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

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

COMPENDIUM OF THE RECEIVER
(MOTION RETURNABLE NOVEMBER 18, 2026)

November 13, 2026

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

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TAB 1A

SCHEDULE D

Sale Procedure

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the **"Court")** dated December 6, 2023 and effective December 22, 2023 (the **"Appointment Order")**, RSM Canada Limited was appointed receiver and manager, without security, of the lands and premises set out on **Schedule "B"** attached hereto (the **"Property"**) owned by the Debtor(s) and of all of the assets, undertakings and properties of the Debtor(s) acquired for, or used in relation to the Property, including all proceeds thereof.

Pursuant to the Substitution Order of the Ontario Court of Justice (Commercial List) dated March 1, 2024, (the "**Substitution Order**") the name of TDB Restructuring Limited ("**Receiver**") was substituted in the place of the name of RSM Canada Limited.

Accordingly, the following Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the Property.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

"Acknowledgement of Sale Procedure" means an acknowledgement of the Sale Procedure in the form attached as **Schedule "A"** hereto;

"Agreement of Purchase and Sale" shall be the form of Agreement uploaded to Dataroom;

"Back-up Bid" means the next highest and/or best Qualified Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

"Back-up Bidder" means the Bidder that submits the Back-up Bid;

"Bid" means a bid submitted by a Bidder pursuant to Section 7 hereof;

"Bid Deadline" means 4 p.m. (Toronto time) on June 3, 2024;

"Bidder" means a party that submits a Bid in accordance with Section 8;

"Confidential Data Room" means a private data room prepared and maintained by the Receiver or the Listing Agent containing confidential information in respect of or related to the Property;

"Confidential Information" means the confidential information in the Confidential Data Room;

"Confidentiality Agreement" means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel;

"Debtor(s)" means, collectively, 5004591 Ontario Inc.;

"Encumbrances" means, collectively, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests;

"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;

"Interested Party" means a party participating in this Sale Procedure;

"Listing Agent" shall mean Colliers Macaulay Nicolls Inc.;

"Notice Parties" means the Receiver, its counsel and the Listing Agent;

"Participant Requirements" has the meaning set out in Section 4 hereof;

"Qualified Bid" means a Bid that satisfies the conditions set out in Section 7 hereof as determined by the Receiver;

"Qualified Bidder" means a Bidder submitting a Qualified Bid;

"Sale Hearing" means a Court hearing on motion by the Receiver for an Order to approve the sale of the Property to the Successful Bidder;

"Successful Bid" means the highest and best Qualified Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including the Expense Reimbursement, if applicable, and those factors affecting the speed and certainty of consummating the proposed sale; and

"Successful Bidder" means the Bidder that submits the Successful Bid.

2. Assets for Sale

The Receiver is soliciting offers for all of and not less than all of the right, title and interest of the Receiver and the Debtor(s) in and to the Property.

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3. Sale Procedure Structure and Bidding Deadlines

Interested Parties that meet the Participant Requirements shall be given access to the Confidential Information in the Confidential Data Room.

All Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Bid Deadline.

A Bid received after the Bid Deadline shall not constitute a Bid and shall be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

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**").

5. Access to Due Diligence Materials

Only Interested Parties that satisfy the Participant Requirements **("Potential Bidders")** will be eligible to receive access to the Confidential Data Room.

The Receiver and the Listing Agent will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Potential Bidders. Neither the Receiver nor the Listing Agent shall be obligated to furnish any due diligence information after the Bid Deadline. Neither the Receiver nor the Listing Agent, nor their agents, shall be responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property, or any of them.

6. Information from Interested Parties

Each Potential Bidder shall comply with all reasonable requests for additional information by the Receiver and/or the Listing Agent regarding such Potential Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information will be a basis for the Receiver to determine that the Potential Bidder is not a Qualified Bidder.

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. The Agreement of Purchase and Sale must constitute a written and binding commitment to close on a transaction for the purchase of the Property, on the terms and conditions set forth therein;

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;

c) Conditions. A Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other terms and conditions associated with a Bid may not, in aggregate, be more burdensome in the sole and exclusive opinion of the Receiver;

d) Financing Sources. A Bid must be accompanied by: (i) written evidence of a commitment for financing or other evidence of the Bidder's ability to close on the Agreement of Purchase and Sale satisfactory to the Receiver; (ii) appropriate contact information for such financing sources; and (iii) names of all principals of the Purchaser together with names of all development partners whether corporate or personal in sufficient detail to allow the Receiver to make a determination as to the Purchaser's ability to complete the transaction in accordance with the terms of the Agreement of Purchase and Sale;

e) Intentionally deleted.

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; and

g) Intentionally deleted.

The Receiver shall be entitled to seek additional information and clarifications from Bidders in respect of their Bids at any time.

8. Intentionally deleted.

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9. Designation as Qualified Bidder

Following the Bid Deadline, the Receiver shall determine which Bidders are Qualified Bidders. The Receiver shall notify each Bidder of its determination as to whether the Bidder is a Qualified Bidder as soon as practicable after the Bid Deadline.

10. Determination of Successful Bid

If one or more Qualified Bids is received by the Bid Deadline, the Receiver may by a date to be determined by the Receiver: (i) conduct an auction amongst the Qualified

Bidders, on terms to be determined by the Receiver and communicated to the Qualified Bidders; and/or (ii) negotiate with the Qualified Bidders to determine the Successful Bid and the Back-up Bid, if any.

Upon determination of the Successful Bid and the Back-up Bid, if any, the Receiver shall, as soon as reasonably practicable, seek Court approval of, and authority to consummate, the Agreement of Purchase and Sale included in the Successful Bid and the transactions provided for therein. The Receiver shall post notice of its application to Court for approval of the Successful Bid on its website established pursuant to the Appointment Order.

If no Qualified Bid is received by the Bid Deadline, then the Sale Procedure shall be terminated.

11. Intentionally deleted.

12. Acceptance of Successful Bid

Subject to the terms of the Agreement of Purchase and Sale, the Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

13. Intentionally deleted.

14. "As Is, Where Is"

The sale of the Property, pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents, except to the extent set forth in the Successful Bid. Each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Property in making its Bid, and that it did not, does not, and will not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied or arising by operation of law or otherwise, regarding the Property, made by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure or as to another Successful Bidder, the applicable Agreement of Purchase and Sale.

15. Free Of Any and All Encumbrances

Except as otherwise provided in the Successful Bid, the Property shall be sold free and clear of all Encumbrances, except the Permitted Encumbrances, in

accordance with an approval and vesting order of the Court, with all Encumbrances on or against the Property that are sold, other than the Permitted Encumbrances, to attach to the net proceeds of the sale of such Property after completion of such sale under a Successful Bid.

16. Back-up Bid

If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Receiver shall be entitled, but not required, to deem the Back-up Bid the Successful Bid. The Receiver may seek the Court's approval to consummate the transaction with the Back-up Bidder at the Sale Hearing on a conditional basis, or may seek such approval in the event that it deems the Back-up Bid to be the Successful Bid under this section.

17. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Bidders shall be held in a non-interest bearing account of the Receiver's counsel. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder and the Back-up Bidder, shall be returned, without interest, to such Qualified Bidders within three (3) business days after the selection of the Successful Bidder and the Back-up Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-up Bidder shall be returned, without interest, to the Back-up Bidder within three (3) business days after the closing of the transaction(s) contemplated by the Successful Bid. If a Successful Bidder (including any Back-up Bidder deemed to be a Successful Bidder hereunder) 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. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-up Bidder, the Good Faith Deposit of the Back-up Bidder shall be applied to the purchase price of the transaction(s) contemplated by the Agreement of Purchase and Sale of the Back-up Bidder at closing.

18. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

TAB 1B

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00701672-00CL **DATE:** DECEMBER 10, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. et al**

BEFORE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE W.D. BLACK:

[1] These parties were before me last week, on December 4, 2024. At that time, as my brief endorsement of that day reflects, there had been considerable activity in the hours leading up to the time appointed for the hearing, including new last-minute offers to purchase the "Toronto Property" that was the subject of the appointment.

[2] In the circumstances, I directed that the parties should have an opportunity to exchange their materials and submissions in a slightly less compressed fashion, and that we would reconvene today (December 10, 2024).

[3] Since the parties were before me last week, there has been one significant development. That is, 1001079582 Ontario Inc ("100")., a would-be purchaser of the Toronto Property delivered a further offer on Saturday December 6, 2024, (the "Third Offer") at a higher price than its two previous offers.

[4] On December 4, and until the arrival of this latest offer, the Receiver's position had been, even-handedly but firmly, to the effect that the prior offers from 100, although higher than the offer/price (the "subject offer" or the "subject price") in the transaction for which the Receiver was seeking approval (the "subject transaction"), was not "substantially higher" than that price so as to raise concerns about the providence of the proposed sale.

[5] In its supplementary factum for purposes of the December 4 hearing, the Receiver had reviewed certain caselaw in which late offers ranging from 8% to 30% higher than the offers subject to approval in those cases had not led to a conclusion that the subject price was unreasonable, or that the process undertaken to obtain the subject price was unreasonable or flawed.

[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. The Receiver reminded the court of the words of Cumming J. in *1730960 Ontario Ltd. (Re)*, in which His Honour said "[i]t is unfair and objectionable for a party to wait until another bid is made and has been accepted by the Receiver and then to make a bid that is marginally higher and ask the Court to not approve the agreement of purchase and sale resulting from the accepted bid."

[8] The Third Offer, however, is 37% higher than the subject price.

[9] While the Receiver, quite appropriately, stands by its submissions about the integrity of the process, and the worrisome precedent associated with giving effect to an offer received very late in the process (and in the face of the subject offer that the Receiver has accepted and recommended), the Receiver also clearly recognizes that at a certain level, a late-breaking offer can and perhaps must be considered simply by dint of its value.

[10] It is apparent that the Receiver allows that the Third Offer may be in that category. Before me today Receiver's counsel submitted that, albeit the Receiver's first position remains that the proposed subject

transaction should be approved, it now says that, as a second possibility, if the court is persuaded that 37% is a sufficiently higher price to qualify as "substantially higher" such that that the subject price risks improvidence, then the Receiver suggests a further "auction" process whereby the bidders are asked to submit their best offers by a specified date in the near term.

[11] In determining what to do in these circumstances, I first observe that I regard the circumstances as unique, likely singular, and unlikely to be replicated in future (or certainly not often).

[12] In that regard, I heard submissions from counsel for the purchaser whose offer is the subject of the approval motion, pointing to the specter of the unpredictable free-for-all that will ensue if I fail to approve the subject transaction and countenance 11th hour offers like the Third Offer.

[13] I do not regard that as a high risk, let alone an inevitable consequence. Again I find that the circumstances before me are unique and unlikely to be regularly repeated.

[14] I should note that, on the other side of the fence, I also reject certain submissions on behalf of 100's bid, offered to suggest that in fact the equities here favour my approval of – or at least a re-opening of the process to recognize and make room for consideration of – the Third Offer.

[15] Those submissions include the assertion that 100 stands in the shoes of a beneficial owner of the Toronto Property, and that its offer is akin to a redemption.

[16] The ownership argument is based on the fact that AJGL Group Inc. ("AJGL") is the beneficial owner of the shares of 5004591 Ontario Inc. and beneficial owner of 2849, 2851, 2853, 2855, and 2857 Islington Avenue in Toronto, being the Toronto Property.

[17] It is clear that AJGL assembled the five properties making up the Toronto Property and developed them over a number of years, ultimately obtaining planning approval for a 110-unit mid-rise condo building which Colliers (engaged by the Receiver) marketed for sale in the receivership.

[18] It is as a result of that ownership and that "sweat equity" that AJGL, via 100 (hereafter AJGL and 100 will be referred to from time to time collectively as "AJGL"), seeks "to acquire ownership back from the Receiver by submitting the highest bid." AJGL submits that, as such, its position is "analogous to that of a mortgagor seeking to redeem a mortgage."

[19] AJGL argues that this ownership interest puts it in a unique position, different than the competing bidder in all of the cases on which the Receiver relies in its argument. It says that whereas the cases in the Receiver's factum involve "disinterested third-parties as bidders" AGJL is instead a "beneficial owner of the [Toronto] Property seeking to have its equitable right to redeem the [Toronto] Property recognized and protected by the Court."

