This offer is conditional upon verifying financial statements for the 3 last consecutive years and building inspection with (sic) satisfaction of buyer. The buyer has 10 days from the acceptance of this offer to get a second mortgage of \$150,000. All condition (sic) have to be waived in 15 (fifteen) days.

[30] Mr. Wang testified that he decided to offer \$1,250,000 because he was not prepared to pay more than three times the Property's annual revenues (3 X \$435,000 = \$1,305,000). He added that he intended to verify its financial statements for the three years ending in October 2006<sup>8</sup> because the restaurant and sport complex were closed in 2006, whereas they had been open previously.

[31] No mention was made in the Conditional Promise of the Property's actual or potential annual gross revenues or of its net income after operating expenses but before taxes and financing costs.

[32] Mr. Wang read the Conditional Promise and signed it on October 27, 2006.

[33] The Owner accepted the Conditional Promise on October 29, 2006.

[34] On November 1, 2006, Mr. Geroue gave Mr. Wang a copy of the Owner's unaudited annual financial statements for the years ending March 31, 2004, 2005 and

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<sup>8</sup> At paragraph 1 of his Defence, Mr. Wang alleges that "we asked for the last three consecutive year's financial statement: October 2004 – October 2006". [Emphasis added.]

2006, which indicated the Property's annual revenues from April 1, 2002 to March 31, 2006:<sup>9</sup>

**ANNUAL REVENUES AS AT MARCH 31**

2003	2004	2005	2006
<b>\$392,756</b>	<b>\$408,559</b>	<b>\$380,365</b>	<b>\$353,929</b>

[35] The Property's annual operating expenses were reported as follows:

**OPERATING EXPENSES**

2003	2004	2005	2006
<b>\$363,530</b>	<b>\$385,456</b>	<b>\$365,296</b>	<b>\$288,229</b>

[36] These expenses included annual rent of \$108,000 for the years ending on March 31, 2003, 2004 and 2005. In 2006, however, the rent was \$27,000. Note 13 to the financial report for the year ending on March 31, 2005 explained this change: the Property had been rented until its purchase, on July 8, 2005, for the sum of \$1,245,000.

[37] Mr. Wang would have no rent to pay if he purchased the Property, although he would incur financing costs.

[38] Subtracting the rent from the Property's annual operating expenses confirmed that the Property was profitable, before financing costs:

**NET ANNUAL INCOME AFTER SUBTRACTING RENT**

2003	2004	2005	2006
<b>\$137,226</b>	<b>\$131,103</b>	<b>\$123,069</b>	<b>\$92,700</b>

[39] The downward income trend was clear and significant.

[40] At that point in time, Mr. Wang did not yet know his financing costs, but he continued to be interested in purchasing the Property.

[41] The Owner's financial statements were written in French and Mr. Wang reads little if any French.

[42] Mr. Wang nonetheless immediately asked Mr. Geroue for financial statements from April to October 2006 and Mr. Geroue agreed.

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<sup>9</sup> D-2.

[43] One or two days later, Mr. Wang asked Mr. Pinto to obtain this information. On November 4 or 5, 2006, Mr. Wang and Mr. Pinto met with Mr. Genoue at Mr. Pinto's office. Mr. Genoue again agreed to provide this financial information.

[44] Mr. Wang was unable to obtain a second mortgage, but was certain that he could obtain a first mortgage.

[45] On November 10, 2006 Mr. Wang signed "Amendments" to the Conditional Promise (the "November Amendments"), the only relevant portion of which reads as follows:<sup>10</sup>

Re: (1) Clauses 7.1 [signing of the act of sale] and 7.2 [adjustments] of (...) [the Conditional Promise] should be extended until December 15, 2006 (2) Clause 8.1 to be removed within two weeks (3) First final mortgage approval of Société Interfinancement Interbay should be extended until December 15, 2006 (...)

[46] Mr. Wang had not received the financial information for the seven months of April to October 2006. The November Amendments nonetheless made no specific reference to that information.

[47] The Owner accepted the November Amendments on November 11, 2006.

[48] On November 27, 2006, Sutton faxed a letter to Mr. Wang's real estate broker indicating that the Owner now considered that the conditions of the Conditional Promise regarding the financial statements and the building inspection had been "waived".<sup>11</sup>

[49] Mr. Wang testified that he only learned of that letter when Sutton served its action.

