

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

and

CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC.

Respondent

**FACTUM OF THE RESPONDENT,
1001079582 ONTARIO INC.**

October 19, 2026

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1. 1001079582 Ontario Inc.'s ("100") responding record is at Tab 6, Exhibit 1 of the Hearing Brief of the Receiver ("RHB"), the affidavit of S. Kronenfeld (the "SK Affidavit")¹.

FACTS, APPLIED TO THE LAW - 100's Offer4 was Not Irrevocable

2. The Receiver's ("R") claim that the fourth offer of 100 dated Dec. 16, 2024² ("Offer4") is irrevocable turns on the content of Offer4, nothing more. Offer4 does not contain a term that it is irrevocable (hereinafter the "IT"). Offers without an IT are revocable; deposits are not forfeited.

3. Offer4 is not ambiguous. Extrinsic evidence cannot be used to insert a term into this offer.

4. Although the R does not define the "sales process" it claims is applicable to Offer4, there are two distinct time periods regarding offers from 100, and only one period (after Dec 10 2024) is relevant to Offer4: 1) a pre-Dec. 10, 2024 sales process, which neither 100 nor Offer4 was a participant in, and; 2) the post Dec. 10 sales process in the Dec. 10, 2024 Sales Process Order³ ("SPO") of Black J. (the "SPO Sales Process"), which 100 did participate with Offer4.

5. To insert an IT into Offer4, the R claims a "Contract A" per *Ron Engineering*⁴ ("Ron") was formed based upon the upon R's inaccurate factual claims that:

1) a sales process had a mandatory term that all offers were *deemed to include* an IT. The R claims that the alleged IT was a **deemed** term, not merely a term which a bidder needed to include if it wanted to submit a compliant bid. The R's position is that any bid was

¹ SK Affidavit, RHB, Tab 6, Exam Exh. 1, RHB pages 560 to 1175

² 100 Inc. Offer dated Dec. 16, 2024, Exhibit 12 to July 17 2026 SK Affidavit, RHB Tab 6, page 962 to 989

³ Sales Process Order ("SPO") Appendix K to Sixth Report of the Receiver, RHB Tab 2, p.153

⁴ R v Ron Engineering [1981] 1 S.C.R. at para 14 and 16, Book of Authorities of R ("RBOA") Tab 12

deemed to contain an IT, even noncompliant bids - such as all of 100's pre-Dec 10 offers and Offer4, all of which expressly deleted the IT in Schedule D of the "Sales Procedure"⁵ in the **Toronto APS**⁶ from the Toronto Purchaser ("**Toronto**"), thereby deleting the same IT terms and *other terms* in the **Template APS**⁷ (100 did not obtain the Template APS until receipt of the R's Sixth Report, dated June 8, 2026). The R claims that Offer4 is deemed to include the very terms the bidder, 100, refused to comply with or accept;

2) the alleged mandatory IT was communicated to 100, based on an inaccurate account by the R of alleged communication during the pre-Dec 10, 2024, sales process. The R also needs to establish that the alleged pre-Dec 10 communication is relevant to the post Dec. 10 2024 SPO Sales Process;

3) that 100 accepted, when it submitted Offer4, the alleged deemed mandatory IT term.

6. To succeed in its claims regarding Offer4, the R must establish that the deemed mandatory IT which it alleges applied to the pre-Dec 10, 2024 period, also applied to the post Dec 10 2024 SPO Sales Process. The R relies on alleged facts/events during the (irrelevant) pre-Dec 10 period. In any event, the R's account of the pre-Dec 10 2024 facts/events is not accurate.

7. None of the cases cited in R's factum ("**FactumR**") support the R's relief. Cases cited in para. 52 of FactumR ("ways that parties can form an agreement"), support dismissal of R's motion. 100 agrees with Forest⁸: "irrevocability clauses in **unaccepted** offers are actually revocable".

⁵ Schedule D to the Template APS, App. G to Sixth Report of the R, RHB, Tab 2, pp. 120-125.

⁶Toronto APS, in Motion Record of R, dated Dec. 4, 2024, Appendix F of 3rd Report of R's dated Nov. 23, 2024, attached as Exh 2 of SK Affidavit, at Exh.1 of the Transcript of the Exam of SK, RHB, Tab 6, pp. 130-173.

⁷ Template APS, Sixth Report of Receiver (Appendix G to Sixth Report of R), RHB, Tab 2, p 87-127

⁸ R's Factum, para 52, Footnote 42, Forest Hill Homes (Cornell Rouge) v. Wei, 2020 ONSC 5060 at paras. 36

8. Applying *Forest*, to succeed the R needs two facts missing here: 1) an IT in Offer4, and; 2) if there was an IT, for Offer4 to be irrevocable, there must also be: “distinct consideration so as to make the irrevocability clause a separate binding contract”⁹. Both are needed; none exist re Offer4.

9. *Forest*, and trite contract law, mandates that the IT must be in the offer, cover letters are irrelevant. The cover letter¹⁰ to Offer4 did not contain an IT and no consideration was provided. Further, the words in the cover letter are not a statement Offer4 is irrevocable. It is a statement as at Dec. 16, 2024 and not a covenant of future conduct. There was no waiver of 100’s entitlement to revoke its offer if it later determined a withdrawal was appropriate.

10. Unlike the facts in *Forest* which held the offer was irrevocable: there is no IT in Offer4; no consideration was provided by the vendor/R; the R did not accept Offer4 before it was revoked; the vendor/R did not take the land off market (the opposite was achieved by 100’s Dec 6 offer, under the SPO the land was remarked); nor did the vendor/R lose another offer (the R closed the offer from Toronto¹¹. The R did not do anything with Offer4 before it was withdrawn, except ignore it. There was no communication from R to 100 about Offer4 before 100 withdrew Offer4.¹²

11. The R did not notify 100 that Offer4 was the preferred or “Successful Bid” (defined in para 8a) of the SPO¹³). If, as the R argues, the two-stage process here is analogous to the offer and acceptance process in *Forest* (which we do not accept), a fatal distinction is that the R cannot claim it selected Offer4 as the Successful Bid and that, therefore, such selection was the “consideration”

⁹ Forest Hill Homes (Cornell Rouge) Limited v. Wei, 2020 ONSC 5060 at paras. 38

¹⁰ FactumR paragraph 58, Letter from P. Rooney, Dec. 16, 2024, Exhibit 12 to SK Affidavit, Exhibit 1 of the Transcript of the Examination of Simion Kronenfeld, RHB, Tab 6, pp. 954-5.