[20] I do not accept that AJGL is akin to a beneficial owner seeking to redeem.

[21] A redemption of the mortgage financing here would require payment of roughly four times the amount of the Third Offer. So, while the Third Offer is potentially propitious, and while the past ownership stake may mean that acquiring the Toronto Property has unique value for AJGL, the Third Offer is not fairly characterized as being in the nature of a redemption.

[22] I am prepared to give modest credence to AJGL's related argument that, inasmuch as the subject purchaser would be aware of the former owner's interest, and aware that the former owner may seek to reclaim ownership, the subject purchaser's argument that a late-breaking offer from the former owner is not within the reasonable expectation of the subject purchaser may be somewhat attenuated.

[23] In addition, recognizing that it could be criticized for "lying in the weeds," AJGL offers an explanation for not submitting a bid before the bid deadline. It says that it believed that the Kingston Property (also a part of the receivership, and for which a sale that was approved earlier this fall did not close) would be sold first, and that there would be sufficient proceeds from that sale that the Toronto Property would not ultimately be sold. AJGL says that this was its business judgment, which proved to be incorrect, but that its decision was taken in good faith, and not with a view to "waiting in the wings."

[24] While I do not dismiss this explanation out of hand, for the most part, like AJGL's past ownership interest and its claim to an entitlement to an equitable claim, I view the purported excuse for the late offer as largely irrelevant.

[25] I also reject AJGL's assertions that Colliers, in particular, on which the Receiver relied for advice and guidance with respect to the sale process, failed to provide proper advice, and failed in particular to ensure that the Toronto Property was exposed to the residential market in addition to that for developers, such that the sale and marketing effort was flawed.

[26] I understand the impetus for AJGL making these arguments, but, as with the over-reaching claims about AJGL's purported rights to equitable redemption, I find these arguments insubstantial and unpersuasive, and again for the most part frankly irrelevant.

[27] What is relevant, and the consideration that concerns and compels me, is the sheer size of the Third Offer.

[28] Not surprisingly, in light of the 37% larger amount of the Third Offer, it has attracted the support of various parties with a potential stake in the proceeds. Ms. Greenspoon-Soer for the applicant Cameron Stephens Mortgage Capital Ltd., Mr. Taylor for 2858087 Ontario Inc. and Issam A. Saad, creditors of relevant entities, and Mr. Mosonyi on behalf of the estate trustee of the late Nicholas Kyriacopoulos each indicate, albeit for slightly different reasons, that their respective clients favour recognition of the Third Offer, and a process to include AJGL/100 with a view to maximizing the return for the Toronto Property, rather than approval of the subject transaction.

[29] As noted, despite its appropriately stated concerns about the integrity of the process, the 37% delta between the Third Offer and the subject price caused the Receiver to suggest, as an alternative to approval of the subject offer, a further process to ensure that the value of the Third Offer is captured and maximized.

[30] In the unique circumstances as described, I find that this is the preferable approach.

[31] I do so without suggesting that the subject purchaser acted in anything other than good faith.

[32] I do so, also, with an appreciation of the need to preserve the integrity and predictability of the marketing and sale process within receiverships, and the reasonable expectation in the vast majority of cases that the process will yield a value-maximizing result that should not be subverted by late-breaking offers.

[33] As noted, I do not find that there are any flaws with the sale and marketing process undertaken here; to the contrary I find that the conduct of the Receiver, and those involved in the process, including Collier, was unassailable.

[34] Nonetheless I find that the magnitude by which the Third Offer exceeds the subject price does in fact qualify as "substantially higher," and that it is not appropriate or in the interests of a majority of stakeholders to leave that much money "on the table."

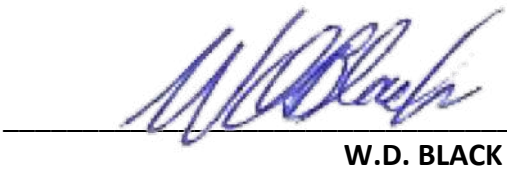
[35] As such, and subject to input from the Receiver about any fine-tuning required, I am ordering the process (the "Proposed Auction Process"), set out in paragraph 79(b) of AJGL's Aide Memoire, save and except that the deadline for further bids should be 5:00 p.m. on December 16 (rather than December 18 as suggested in that paragraph). To be clear, as will be evident, the subject purchaser is able to participate in this further process, and so is not precluded from making a further bid to purchase the Toronto Property.

[36] 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.

[37] AJGL requested the right, which I allowed, to file further written submissions after the time allotted for the hearing had elapsed. The further submissions, which I have reviewed, ask that the vesting order that will be required for the sale of the Toronto Property include a particular provision.

[38] At the time that I granted AJGL the right to file the supplementary written submission, I also confirmed that the Receiver would have an opportunity to respond, also in writing. At the time of preparing this endorsement I have not yet received the Receiver's position.

[39] Inasmuch as the issue with respect to the insertion or not of that clause at issue relates to an approval of a transaction not yet in place, and inasmuch as there is some urgency to deal with the process for selling the Toronto Property, I will defer my consideration and determination of the issue regarding the proposed insertion of the clause until such time as I hear from the Receiver as to its position.



W.D. BLACK J.

RELEASED: DECEMBER 10, 2024

TAB 1C

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 10TH
	)	
JUSTICE BLACK	)	DAY OF DECEMBER, 2024

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

ORDER

(SALES PROCESS)

THIS MOTION, made by TDB Restructuring Limited, in its capacity as receiver and manager (in such capacity, the "**Receiver**") of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the "**Kingston Property**") and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the "**Toronto Property**" and together with the Kingston Property, the "**Properties**") for an order for an approval and vesting order in respect of the Toronto Property was heard this day at the courthouse at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Receiver, the Third Report of the Receiver dated November 25, 2024 (the "**Third Report**"), the Supplement to the Third Report of the Receiver dated November 28, 2024 (the "**Supplement to the Third**

Report"), the Second Supplement to the Third Report of the Receiver dated December 3, 2024 (the "**Second Supplement to the Third Report**"), the Third Supplement to the Third Report of the Receiver dated December 7, 2024 (the "**Third Supplement to the Third Report**"), the Factum of the Receiver, the Supplementary Factum of the Receiver, the First Affidavit of Simion Kronenfeld, the Second Affidavit of Simion Kronenfeld, the Third Affidavit of Simion Kronenfeld, the Affidavit of Carly Vande Weghe, the First Affidavit of Jamie Erlick, the Second Affidavit of Jamie Erlick, the Third Affidavit of Jamie Erlick, the Affidavit of Vincent Zhang, the First Aide Memoire of AJGL Group Inc. and 1001079582 Ontario Inc., the Second Aide Memoire of AJGL Group Inc. and 1001079582 Ontario Inc., the Receiver's Responding Submissions to the Second Aide Memoire of AJGL Group Inc. and 1001079582 Ontario Inc., the Factum of Issam A. Saad and 2858087 Ontario Inc., the Aide Memoire of Arjun Anand (in trust for a company to be formed) and on hearing the submissions of counsel for the Receiver and the other parties listed on the counsel slip, no one appearing for any other party although properly served as appears from the Lawyer's Certificate of Service of Ryan Shah, dated November 25, 2024 and the Affidavit of Service of Beatrice Loschiavo, dated November 29, 2024:

A. Definitions

1. THIS COURT ORDERS that for the purposes of this Order, the following definitions apply:

(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.

B. Approval and Vesting Order

2. THIS COURT HEREBY does not approve the sale transaction in respect of the Toronto Property as contemplated by an Agreement of Purchase and Sale as between the Receiver and Anand, dated September 26, 2024 (the "**Transaction**").

3. THIS COURT HEREBY does not approve the proposed sale transaction in respect of the Toronto Property as contemplated by an Agreement of Purchase and Sale submitted to the Receiver by 1001079582 Ontario Inc. on December 6, 2024.

4. THIS COURT HEREBY dismisses the Receiver's motion seeking an Approval and Vesting Order approving the Transaction.

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:

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Toronto Superior Court of Justice / Cour supérieure de justice

(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.

D. Reimbursement of Anand

9. If Anand is not the offeror of the Successful Bid, AJGL Group Inc. shall reimburse Anand for its reasonable legal costs associated with the Transaction up to the date hereof.

10. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.

Justice W.D. Black

Electronically issued / Délivré par voie électronique : 06-Mar-2025
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-23-00701672-00CL

141

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

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ORDER
(SALES PROCESS)

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1
Fax: (416) 646-4301

Jeffrey Larry (LSO#44608D)
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Ryan Shah (LSO# 88250C)
Tel: 416.646.6356
ryan.shah@paliareroland.com

Lawyers for the Receiver, TDB Restructuring Limited

TAB 2A

Paul F. Rooney
Professional Corporation
Barrister & Solicitor

121 King Street West, Suite 510
Toronto, Ontario
M5H 3T9

Telephone: (647) 981-7838
Email: rooney@paulfrooneyprofcorp.com

BY EMAIL
December 16, 2024

Our File No. 19507

TDB Restructuring Limited,
11 King Street West, Suite 700
Toronto, Ontario M5H 4C7

Attention: Arif Dhanani adhanani@tdbadvisory.ca

AND TO
Garfinkle Biderman LLP
801-1 Adelaide Street East
Toronto, ON M5C 2V9
Attention: Avrom W. Brown abrown@garfinkle.com

AND TO

Colliers Macaulay Nicolls Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1
Attention: Steve Keyzer steve.keyzer@colliers.com

Re: Re: Receivership of properties located at 2857 Islington Avenue, Toronto (the "Islington Properties") and 311 Conacher Drive, Kingston (the "Kingston Property" and with the Toronto Property, the "Properties")

This letter is further to my letters to you of December 3, 6 and 13 on this topic.

Pursuant to the Endorsement of Justice Black, dated December 10, 2024, and in particular Paragraph 35 thereof, my client is hereby submitting to the Receiver a further revised offer to purchase the Islington Properties, which replaces the previous offers and Agreements. The only revision is as to the price to be paid, which has been increased to $3,801,000, and the deposit has correspondingly been increased to the amount of $380,100 as required in your standard form of agreement. The additional $80,100 of deposit will be provided within 24 hours of acceptance of the Agreement by the Receiver, as described in your standard agreement terms. Mr. Brown already has my client's bank draft for $300,000 payable to his firm in trust. There is no due diligence condition, nor other conditions, save for being conditional on the obtaining of the Approval and Vesting Order in favour of this purchaser. This revised offer (signed and

initialed by the purchaser) is open for acceptance by the Receiver until such date as the Court determines whether or not it should be accepted (and if accepted, then until the date the Receiver obtains court approval for the Agreement). It is not necessary that the purchaser have access to the Confidential Data Room for purposes of this offer and Agreement, and so there is also no need for a Confidentiality Agreement regarding the data in the Confidential Data Room. However if for some reason the Receiver shows a need for the Confidentiality Agreement, the purchaser is willing to provide a confidentiality agreement that is appropriate to this context.

The enclosures in my prior letters, and the Confirmation I previously provided regarding having $3,300,000 of funds in my trust account for this transaction, continue to apply in relation to the revised offer and Agreement.

The existence of this revised offer and Agreement should be considered by the Receiver, and also made known to the Court confidentially in relation to carrying out and completing the Proposed Auction Process as described in Paragraph 35 of the Endorsement. 1001079582 Ontario Inc. requests that the Receiver recommend its revised Agreement to the Court for acceptance and approval. If the Receiver wishes additional information in respect of this revised Agreement, please let me know. If this revised offer and Agreement is not going to be recommended to the Court by you, I request that you advise me as soon as possible.

Yours very truly,

Paul F. Rooney
Professional Corporation

per

Paul F. Rooney
PFR:md

E:\Office\Client Matters\Islington\Letter to Receiver with Agreement (4th revised agmt) doc

TAB 2B

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made as of the 16th day of December 2024.

