

**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.**

Respondents

**AIDE MEMORANDUM OF THE TORONTO PURCHASER**

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TO: Service List

1. This Aide Memorandum is submitted by Arjun Anand in Trust for a company to be incorporated (i.e. the Toronto Purchaser as defined in the Factum of the Receiver)
2. Arjun Anand seeks directions of this court and an order that the deposit of \$300,000.00 (“Deposit”) currently being held by the Receiver which had been provided by the Late Bidder (as defined below) be applied to cover the out of pocket expenses and legal fees of Arjun Anand, in Trust, for the reasons as set out below.

### **Sales Process**

3. After a failed sale to a third-party purchaser (“Third Party Purchaser”), pursuant to an Approval and Vesting Order dated July 24, 2024 (“First AVO”), the Receiver terminated the Third Party Purchaser Agreement of Purchase and Sale on August 27, 2024 and commenced extensive re-marketing of the Toronto Property.<sup>1</sup>
4. The Receiver and the listing agent being Colliers Macaulay Nicolls Inc. (“Colliers”) set out a detailed sales procedure which included a bid deadline of September 26, 2024 (“Sales Process”).<sup>2</sup>
5. The Receiver and Colliers received two offers and one letter of intent. The Receiver determined that the offer from Arjun Anand, in Trust (i.e. the Toronto Purchaser as defined in the factum of the Receiver) was the highest and best offer. On October 7, 2024, the Receiver executed the Toronto APS (as defined in the factum of the Receiver)

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<sup>1</sup> Third Report of the Receiver dated November 25, 2024 (“Third Report of the Receiver”) at para. 3 and 4

<sup>2</sup> Third Report of the Receiver at paras. 17 to 19

with the Toronto Purchaser.<sup>3</sup> As required, Arjun Anand, in Trust, provided the required deposit (“Anand Deposit”).

6. The Receiver initially sought the approval of the Toronto APS in a motion before this court which was heard on December 4<sup>th</sup> and 10<sup>th</sup> 2024. Before and in between these two hearings, 10010195852 Ontario Inc. (“Late Bidder”) **a company related to the Debtors**, made several offers to purchase the Toronto Property. On December 6, 2024, the Late Bidder went “fishing”. They initially provided a bid which the Receiver said was not “substantially high”. As set out in the Supplementary Factum of the Receiver dated December 3, 2024 (“Supplementary Factum”), the *“Late offers are only marginally (6.7% to 14.2%) higher. The purchase price in the [Toronto APS submitted by Arjun Anand] before the court falls squarely within the range of the offers received, and importantly, was **compliant with the sales process.**”*<sup>4</sup>
7. Unfortunately, despite seeking a sealing order, the purchase price to be paid by Arjun Anand was disclosed to the Late Bidder by the Receiver (“Confidential Information”). This resulted in the Late Bidder making two additional bids each for slightly higher increments, the highest purportedly being approximately 37% higher than the Toronto APS (“Higher Offer”).<sup>5</sup> However, while making this Higher Offer, the Late Bidder did not provide the required deposit and was not compliant with the Sales Process implemented by the Court appointed Receiver.

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<sup>3</sup> Third Report of the Receiver at paras. 19-27

<sup>4</sup> Supplementary Factum of the Receiver dated December 3, 2024, para. 12

<sup>5</sup> Confidential Second Supplement to the Third Report of the Receiver dated December 3, 2024, at paras. 6 and 7; Receiver’s Confidential Brief of Document (“RCD”) Tab 3, pgs. 54, 55; Fifth Report of the Receiver at para. 4

8. At the December 10, 2025 hearing, the Receiver:
  - (a) Took the position that the Toronto APS be approved; and
  - (b) Also, submitted that given the 37% higher offer, the Toronto APS not be approved but rather an auction process be implemented.
9. The Receiver made this latter recommendation **without obtaining the required 10% deposit from the Late Bidder**. In fact, what has now become evident is that the Receiver assumed that the Late Bid was in fact a bona fide bid. As now admitted to by the Receiver, the Late Bidder had not even provided the full deposit. The Late Bid was not a bona fide bid. This mischaracterization was material.
10. The Receiver's disclosure of the Toronto Purchaser's confidential purchase price enabled the Late Bidder to escalate its offer in small increments, which in turn formed the basis for the Receiver's recommendation that an auction process be reopened. The resulting prejudice to the Toronto Purchaser stems from this erroneous treatment of a non-bona fide bid as a compliant one.
11. As now acknowledged by the Receiver, the Late Bidder defaulted by failing to pay the entirety of the deposit required thereunder.<sup>6</sup> The Late Bidder has now revoked its offer which was the basis of re-opening the sales process.
12. Simply put, the parties and in particular the innocent Toronto Purchaser, being Arjun Anand, ought not to have gone down the road of the appeal and eventually obtaining the

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<sup>6</sup> Fifth Report of the Receiver at para. 35

right to purchase the Toronto Property when from the outset, it should have made clear to Justice Black that the Late Bidder had not made a bid in compliance and that the had not received all of the required deposit monies.