[50] Mr. Wang again visited the Property on November 28, 2006. Mr. Geroue told him that the restaurant could be sold for \$650,000, that it would be possible to build 30 condominium units next to it, and that the Property's monthly revenues from rooms rented on a monthly basis totalled \$9,000 in addition to the revenues generated from daily room rentals.

[51] Mr. Wang testified that he believed that the (gross) monthly revenues of \$9,000 alone (or \$108,000 per annum) would suffice to pay the mortgage.<sup>12</sup>

[52] On December 15, 2006, Mr. Wang was informed that he could obtain a first mortgage.

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<sup>10</sup> P-3.

<sup>11</sup> P-4.

<sup>12</sup> At that time, Mr. Wang was not yet informed of the terms of his first mortgage loan.

[53] Pursuant to the November Amendments, the term for the building inspection had expired in November. Mr. Wang nonetheless gave instructions for a building inspection, which was carried out on December 17, 2006.<sup>13</sup>

[54] He also instructed Mr. Pierre Papillon, C.A., to confirm the revenues indicated in the annual financial statements as well as the Property's monthly revenues from April to December 2006.<sup>14</sup> Mr. Wang's instructions regarding financial statements after October 2006 unquestionably exceeded the terms of the Conditional Promise as well as those of the November Amendments.

[55] On December 19, 2006, Mr. Wang received the building inspection report. It indicated, among other things, that the roof leaked (as was visible in photographs), that drain pipes were corroded and leaked, the presence of water infiltration in the basement, leakage around and below windows in several rooms and that two old oil furnaces could fail at any time.

[56] Mr. Wang's only apparent concern was the leaking roof.

[57] Mr. Wang told Mr. Geroue about it. Mr. Geroue denied that the roof was leaking.

[58] On December 19, 2006, Mr. Papillon met with Mr. Wang and Mr. Geroue at the Property. Mr. Papillon examined the books and supporting documents for the period from April 30, 2003 to March 31, 2005, but the more recent documents were unavailable. Mr. Papillon asked Mr. Geroue for these documents and was told that the Owner's accountant had them.

[59] Mr. Papillon's worksheets, dated December 19, 2006, indicated cheques to the Owner totalling \$442,238.61 and bank deposits totalling \$425,519 for the period from April 2003 to March 2004 inclusive, as well as deposits totalling \$499,576.71 for the period from April 2004 to March 2005 inclusive.<sup>15</sup>

[60] Mr. Wang continued to be interested in purchasing the Property.

[61] On December 21, 2006, Mr. Wang signed further Amendments to the Conditional Promise extending the signing of the act of sale to January 16, 2007 before his own notary and reducing the sale price by \$20,000 for roof repairs (the "December Amendments").<sup>16</sup>

[62] Mr. Wang still had not received "financial statements" to October 2006. He made no request in writing for this information nor did he refer to it in any way in the December Amendments.

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<sup>13</sup> D-4.

<sup>14</sup> D-5.

<sup>15</sup> *Ibid.*

<sup>16</sup> P-5.

[63] The Owner accepted the December Amendments on January 3, 2007.

[64] On January 4, 2007, Mr. Wang accepted the terms of his first mortgage financing.<sup>17</sup> A sum of \$875,000 could be financed at a variable interest rate of 9.365 % per annum for a five-year term. Daily interest charges were of \$227.62 (or \$82,855 per annum).

[65] On January 8, 2007, Mr. Geroue told Mr. Wang that 35 rooms had been occupied at the Property on January 6, 2007.

[66] According to Mr. Geroue, Mr. Wang told him that he wished to withdraw his offer because he and his family were very stressed. Mr. Wang denies this.

[67] On January 10, 2007, Mr. Wang signed a loan and mortgage agreement.<sup>18</sup>

[68] On January 12, 2007, Ms. Godin communicated to Mr. Wang the Property's daily room rental revenues from month to month from May 2000 to December 2006 (Exhibit D-8). She also informed him of its monthly revenues in 2006 from rooms rented on a monthly basis. Mr. Wang realized that revenues from all rental sources from January to December 2006 totalled less than \$300,000 (\$264,937.32 from daily rentals plus approximately \$30,000 from monthly rentals).

[69] Mr. Wang considered that this was significantly less than the figure of \$435,000 indicated in Sutton's detailed description of the Property.