BETWEEN:

TDB RESTRUCTURING LIMITED (the **"Receiver"**)

in its capacity as Court-Appointed Receiver over the lands and premises set out on Schedule "A" attached hereto and not in its personal or corporate capacity

(the **"Vendor"**)

and

1001079582 ONTARIO INC., a corporation formed pursuant to the laws of Ontario

(the **"Purchaser"**)

RECITALS:

A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the **"Court"**) dated December 6, 2023, (the **"Appointment Order"**) RSM Canada Limited was appointed as Receiver over the lands legally described in Schedule "A" attached hereto, effective December 22, 2023;

B. Pursuant to the Substitution Order of the Ontario Court of Justice (Commercial List) dated March 1, 2024, (the **"Substitution Order"**) the Receiver's name was substituted in the place of the name of RSM Canada Limited;

C. The Vendor desires to sell and the Purchaser desires to purchase the Purchased Assets, as more particularly set out herein, subject to the terms and conditions hereof.

NOW THEREFORE in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Parties covenant and agree as follows:

SECTION 1 - INTERPRETATION

1.1. Definitions

In this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

(a) **"Acceptance Date"** means the date that this Agreement is executed and delivered by the Parties;

(b) **"Agent"** shall mean Colliers Macaulay Nicolls Inc.;

(c) **"Agreement"** means this Agreement of Purchase and Sale, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

(d) **"Applicable Laws"** means, with respect to the Purchased Assets or to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event;

(e) **"Assumed Liabilities"** has the meaning ascribed to it in Section 2.10.

(f) **"Business Day"** means a day on which banks and the Land Registry Office for the City of Toronto are open for business but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;

(g) Intentionally deleted.

(h) **"Claim"** means any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including legal fees on a substantial indemnity basis) and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;

(i) **"Closing"** means the successful completion of the Transaction;

(j) **"Closing Date"** means that date that is six (6) business days immediately following the date upon which the Approval and Vesting Order is granted.

(k) Intentionally Deleted

(l) **"Court"** means the Court defined in the first recital of this Agreement;

(m) Intentionally deleted.

(n) **"Data Room"** means the electronic data room established by or on behalf of the Vendor containing documents related to the Purchased Assets for review by the Purchaser;

2A

(o) Intentionally deleted.

(p) Intentionally deleted.

(q) **"Debtor or Debtors"** means all or any one of Kings Townhomes Limited (formerly Conacher Kingston Holdings Inc.) and 5004591 Ontario Inc.;

(r) **"Deposit"** has the meaning ascribed to it in Section 2.5;

(s) **"Encumbrance"** means any mortgage, charge, pledge, hypothecation, security interest, trust, deemed trust (statutory or otherwise) assignment, lien (statutory or otherwise), Claim, title retention agreement or arrangement, restrictive covenant, rights of way, easements, encroachments, reserves, or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation;

(t) **"Environmental Condition"** has the meaning ascribed to it in Section 2.2(a).

(u) **"Environmental Laws"** means all Applicable Laws concerning pollution or protection of the natural environment or otherwise relating to the environment or health or safety matters, including Applicable Laws pertaining to (i) reporting, licensing, permitting, investigating and remediating the presence of Hazardous Materials, and (ii) the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of Hazardous Materials including without limiting the generality of the foregoing the following any written policies and guidelines and directives, administrative rulings or interpretations, that are in effect and applicable to the Vendor or the Property on the Closing Date, as well as the common law and any judicial or administrative order, consent decree or judgment that is in effect and applicable to the Vendor or the Property on the Closing Date, that relates to pollution or the protection of the environment, including, without limitation, the *Atomic Energy Control Act* (Canada), the *Canadian Environmental Protection Act* (Canada), the *Pest Control Products Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Environmental Assessment Act* (Ontario), the *Ontario Water Resources Act* (Ontario) and the *Occupational Health & Safety Act* (Ontario), and the regulations and guidelines promulgated pursuant thereto or issued by any Government Authority in respect thereof, and equivalent or similar local and provincial ordinances and statutory programs and the regulations and guidelines promulgated pursuant thereto.

(v) **"Ereg"** has the meaning ascribed to it in Section 5.7;

(w) **"ETA"** means the *Excise Tax Act* (Canada), as it may be amended from time to time;

(x) **"Excluded Assets"** means the assets, if any, listed in Schedule "C";

(y) **"Final Order"** means, in respect of any order, such order after i) the expiry of applicable appeal periods; or (ii) in the event of an appeal or application for leave to appeal or to stay, vary, supersede, set aside or vacate such order, final determination of such appeal or application by the applicable court or apelet tribunal;

(z) **"Governmental Authority"** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Purchased Assets, the Transaction or one or both of the Parties and shall include a board, commission, courts, bureau, agency or any quasi-governmental or private body exercising any regulatory authority including an association of insurance underwriters;

(aa) **"Hazardous Materials"** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Governmental Authority and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health or safety matters;

(bb) **"HST"** means all goods and services taxes and harmonized sales tax payable under the ETA;

(cc) **"Land Transfer Tax"** means all the taxes payable under the *Land Transfer Tax Act* (Ontario) and any other applicable provincial or municipal land transfer tax legislation, including all registration fees, license fees, and other like charges payable upon a transfer of real property, together with interest, penalties and additions thereto;

(dd) "Leases" means any leases with any tenants relating to the Property;

(ee) Intentionally deleted.

(ff) **"Liabilities"** means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, liquidated or unliquidated under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and Taxes

5

(gg) **"Parties"** means the Vendor, the Purchaser and any other Person who may become a party to this Agreement. **"Party"** means any one of the foregoing;

(hh) **"Permits"** means all permits, licenses and applications that may have been issued or applied for in the name of the Debtor and/or the Vendor in connection with the servicing and/or development of the Property;

(ii) **"Permitted Encumbrances"** means those Encumbrances listed in Schedule "B" attached hereto;

(jj) **"Person"** means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

(kk) **"Plans"** means all plans and documentation in the possession or control of the Vendor relevant to the development of the Property including, without limitation, any project documents, engineering drawings, architectural plans and working drawings, landscaping plans, reports, project documents other documentation prepared to illustrate or define a particular aspect of the development of the Property, in each instance, to the extent forming part of the Data Room created by the Vendor in respect of the Transaction;

(ll) **"Property"** means the real property described in Schedule "A" attached hereto;

(mm) **"Property Documents"** means the documents in the Data Room;

(nn) **"Purchaser Closing Conditions"** has the meaning ascribed to it in Section 4.1;

(oo) **"Purchase Price"** shall have the meaning ascribed to it in Section 2.4. For greater certainty, the Purchase Price shall be exclusive of Transfer Taxes and any other taxes payable as a result of or in connection with the Transaction;

(pp) **"Purchaser's Solicitors"** means the law firm of Paul F. Rooney Professional Corporation;

(qq) **"Purchased Assets"** means those assets being the lands which are the subject of this Agreement;

(rr) **"Receiver"** has the meaning described thereto in the Recitals;

(ss) **"Reports"** means collectively any written reports or documents received or obtained by the Receiver from any third party regarding any aspect of the Property;

(tt) **"Rights"** has the meaning ascribed to it in Section 2.13;

(uu) Intentionally deleted;

(vv) Intentionally deleted.

(ww) Intentionally deleted;

(xx) Intentionally deleted;

(yy) **"Transaction"** means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;

(zz) **"Transfer Taxes"** means all HST, Land Transfer Tax, sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated together with interest, penalties and additional amounts imposed with respect thereto;

(aaa) Intentionally deleted.

(bbb) **"Vendor Closing Conditions"** has the meaning ascribed to it in Section 4.3;

(ccc) **"Vendor's Solicitor"** means the law firm of Garfinkle Biderman LLP;

(ddd) **"Approval and Vesting Order"** means the order of the Court approving the sale by the Receiver to the Purchaser of the Purchased Assets and vesting all rights, title and interest of the Purchased Assets in favour of the Purchaser free and clear of all Encumbrances (other than Permitted Encumbrances) (in a form to be agreed upon by the parties);

(eee) **"Vesting Order Motion"** means a motion by the Receiver seeking the granting of the Approval and Vesting Order; and

(fff) **"Work Orders"** means any work orders, deficiency notices, outstanding building permits, orders, or requirements to comply with any Applicable Laws or issued by any Governmental Authorities.

1.2. Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of

this Agreement. The terms "this Agreement", "hereof, "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof

1.3. Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

1.4. Schedules

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

Schedule "A"	Property
Schedule "B"	Permitted Encumbrances
Schedule "C"	Excluded Assets
Schedule "D"	Intentionally deleted

SECTION 2 - SALE AND PURCHASE AND ASSIGNMENT

2.1. Sale and Purchase of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Liabilities, all in accordance with and pursuant to the terms hereof and the Approval and Vesting Order. The Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Purchased Assets.

2.2. "As is, Where is"

The Purchaser acknowledges and agrees that:

(a) the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including, without limiting the generality of the foregoing, any latent or patent defects in the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to any matter including, title, encumbrances, description, fitness for purpose or use, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, zoning,

permitted uses, permits, compliance with Applicable Laws of Government Authorities, threatened claims, litigation, the existence or non-existence of Hazardous Materials flowing onto or from the Property or any part thereof, or in the air, surface or ground water flowing through, onto or from the Property, or any part thereof, any non-compliance with Environmental Laws including any adverse matters contained in the Reports (the **"Environmental Condition"**), compliance with any or all Environmental Laws, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell or assign same save and except as expressly provided for in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and are hereby waived by the Purchaser. The descriptions of the Purchased Assets set out in this Agreement or in the Property Documents are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the completeness or accuracy of such descriptions. The Purchaser further acknowledges that the Property Documents and all other written and oral information (including, without limitation, any analyses, financial information and projections, compilations, studies and the Plans) obtained by the Purchaser from the Vendor or the Agent with respect to the Purchased Assets or otherwise relating to the Transaction has been provided for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall not be under any obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

(b) notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding Work Orders, and the Purchaser shall accept the title to the Property subject to the Permitted Encumbrances and the Environmental Condition.

(c) the various parties who prepared the Property Documents may have restricted the use thereof to the Debtor only, in their respective retainers with the Debtor and any purported conveyance of any of the Property Documents by the Vendor to the Purchaser may be subject to such limitations.

(d) Without limiting the generality of this Section 2.2, the Purchaser acknowledges and agrees that the parties have expressly agreed to exclude from this Agreement all express or implied representations and warranties with respect to the following matters:

(i) the compliance of the Property with Applicable Laws, by-laws or regulations including without limitation, municipal zoning by-laws and regulations;

(ii) any easements, rights of way, instruments, documents, agreements or other registered or unregistered interest in the Property which impacts the

use, enjoyment, income or development opportunities connected with the Property;

(iii) that the present use or any future use of the Purchased Assets intended by the Purchaser is or will be lawful or permitted;

(iv) the execution, good standing, validity, binding effect or enforceability of the Permitted Encumbrances;

(v) that the Vendor has any right, title or interest in any goodwill associated with the Purchased Assets, or the use of any name associated with the operation of the Purchased Assets;

(vi) the description, title, condition, value, state of repair and fitness for any purpose of the Purchased Assets; and

(vii) the compliance of the Property with Environmental Laws, Reports or the existence or non-existence of Hazardous Materials, environmental, soil or water contamination or pollution on or about the Property, or otherwise with respect to the environmental condition of the Property;

(e) the Property Documents and any assets lists, information packages and other material concerning the Purchased Assets or the sale thereof provided by or on behalf of the Vendor and the Agent have been prepared solely for the convenience of the Purchaser and are not warranted or represented to be complete or accurate and are not part of this Agreement (unless specifically provided in such material) and the descriptions of the Purchased Assets provided to the Purchaser are for the purposes of identification only, no conditions, warranty or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning such descriptions;

(f) the Vendor is entering into this Agreement solely in its capacity as Receiver of the Property pursuant to the Appointment Order and not in its personal or other capacity and the Vendor and its agents (including the Vendor's Solicitors), officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith;

(g) save as to any valid objection to title made in respect of matters arising after the Acceptance Date, the Purchaser shall be conclusively deemed to have accepted the title to the Property and to have accepted the Property subject to the Permitted Encumbrances and the Environmental Condition and subject to all Applicable Laws, by-laws and regulations affecting its use. If any valid objection to title expressly permitted herein is made by the Purchaser prior to the Closing Date, which the Vendor is unwilling or unable to remove, remedy, or satisfy and which the Purchaser will not waive or is not satisfied by title insurance, then the Receiver may terminate this Agreement by notice to the Purchaser, whereupon, except as herein expressly set forth, the Deposit without interest accrued thereon shall be forthwith returned to the Purchaser in accordance with and subject to the

terms in Section 2 6 and 2 12 each of the Purchaser and the Receiver shall be released from all obligations under this Agreement;

(h) the Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title except such of the foregoing as are in the possession or control of the Receiver;

(i) the Purchaser acknowledges that, the Vendor has provided the Purchaser access to the Data Room and that the Purchaser has had sufficient opportunity to review, and has satisfied itself with respect to, the Property Documents. If for any reason the transaction is not completed, the Purchaser shall forthwith return the Property Documents, and delete any electronic copies of them in its possession or control. The Vendor makes no representation or warranty, express or implied, as to the accuracy or completeness of any information contained in any of the Property Documents; and

in entering into this Agreement, the Purchaser has relied and will rely entirely and solely upon its own inspections and investigations with respect to the Property and the Purchased Assets, including the physical condition and the Environmental Condition of the Purchased Assets including compliance with Applicable Laws and has relied solely upon its own judgement resulting from doing so and has not relied and will not rely on any information, written or oral, furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor including the Agent, including with respect to value of the Purchased Assets, the development potential of the Property, adequacy, marketability, quantity, location, condition, quality, fitness or state of repair. The information in the Data Room and description of the Purchased Assets in any marketing material, listing information, and any like material delivered or made available by the Vendor and/or the Agent, the Vendor's agents or any other party on its behalf to the Purchaser or its representatives are believed to be correct, but if any misstatement, error, inaccuracy or omission (collectively the "Inaccuracies") is found in the them, the Purchaser shall not be entitled to any abatement, damages, reimbursement, costs or to termination of this Agreement as a result of them and the Purchaser releases the Vendor and its agents from any Claims the Purchaser had, has or may have as a result of such Inaccuracies.