¹¹ FactumR para 40

¹² Para 79, 80 of SK Affidavit, RHB, Tab 6, Exam Exh. 1, SK Affidavit, RHB pg 589

¹³ Sales Process Order (“SPO”) Appendix K to Sixth Report of the Receiver, RHB Tab 2, p.153

required in *Forest* to make an offer irrevocable (assuming Offer4 actually did have an IT in it). The R did not even communicate during the 10 month period before 100 revoked Offer4: if Offer4 was highest offer submitted before the Dec. 16 2024 5 PM deadline in the Dec. 10, 2024 SPO; if the R would, during the next Stage2 hearing to determine which offer would be approved by the Court, advocate that a factor in support of a bid, like Offer4, is if it was submitted before the Dec. 16, 2024 deadline in the SPO, versus ten months later. It does not matter that the R's excuse for not selecting Offer4 as the "Successful Bid" per para 8 a) of the SPO is the R's "position that the filling of the Appeal stayed the SPO"¹⁴, this does not change that Offer4 was never selected as the Successful Bid before it was withdrawn. Also, the appeal/stay is conduct of Toronto, not 100.

12. Our facts, in a *Forest* scenario of builder/vendor in receipt of an offer, are akin to a builder's position: 'I can't sell it to you, I'm frozen, can't help you, how dare you revoke.'

13. Our facts, in a *Ron* scenario of a tender issuer in receipt of a bid (even if, unlike here, it was conforming), are akin to issuer's position: 'I can't build it, can't contract with you, I'm frozen, don't know if you won the bid, how dare you revoke – no, you must put your price and labour on hold until I don't know when.'. This is untenable for a condo developer, like 100.

14. The R's contractual interpretation is commercially unreasonable.

15. If an offer contains an IT, the IT is not enforceable if, like the Template, the irrevocable date is not stated as a clear/fixed time and date. An IT is not enforceable if the date is uncertain.

¹⁴ FactumR para 26

16. In a two-stage sales process (this case), the relevant (to the law of contract) way for a R in receipt of a noncompliant offer, to cause it to conform to a Template, is to request an amendment which conforms. Such amendments require consent of the offeror; the R can't impose it.

17. The undisputed evidence is that the R did not respond to Offer4 (or any of 100's offers) by requesting compliance with the Template (ie. by demanding the inclusion of the Sale Procedure).¹⁵

18. Trite contract law deals with the contingency of a falling market by mandating that an offer must be accepted to lock in the price in the offer or (per *Forest*) it must have both an IT and consideration from the vendor. The R took none of these three steps.

19. Offerors who are not willing to accept the risk of future unknown contingencies will ensure that their offer is revocable, by making sure that the offer does not state that it is "irrevocable".

20. Revocability was a term of 100's Offer. It is inaccurate to claim that 100 failed to comply with its offer¹⁶. 100 simply exercised its contractual/common law right to revoke.

100's Offer4 was Not Accepted

21. Offer 4 was not accepted by the R before it was withdrawn. Regarding the nonacceptance of Offer4, the SK Affidavit attaches the key documents in chronological order¹⁷:

- 1) [Offer] Offer 4, dated December 16, 2024, is Exhibit 12¹⁸;
- 2) [Withdrawal] 100's October 24, 2025 notice of withdrawal of Offer 4 is Exhibit 22¹⁹;

¹⁵ Para 9 last sentence of 1st subpara of SK Affidavit, RHB, Tab 6, Exam Exh. 1, SK Affidavit, para 14 RHB pg 563

¹⁶ Paragraph 3 of the Receiver's Factum

¹⁷ the document dates are also sent and received dates

¹⁸ Offer4 dated Dec.16, 2024, Exhibit 12 to July 17 2026 SK Affidavit, RHB Tab 6, page 956-989

¹⁹ 100 Inc. Letter dated October 24, 2025, Exhibit 22 to July 17 2026 SK Affidavit, RHB Tab 6, page 1072-1073

- 3) [Alleged Acceptance] the purported ‘acceptance’ by the R of, the by then withdrawn Offer4, is dated October 30, 2026²⁰.

22. Contracts are formed by offer and acceptance. During the 10 months after 100 sent Offer4, before it was withdrawn on Oct. 24, 2025, the R did not accept Offer4. Per para 26 of **FactumR**, during this ten-month period: “the Receiver refrained from dealing with offers”.

There is no Villain In This Story

23. The R’s casting of 100 as villain for trying in Dec 2024 to buy land its director spent years developing (only giving up ten months later after the R failed to accept its offer and could not deliver the land within a reasonable time, and the market turned²¹) is irrelevant and unfair to 100. There is no evidence that 100 acted in bad faith, or that it would not have closed in early 2025.

24. Through no fault of 100, the expectation of a short deadline, a quick acceptance and approval motion, did not materialize. Instead, the Toronto Purchaser appealed – an act for which 100 is not responsible. The CA did not fault 100 for participating in the approval hearing process: “50 [...] I see nothing in the record that suggests that 100 Inc.’s involvement in the motion caused delay, additional expense, or prejudice to the appellant in any way. This submission has no merit.”²²

25. Participation in an approval hearing is not contrary to the “integrity of insolvency sales process”²³. Contrary to FactumR para 60 b), Black J. held the Dec. 4 adjournment was appropriate.

26. The R obtained the benefit it recommended at the Dec 10 hearing, by using 100’s Dec 6 Higher Offer²⁴ to extend the bid period. The R got the benefit of 2 higher offers, Offer4 and 160

²⁰ Paliare Roland Letter dated October 24, 2025, Exhibit 28 to July 17 2026 SK Affidavit, RHB Tab 6, page 1112

²¹ Para 72, 75, 88, 107, 108 of SK Affidavit, RHB, Tab 6, Exam Exh.t 1, SK Affidavit, RHB pg 588,591, 597

²² CA Decision at para 50, Appendix O to Sixth Report of the Receiver, RHB Tab 2, p. 197

²³ As alleged in para 5 of FactumR,

²⁴ FabrumR para 20

Inc's offer²⁵, both above \$3.6 million. 100 is not at fault that neither was sustainable²⁶ 10 months later. The R did not take steps to expedite the appeal or expedite the release of the CA Decision.