13. The court, and Cameron Stephens Mortgage Capital Ltd., being the secured lender, supported the opening of the sales process as recommended by the Receiver on the basis and on the representations that the Late Bid was in fact bona fide. It was not.
14. All parties including the innocent Arjun Anand, had to incur significant legal fees only to find, at the end of it all, to be before this court over one year later seeking approval of the same Toronto APS. The prejudice to the Toronto Purchaser is compounded by the fact that the Receiver accepted two separate offers while continuing to hold the Anand Deposit. Throughout this period, the Toronto Purchaser remained ready, willing, and able to close the accepted APS, yet the Sale Process was repeatedly diverted due to a non-compliant bidder.
15. The secured creditor stood to benefit from the artificially inflated Late Bidder offer and accordingly supported the reopening of the sale process based on the Receiver's representation that the Late Bid was bona fide. The Fifth Report demonstrates that this representation was incorrect. The creditor's attempt to improve its recovery by relying on a non-compliant and ultimately invalid offer resulted in substantial increase in legal and process-related costs.
16. With only a \$300,000.00 deposit, the purchase price offered by the Late Bidder was in fact \$3 million dollars which was approximately 14% higher than the Toronto APS, and not 37% higher, which Justice Black deemed sufficient to displace the Soundair test. As

set out in the Supplementary Factum of the Receiver, the first few offers were only marginally higher at 6.7% to 14.2%. The Late Bid in fact also within that marginal range of only 14%.<sup>7</sup> With only a \$300,000.00 deposit, the offer of the Late Bidder was only 14% higher.

17. The nominal increase would not have justified the opening of the bidding process.
18. The integrity of the court approved sales process and receivership has now been brought into question. The courts have consistently favoured and approached that preserves the integrity of the process. As set out in [\*Cameron v. Bank of Nova Scotia\*, 1981 CanLII 4762 \(NSCA\)](#):

*“In my opinion, if the decision of the Receiver to enter into an agreement of purchase and sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances at the time existing, it should not be set aside simply because a later and a higher bid is made. To do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they have a binding agreement. On the contrary, they would know that the other bids could be received and considered up until the application for court approval is heard – this would be an intolerable situation...”*<sup>8</sup>

## **Costs**

19. All of the costs should be born by AJGL and the Late Bidder.
20. Justice Black’s Endorsement contemplated that the Toronto Purchaser would recoup their costs if they were not the successful bidder. However, the steps taken by AJGL and the

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<sup>7</sup> Supplementary Factum of the Receiver dated December 3, 2024 at para. 10

<sup>8</sup> [\*Cameron v. Bank of Nova Scotia\*, 1981 CanLII 4762 \(NSCA\), at para. 35](#)

Late Bidder increased costs for all parties. Moreover, the Late Bidder also filed motions in the Court of Appeal trying to displace the accepted offer.

21. The deposit of \$300,000.00 exists solely because of defaults and should be applied towards compensating Arjun Anand, in Trust, as contemplated by Justice Black. It would be inequitable and contrary to the principles governing court supervised sales for the secured creditor or any other party to retain a windfall generated by the misconduct of the Late Bidder.<sup>9</sup> As stated by Justice Black:

*“In the course of its submissions, acknowledging the regrettable lateness of its bids (including the third offer), AJGL offered that, if the subject purchaser does not remain the successful bidder following the Proposed Auction Process, AJGL will reimburse the subject purchaser for its reasonable legal costs associated with the process to date. I find that to be a fair proposal, and direct AJGL to do so if we end up in that scenario.”<sup>10</sup>*

22. In these circumstances, the \$300,000.00 currently being held being the deposits from AJGL/Late Bidder should be used to pay the out of pocket expenses and fees of Arjun Anand and the costs he has incurred in this process as a result of the wrongful conduct. In keeping with Justice Black’s Endorsement, what would be “fair” and reasonable is that Arjun Anand be paid his legal fees and out of pocket expenses from the \$300,000.00 deposit.
23. The Receiver now holds forfeited deposits that exist solely because non-compliant bidders were permitted to participate in the sale process. Equity requires that this windfall

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<sup>9</sup> Endorsement of Justice Black dated December 10, 2024 at para. 36

<sup>10</sup> Supra, at para. 36

be used to cover the out of pocket expenses of the compliant bidder, while preserving the court's jurisdiction to rectify the inequities.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 11<sup>th</sup> day of December, 2025.

*Jonathan Kulathungam*

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

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PROCEEDING COMMENCED AT  
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