2 3 Permitted Encumbrances

The Purchaser acknowledges that the Vendor is selling the Purchased Assets subject to the Assumed Liabilities and that the Vendor undertakes no obligation to discharge the Permitted Encumbrances on Closing or thereafter.

2.4 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "Purchase Price") shall be an amount of ~~$2,000,000.00~~ $3,801,000.00, allocated as set out in paragraph 2 7

2.5. Deposit

The Parties acknowledge and agree that the sum of $380,100.00, being ten (10%) percent of the Purchase Price (the "Deposit") will be delivered by the Purchaser to the Vendor's solicitor in trust within 24 hours of acceptance of an executed copy of the Agreement by the Purchaser and the Vendor. The Deposit shall be held in a non-interest bearing account of a Canadian chartered bank or trust company, in trust and to be disbursed in accordance with the following provisions

(a) If the purchase and sale of the Purchased Assets is completed on the Closing Date, then the Deposit shall be released from trust and applied towards payment of the Purchase Price;

(b) If the purchase and sale of the Purchased Assets is not completed on the Closing Date for any reason other than the default of the Purchaser hereunder, then the Deposit shall, subject to any Claim by the Vendor for damages under Section 2.12(d) herein, be released from trust and paid to the Purchaser in full satisfaction of all Claims incurred by the Purchaser as a result of such non-completion; or

(c) If the purchase and sale of the Purchased Assets is not completed on the Closing Date as a result of the Purchaser's default hereunder, then the Deposit shall be forfeited to the Vendor and released from trust as liquidated damages and not as a penalty and paid to the Vendor without prejudice to the Vendor's rights to reimbursement on account of any Claim of the Vendor against the Purchaser as a result of such failure and the Vendor shall be entitled to pursue all of its rights and remedies against the Purchaser, including the resale of the Purchased Assets. Upon any such resale, the Purchaser shall pay to the Vendor, (i) an amount equal to the amount, if any, by which the Purchase Price under the Agreement exceeds the net purchase price received by the Vendor pursuant to such resale (net of any commissions and costs and expenses incurred to effect the completion of such resale including legal costs on a full indemnity basis), and (ii) an amount equal to all costs and expenses incurred by the Vendor in respect of the Transaction or occasioned by the Purchaser's failure to comply with this Agreement.

2.6 Payment of Purchase Price

The Purchase Price shall be paid and satisfied as follows

(a) on Closing, the Deposit shall be released from trust and credited against the Purchase Price in accordance with Section 2.5(a); and

(b) on Closing, the Purchase Price, subject to adjustments and minus the amount paid to the Vendor pursuant to Section 2.6(a), shall be paid to the Vendor or as the Vendor may direct in writing by way of wire transfer using the Large Value Transfer System.

2.7 Intentionally deleted.

2.8 Adjustment of Purchase Price

(1) The Purchase Price shall be adjusted as of the Closing Date in accordance with the terms of this Agreement for any property taxes (including interest thereon, if applicable), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a Court supervised sale (the **"Adjustments"**). The Receiver shall prepare a statement of adjustments and deliver same to the Purchaser for its approval by no later than 3 Business Days prior to the Closing Date. If the amount of any Adjustments required to be made pursuant to this Purchase Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be made by the Vendor as of the Closing Date based upon the best information available to the Vendor at such time. When such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Vendor and the Purchaser shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the Parties the final cost or amount of an item shall be determined by an accountant or such other financial professional appointed jointly by the Vendor and the Purchaser, with the cost of such accountant's or other financial professional's determination being shared equally between the Parties. All re-adjustments shall be requested in a detailed manner on or before the 60th day after the Closing Date, after which time neither party shall have any right to request re-adjustment.

(2) Other than as provided for in this section 2.8, there shall be no Adjustments to the Purchase Price.

2.9 Excluded Liabilities

Other than the Assumed Liabilities, the Purchaser shall not assume and shall not be liable for any other Liabilities of the Vendor or the Debtor.

2.10 Assumed Liabilities

From and after Closing, the Purchaser shall assume and be liable for the Assumed Liabilities. The Assumed Liabilities shall consist only of the Liabilities incurred under or in respect of:

(a) Permitted Encumbrances;

(b) the use of the Purchased Assets from and after the Closing Date to the extent relating to periods from and after the Closing Date; and

(c) the Environmental Condition, and any and all Liabilities for the remediation of the soil and groundwater in, on, over, under or flowing through, onto or from the Property or any part thereof.

(the foregoing being the **"Assumed Liabilities"**).

2.11 Taxes

In addition to the Purchase Price, the Purchaser or the beneficial owner of the Property if different from the Purchaser shall pay all applicable Transfer Taxes exigible in connection with the purchase and sale of the Purchased Assets, including, without limitation, HST and Land Transfer Tax.

The Purchaser will be an HST registrant and a prescribed recipient under the ETA on or before the Closing Date and will provide its registration number to the Vendor on or before the Closing Date.

The Purchaser shall deliver, prior to Closing, a certificate in form prepared by the Vendor acting reasonably certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the Transaction. The Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration as the case may be, and the Purchaser's HST registration number together and the Purchaser shall indemnify and hold harmless the Vendor from and against any and all Claims, HST, penalties, costs and any interest that may become payable by or assessed against the Vendor for all Transfer Taxes arising out of, related to or connected in any way with the Property or this Transaction. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor at Closing, in addition to the balance due on Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the Transaction.

2.12 Inspections

The Vendor will permit the Purchaser, its consultants, agents and representatives to carry out, at the Purchaser's sole expense and risk, such investigations, soil tests, and environmental audits as the Purchaser, acting reasonably, may deem necessary with respect to the Property, subject to and conditional upon the following terms and conditions:

(a) any invasive testing shall require the Vendor's written approval prior to such testing;

(b) the Purchaser shall provide at least two Business Days' notice to the Vendor of any such tests and inspections and the Vendor will be entitled to have a representative present during all such tests and inspections;

(c) all soil tests or environmental audits shall be coordinated with the Vendor;

(d) any damage to the Property caused by such tests and inspections will be promptly repaired by the Purchaser and the Purchaser will indemnify and save the Vendor harmless from all Claims which the Vendor may suffer as a result of the said tests and inspections or any other breach of this Section by the Purchaser; and

(e) prior to entering the Property to conduct the Purchaser's tests and investigations, the Purchaser shall deliver (or shall cause its representatives completing the Purchaser's investigations on its behalf to deliver) to the Vendor evidence of liability insurance coverage for at least $2,000,000.

The Purchaser agrees that the Vendor shall be entitled to deduct from the Deposit the amount of any Claims which the Vendor may suffer as a result of a breach of this Section 2.12 by the Purchaser. To the extent that the Purchaser commissions any reports in connection with its tests and investigations of the Property, copies of all such reports shall be delivered to the Vendor at no cost to the Vendor within three (3) Business Days of issuance.

2.13 Non-Transferable and Non-Assignable Purchased Assets

To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any Claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the **"Rights"**) is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained, then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer such Rights unless and until such approval, consent or waiver has been obtained. After Closing and for a period of sixty (60) days following Closing, the Vendor shall:

(a) maintain its existence and hold the Rights in trust for the Purchaser;

(b) comply with the terms and provisions of the Rights as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;

(c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and

(d) enforce, at the reasonable request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such Rights in accordance with the terms of such Rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser,

the Vendor shall, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the reasonable opinion of the Vendor, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and ensures to the benefit of the Purchaser. To the extent that such approval, consent or waiver has not been obtained by the 60th day following the Closing, such Right shall be deemed to be an excluded Purchased Asset and the Vendor may terminate any agreement pertaining to such Right unless otherwise agreed to by the Parties. The Purchaser shall indemnify and hold the Vendor harmless from and against any Claim under or in respect of such Rights arising because of any action of the Vendor taken in accordance with this Section.

2.14 Intentionally deleted.

2.15 Approval and Vesting Order

(a) The Receiver and the Purchaser acknowledge that:

i. this Agreement is subject to Court approval; and

ii. closing of the Transaction is subject to the issuance of the Approval and Vesting Order.

(b) If this Agreement is accepted by both parties, the Receiver shall use its commercially reasonable efforts to promptly thereafter file and serve the Vesting Order Motion on notice to the necessary parties.

(c) If the Receiver accepts this Agreement, the Purchaser shall provide all information if any, and take any such actions as may be reasonable requested by the Receiver to assist the Receiver in obtaining the Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the Transaction.

(d) From and after the Acceptance Date, the Receiver shall provide such prior notice as may be reasonable under the circumstances before filing any materials with the Court that relate, in whole or in part, to this Agreement, the Purchaser, or the Approval and Vesting Order and shall consult in good faith with the Purchaser regarding the content of such materials prior to any such filing (provided that the Receiver shall not be obligated to incorporate the comments of the Purchaser and do any such filings).

2.16 Closing Certificate

The parties hereto acknowledge and agree that the Receiver shall be entitled to file with

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the Court a certificate, substantially in the form attached to the Approval and Vesting Order (the **"Closing Certificate"**) upon receiving written confirmation from the Purchaser that all conditions to close under this Agreement have been satisfied or waived. The Receiver shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate.

2.17 Receiver's Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to this Agreement, including in its execution, the Receiver has acted and is acting solely in its capacity as Receiver and manager of the Property pursuant to the Appointment Order and not in its personal, corporate or any other capacity and the Receiver and its agents, officers, directors, employees and representatives will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith.

SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Covenants

The Purchaser covenants and agrees that it will, effective on and after the Closing Date, assume and be fully responsible for:

(a) all obligations which are to be observed or performed from and after completion of this Transaction under the Permitted Encumbrances; and

(b) the Assumed Liabilities and any other obligations and liabilities assumed by the Purchaser as provided for by this Agreement.

3.2 Purchaser's Representations and Warranties

The Purchaser represents and warrants to the Vendor, which representation and warranties the Vendor is relying upon, that:

(a) the Purchaser is and will be as of Closing, a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified to purchase and own the Purchased Assets;

(b) the Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations and the execution and delivery of this Agreement and the consummation of the Transaction has been duly authorized by all necessary corporate action on the part of the Purchaser;

(c) no consent or approval of or registration, declaration or filing with any Government Authority is required for the execution or delivery of this Agreement by the Purchaser, the validity or enforceability of this Agreement against the Purchaser, or the performance by the Purchaser of

any of its obligations hereunder;

(d) the Purchaser is not a party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained herein;

(e) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Purchaser to enter into this Agreement or to consummate the Transaction and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success;

(f) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as of Closing, duly and validly executed and delivered by the Purchaser and constitute or will, as of Closing, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;

(g) the Purchaser is not a non-Canadian person as defined in the *Investment Canada Act;*

(h) The Purchaser has now and will have on the Closing Date the financial resources to complete this transaction in accordance with the terms of this Agreement; and

(i) the Purchaser is registered or will be registered on Closing under Part IX of the ETA.