27. Exercising a contractual right (to revoke) does not impugn the integrity of a receivership sales process, nor does participating at the approval hearing/stage. 100 did not “disrupt”²⁷ a sales process – it did not participate in the R's sales process which predated the Dec 4/10 approval hearing, it participated at the Dec 4/10 approval hearing which it was entitled to do (at the Dec 10 Hearing the R advocated that 100's much higher offer was worthy of consideration). 100 then participated in the Court ordered SPO Sales Process (leading to Offer4 sent hours before the Dec. 16, 2024 deadline). On Dec. 4 Justice Black did not discourage offers after the bid deadline for consideration at the approval hearing: “if any parties wish to file additional offers, I have directed this be done by...Dec. 9”²⁸. The SPO itself validated and invited 100's involvement.

28. The post Offer4, post SPO, delays were not caused by 100. The R's inability to sell to 100 over the 10-months of uncertainty was not caused by 100. This delay is contrary to the reasonable expectation in Black J's Dec. 10, 2024 endorsement²⁹, and SPO, that the bid process would end hours after 100 submitted Offer4 on Dec. 16th, and be concluded “promptly thereafter”:

Endorsement (RHB p. 160)

[35] As such, and subject to input from the Receiver about any fine-tuning required, I am ordering the process (the “Proposed Auction Process”), set out in paragraph 79(b) of AJGL's Aide Memoire, save and except that the deadline for further bids should be 5:00 p.m. on December 16 (rather than December 18 as suggested in that paragraph). [...]

Sales Process Order (RHB p. 151)

(b) “Bid Deadline” means **December 16, 2024** at 5:00 PM [...]

²⁵ FactumR para 24

²⁶ See Footnote 21 above

²⁷ FactumR para 2

²⁸ CA Decision at para 12, Appendix O to Sixth Report of the Receiver, RHB Tab 2, p. 183-184

²⁹ Endorsement of Black J, dated Dec. 10, 2024, at para 35, Appendix L to the Sixth Report, RHB, Tab 2, p.160

“8. THIS COURT ORDERS that, following the Bid Deadline:

- (a) the Receiver shall review offers it received [...] prior to the Bid Deadline and [...] determine which offer the Receiver intends to accept and recommend to the Court for approval such successful bid [...]
- (b) The Receiver shall **promptly thereafter** file and serve a motion seeking approval and vesting order [...]

29. A plea that 100 “cannot be permitted to walk away”³⁰ misstates the issue of contract formation. An offer, not the R, or the Court, permits or restricts if the offer is revocable. Offer4 permitted 100 to revoke. The R, by not: using a *Ron* tender process; obtaining an Order that offers were deemed to contain an IR **and** deemed to form Contract A; offering consideration or; requesting an IT be added to Offer4; **permitted** (certainly did not oppose) 100’s revocable offer.

30. **Ron does not apply.** There was no Contract A. The *Ron* type tender process, involving Contract A and Contract B, is very different from the two stage process the R followed in this case.

31. The fact that Contract A was not formed under this test in *Ron*:

“14...the tender does not in law amount to **an acceptance** of the call for tenders and hence the unilateral contract does not come into existence.”; “16 [a bid] ... becomes irrevocable **if filed in conformity** with the terms and conditions under which the call for tenders was made”³¹;

is clear by comparing terms of Offer4 with the Template. Offer4 rejects, does not **accept/conform** with R’s alleged ‘tender’ terms:

Offer4: “Section 1.1 (uu): “Intentionally Deleted” (RHB 962)

The deleted term in the Toronto APS (RHB 736):

(uu) “Sale Procedure” means the sale procedure attached hereto as Schedule “D”, with such amendments as are satisfactory to the Receiver;

Offer4: “Section 1.1 (ww): “Intentionally Deleted” (RHB 962)

The deleted term in the Toronto APS (RHB 736):

³⁰ Receiver’s Factum, para 4

³¹ R v Ron Engineering [1981] 1 S.C.R., at para 14 and 16, Book of Authorities of R (“**RBOA**”) Tab 12 p.253, 254

(ww) “Successful Bid” has the meaning given to it in the Sale Procedure;

Offer4: “Section 1.1 (xx): “Intentionally Deleted” (RHB 962)

The deleted term in the Toronto APS (RHB 736):

(xx) “Successful Bidder” has the meaning given to it in the Sale Procedure;

Offer4: “Section 1.4 (RHB pg 963):

The following Schedules are incorporated in and form part of this Agreement:

“Schedule “D” Intentionally Deleted”

The deleted term in the Toronto APS (RHB 737):

1.4. Schedules

The following Schedules are incorporated in and form part of this Agreement;

[...] Schedule “D” Sale Procedure

32. As a non-compliant offer, Offer4 could not form a Contract A, as set out in *Graillen Holdings Inc. v. Orangeville (Town)*³²:

“39 A non-compliant bid — one that does not satisfy the requirements of the tender call — will not give rise to Contract A, as it does not accept the terms offered by the issuing party: *Graham Industrial Services Ltd. v. Greater Vancouver Water District* [...], relying on *Ron Engineering, supra* at 121-122.”

33. Even if 100 had received a copy of the Template (it did not) 100 did not accept the “Participant Requirements” in the Sales Procedure, which required 100’s acceptance of two conditions (by signing two documents) to 100 being a “participate in the Sales Procedure”. 100 did not enter into either document, it did not accept either condition:

“4. Participant Requirements To participate in the Sale Procedure and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with each of the following: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure (collectively, the “Participant Requirements”).”

34. The Sales Procedure in the Template (ie. R’s alleged terms of tender in *Ron*) is contractual - it only applies **if** a bidder **accepts** its terms by executing the “Acknowledgment”, which states:

³² [*Graillen Holdings Inc. v. Orangeville*](#) (Town), 2016 ONSC 3687, paragraph 39:

“The undersigned hereby acknowledges ... its agreement with the Sales Procedure.”. 100 did not sign the “Acknowledgement”³³, and thus did not accept or conform with the Sales Procedure.³⁴

35. Also, 100 did not sign a Confidentiality Agreement.³⁵

36. Per *Ron*, The R’s motion fails completely on the fact that Offer4 is not **acceptance**, and is not in **conformity** with, the sales process terms the R (incorrectly) alleges it sought from 100.