[70] Mr. Wang also learned that the total number of rooms rented on a daily basis during all of the previous week had been of less than 35.

[71] On the morning of January 15, 2007, Mr. Wang told Mr. Pinto to inform every interested party that he would not purchase the Property.

[72] At noon, Mr. Wang, his wife and Mr. Pinto met Mr. Geroue at the Property. Mr. Geroue stated that its revenues in 2006 had exceeded \$300,000. He gave Mr. Wang a handwritten document, signed afterwards by Ms. Godin, which indicated that the Property's revenues from January to December 2006 had totalled approximately \$385,000 (Exhibit D-11).

[73] Exhibit D-11 indicated total revenues of \$39,000 in June 2006.

[74] On the other hand, the document Mr. Wang had received on January 12, 2007 (Exhibit D-8) indicated that the Property's revenues from daily rentals in June 2006 was

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<sup>17</sup> P-6.

<sup>18</sup> The loan and mortgage agreement was not produced. There was no objection to Mr. Wang's testimony.



\$19,795, to which, according to Ms. Godin, \$4,225 should be added for monthly rentals, for a monthly total of \$24,020.

[75] Mr. Wang and his wife proceeded to add up all of the daily rentals in June 2006. They totalled \$19,775.

[76] On January 16, 2007, Mr. Wang, his wife, Ms. Godin, Mr. Pinto and Mr. Geroue met Ms. Godin's accountant. Mr. Wang received a summary of the Property's revenues for the six months from April to September 2005 (\$224,456.31) and a detailed computerized printout of its revenues for the same period in 2006 (\$171,611.97).<sup>19</sup>

[77] On that basis, projected revenues in 2006 would be of \$343,219,94, approximately \$10,000 less than annual revenues for the year ending March 31, 2006.

[78] Mrs. Wang's wife asked Ms. Godin for a reduction of the sale price. Ms. Godin refused.

[79] On January 16, 2007, Mr. Wang again instructed his notary to stop his work.

[80] Mr. Wang testified that had decided not to buy because the information received from Mr. Geroue was significantly inaccurate and misleading.

[81] Mr. Wang also testified that he would not have signed the Conditional Promise if he had been informed of the figures disclosed to him on January 16, 2007. Mr. Wang did not explain why a \$10,000 difference would have been so important in his eyes in October 2006 and the Court does not find his statement credible.

[82] On January 16, 2007, Mr. Geroue and Ms. Godin attended the office of Mr. Wang's notary to execute the act of sale but Mr. Wang did not present himself.

[83] On January 19, 2007, Mr. Wang signed other Amendments confirming that he did not intend to purchase the Property and wanted his deposit returned (the "January Amendments"):

The buyers state that due to the fact that they are not satisfied with the financial statements, they decided not to pursue with the purchase of this property (...) Therefore they request that their deposit cheque of \$50,000 (fifty thousand) dollars be returned to them by January the 29, 2007 – at the latest. Furthermore, the buyers say that even though they asked for the 2006 financial statements from March to October, they were not given to them. Their accountant, Mr. Papillon, analysed financial statements at the site, and he informed the buyer that the financial statements for 2006, from March 2005 to November 2006, were not available to him. The financial statements for March 2005 to November 2006 were in the owner's accountant and again not supplied to the buyers, even though they requested.

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<sup>19</sup> D-13.

[84] Mr. Wang did not indicate in the January Amendments that Mr. Geroue had ever accepted to deliver financial statements to October 2006.

[85] The Owner refused to accept the January Amendments.

[86] Sutton did not receive any commission on the aborted sale.

[87] On January 25, 2007, Mr. Wang received a demand letter from the Owner's attorney, summoning him to sign, on January 31, 2007, an attached act of sale.<sup>20</sup>

[88] On January 28, 2007, Mr. Wang and his wife answered that they had already annulled the purchase.<sup>21</sup>

[89] On February 10, 2007, Mr. Wang and his wife wrote to Mr. Geroue asking for the refund of the deposit.<sup>22</sup>

[90] On February 13, 2007, Mr. Geroue responded that his broker had been instructed by the Owner's attorney not to disburse the deposit as it was considering a legal action to force the execution of the sale.<sup>23</sup>

[91] On February 20, 2007, Sutton's attorney claimed on behalf of his client a commission of \$70,740.38 from the Owner and Mr. Wang.<sup>24</sup> Mr. Wang received the letter on February 22, 2007.<sup>25</sup>

[92] In connection with the aborted sale, Mr. Wang paid Mr. Papillon \$636.73 for his services, paid his notary \$5,000, paid the building inspector \$810.44 and paid Interbay \$2,500.