3.3 Record of Site Condition in the Environmental Registry

If at any time following Closing the Purchaser, in its sole discretion, elects to file a Record of Site Condition (**"RSC"**) in respect of any Property, then the following clause will be deemed to have formed part of this Agreement as at the time of execution hereof, in respect only of the Property for which the RSC is filed:

"The Purchaser covenants and agrees that following the Closing, it shall file, at its sole cost and expense, a Record of Site Condition in the Environmental Registry as contemplated under s.168.4 of the Environmental Protection Act for the Property."

On Closing, the Purchaser shall deliver an indemnity in favour of the Vendor in which it

agrees to indemnify and save the Vendor harmless from any and all Claims incurred by the Vendor in the event the Purchaser fails to make such filings.

3.4 Receiver's Representations

The Receiver represents and warrants to the Purchaser as follows:

(a) the Receiver has been duly appointed as the receiver of the Purchased Assets pursuant to the Appointment Order and has full right, power and authority, subject to obtaining the Approval and Vesting Order prior to Closing, to sell the Purchased Assets, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order; and

(b) the Receiver is not a non-resident of Canada for purposes of Section 116 of the *Income Tax Act* (Canada).

3.5 Survival of Representations, Warranties and Covenants

The representations, warranties, agreements and covenants made by the Purchaser herein or in any other agreement, certificate or instrument delivered by the Purchaser to the Vendor pursuant to this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Vendor, without limitation.

SECTION 4 - CONDITIONS

4.1 Purchaser Closing Conditions

The obligation of the Purchaser to complete the Transaction is subject to the following conditions precedent being fulfilled or performed at or prior to the Closing Date (the **"Purchaser Closing Conditions"**):

(a) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;

(b) the Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the documents contemplated in Section 5.3 or elsewhere in this Agreement;

(c) intentionally deleted;

(d) the Appointment Order and the Approval and Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction; and

The Purchaser Closing Conditions are for the exclusive benefit of the Purchaser. Any Purchaser Closing Condition may be waived by the Purchaser in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing.

4.2 Purchaser Closing Conditions Not Fulfilled

If any Purchaser Closing Condition has not been fulfilled at or prior to Closing, then the Purchaser in its sole discretion may, either:

(a) terminate this Agreement by notice to the Vendor, in which event the Purchaser shall be released from its obligations under this Agreement and the Deposit shall be promptly returned to the Purchaser in accordance with and subject to the provisions of Section 2.5 hereof; or

(b) waive compliance with any such Purchaser Closing Condition, without prejudice to its right of termination in the event of non-fulfillment of any other Purchaser Closing Condition.

4.3 Vendor Closing Conditions

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Date (the **"Vendor Closing Conditions"**):

(a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Date in all material respects with the same effect as though made on and as of that date;

(b) the Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents contemplated in Section 5.2 or elsewhere in this Agreement;

(c) there shall be no litigation or proceedings pending against the Vendor, in respect of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and

(d) On the Closing Date, the Appointment Order and the Approval and Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction.

The foregoing conditions are for the exclusive benefit of the Vendor. Any condition may be waived by the Vendor in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. The Closing of the Transaction shall deem all conditions to be waived or satisfied.

4.4 Vendor Closing Conditions Not Fulfilled

If any Vendor Closing Condition shall not have been fulfilled at or prior to Closing, then the Vendor in its sole subjective discretion may, without limiting any rights or remedies available to the Vendor at law or in equity, either:

(a) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement and, unless the Vendor Closing Condition(s) that was not fulfilled was the Vendor Closing Condition contained in Section 4.3(c) or (d), the Deposit shall be retained by the Vendor in accordance with the provisions of Section 2.5 hereof; or

(b) waive compliance with any such Vendor Closing Condition without prejudice to its right of termination in the event of non-fulfillment of any other Vendor Closing Condition.

4.5 Approval and Vesting Order

The obligations of the Vendor and the Purchaser hereunder are subject to the mutual condition that the Vesting Order shall have been made by the Court on a date to be determined by the Receiver approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances. The Parties hereto acknowledge that the foregoing condition has been inserted for the mutual benefit of the Parties and is incapable of waiver. In the event that said condition has not been fulfilled by the aforesaid date, the Transaction shall automatically be deemed to be null and void and of no further force and effect as of said date and provided that the Purchaser is not in default of its obligations hereunder, the Deposit shall be promptly returned to the Purchaser in accordance with and subject to the provisions of Section 2.5 hereof. The Parties further acknowledge that the Application to the Court for the Vesting Order will be made as soon as reasonably practical after the binding Agreement is entered into by the Parties.

SECTION 5 - CLOSING

5.1. Closing

The completion of the Transaction shall take place on the Closing Date as specified in this Agreement or as otherwise determined by mutual agreement of the Parties in writing.

The Closing Date shall be subject to the approval of the Vesting Order, and to any approvals required from the City of Toronto pursuant to Instrument AT4601555 and related restrictions having been received. If either of the approval of the Vesting Order or any approvals required from the City of Toronto pursuant to Instrument AT4601555 and related restrictions have not been received by the initial Closing Date, then the Closing Date shall be extended ("Extended Closing Date") for a further period of 60 days. In the event that the approvals have not been received by the Extended Closing Date, then the Purchaser shall have the right to terminate this Agreement in writing to the Vendor

or to the Vendor's Solicitor at his absolute and sole discretion and the Deposit shall be returned to the Purchaser in full without interest or deduction.

5.2. Purchaser's Deliveries on Closing

On or before Closing, the Purchaser shall execute or deliver as applicable, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

(a) payment of the Purchase Price;

(b) a certificate, dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;

(c) an acknowledgement dated as of the Closing Date, that each of the Purchaser Closing Conditions have been fulfilled, performed or waived as of the Closing Date;

(d) assignment of the Purchased Assets and assumption of the Assumed Liabilities with an indemnification by the Purchaser in favour of the Vendor for any Claims under the Assumed Liabilities;

(e) the certificate and indemnity provided for under Section 2.11;

(f) an undertaking to re-adjust any item on or omitted from the statement of adjustments subject to 60 day limitation period in Section 2.8;

(g) an environmental release and indemnity indemnifying and holding the Vendor harmless from any and all damages, claims, actions, losses, costs, liabilities or expenses (collectively **"Damages"**) suffered or incurred by the Vendor, directly or indirectly, as a result of or in connection with any of the following, and without restricting the generality of the foregoing, which include Damages incurred in addressing an administrative order by a Government Authority or in addressing a notice, investigation or other process which could reasonably be anticipated to result in such an order:

(i) the presence, release, or the threat of a release of any Hazardous Materials in, on or under the Property;

(ii) the presence of any Hazardous Materials in, on or under properties adjoining or proximate to the Property;

(iii) any other environmental matters relating to the Property;

(iv) the breach of any Environmental Laws applicable to the Property;

(v) the release or threatened release of any Hazardous Materials owned, managed, generated, disposed of, controlled or transported by or on behalf of the Purchaser;

(vi) the Environmental Condition; or

(vii) the Indemnity provided for in Schedule 3.3; and

(h) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

5.3 Vendor's Deliveries on Closing

(a) On or before the Closing, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

(i) statement of adjustments;

(ii) an acknowledgement dated as of the Closing Date, that each of the Vendor Closing Conditions have been fulfilled, performed or waived as of the Closing Date;

(iii) an assignment of the Purchased Assets and assumption of the Assumed Liabilities with an indemnification by the Purchaser in favour of the Vendor for any Claims under the Assumed Liabilities;

(iv) assignment of all Leases;

(v) the Approval and Vesting Order; and

(vi) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

(b) Upon the completion of the deliveries pursuant to Section 5 2 and 5.3(a), the Vendor shall immediately file a certificate with the Court (the **"Receiver's Certificate"**) that the Transaction has been completed and title to the Property shall vest in the Purchaser effective immediately upon the filing with the Court of the Receiver's Certificate and shall deliver to the Purchaser a copy of same.

5.4 Risk

The Purchased Assets shall be and remain at the risk of the Vendor until Closing. From and after Closing, the Purchased Assets shall be at the risk of the Purchaser. In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall advise the Purchaser in writing within twenty-four (24) hours of the Vendor learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Vendor shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the Purchaser and in such event the Parties hereto shall be released from all obligations and liabilities hereunder. If the Vendor shall not elect to terminate this Agreement as set out above, then the Transaction shall be completed in accordance with the terms and conditions hereof and the Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.

5.5 Termination

If either the Vendor or the Purchaser validly terminates this Agreement pursuant to the provisions of Sections 4.2, 4.4, 4.5 or 5.4:

(a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
(b) the Purchaser shall have no right to specific performance or any other remedy against, or any right to recover on account of any Claim it may have from, the Vendor.

5.6 Breach by Purchaser

If all of the Purchaser Closing Conditions have been complied with or waived by the Purchaser and the Purchaser fails to comply with the terms of this Agreement, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser. In addition, the Purchaser shall pay to the Vendor, on demand, the deficiency, if any, arising upon such resale (after deducting the expenses of resale) together with interest and all other damages or charges occasioned by or resulting from the default by the Purchaser.

5.7 Electronic Registration

In the event that a system for electronic registration **("Ereg")** is operative and mandatory in the applicable land registry office, the Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendor or the Vendor's solicitors, to complete the Transaction using Ereg in accordance with the Law Society of Ontario's (the **"LSO")** guidelines. If Ereg is operative on the Closing Date, (i) the Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the LSO, (ii) the Purchaser's solicitors will enter into the Vendor's solicitors' standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing the Transaction provided same are in accordance with LSO guidelines, and (iii) if the Purchaser's solicitors are unwilling or unable to complete the Transaction using Ereg, then the Purchaser's solicitors must attend at the Vendor's solicitors' office or at another location designated by the Vendor's solicitors at such time on Closing as directed by the Vendor's solicitors to complete the Transaction using Ereg utilizing the Vendor's solicitors' computer facilities, in which event, the Purchaser shall pay to the Vendor's solicitors a reasonable fee therefor.

SECTION 6 - GENERAL

6.1. Further Assurances

Each of the Parties shall, from time to time after the Closing Date, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

6.2. Notice

Any notice or other communication under this Agreement shall be in writing and may be

delivered personally or transmitted by electronic transmission, addressed

in the case of the Purchaser, as follows:

Attention: Simion Kronenfeld

Telephone No: 416-520-7111

Email: simion@ajglgroup.com

and in the case of the Vendor, as follows:

TDB Restructuring Limited, Court-Appointed
Receiver of 5004591 Ontario Inc.
11 King Street West
Suite 700, PO Box 27
Toronto, ON M5H 4C7

Attention: Arif Dhanani
Email: adhanani@tdbadvisory.ca

with a copy to:

Garfinkle Biderman LLP
801-1 Adelaide Street East
Toronto, ON M5C 2V9

Attention: Avrom W. Brown
Email: abrown@garfinkle.com

and a copy to:

Colliers Macaulay Nicolls Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1

Attention: Steve Keyzer
Email: steve.keyzer@colliers.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by electronic transmission before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on that Business Day, and if transmitted by electronic transmission after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

6.3. Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or by their respective solicitors.

6.4. Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

6.5. Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns, provided that the Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor; provided the Purchaser may assign its rights and obligations under this Agreement to an "affiliate" of the Purchaser (as such term is defined in the *Business Corporations Act* (Ontario)), provided that the Purchaser remains liable, jointly, with such affiliate for all the obligations of the Purchaser hereunder. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.6. Amendments and Waiver

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Purchaser and the Vendor. The Vendor and the Purchaser may consent to any such amendment at any time prior to the Closing with the prior authorization of their respective boards of directors.

6.7. Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the Parties with respect to the subject matter and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby. Subject to the Approval and Vesting Order being issued by the Court, this Agreement is intended to create binding obligations on the part of the Vendor as set

forth herein and on acceptance by the Purchaser, is intended to create binding obligations on the part of the Purchaser, as set out herein.