37. The terms of the unaccepted Sales Procedure in the Template further confirmed and defined (for the R and Court who had a copy of the Template) 100’s status as a nonconforming offeror, which is obvious from the definitions in the Sales Procedure which 100 “intentionally deleted” by deleting all of the Schedule D, Sales Procedure, as follows:

- i) 100 did not submit a “Bid” as defined in the Sale Procedure. A “Bid” is “a bid submitted ... pursuant to Section 7 hereof”³⁶, however, by deleting section 7 (along with the entire Sales Procedure), Offer4 was clearly not “pursuant to Section 7;
- ii) Offer4 is not a “Qualified Bid”³⁷, defined as a bid “that satisfies the conditions set out in Section 7”;
- iii) 100’s bid was not submitted before the “Bid Deadline”³⁸ of “June 3, 2024” and it was therefore automatically “disqualified”, per section 3³⁹: “A Bid received after the Bid Deadline shall not constitute a Bid and shall be disqualified.”
- iv) 100 did not submit the defined “Agreement of Purchase and Sale”, defined as “the form of Agreement uploaded to the Dataroom”⁴⁰, and it is not disputed that 100 did not use this form of APS, nor did 100 even access the data room⁴¹;

³³ Para 51 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 51 RHB pg 581

³⁴ In paragraph 50 of the SK Affidavit, Mr. Kronenfeld states that 100 Inc. never signed an Acknowledgement (RHB 580)

³⁵ Para 18b of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 18b RHB pg 568

³⁶ Schedule D to the Template APS at para 1, Appendix G to Sixth Report of R, RHG, Tab 2, p 120

³⁷ Schedule D to the Template APS at para 1, Appendix G to Sixth Report of R, RHG, Tab 2, p 121

³⁸ Schedule D to the Template APS at para 1, Appendix G to Sixth Report of R, RHG, Tab 2, p 120

³⁹ Schedule D to the Template APS at para 1, Appendix G to Sixth Report of R, RHG, Tab 2, p 122

⁴⁰ Schedule D to the Template APS at para 1, Appendix G to Sixth Report of R, RHG, Tab 2, p 120

⁴¹ Para 18d of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 18d RHB pg 568

- v) Because Offer⁴ was not a “Qualified Bid”⁴², it could not be a: “Successful Bid”, defined as: “the highest and best Qualified Bid as determined by the Receiver”⁴³.
- vi) 100 is nonconforming as it did not satisfy the “Bid Requirements”:

“7. Bid Requirements

In order to be considered a Qualified Bid, as determined by the Receiver, a Bid must satisfy each of the following conditions:

- a) Written Submission of Agreement of Purchase and Sale. The Bid must be submitted by the Bid Deadline. [...]
- b) Irrevocable. A Bid must be received by the Bid Deadline, in accordance with Section 3 above, and must be irrevocable until the date on which the Receiver obtains court approval of the Successful Bid, subject to the provisions hereof regarding the Back-up Bid being deemed to be the Successful Bid.”

38. Regarding 100’s deposit, 100 did not conform the Sales Procedure. By not using the defined “Agreement of Purchase and Sale”, 100 refused to agree that its deposit was a defined “Good Faith deposit”⁴⁴, “held in trust in accordance with the Sales Procedure”⁴⁵ and 100 refused to accept that its deposit was subject to forfeiture under section 17⁴⁶ of the Sales Procedure:

“1. “Good Faith Deposit” means a cash deposit in an amount equal to 10% of the purchase price as set out in the Agreement of Purchase and Sale;” [...]

“7. Bid Requirements

In order to be considered a Qualified Bid, as determined by the Receiver, a Bid must satisfy each of the following conditions: [...]

- f) Good-Faith Deposit. Each Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver’s counsel by wire transfer or banker’s draft, to be held by the Receiver’s counsel in trust in accordance with this Sale Procedure and which shall constitute the Deposit under the Agreement of Purchase and Sale;”

“17. Return of Good Faith Deposit

⁴² Schedule D to the Template APS at para 1, Appendix G to Sixth Report of R, RHG, Tab 2, p 121

⁴³ Schedule D to the Template APS at para 1, Appendix G to Sixth Report of R, RHG, Tab 2, p 121

⁴⁴ Schedule D to the Template APS at para 1, Appendix G to Sixth Report of R, RHG, Tab 2, p 121

⁴⁵ Schedule D to the Template APS at para 7f, Appendix G to Sixth Report of R, RHG, Tab 2, p 123

⁴⁶ Schedule D to the Template APS at para 17, Appendix G to Sixth Report of R, RHG, Tab 2, p 125

[...] If a Successful Bidder [...] fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder.”

39. The R’s position that 100 be deemed to have accepted a term Offer⁴ and that its **deposit is forfeited** is untenable when the document/Offer⁴ expressly communicated (by deleting all terms of the Toronto APS which forfeited 100’s deposit) that its deposit was forfeited on revocation.

40. **Ron is a Different Process:** The R’s 2 Stage process, with **discretion** of the R and Court to accept nonconforming offers, distinguishes this sales process from a *Ron* tender process.

41. The issue for the Court at the next approval hearing - upon receipt of 100’s nonconforming Offer⁴ (if Offer⁴ was not withdrawn and was accepted by the R) would have been to accept it, accept a competing offer, or reopen the bid process. In a *Ron* type tender process there is no such second stage process or **discretion** to accept a nonconforming bid.

42. In *Ron*, the process does not deem/insert a term in either Contract A or B. If the offer which is tendered does not conform with the terms of tender, the finding is that there is no contract. The court does not insert the missing terms to create the match of tender terms with the tender.

43. The R’s request on this motion, the novel idea of imposing a Contract A on all bidders who respond to a R’s sales process (including a nonconforming bidder like 100), apart from being a major change and disruption in the two-stage sales process, is inconsistent with, and undermines, the discretion of the R and the Court, as set out in *Crown Trust. v. Rosenberg*⁴⁷:

“74 It is clear on the one hand that the court is not to apply an automatic stamp of approval to the decision of the Receiver. Plainly, the court has power to decide differently and a discretion to exercise which must be exercised judicially.”

44. The R does not, however, have discretion to insert terms into offers.

⁴⁷ *Crown Trust Co. v. Rosenberg*, 1986 CarswellOnt 235, para 74

45. The R's position on this motion - that the winning bidder, ie. pursuant to Contract A and Contract B, had been determined **before** the hearing, sans Court approval - runs counter to the role and jurisdiction of the Court at the approval hearing to approve or select the winning bidder, either a compliant or a nonconforming bidder (or reopen the sales process), and is inconsistent with the R's position before Black J and the CA regarding the role of the Court, quoting the CA Decision:

[11] Following these offers, the Receiver filed a factum with the court outlining its position. The Receiver was of the view that the court had discretion to consider the late offers⁴⁸ [...],

[38] I agree with the Receiver's submission on appeal that the appellant's submission, if accepted by this court, would establish a rigid rule to be applied without exception, would unduly restrict the court to address fast-moving commercial realities, and would be contrary to the principles of insolvency which requires courts to respond with practical solutions⁴⁹. [...]