[93] Sutton took action against Mr. Wang and the Owner, but later withdrew its claim against the Owner.

[94] Sutton returned the deposit to Mr. Wang on or before April 2007.<sup>26</sup>

## II- THE LAW

[95] The failure by a party to a contract to perform his contractual obligation may entail that party's civil liability towards a third person if the defaulting party also fails to act towards such third person as a reasonably prudent and diligent person would have

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<sup>20</sup> P-8.

<sup>21</sup> D-16.

<sup>22</sup> D-17.

<sup>23</sup> D-18.

<sup>24</sup> P-12.

<sup>25</sup> Paragraph 24 of the Defence.

<sup>26</sup> D-21.

under the same circumstances, and that such third person suffers damages as a result.<sup>27</sup>

[96] In the context of an accepted promise to purchase an immovable, the promising purchaser will be liable - on an extracontractual basis - for the commission of the real estate agent retained by the promising seller (with whom the promising purchaser did not contract) if the promising purchaser refuses to perform the purchase without an objectively serious reason or by raising a mere pretext.<sup>28</sup>

### III- THE ISSUES

[97] The case at bar principally raises the following issues:

- 1- Was Mr. Wang's obligation to purchase conditional to verifying financial statements to October 2006?
- 2- Did the Owner or his agent mislead Mr. Wang or significantly misrepresent the Property's annual revenues?
- 3- Did Mr. Wang act reasonably towards Sutton in the context of his contract with the Owner?
- 4- Is either party entitled to damages, and in the affirmative, to what amount?

### IV- DISCUSSION

[98] This case is complicated by the fact that Mr. Wang does not speak French, that his spoken English is often incomprehensible, that he is not represented by counsel, and that Sutton's counsel's mastery of the English language is approximate.

[99] Neither party saw fit to call Ms. Godin or her accountant to testify, the only witnesses heard being Mr. Wang and Mr. Geroue.

[100] Mr. Wang argues that his obligation to purchase was conditional to verifying financial statements to October 2006 and that he never received such statements, that the financial information he received was inconsistent with Sutton's representation that the Property's annual revenues were \$435,000, and that the information he received was misleading and significantly inaccurate.

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<sup>27</sup> Article 1457 C.C.Q.; *Bank of Montreal v. Bail Ltée*, [1992] 2 S.C.R. 554 at 581-585; *Ibrahim v. Groupe Sutton Immobilia inc.*, 2008 QCCA 2379 at para. 37.

<sup>28</sup> *Ibrahim v. Groupe Sutton Immobilia inc.*, 2008 QCCA 2379 at para. 35.

***1- Was Mr. Wang's obligation to purchase conditional to verifying financial statements to October 2006?***

[101] By signing the Conditional Promise, Mr. Wang promised to purchase the Property on or before December 11, 2006 if the conditions stipulated at paragraph 8.1 were satisfied.

[102] Paragraph 2.1 of the Conditional Promise explicitly stated his promise to purchase:

- 2.1 The BUYER hereby promises to purchase, through Les Immeubles Kronos Inc. real estate broker, represented by Joaquim (Jack) Pinto (...) the immovable described hereinafter, at the price and under the conditions stated below.

[Emphasis added.]

[103] The conditions bear repeating:

- 8.1 This offer is conditional upon verifying financial statements for the 3 last consecutive years and building inspection with satisfaction of buyer. The buyer has 10 days from the acceptance of this offer to get a second mortgage of \$150,000. All condition (sic) have to be waived in 15 (fifteen) days.

[Emphasis added.]

[104] The precise meaning of the condition pertaining to financial statements is uncertain in at least three respects: first, it does not indicate their term (whether monthly,<sup>29</sup> annual or otherwise); second, it does not indicate the precise calendar period to which they pertain (whether the Property's last three financial years, the three previous calendar years or the three previous twelve-month periods before the signing of the Conditional Promise); and, third, it does not indicate what would be required for them to satisfy Mr. Wang.