6.8. Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

6.9. Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

6.10. Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

6.11. Commission

The Vendor shall be responsible for any commissions to the Agent. Any other commissions payable to any other party shall be the responsibility of the Purchaser.

6.12. Certain Words

In this Agreement, the words "including' and "includes" means "including (or includes) without limitation", and "third party" means any Person who is not a Party.

6.13. Statutory References

All references to any statute is to that statute or regulation as now enacted or as may from time to time be amended, re-enacted or replaced and includes all regulations made thereunder, unless something in the subject matter or context is inconsistent therewith or unless expressly provided otherwise in this Agreement.

6.14. Actions to be Performed on a Business Day

Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following

such day.

6.15. No Registrations

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Property. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Property and the Purchaser shall be deemed to be in default of its obligations hereunder. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property. The Purchaser acknowledges and agrees that until Closing, the Purchaser has no interest in the Property whatsoever, notwithstanding anything to the contrary herein.

6.16. Strict Construction

Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

6.17. No Third Party Beneficiaries

This Agreement shall be binding upon and enure solely to the benefit of each of the Parties hereto and its permitted assigns and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement. Each of the Parties agrees that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, survive the closing of the Transaction.

6.18. Planning Act

This Agreement is entered into subject to the express conditions that it is to be effective only if the provisions of Section 50 of the *Planning Act* (Ontario) and amendments, are complied with.

6.19. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

6.21 Expenses

Each Party shall be responsible for its own legal and other expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Transaction and for the payment of any broker's commission, finder's fee or like payment payable by it in respect of the purchase and sale of the Purchased Assets pursuant to this Agreement.

(Remainder of this page intentionally left blank)

6.22 Announcements

Except as required by law including applicable regulatory and stock exchange requirements, all public announcements concerning the Transaction shall be jointly approved as to form, substance and timing by the Parties after consultation.

The Parties have executed this Agreement by their duly authorized officers.

TDB RESTRUCTURING LIMITED in its capacity as Court-Appointed Receiver and not in its personal capacity

Per: _____
Name: Arif Dhanani, CPA, CA, CIRP, LIT
Title: Managing Director

1001079582 ONTARIO INC.

PER _____
Name:
Title:

Schedule "A"

Property

PIN No. 10306-0064 (LT) - 2849 Islington Avenue

Part Lot 22 Concession 6 WYS Township of York as in NY735134; Toronto (N York), City of Toronto

PIN No. 10306-0035 (LT) - 2857 Islington Avenue

Part Lot 2 Plan 9059 North York as in 18379983; Toronto (N York), City of Toronto

PIN No. 10306-0034 (LT)- 2855 Islington Avenue

Part Lot 2 Plan 9059 North York as in 18379984; Toronto (N York), City of Toronto

PIN No. 10306-0033 (LT)- 2853 Islington Avenue

Part Lot 1 Plan 9059 North York as in 18221318; Toronto (N York), City of Toronto

PIN No. 10306-0032 (LT)- 2851 Islington Avenue

Part Lot 1 Plan 9059 North York as in TR92058; Toronto (N York), City of Toronto

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Schedule "B"

Permitted Encumbrances

"Permitted Encumbrances" means the following:

1. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act*, R.S.O. 1990, and any amendments thereto or any successor legislation, except paragraph 11;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements or rights of way in favour of any governmental authority or public utility provided that none of the foregoing interfere in any material adverse respect with the current use of the Property;
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due;
5. All agreements and easements, registered or otherwise, for utilities and services for hydro, water, heat, power, sewer, drainage, cable and telephone serving the Property, adjacent or neighbouring properties, provided none of the foregoing interfere in any material adverse respect with the current use of the Property;
6. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property provided that in either case same do not materially adversely impair the use, operation, or marketability of the Property;
7. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
8. Any breaches of any Applicable Laws, including Work Orders;
9. Any subdivision agreements, site plan agreements, developments and any other agreements with the Municipality, Region, publicly regulated utilities or other governmental authorities having jurisdiction;
10. Minor title defects, if any, that do not in the aggregate materially affect the use of the Property for the purposes for which it is used on the date of acceptance of this Agreement;
11. The following specific instruments registered on title against the Property:

Permitted Encumbrances related to the Property
(unaffected by the Approval and Vesting Order)

Reg. Num.	Date	Instrument Type	Parties To
NY524794	November 21, 1967	Agreement	The Corporation of the Borough of North York
NY579166	July 20, 1970	By-law exempting Part Lot Control	
NY593705	May 12, 1971	Agreement	The Borough of North York
NY608306	December 29, 1971	Agreement	The Corporation of the Borough of North York
NY620929	July 28, 1972	Municipal By-law	
NY632269	January 29, 1973	Notice of Airport Zoning Regulations	Department of Transportation
TB379984	December 29, 1986	Statutory Declaration of Anthony Dilena	
TR57844	March 27, 2000	Notice	Her Majesty the Queen in Right of the Department of Transport Canada
AT4601553	June 19, 2017	Section 37 Agreement	City of Toronto
AT4601554	June 19, 2017	Rental Housing Agreement	City of Toronto
AT4601555	June 19, 2017	Restriction preventing any Transfer or Charge of the lands or any part thereof without the prior written consent of the Chief Planner, of the City of Toronto	
AT4867240	May 18, 2018	Site Plan Agreement	City ofToronto

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Schedule "C"

Excluded Assets

TAB 2C

Paul F. Rooney
Professional Corporation
Barrister & Solicitor

121 King Street West, Suite 510
Toronto, Ontario
M5H 3T9

Telephone: (647) 981-7838
Email: rooney@paulfrooneyprofcorp.com

BY EMAIL
October 24, 2025

Our File No. 19507

TDB Restructuring Limited,
11 King Street West, Suite 700
Toronto, Ontario M5H 4C7

Attention: Arif Dhanani adhanani@tdbadvisory.ca

AND TO
Garfinkle Biderman LLP
801-1 Adelaide Street East
Toronto, ON M5C 2V9
Attention: Avrom W. Brown abrown@garfinkle.com

AND TO

Colliers Macaulay Nicolls Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1
Attention: Steve Keyzer steve.keyzer@colliers.com

Re: Re: Receivership of properties located at 2857 Islington Avenue, Toronto (the "Islington Properties") and 311 Conacher Drive, Kingston (the "Kingston Property" and with the Toronto Property, the "Properties")

This letter is further to my letter to you of December 16, 2024 on this topic.

By way of my letter of December 16, 2025, my client 1001079582 Ontario Inc. submitted to the Receiver a further revised offer to purchase the Islington Properties, which replaced the previous offers and partial Agreements. The offer to purchase was submitted pursuant to the terms set out in the Endorsement of Justice Black, dated December 10, 2024, and in particular Paragraph 35 thereof, which described what Justice Black called the "Proposed Auction Process", which would allow for and govern additional offers to be submitted and considered on the terms Justice Black described. The subsequently-issued and entered Order of Justice Black dated December 10, 2024 (only issued in March, long after my client's offer was submitted) referred in Paragraph 5 thereof to a "Final Sales Process" (the Receiver considering further offers) and in Paragraph 7 stated that certain persons could "submit an offer in the

Final Sales Process". The Receiver had a discretion whether to accept any of those offers (Paragraph 8(a)). As at the date hereof, the Receiver has not accepted my client's offer made pursuant to the Proposed Auction Process.

This letter shall constitute notice that effective immediately today and as of this email transmission, my client is withdrawing its offer previously made pursuant to my December 16, 2024 letter with its enclosed form of agreement that my client had signed. That offer made by my client (which is also the only existing offer made by my client that is outstanding) is no longer open for acceptance by the Receiver, and is now of no effect. Mr. Brown is in possession of funds in the amount of $300,000 held by his firm in trust, which my client had voluntarily (it was not yet required by any term in the offer) and conditionally delivered to be held in this manner on account of any subsequent deposit that might have become payable by my client if and when its offer had been accepted by the Receiver. Those trust funds must now be returned to my client right away, without deduction. In that respect, please contact the undersigned to make arrangements for the return of those trust funds.

Yours very truly,

Paul F. Rooney
Professional Corporation

per

Paul F. Rooney
PFR:md

E:\Office\Client Matters\Islington\\Letter to Receiver with Withdrawal of Agreement (4th revised agmt) doc

TAB 2D

KeyCite treatment
Most Negative Treatment: Distinguished
Most Recent Distinguished: Dawson Wallace Construction Ltd. v. TIC Interiors Ltd. | 2018 ABPC 237, 2018 CarswellAlta 2285, [2018] A.W.L.D. 4385, 297 A.C.W.S. (3d) 530 | (Alta. Prov. Ct., Oct 9, 2018)

1981 CarswellOnt 109
Supreme Court of Canada

R. v. Ron Engineering p; Construction (Eastern) Ltd.

1981 CarswellOnt 109, 1981 CarswellOnt 602, 1981 J.E. 220, [1981] 1 S.C.R. 111, [1981] S.C.J. No. 13, 119 D.L.R. (3d) 267, 13 B.L.R. 72, 35 N.R. 40, J.E. 81-220

REGINA et al. v. RON ENGINEERING p; CONSTRUCTION (EASTERN) LTD.

Martland, Dickson, Estey, McIntyre and Lamer JJ.

Heard: November 13, 1980
Judgment: January 27, 1981

Counsel: *B. Johnston*, Q.C. and *M. Fleishman*, for appellants.
Hyman Soloway, Q.C. and *J. Shields*, for respondent.

Subject: Corporate and Commercial; Contracts
Related Abridgment Classifications
Construction law
II Contracts
II.1 Building contracts
II.1.a Execution of formal contract
II.1.a.i Tendering process
II.1.a.i.I Miscellaneous
Construction law
III Bonds and sureties
III.1 Bonds
III.1.a Bid bonds
Contracts
V Mistake
V.5 Miscellaneous
Headnote
Construction Law --- Building contract — Execution of formal contract — Tendering process — General
Construction Law --- Bonds and sureties — Bid bonds
Contracts — Tenders — Error in tender — Tender accepted — Tenderer bound by tender.
R submitted a tender in response to a call for tenders by Her Majesty. R's tender was for $2,748,000 and upon the opening of the tenders was found to be some $632,000 lower than the next lowest tender. R had realized that it had made a mistake in calculating its tender price but had not communicated this fact to Her Majesty prior to the opening of tenders. Subsequent to the opening of tenders but prior to acceptance of any, R sent a telex to Her Majesty advising that it had made an error in calculating its tender amounting to $750,058 and requesting to withdraw its tender without penalty. The error was not apparent on the face of the tender.
Her Majesty delivered to R a form of construction contract for signature. R refused to sign the contract. Her Majesty took the position that she was entitled to retain R's tender deposit of $150,000 and award the contract to the second lowest bidder. R

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contract does not come into existence. Therefore, with the greatest of respect, I diverge from that Court where it is stated in the judgment below [p. 334]:

> However, when that mistake is proven by the production of reasonable evidence, the person to whom the tender is made is not in a position to accept the tender or to seek to forfeit the bid deposit.

The test, in my respectful view, must be imposed at the time the tender is submitted and not at some later date after a demonstration by the tenderer of a calculation error. Contract A (being the contract arising forthwith upon the submission of the tender) comes into being forthwith and without further formality upon the submission of the tender. If the tenderer has committed an error in the calculation leading to the tender submitted with the tender deposit, and at least in those circumstances where at that moment the tender is capable of acceptance in law, the rights of the parties under Contract A have thereupon crystallized. The tender deposit, designed to ensure the performance of the obligations of the tenderer under Contract A, must therefore stand exposed to the risk of forfeiture upon the breach of those obligations by the tenderer. Where the conduct of the tenderer might indeed expose him to other claims in damages by the owner, the tender deposit might well be the lesser pain to be suffered by reason of the error in the preparation of the tender. This I will return to later.

15 Much argument was undertaken in this Court on the bearing of the law of mistake on the outcome of this appeal. In approaching the application of the principles of mistake it is imperative here to bear in mind that the only contract up to now in existence between the parties to this appeal is the contract arising on the submission of the tender whereunder the tender is irrevocable during the period of time stipulated in the contract. Contract B (the construction contract, the form of which is set out in the documents relating to the call for tenders) has not and did not come into existence. We are concerned therefore with the law of mistake, if at all, only in connection with Contract A.