46. Surely, if Ron applied it would have applied to the "Subject Transaction" in the Toronto APS (which does contain the Sales Procedure) and was the only compliant offer before Black J. If Contract A was always, automatically, formed when there was a conforming offer, the R would have advocated before Black J. and the CA, that 100's third offer could not be considered by Black J. because *Ron* applied, and there was accordingly a binding agreement with the Toronto Purchaser. Not so. The Receiver's factums before Black J and the CA don't reference Ron, or a Contract A with the Toronto Purchaser. However, the Court did not treat the Toronto Purchaser as having any contractual rights. The CA held that, before Black J. on Dec 10: "The Receiver continued to seek approval of the Subject Transaction" and "The core effect of the [Dec 10 SPO] is to dismiss the R's motion seeking approval of the Subject Transaction."⁵⁰

⁴⁸ CA Decision at para 11, Appendix O to Sixth Report of the Receiver, RHB Tab 2, p. 183

⁴⁹ CA Decision at para 38, Appendix O to Sixth Report of the Receiver, RHB Tab 2, p. 192

⁵⁰ CA Decision at para 24, Appendix O to Sixth Report of the Receiver, RHB Tab 2, p. 186

47. If a conforming offer, accepted by the R (ie. the Toronto APS) did not form Contracts A and B, surely 100's nonconforming, and unaccepted Offer4 did not form contracts A and/or B.

48. The 'solution' proposed by the R – deem terms into nonconforming offers - sidesteps that there is no problem requiring this novel 'solution'. The two-stage process, the Court's jurisdiction at the approval hearing, is working just fine in maintaining the integrity of the sales process, it is, of course, **the** forum for hearing a R's request to sanction a late bidder – not this deposit motion.

49. The R's position that 100 should be punished by forfeiting its deposit because it participated in the approval hearing or in the SPO Sales Process has no place in law of offer and acceptance and contract formation. Neither Justice Black nor the CA imposed costs against 100, nor did the R seek any. The two-stage process invites participation; post process sanctioning would act as a deterrent to participation. Again, the Court at the approval stage controls the process.

THE FACTS DO NOT SUPPORT R'S MANDATORY IT: 100's Offer4 was Not Irrevocable

50. The factual scenario, of an alleged sales process with a mandatory deemed IT, alleged by the R, does not apply to Offer4 because: **First**, Offer4 responded only to the Court ordered SPO Sales Process which does not mandate an IT; **Second**, Offer4 was made after, not part of or in compliance with, the sales process which allegedly mandated a Template; **Third**, 100 first participated at the Stage2 approval hearing (ie. not during a 'tender process'); **Fourth**, Offer4 could not possibly have been acceptance of 'terms of tender' with a mandatory IT, because 100 was not notified of any such term.

51. **First**, the only sales process which 100 participated in **with** Offer4 is the SPO Sales Process defined in the Dec. 10, 2024 **SPO** of Black J. The SPO Sales Process does not impose an IT.

52. The following are the terms of the Sales Process Order⁵¹ about the only sales process in effect when Offer4 was submitted – none state an offer is deemed to be “irrevocable”:

A. Definitions

- (a) "**Anand**" means Arjun Anand (in trust for a company to be formed);
- (b) "**Bid Deadline**" means December 16, 2024 at 5:00 PM E.S.T.; and
- (c) "**Potential Bidders**" mean all persons who, as of December 10, 2024, have submitted to the Receiver offers to purchase the Toronto Property which term includes, for certainty, 1001079582 Ontario Inc. and Anand.

[...]

C. Final Sales Process

5. THIS COURT ORDERS AND DIRECTS that, beginning forthwith and continuing until the Bid Deadline, the Receiver shall solicit and consider further offers to purchase the Toronto Property from Potential Bidders (such process being the "**Final Sales Process**").

6. THIS COURT ORDERS that, for certainty, the Final Sales Process shall conclude at the Bid Deadline and that the Receiver shall not consider offers for the purchase of the Toronto Property received after the Bid Deadline.

7. THIS COURT ORDERS that the Receiver shall forthwith advise the Potential Bidders that all such persons shall have a final opportunity to submit an offer for the purchase of the Toronto Property in the Final Sales Process.

8. THIS COURT ORDERS that, following the Bid Deadline:

- (a) the Receiver shall review the offers it received in the Final Sales Process prior to the Bid Deadline and, in its discretion, determine which offer the Receiver intends to accept and recommend to the Court for approval (such successful bid being the "**Successful Bid**"); and

- (b) the Receiver shall promptly thereafter file and serve a motion seeking an approval and vesting order in respect of the transaction contemplated by the Successful Bid.

53. During the May 26, 2025, Court of Appeal (“CA”) hearing⁵² the R, without notice to 100⁵³ moved the goal post by asking the CA to amend the SPO Sales Process by extending the bid deadline of Dec. 16, 2024, 5 pm, to 48 hours after the (unknown) date of release of the CA decision. When the CA decision was released over five months later, on Oct. 27, 2025, the 48-hour extension

⁵¹ Sales Process Order (“SPO”) Appendix K to Sixth Report of the Receiver, RHB Tab 2, p. 151-153

⁵² CA Decision at para 52, 53, Appendix O to Sixth Report of the Receiver, RHB Tab 2, p. 197-198

⁵³ Para 10, 2nd last para, of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 10 RHB pg 566

of the SPO Sales Process was granted (the “**Amended SPO**”), enabling new bids in late **Oct. 2025** to compete with 100’s **Dec. 2024** Offer⁴. Just as the SPO is silent whether offers must be irrevocable during an appeal, the Amended SPO is similarly silent. The R did not request that either Black J. (in the SPO) or the CA (in the Amended SPO) mandate offers be irrevocable, neither Order mandates an IT. 100 did not participate in the Amended SPO.

54. **Second**, 100 arrived on the scene after the R’s pre-Dec 10 sales process was done, after the bid deadline, after the R selected the Toronto Purchaser as its Successful Bidder. The “Bid Deadline” in the Template is June 3, 2024.⁵⁴ The extended bid deadline is September 26, 2024. Before Dec. 3, 2024, 100 was not involved in any bid. 100’s first offer was sent on Dec. 3, 2024.⁵⁵

55. **Third**, with 100’s first, second and third offer, 100 was participating at the approval hearing stage of the two stage sales and approval process. All concerned - 100, the R, the Court - correctly treated 100 as a nonparticipant in the completed pre-Dec 4/10, 2024 sale process. The issue was whether a noncompliant/nonconforming offer from 100 would be accepted by the Court.