[105] Before signing the Conditional Promise, Mr. Wang knew only of the Property's annual financial statements for the years ending on March 31, 2004, 2005 and 2006. There is no proof that any other financial statements were discussed.

[106] Although Mr. Wang claims that Clause 8.1 entitled him to verify financial statements from October 2003 to October 2006, he never requested such statements in writing despite amending in writing his Conditional Promise twice, despite two stipulated time limits (set by himself) for "verifying financial statements", and despite having repeatedly been told that they would be delivered to him and not having received them.

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<sup>29</sup> At paragraph 3 of his Defence, Mr. Wang alleges that on November 1, 2006, he asked Mr. Pinto for "monthly (month by month) financial statements". [Emphasis added.]

[107] Given the formal process of negotiations involving a promising buyer, a promising seller and their respective agents, Mr. Wang had no reason to believe that Mr. Geroue had the authority to verbally amend the written terms of the Conditional Promise and of its subsequent amendments.

[108] Mr. Wang apparently did not consider himself bound by the terms of the Conditional Promise: without asking for permission, he instructed for a building inspection although the time to do so had long passed and he never asked or obtained permission to verify financial statements for November 2006, but nonetheless instructed his accountant to verify revenues "to December 2006".

[109] In light of the additional fact that Mr. Wang's agent completed the Conditional Promise,<sup>30</sup> the Court finds that Mr. Wang's obligation to buy was not conditional to verifying financial statements from October 2003 to October 2006 inclusive, but only to verifying those "financial statements for the 3 last consecutive years" that had previously been shown to him and that he had been told he would receive if he offered to purchase the Property, namely Exhibits D-2A, D-2B and D-2C.

***2- Did the Owner or his agent mislead Mr. Wang or significantly misrepresent the Property's annual revenues?***

[110] Mr. Wang claims that Sutton significantly misrepresented the Property's annual revenues by indicating in its detailed description of the Property that its annual gross revenues were of \$435,000, by stating that the Property's revenues from monthly rentals were of \$9,000 per month, by stating that the Property's revenues from January to December 2006 exceeded \$300,000. Mr. Wang also claims to have been misled by Sutton as to the number of rooms actually rented in January 2007.

(i) Annual revenues of \$435,000

[111] Mr. Wang's contention that Sutton misrepresented the Property's annual revenues in its detailed description has little substance. It also has little - if any - bearing on his decision to refuse to purchase.

[112] Mr. Wang testified that he intended to verify if the Property could generate the annual revenues of \$435,000 that Sutton had indicated in writing and to satisfy himself that he could pay the debt.

[113] Mr. Wang did not demonstrate or attempt to demonstrate, however, that annual revenues of \$435,000 or more were required to pay the debt.

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<sup>30</sup> Article 1432 C.C.Q.: In case of doubt, a contract is interpreted (...) against the person who stipulated it. (...)

[114] It bears repeating that Sutton did not indicate in its detailed description of the Property that its annual revenues were of \$435,000, but only that the Property had the potential of generating such revenues.

[115] Most importantly, Mr. Wang made no issue of Sutton's detailed description after receiving the annual financial statements for 2004 to 2006.

[116] On the balance of the evidence, Mr. Wang did not prove that he was ever told that the Property's annual revenues amounted to \$435,000 (with or without cash revenues).

(ii) Monthly rental revenues

[117] On November 28, 2006, Mr. Geroue told Mr. Wang that the Property's monthly revenues from rooms rented on a monthly basis totalled \$9,000.

[118] This was probably incorrect. On the one hand, Ms. Godin did approve on January 15, 2007 the figure of \$39,000 for all revenues in June 2006 (D-11).

[119] On the other hand, on January 16, 2007 her accountant reported revenues of \$25,049.26 in June 2006 (D-13). Moreover, Mr. Wang testified that Ms. Godin told him on January 10, 2007 that the monthly revenues from monthly rentals did not exceed \$4,225.

[120] In short, the monthly revenues for monthly rentals were probably no more than \$4,225 and the June 2006 total revenues were probably of approximately \$25,000.

[121] These figures were consistent with the verification made by Mr. Wang and his wife on January 15, 2007 and this information did not cause Mr. Wang to withdraw immediately.