16 The tender submitted by the respondent brought Contract A into life. This is sometimes described in law as a unilateral contract, that is to say a contract which results from an act made in response to an offer, as for example in the simplest terms, "I will pay you a dollar if you will cut my lawn." No obligation to cut the lawn exists in law and the obligation to pay the dollar comes into being upon the performance of the invited act. Here the call for tenders created no obligation in the respondent or in anyone else in or out of the construction world. When a member of the construction industry responds to the call for tenders, as the respondent has done here, that response takes the form of the submission of a tender, or a bid as it is sometimes called. The significance of the bid in law is that it at once becomes irrevocable if filed in conformity with the terms and conditions under which the call for tenders was made and if such terms so provide. There is no disagreement between the parties here about the form and procedure in which the tender was submitted by the respondent and that it complied with the terms and conditions of the call for tenders. Consequently, Contract A came into being. The principal term of Contract A is the irrevocability of the bid, and the corollary term is the obligation in both parties to enter into a contract (Contract B) upon the acceptance of the tender. Other terms include the qualified obligations of the owner to accept the lowest tender, and the degree of this obligation is controlled by the terms and conditions established in the call for tenders.

17 The role of the deposit under Contract A is clear and simple. The deposit was required in order to ensure the performance by the contractor-tenderer of its obligations under Contract A. The deposit was recoverable by the contractor under certain conditions, none of which were met; and also was subject to forfeiture under another term of the contract, the provisions of which in my view have been met.

18 There is no question of a mistake on the part of either party up to the moment in time when Contract A came into existence. The employee of the respondent intended to submit the very tender submitted, including the price therein stipulated. Indeed, the president, in instructing the respondent's employee, intended the tender to be as submitted. However, the contractor submits that as the tender was the product of a mistake in calculation, it cannot form the basis of a construction contract since it is not capable of acceptance and hence it cannot be subject to the terms and conditions of Contract A so as to cause a forfeiture thereunder of the deposit. The fallacy in this argument is two-fold. Firstly, there was no mistake in the sense that the contractor did not intend to submit the tender as in form and substance it was. Secondly, there is no principle in law under which the tender was rendered incapable of acceptance by the appellant. For a mutual contract such as Contract B to arise, there must of course be a meeting of the minds, a shared animus contrahendi, but when the contract in question is the product of other contractual arrangements,

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TAB 2E

CITATION: Fulton and White v. KOA Aloha Inc., 2018 ONSC 3261
COURT FILE NO.: CV15-136
DATE: 20180525

2018 ONSC 3261 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :	)	
	)	
Jesse Fulton and Nicole White	)	Erroll G. Treslan, for the Plaintiffs
	)	
	)	
	)	
Plaintiffs	)	
	)	
- and -	)	
	)	
	)	
KOA Aloha Inc.	)	Christopher J. Staples, for the Defendant
	)	
	)	
Defendant	)	
	)	
	)	
	)	**HEARD:** April 12, 17, 18, 23, 24, 25, 26 and May 22, 2018

REASONS FOR JUDGMENT

Conlan J.

I. Introduction

The End of a Friendship

[1] Jesse Fulton ("Jesse") and Nicole White ("Nicole"), the Plaintiffs, are common law spouses. Shane and Shelly Anderson ("Shane" and "Shelly") are

[43] At its essence, any agreement that was made between these parties would form the basis of an oral contract.

[44] In dealing with alleged contracts that are wholly oral, (i) it is necessary to examine the words and actions of the parties in order to determine what they intended; (ii) evidence of the parties' subjective intentions has no independent place in deciding what the terms of the agreement were; (iii) rather, the test of what the parties agreed to is an objective one; and (iv) the contract must include the necessary ingredients of offer, acceptance and consideration. *S & J Gareri Trucking Ltd. v. Onyx Corporation*, 2016 ONCA 505 (CanLII), at paragraph 7.

[45] I agree with and adopt the following, at paragraphs 43 through 49 of the decision of Justice Corbett in *Brownlee v. Kashin*, 2015 ONSC 1035, as being a helpful summary of the legal principles applicable to oral contracts:

> [43] Formation of a contract occurs when one party makes an offer that the other accepts, the parties intend to create legal relations, and there is consideration.
>
> [44] In this case there was intent to create legal relations and consideration. But was there "offer and acceptance"? Underlying "offer and acceptance" is the notion that the parties have reached a "meeting of the minds". Thus a contract is created only where the parties "have formed a mutual intention to enter into a bargain with each other and, further, are in agreement as to the terms of that bargain".
>
> [45] It is settled law that "[t]he question of whether the parties entered into a binding contract must be determined objectively. What would a reasonable bystander observing the parties conclude with respect to whether a contract was concluded and on what terms?"
>
> [46] Where possible the courts will find an enforceable contract.[4] However if the parties fail to agree on the essential terms of their contract, the contract will fail for lack of "sufficient [meeting of the minds] to enable the courts to enforce their agreement."

2018 ONSC 3261 (CanLII)

TAB 2F

CITATION: 1114136 Ontario Inc. v. Feltz Design Build Inc., 2026 ONSC 1512
COURT FILE NO.: CV-20-293-00SR
DATE: 2026/03/13

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
1114136 ONTARIO INC. c.o.b. as CORE TEC. CONTRACTING	Plaintiff	Benjamin E. Jefferies and Tanisha Merkley, Counsel for the Plaintiff
– and –		
FELTZ DESIGN BUILD INC.	Defendant	Michael A. van Bodegom and Mark E. Day, Counsel for the Defendant
		HEARD: June 10 – 13, 2025

THE HONOURABLE JUSTICE I.R. SMITH

REASONS FOR JUDGMENT

1. Introduction

[1] In 2019, the Avon Maitland District School Board (the "Board"), was preparing for renovations and the construction of an addition to the Stratford Central Secondary School (the "project"). Marklevitz Architects Inc. (the "project manager") was retained as the project manager. On April 15, 2019, the Board issued a call for tenders which had been prepared by the project manager. Bids were to be submitted to the Board by May 8, 2019.

[2] The defendant, Feltz Design Build Inc. ("Feltz") is a general contractor. Feltz was included on a list of pre-qualified contractors who were permitted to bid to become the general contractor

2026 ONSC 1512 (CanLII)

specified by the Board. I note also that this point was effectively accepted by Mr. Beland during his cross-examination, when he agreed that Core-Tec's bid was governed by the Board's tender documents and that Core Tec was required to follow all the rules found in those documents.

[55] I have concluded that Core Tec's bid was materially non-compliant in several respects. First, its bid was expressly subject to Core Tec's "Review of Final Working Drawings". In other words, Core Tec's bid was expressly conditional, not final.

[56] Further, Core Tec's bid included a list of 26 exclusions. That is, its bid indicated that it was excluding from its quoted price the work required to be done on items included in the masonry scope of work. In other words, Core Tec was saying that there were portions of the scope of work that it did no intend to complete. These exclusions included most significantly the installation of composite wall ties, precast concrete sills,[6] and fastening ties. Mr. Marklevitz testified that each of these tasks – each described in the scope of work – was necessary for the completion of the masonry work and that if Feltz's bid to the Board had excluded these items, Feltz would not have been selected as the general contractor for the project. In other words, a bid that did not commit to completing all three of these items of work would be non-compliant.

[57] While emphasizing the three exclusions identified in the previous paragraph, Feltz relies on many of the exclusions listed by Core Tec as evidence of Core Tec's non-compliance.[7] From Feltz's point of view, the price it quoted to the Board included the cost of doing all the masonry work listed in the Board's scope of work irrespective of whether the masonry contractor had agreed to do all of that work. The thrust of Mr. Marklevitz's evidence was that the Board was not going to pay extra for work which a subcontractor selected by Feltz had excluded. Feltz would be responsible to pay for that work. Therefore, a bid from a masonry subcontractor which did not

---

[6] Core Tec argues with some force that it did not exclude the pre-cast sills from its bid. On page one of its two-page bid, it included the sills (and other pre-cast concrete elements), but on the second page it excluded "precast concrete" work without qualification. I am inclined to think that the apparent contradiction in Core Tec's bid would be enough for Feltz to have found the bid non-compliant – especially in the necessarily fast-paced process of finalizing the Feltz bid before 2:00 p.m. on May 8, 2019 - but even if I am wrong in this respect, to be compliant, Core Tec's bid had to be compliant in all material respects. Here, Feltz alleges more than one deficiency.

[7] These include, for example, the cost of supplying winter weather protection measures and the cost of multiple mobilizations.

2026 ONSC 1512 (CanLII)

commit to fulfill the entirety of the scope of work was non-compliant because it leaves the price at which the work is to be completed uncertain – one of the very uncertainties the bidding process is intended to eliminate.[8] In *Double N*, the court held (at para. 41), that material non-compliance was non-compliance which affected "the price or performance of Contract B."

[58] In addition, although less significant, Core Tec failed to comply with some of the formal terms associated with the bid process, all of which were set out in the Board's tender package, including that its bid was not submitted in person, it was not signed by all of Core Tec's signing officers, and it did not bear a corporate seal.[9] While these formalities may be less significant than some of the other indicia of non-compliance, as Feltz submits, if Core Tec seeks to argue that the bidding rules set out in the tender package bind Feltz, Core Tec cannot the pick and choose which of the rules apply to and bind itself. Feltz put the point this way in its written submissions: "… the Tender's terms are not a menu that Core Tec gets to freely choose from when submitting its own purported bid."

[59] Core Tec's argument in favour of the proposition that its bid was compliant, or was compliant enough, amounts to an argument that the tender package of documents defines the contractual relationship between the Board and bidding general contractors, but does not necessarily define the relationship between the general contractor and bidding subcontractors. In this respect, Core Tec relies on Mr. Marklevitz's evidence that the Board did not concern itself with the contents of the contracts between the general contractor and the subcontractors because it

[8] In addition to demonstrating the non-compliance of the Core Tec bid, price uncertainty tends to lead to the conclusion that Core Tec did not regard the quote it submitted in this case as part of the kind of tender process described in *Ron Engineering* and other cases whereby bids are submitted and are accepted or not. Instead, it seems that Core Tec did not intend to be bound by its quote and foresaw future negotiation of both the scope and price of its work on the project. As Mr. van Bodegom put it in oral argument, "you don't do that in a tender process. In a tendering process, you get a document, and you pick that document. Done. And you have to live with what it says." If Core Tec did not regard the process engaged in here as binding on it, it cannot assert that Feltz assumed any obligations to Core Tec by naming CORE TECK in its bid to the Board even if doing so was not a mistake.

[9] Feltz also points out that Core Tec's bid was only held open for 30 days, not the 60 days required by the tender package. Importantly, however, the tender package is not consistent on the number of days for which bidders must be bound by their bid, at one point indicating 30 days, and at others 60 days. While the weight of the evidence suggests that bids were to be open for 60 days, given the confusion created by the tender package, I have not considered this point in assessing Core Tec's compliance or lack thereof.

2026 ONSC 1512 (CanLII)

TAB 2G

CITATION: Metrolinx v. Exclusive Advertising, 2019 ONSC 3002
COURT FILE NO.: CV-14-515255
DATE: 20190517

2019 ONSC 3002 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
METROLINX Plaintiff/ Defendant by Counterclaim (Appellant/Respondent)	*Adam Stephens*, for the Plaintiff/Defendant by Counterclaim (Appellant/Respondent)
– and –	
EXCLUSIVE ADVERTISING INC. Defendant/ Plaintiff by Counterclaim (Respondent/Appellant)	*Riaz Ahmed*, for the Defendant/Plaintiff by Counterclaim (Respondent/Appellant) *Q. Ryan Hanna*, for the IMA Outdoor Inc. (Non-party Appellant/Respondent)
	HEARD: April 29, 2019

NAKATSURU J.

[1] Metrolinx is a government agency that owns and operates the GO Transit public transportation system. Exclusive Advertising Inc. ("Exclusive") was formerly Metrolinx's exclusive advertising broker for all advertising on GO trains. IMA Outdoor Inc. ("IMA") was Metrolinx's exclusive advertising broker for in-station and GO bus advertising. In 2014, Metrolinx conducted a Request For Proposal ("RFP") to secure a new advertising broker for all of its operations. Exclusive and IMA along with another company, participated in the process. IMA was the successful bidder.