56. The R, on this motion, by relying on the sales process which predates the SPO Sales Process, is relying on the wrong sales process, the R relies on the sales process which 100 did not participate in. Offer⁴ is a response to the SPO Sales Process, nothing else.

57. Unlike the tender process in Ron, Court approved sales by a R involve: Stage 1, the R’s sales process, which ends at the ‘bid deadline’, **before** a hearing to consider the R’s **selected** offer⁵⁶; Stage 2, the approval hearing, when the court may consider late (post sales process) offers.

⁵⁴ Schedule D to the Template APS at para 1, Appendix G to Sixth Report of R, RHB, Tab 2, p. 120

⁵⁵ Para 13 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 13 RHB pg 567

⁵⁶ At the December 10, 2024 Hearing, the Receiver’s preferred bidder, its recommended bidder, its “successful” bidder was the Toronto purchase because it had participated in the Stage 1 bid process.

58. 100. did not participate in the R's Stage 1 sales process. At the approval hearing, it was not disputed that 100 was a late bidder who first participated at the approval hearing (in Stage 2).⁵⁷

59. At the December 10, 2024 approval hearing, the consequence to 100 of not participating in a Stage 1 sales process was that 100 was (correctly) characterized as a nonparticipating, nonconforming bidder. Meaning that, if it wanted to win the bid, 100 had to pay a significantly higher price to overcome the fact that it did not participate in the R's Stage 1 sales process.⁵⁸ Also, its nonparticipation is still a factor which could, at the next approval hearing, have been weighed in the **R's** and Court's **discretion**, whether to accept and approve Offer4.

60. Before the Receiver's Sixth Report dated June 8, 2026, the position of the R was that the **consequence** of being a nonconforming bidder was: 'the Receiver will treat you as nonconforming and recommend the Court do the same'. This is how, appropriately, 100 was treated at the Dec. 10, 2024 hearing. The position of the R, before it sought 100's deposit, was the opposite of the R's position on this motion, which now is to: 'treat 100 as a conforming/participating bidder'.

61. To achieve this reversal the R asserts that: 1) the relevant sales process is the one 100 did not participate in, and; 2) the relevant sales process is the Stage 1 sales process, despite the fact that 100 only and first participated at the Dec. 4/10, 2024 Stage2 approval hearing.

62. The R's rationale for inserting/deeming an IT – its the claim that 100 participated in a sales process which included a template APS with an IT – is factually inaccurate. **First**, as set out above, the only operative sale process for Offer4 is that set out in the SPO dated Dec.10, 2024 and this order does not include a term that offers had to be irrevocable. **Second**, 100 did not participate in

⁵⁷ Para 27 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 27 RHB pg 573

⁵⁸ Para 28 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 28 RHB pg 573

the R's sales process which the R claims had the IT condition, because that sales process ended before 100 arrived on the scene when it presented its first Offer dated Dec. 4, 2024.

63. **Third**, the R's rationale for deeming an IT is a striking reversal of the R's description, during the Dec. 10, 2024 hearing, of 100 as a **noncompliant** bidder (because it failed to participate in the R's sales process)⁵⁹. Before Black J, in the R's Dec. 3, 2024 Supplemental Factum⁶⁰, the R stated the undisputed fact that 100 was a noncompliant bidder, **because** it had not participated in the R's sales process (bold emphasis added):

6. [...] the Receiver has canvassed the relevant caselaw in circumstances **where, as here**, a higher **offer is presented after the conclusion of the sales process** but before the sale approval motion. (HRB p. 882)

13. [...] concern with integrity, fairness and predictability of the court-ordered sales process militate in favour of the approval of the **conforming, successful bid**. (HRB p. 884)

64. At the Dec 10 2024 hearing, the R's (correct) description of 100 as a non complaint bidder is recorded in Justice Black's December 10, 2024 endorsement as follows: ⁶¹

6. In the circumstances of last week, in reliance on those cases, the Receiver's position was that it had run a comprehensive marketing effort, that the (existing) purchaser (the "subject purchaser"), had "acted in good faith" and was a "*bona fide* third party purchaser" and that the "existence of marginally higher bids, submitted **on the eve of the hearing**, are **not sufficient to displace the Receiver's recommendation** set out in its Third Report."

7. **That recommendation**, stressing the "overriding concern with integrity, fairness and predictability of the court-ordered sales process," **was that the court should approve the conforming, successful** (subject) bid. [...]

65. Before its motion to seize 100's deposit (starting with R's Sixth Report, June 2026), the R stood fast to its position, before Black J. and the CA, that 100 was a noncompliant bidder.

⁵⁹ Para 40 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 40 RHB pg 577

⁶⁰ RHB Tab 6, Exhibit 1, Affidavit of SK, Exhibit 6, Suppl. Factum of Receiver dated Dec. 3, 2024, RHB p.882

⁶¹ Endorsement of Black J, dated Dec. 10, 2024, at para 6 and 7, Appendix L to the Sixth Report, RHB, Tab 2, p.157

66. A R does not have the power to pick and chose if a bidder is a **noncompliant** bidder for one purpose (when recommending acceptance of the competing complaint Toronto APS) and a **complaint** bidder for another purpose (when claiming 100's deposit).

67. In any event, only the terms of Offer4 are relevant, not the R's alleged "expectation"⁶². Even if the R had set out its expectation in an affidavit or Report (the R did not do so) such evidence: "of subjective intention which is not admissible in commercial contract interpretation".⁶³

68. **Fourth**, the R did not notify 100 that any of 100's offers had to be irrevocable. 100 was not notified that the Template, Sales Procedure or IT were mandatory.

69. Paragraph 3 of FactumR is careful to use the word "parties", not the name 100. 100 was not one of the parties referenced in para 3: "The R had communicated to **parties** that offers ... had to be irrevocable...". None of the communication cited by the R in the Sixth Report or FactumR is addressed to 100, nor is there document/evidence that 100 received any such communication. The R has led no evidence that 100 (as opposed to unknown "interested parties") was notified. Mr. Kronenfeld's uncontested evidence is that 100 was not notified.

70. While receipt of such "communication" would not have inserted an IT into Offer4 (ie. on its face Offer4 is nonconforming by rejecting the IT/Sales Procedure in the Template), however, such receipt it is not an issue on this motion as there was no such communication to 100.