[122] The retrospective importance that Mr. Wang lends to Mr. Geroue's assertion is uncorroborated. In this regard, it is noteworthy that Mr. Wang's December Amendments do not refer in any way to monthly revenues from monthly rentals and that he did not instruct his accountant to verify Mr. Geroue's assertion. In addition, Mr. Wang did not explain the relevance of Mr. Geroue's incorrect assertion to potential payment of financing costs after operating costs.

(iii) The Property's revenues from January to December 2006

[123] Mr. Wang claims that the Property's annual revenues in calendar year 2006 were significantly less than what Sutton had initially represented, and that they were less than \$300,000.

[124] Mr. Wang did not attempt to demonstrate that the annual revenues reported in the annual financial statements were incorrect. From 2003 to 2006, the lowest reported annual revenues were \$353,929, for the twelve-month period ending March 31, 2006.

[125] Mr. Wang did not prove on the balance of probabilities that the Property's revenues in calendar 2006 totalled less than \$300,000: exhibit D-8 (which is unsigned and undated) supports Mr. Wang's contention, but exhibits D-11 (which is signed by Ms. Godin) and D-13 (which is a detailed computer printout from her accountant) contradict it.

***3- Did Mr. Wang act reasonably towards Sutton in the context of his contract with the Owner?***

[126] To satisfy himself that he could pay the debt arising from the purchase of the Property, it was reasonable for Mr. Wang to verify that its net cash flow would suffice to pay the principal and interest on the loan.

[127] Before the Court, Mr. Wang expressed concern solely over the Property's true revenues, never over its true expenses. He did not demonstrate or even attempt to demonstrate that its revenues, as reported by the Owner's annual financial statements, or as reported to him at any time after the signing of the Conditional Promise, would not suffice to pay, after operating expenses, the borrowed principal and interest.

[128] Mr. Wang decided to abort the purchase when and because he began having doubts about Mr. Geroue's credibility and the Property's true revenues.

[129] While there was some objective basis for such doubts, they were insufficient to justify his withdrawal from the promised purchase given the terms and conditions of the Conditional Promise and of its subsequent amendments.

[130] Mr. Wang knew that the sale of the Property would entitle Sutton to a commission. He knew or ought to have known that he must avoid causing damage to Sutton in this regard by withdrawing without serious reason his binding offer to purchase.<sup>31</sup>

[131] Under the circumstances, Mr. Wang's conduct towards Sutton failed to meet the standard of a reasonably prudent and diligent person placed in the same circumstances.

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<sup>31</sup> P-2, Clause 11.1; *Bank of Montreal v. Bail Ltée*, supra note 27 at 584 para. a.

**4- Is either party entitled to damages, and in the affirmative, to what amount?**

[132] The damages due to Sutton must compensate for the amount of the loss it has sustained as a result of Mr. Wang's extracontractual fault.<sup>32</sup>

[133] Mr. Wang's unjustified withdrawal prevented Sutton from receiving the commission that it had earned.

[134] The initially agreed purchase price of \$1,250,000 was reduced to \$1,230,000 as a consequence of the December Amendments.

[135] Sutton was contractually entitled to a commission of 5 % of \$1,230,000, or \$61,500, plus applicable taxes (GST and QST).

[136] If the act of sale had been executed, Sutton would have received the taxes as agent of Her Majesty. Sutton was not deprived of the taxes.<sup>33</sup>

[137] On the whole, Mr. Wang thereby committed an extracontractual fault that caused a prejudice to Sutton and for which Sutton is entitled to compensation, whereas Mr. Wang is not entitled to any damages against Sutton.

**FOR THESE REASONS, THE COURT:**

**CONDEMNNS** Jian Chen Wang to pay the Plaintiff the sum of \$61,500, with interest at the legal rate and the additional indemnity from February 22, 2007, plus costs.

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**LOUIS-PAUL CULLEN, J.S.C.**

Mr. Jian Chen Wang  
Self-represented

Mtre Marc-B. Bilodeau  
Counsel for Groupe Sutton Royal Inc.

Dates of hearing: February 9 and 10, 2012

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<sup>32</sup> Article 1611 C.C.Q.

<sup>33</sup> *Cardinal v. Hochhauser*, J.E. 2004-856 (S.C.). Appeal dismissed on motion (C.A., 2004-09-13), 500-09-014394-043 and 500-09-014395-040).