71. If the R had notified 100 its offer had to provide that the offer was irrevocable, such notice would not form Contract A when 100 rejected the alleged 'mandatory term' by expressly deleting

⁶² Factum R, para 59;

⁶³ [NexJ Systems Inc.\(Re\)](#), ONCA 451, para 10

it in all of 100's Offers.⁶⁴ The R and Court would each still have discretion to accept/approve a nonconforming offer. However, no notice of an IT was provided to 100.⁶⁵

72. The R conducted a private sales process, with no public disclosure of a sales procedure.

73. The R elected not to state terms of a sale process in a court order. The R did not obtain a court order about the sales process.⁶⁶ No Order stated an offer had to be irrevocable.⁶⁷

74. The R elected not to take out an order like the one obtained by a receiver in *Target Canada*, which mandated that offers had to be irrevocable, as follows⁶⁸:

“29. Any Competing Bidder {...} who wishes to become a Qualified Bidder must submit a Qualified Bid satisfying the conditions set forth below [...]:

(c) it is irrevocable until the earlier of: (i) the approval by the Court [...]"

75. In any event, such a sales process order (like all the orders cited in *FactumR* para 67, footnote 49) does not order what the R is asking this honourable court to order. They do not deem/insert a term into a nonconforming offer which is not in a nonconforming offer, the orders simply state what is required to be conforming. Nor do the orders take away the Stage2 power of the Court at the approval hearing to consider and possibly approve an offer which does not comply with the subject sales process order. The footnote 49 set of nine cases is not admissible evidence, is not opinion evidence, of a “universal practice”. Further, if it is a practice, it is one this R did not follow in this case – there is no such similar sales process order here.

⁶⁴ *R v Ron Engineering* [1981] 1 S.C.R., at para 14 and 16, RBOA Tab 12 p.253, 254

⁶⁵ Paragraphs 4 (HRB 561), 7 (HRB 562), 18 (HRB 568), 19 (HRB 569) of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit

⁶⁶ Para 14 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 14 RHB pg 567

⁶⁷ Para 15 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 14 RHB pg 567

⁶⁸ Exhibit 32 to the SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit Exhibit 32, RHB pg 1165

76. The cases cited at FactumR para 67, footnote 48, do not support, are not admissible evidence of, an “industry practice”. The cases do not support an industry practice, or court finding, that an irrevocable term be **deemed to be included** into a nonconforming offer. Also, these cases are about subcontracts where a Contract A has been held to be in place with the general contractor.

77. Justice Black, in his endorsement dated Dec 10 2024, invited the R to provide its input regarding the terms of the sales process: “As such, and subject to input from the R about any fine-tuning required, I am ordering the process”. The R did not provide the “input” the R now asks this Court to add as a deemed term of the sales process. It is trite law that the Courts do not make contracts, which is essentially what the R seeks, a contract different from that set out in Offer4.

78. 100. understood that the Toronto APS was an agreement negotiated between the R and the Toronto Purchaser. The Toronto APS contains terms which are struck out (such as s.1.1(j), 5.1) and the Toronto APS states many terms have been “intentionally deleted”, and has terms in red font (section 4.1 f, g, h, I, j, k, and l) which therefore appear to be negotiated terms.⁶⁹

79. The first sentence of para 10 (footnote 5), of FactumR is not accurate with respect to any offers by 100 Again, the R is careful in FactumR not to state that it “required” or notified 100 Para 10, footnote #5, of FactumR cites para 15.2 of the Sixth Report, which states: “In correspondence to potentially interested persons...Colliers advised...Parties wishing to submit an offer ...were required to submit an offer in the form of the [Template]”⁷⁰ The R, in FactumR, does did not state that 100 was one of the “interested persons” or “Parties” referenced in para 15.2.

⁶⁹ Para 54 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 54 RHB pg 581

⁷⁰ Sixth Report of the Receiver at para 15.2, RHB Tab 2, p. 22

80. Further, the uncontested evidence in the SK Affidavit is that the R **never required** that an offer from 100 be in the form of the Template. Specifically (quoting the SK Affidavit):

16. 100 Inc. was not involved whatsoever in the time period, events or documents, described in paragraphs 9.2 to 25.2 of the Sixth Report, covering the period from the start of the Receivership (December 6, 2023, paragraph 9.2) to December 2024 (paragraph 26.2).⁷¹

18. Specifically⁷²:

- a) 100 Inc. had no involvement in the “Sales Process” defined in paragraph 11.2 of the Sixth Report;*
- b) 100 Inc. was not one of the “interested parties” who were invited to execute, or who executed a “Confidentiality Agreement” (para 12.2 of the Sixth Report, Appendix “E”);*
- c) 100 Inc. did not receive any of the “e-mails” “sent to Colliers distribution list of approximately 3000 parties” (para 14.2a(2) of the Sixth Report);*
- d) 100 Inc. did not request or obtain access to the data room (para 14.2 (b)2 of the Sixth Report);*
- e) 100 Inc. did not receive any of the “correspondence to potentially interested parties” (para 15.2 of the Sixth Report);*
- f) 100 Inc. was not one of the “parties wishing to submit an offer to purchase the Toronto Property”⁷³ and consequently;*
- g) 100 Inc was not aware of, nor provided with “a template agreement of purchase and sale”, attached as Appendix G to the Sixth Report; (para 15.2 (a)2 of the Sixth Report). As set out below, 100 Inc. first received a copy of the Template APS when it was delivered in June 2026 as an appendix to the Sixth Report;*
- h) 100 Inc was not aware of, nor notified about the June 3, 2024 “deadline for parties to submit offers to purchase the Toronto Property” (para 15.2 (b)2 of the Sixth Report).⁷⁴*

22. Specifically with respect to paragraph 15.2 of the Sixth Report, in addition to the fact that 100 Inc. did not receive the “correspondence to potentially interested parties” from

⁷¹ Para 16 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 16 RHB pg 568

⁷² Para 18 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 18 RHB pg 568

⁷³ (paragraph 15.2(a)2 of the Sixth Report

⁷⁴ Para 18 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 18 RHB pg 568

Colliers, the following facts bear out that paragraph 15.2 is not accurate if it was intended to refer to 100 Inc:

- a) 100 Inc. was never advised by the Receiver that it was “required to submit an offer in the form of [the Template APS]”;
- b) Each of the five offers submitted by 100 Inc, on or after December 3, 2024, including its [Offer4] (defined by the R in para 17.2 of the Sixth Report⁷⁵ as the “Final Offer”) dated December 16, 2024⁷⁶, did not comply with the form of the Template APS and contained material revisions to the Template APS;
- c) The Receiver did not, before submitting its case in the Sixth Report (sent in June 2026 seeking to justifying its attempt to seize 100 Inc.’s deposit), assert that 100 Inc. had failed to comply with any obligation to adhere to the terms of the Template APS or that it was required to;
- d) During the December 10 2024 hearing before Justice Black, and in its submission to the Court of Appeal, the Receiver did not disclose in any of its court material, the view now stated by the Receiver, that 100 Inc’s offer did not comply with the terms of the Template APS, or that there was any obligation on 100 Inc. (or any other bidder) to comply with the terms of the Template APS;
- e) The alternative recommendation of the Receiver before - Justice Black on December 10, 2024 and repeated before the Court of Appeal at the May 26, 2025 Court of Appeal hearing – was that it was appropriate for the Receiver to consider approving 100 Inc’s Final Offer, an offer which by its very terms did not adhere to the terms of the Template APS and which expressly deleted the terms of the Template APS which required that a bid be irrevocable;
- f) Specifically, each and every offer from 100 Inc., including [Offer4] dated December 16, 2024, expressly deleted the following language in the Toronto APS, which is identical to the following language in the Template APS quoted in paragraph 43.2(a)2 of the Sixth Report:

“(a)2 The Receiver’s form of Template APS sets out at item #7(b) of Schedule D that “A Bid must be received by the Bid Deadline, in accordance with Section 3 above, and must be irrevocable until the date on which the Receiver obtains court approval of the Successful Bid”; “

19. [...]100 Inc. was not provided with a copy of the Template APS, 100. did not receive any “notice of the rules and procedures governing the Receiver’s Sales Process in the form of a schedule [ie. Schedule D] appended thereto.” (paragraph 16.2 of the Sixth Report).⁷⁷

⁷⁵ Sixth Report of the Receiver at para 17.2, RHB p. 25

⁷⁶ 100 Inc. Offer dated Dec 16, 2024, Exhibit 12 to the SK Affidavit, RHB Tab 6, page 962 to 989

⁷⁷ Para 19 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 19 RHB pg 569

20. The first time 100 Inc. received notice of the terms of the Template APS was on June 8, 2026 when the Receiver served the Sixth Report of the Receiver, which attached the Template APS as Appendix G to the Sixth Report.⁷⁸

81. Para 15 (footnote 12) of FactumR is not accurate with respect to any communication to 100. Again, the R is careful in Para 15, footnote 12 not to state that it “communicated” to 100. FactumR para 15 states: “On Sept 17, 2024 Colliers communicated to interested parties [...] that offers had to be in the form of the Template APS.” Footnote 12 of FactumR cites “Emails dated Sept 17, at Appd. H of the Sixth Report”. However, it is clear from the review of the Sept 17 emails at Exh. H that they were not sent to 100. The uncontested evidence in the SK Affidavit is that the Sept. 17 emails were not sent to 100 as follows:

“29. With respect to the fact that 100 Inc. was not involved in the (pre-December 2024) events described in paragraphs 19.2 to 25.2 of the Sixth Report, the fact is that:

- a) 100 Inc. did not receive any of the emails referenced in paragraph 19.2, and attached as Appendix H to the Sixth Report;
- b) 100 Inc. did not receive the email sent on Sept. 17, 2024 by Colliers, referenced in paragraph 22.2 and attached as Appendix “J” to the Sixth Report;
- c) Specifically, with respect to paragraph 23.2 of the Sixth Report, 100 Inc. did not receive an “invite to submit an offer to purchase the Toronto Property using the Receiver’s form of Template APS”.⁷⁹

82. The Sept. 17 emails at Appd. H and Appd J of the Sixth Report do state the private sales process the R elected to use, by stating that if a person “sign and submit the Confidentiality Agreement” they would get access to data. 100 never signed a Confidentiality Agreement⁸⁰, did not access the data room⁸¹ (assuming it held the Template, Sales Procedure or Acknowledgement).

⁷⁸ Para 20 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 20 RHB pg 570

⁷⁹ Para 29 of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 29 RHB pg 573-574

⁸⁰ Para 18b of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 18b RHB pg 568

⁸¹ Para 18d of SK Affidavit, RHB, Tab 6, Exam Exhibit 1, SK Affidavit, para 18d RHB pg 568

83. Again, in FactumR para 54, 55, the R is careful not to identify 100, or name 100, as one of the “parties” who made the alleged “representations” or received “communication” that offers must be irrevocable. Nor does R state in FactumR para 56 that 100 received or was sent the “Receiver’s materials ...that offers were to be in the form of the Receiver’s Template APS”. Of course not, the uncontested evidence in the SK Affidavit is that 100 did not receive any notice or any document stating that any of its offers had to be irrevocable.

84. The “reasonable observer” (FactumR para 58) would conclude that a “party submitting an offer...intended and agreed” that the terms of their offer were in the document they signed and delivered (Offer4) and were not set out in: communication they did not receive; a Template APS they were not told was mandatory; terms they expressly deleted from a form of offer (the Toronto APS) which a competing bidder (ie.Toronto) and the R had signed.

85. The alleged communication by the R, or Mr. Rooney’s cover letter, are not relevant to the issue of contract formation: one must “determine the intentions of the parties in accordance with the language used in the written document”⁸²: “The court begins with the words of the contract and presumes that the parties intended what is written in the contract.”⁸³

ISSUES

86. Is Offer4 irrevocable? Answer: No

87. Did R and 100 enter into an Agreement regarding Offer4? Answer: No

⁸² FactumR para 81

⁸³ [McLean v McLean](#), 2013 ONCA, para 54

ORDER REQUESTED

88. 100 respectfully requests that the R's claim to 100's deposit be dismissed and that the Receiver be ordered to forthwith return 100's deposit to 100, as directed by counsel, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of October 2026.



Dale Denis

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Graillen Holdings Inc. v. Orangeville (Town)*, 2016 ONSC 3687, paragraph 39:
2. *Crown Trust Co. v. Rosenberg*, 1986 CarswellOnt 235, para 74
3. NexJ Systems Inc.(Re), ONCA 451, para 10
4. McLean v McLean, 2013 ONCA, para 54

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and- CONACHER KINGSTON HOLDINGS INC.et al.
Respondents

Court File No. CV-23-00701672-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**FACTUM OF THE RESPONDENT 1001079582
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