[2] On May 29, 2014, Metrolinx ended Exclusive's contract and entered into a contract with IMA. Metrolinx started a breach of contract action against Exclusive on October 30, 2014, for failing to make payments and abide by transitional obligations to IMA. Exclusive defended. It

B. EXCLUSIVE'S MOTION TO AMEND ITS PLEADINGS

[8] To assess this ground of appeal (and indeed, some of the other grounds of appeal as well), it is important to recognize that the set-off claim and counterclaim of Exclusive involves a challenge to the 2014 tender process by Metrolinx for advertising broker services. Tender processes are governed by the Contract A and Contract B framework established in *R. v. Ron Engineering & Construction (Eastern) Ltd.*, [1981] 1 S.C.R. 111. Where parties intend to initiate contractual relations, a submission in response to a call for tenders can lead to the formation of Contract A. The contractual rights and obligations of the parties to Contract A are governed by the express or implied terms of the tender documents. Where a bid is accepted, the terms of the tender and bid documents become the terms and conditions of Contract B.

[9] When Metrolinx sent out a tender, this Contract A contained an implied obligation to consider all bids fairly and equally: *Martel Building Ltd. v. R.*, [2002] 2 S.C.R. 860. Failure to do so when Metrolinx chose IMA, is at the core of Exclusive's counterclaim.

[10] Exclusive first brought a Notice of Motion dated May 19, 2017, to be heard by a master for a wide array of relief as noted above. It sought to amend its pleadings and attached a proposed Amended Statement of Defence and Counterclaim. This was to be the third amended pleading by Exclusive. In this Notice of Motion and proposed Amended Statement of Defence and Counterclaim, Exclusive did not make any allegation of "collusion" (i.e., an agreement to rig the bid) between IMA and Metrolinx. The motion was scheduled to be heard July 24 and 25, 2017.

[11] On July 19, 2017, Metrolinx delivered its factum arguing that Exclusive was not entitled to its proposed pleading amendments/requested disclosures for the post Contract B time period. On July 21, 2017, the Friday before the Monday hearing, Exclusive served another proposed amended pleading and sought leave to amend in a further Amended Notice of Motion. Metrolinx's position is that Exclusive did this in order to try and counter the argument made in Metrolinx's factum that absent collusion, the authorities foreclosed Exclusive from delving into matters concerning Contract B between IMA and Metrolinx.

[12] Master Short refused to consider the newest amended pleading given that it was filed late and given the background of numerous delays and breaches of deadlines by Exclusive. In his Endorsement #1 delivered July 24, 2017, he stated:

> Counsel for Exclusive served a motion on Friday seeking further amendments in addition to motion already served for today. I am satisfied that timelines need to be respected and have been ignored too often in this case. I am not satisfied application is not in any event statute barred. I however have declined to allow amendment but without prejudice to Exclusive moving on proper notice and evidence for such an amendment in the future.

2019 ONSC 3002 (CanLII)

TAB 2H

In the Court of Appeal of Alberta

Citation: Gloge Heating & Plumbing Ltd. v. Northern Construction Company Ltd., 1986 ABCA 3

Date: 19860110
Docket: 17804
Registry: Edmonton

1986 ABCA 3 (CanLII)

Between:

Gloge Heating & Plumbing Ltd.

(Appellant)

- and -

Northern Construction Company Ltd.

(Respondent)

The Court:

The Honourable Mr. Justice Lieberman
The Honourable Mr. Justice Harradence
The Honourable Mr. Justice Irving

Memorandum of Judgment
Delivered from the Bench

COUNSEL:

W.G., Geddes Esq., for the Appellant

G.C. Hawco Esq., for the Respondent

MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH

IRVING, J.A. (for the Court):

[1] The respondent Northern was a general contractor, and the appellant Gloge was a mechanical subcontractor. In August 1980 the Government of Canada (the owner) invited tenders from contractors for the work proposed to be done at the Edmonton International

Construction (Eastern) Ltd. v. Ontario, Province of and The Water Resources Commission (1981) 1 S.C.R. 111, 35 N.R. 40; and *The City of Calgary v. Northern Construction Company Division of Horrison-Knudsen Company Inc., et al* (December 11, 1985, Alta. C.A.), provide the answer.

[12] Applying the analysis of Estey, J. in *Ron Engineering* Northern made an offer to Gloge to submit a tender for the mechanical subcontract; Gloge accepted the offer by submitting its tender on September 19, 1980, and contract A (as described by Estey, J.) was made.

[13] As Estey, J. stated in *Ron Engineering:*

> "The tender submitted by the respondent brought contract A into life. This is sometimes described in law as a unilateral contract, that is to say a contract which results from an act made in response to an offer, as for example in the simplest terms, 'I will pay you a dollar if you will cut my lawn'. No obligation to cut the lawn exists in law and the obligation to pay the dollar comes into being upon the performance of the invited act. Here the call for tenders created no obligation in the respondent or in anyone else in or out of the construction world. When a member of the construction industry responds to the call for tenders, as the respondent has done here, that response takes the form of the submission of a tender, or a bid as it is sometimes called. The significance of the bid in law is that it at once becomes irrevocable if filed in conformity with the terms and conditions under which the call for tenders was made and if such terms so provide. There is no disagreement between the parties here about the form and procedure in which the tender was submitted by the respondent and that it complied with the terms and conditions of the call for tenders. Consequently, contract A came into being. The principal term of contract A is the irrevocability of the bid, and the corollary term is the obligation in both parties to enter into a contract (contract B) upon the acceptance of the tender.

[14] Was Gloge's tender revocable after close of tender? Gloge knew that Northern would select a mechanical tender and rely on it, and Gloge also knew that the tenders of the general contractors to the owner would be irrevocable for the time set out in the contract documents. Perhaps these facts of themselves might justify holding the Gloge tender to be irrevocable. But, in addition, the trial judge accepted certain expert evidence given at the trial by two witnesses who had been in the construction industry for many years. That evidence demonstrated that it was normal and standard practice for general contractors to accept last minute telephone tenders from subcontractors, and that it was understood and accepted by those in the industry that while such tenders could be withdrawn prior to close of tendering, if not so withdrawn, that such tenders must remain irrevocable for the same term that the general contractors' tenders to the owner are irrevocable.

1986 ABCA 3 (CanLII)

[15] This industry practice is eminent common sense. Without such accepted practice the tendering system would become unenforceable and meaningless. Estey, J. observed in *Ron Engineering:*

> "I share the view expressed by the Court of Appeal that the integrity of the bidding system must be protected where under the law of contracts it is possible so to do."

[16] Applying the industry practice to this case, Gloge could not withdraw its tender to Northern after tenders had closed, and its tender was irrevocable for the same period as Northern's. Accordingly Gloge was obligated to perform the work when Northern awarded it the subcontract, and is liable for failing to do so.

[17] We observe that Gloge's conduct after its tender error was discovered is consistent with the industry practice already described. Gloge did not take the position with Northern that it had the right to withdraw its bid. Instead, it sought Northern's assistance in an attempt to persuade the owner to consent to the substitution of a higher mechanical tender to replace Gloge's.

[18] In the result, the judgment at trial is affirmed. The appeal is dismissed with costs to be calculated on the same basis as ordered by the trial judge.

1986 ABCA 3 (CanLII)

TAB 2I

Alberta Court of Queen's Bench
Slave Lake (Town) v. Appleton Construction Ltd.
Date: 1987-06-24

W.J. Kenney, for plaintiff.

S.M. Maclellan, for defendant Western Surety Company.

D.R. Cranston, for defendant Appleton Construction Ltd.

(Edmonton No. 8503-00294)

June 24**,** 1987.

1987 CanLII 3395 (AB QB)

[1] MATHESON J.:— The plaintiff, the town of Slave Lake ("town"), sues the defendant (contractor), Appleton Construction Ltd. ("Appleton"), for loss and damages for its failure to carry out the terms of the tender it made to the town in response to the town's call for bids for construction of the town's "Wastewater Systems Improvement Project" ("project").

[2] Appleton had, on 22nd August 1984, submitted the lowest tender for construction of the project, which tender was accompanied by a bid bond issued by the co-defendant, Western Surety Company ("Western Surety"), for 10 per cent of the tender price. The plaintiff sues this defendant on the bid bond.

[3] All aspects of the planning and engineering and the documentation of the subject project were carried out by the town's firm of professional engineers, Terren Engineering Ltd. ("Terren"), whose engineer in charge was a Mr. Van Steenis. The action was discontinued against this third party.

[4] At the close of tenders on 22nd August 1984 six companies had submitted bids for the project. Appleton tendered a price in the sum of $693,000.

[5] The bid bond accompanying the tender supplied by Western Surety provided that if Appleton's tender was accepted by the town within 60 days from the closing of tenders, and if, within the time required, Appleton entered into a formal contract with the town and gave a good and sufficient bond of not less than 50 per cent of the accepted

1987 CanLII 3395 (AB QB)

> This industry practice is eminent common sense. Without such accepted practice the tendering system would become unenforceable and meaningless. Estey, J., observed in *Ron Engineering:*
>
> "I share the view expressed by the Court of Appeal that the integrity of the bidding system must be protected where under the law of contracts it is possible so to do."
>
> Applying the industry practice to this case, Gloge could not withdraw its tender to Northern after tenders had closed, and its tender was irrevocable for the same period as Northern's. Accordingly Gloge was obligated to perform the work when Northern awarded it the subcontract, and is liable for failing to do so.
>
> We observe that Gloge's conduct after its tender error was discovered is consistent with the industry practice already described. Gloge did not take the position with Northern that it had the right to withdraw its bid. Instead, it sought Northern's assistance in an attempt to persuade the owner to consent to the substitution of a higher mechanical tender to replace Gloge's.

[45] In this case, Appleton could have withdrawn its tender any time up to the close of tender, but after the close of tender, its tender was irrevocable. The irrevocability of tenders after closing is surely the premise upon which the modern authorities on this subject now rest.

[46] It is to be noted in both *Ron Engr.,* supra, and *Nor. Const, v. Gloge,* supra, that the tender documents in those cases expressly stated that the tenders were to be irrevocable. In this case, in my view, even though the tender documents were silent as to revocability, the "industry practice" as defined by Irving J.A., above, must prevail. Accordingly, Appleton is bound by its tender whether it revoked its tender after closing or not. The answers to the two questions above posed were:

1. Appleton was not free to withdraw its tender after closing.

2. Appleton did not withdraw its bid.

[47] I find as a fact, on all the evidence, that Appleton did not revoke its tender prior to acceptance.

[48] It was adduced in evidence at the trial that Appleton has not been operated as a company since 1985 and had been struck off the corporate register. The plaintiff is seeking judgment only against the other defendant, Western Surety.

TAB 2J

KeyCite treatment
Most Negative Treatment: Distinguished
Most Recent Distinguished: Murphy v. Alberton (Town) | 1993 CarswellPEI 12, 44 A.C.W.S. (3d) 1217, [1993] P.E.I.J. No. 141, 356 A.P.R. 34, 114 Nfld. & P.E.I.R. 34, 14 B.L.R. (2d) 99 | (P.E.I. T.D., Dec 13, 1993)

1993 CarswellOnt 815
Ontario Court of Justice (General Division) [Divisional Court]

Scott Steel (Ottawa) Ltd. v. R.J. Nicol Construction (1975) Ltd.

1993 CarswellOnt 815, [1992] O.J. No. 3005, 10 C.L.R. (2d) 128,
15 C.L.R. (2d) 10 at 24, 15 C.L.R. (2d) 10, 38 A.C.W.S. (3d) 1146

SCOTT STEEL (OTTAWA) LTD. v. R.J. NICOL CONSTRUCTION (1975) LTD.

White, Charron and Greer JJ.

Heard: November 4, 1992
Judgment: March 3, 1993
Docket: Docs. 450/89, 419/93

Counsel: *Robert Morrow*, for appellant.
Justin Fogarty, for respondent.

Subject: Contracts
Related Abridgment Classifications
Construction law
II Contracts
II.1 Building contracts
II.1.a Execution of formal contract
II.1.a.i Tendering process
II.1.a.i.C Relation of subcontractor to contractor

Headnote

Tender — Acceptance of tender — Subcontractor making telephone bid for supply of structural steel — General contractor using bid in its tender — General contractor being awarded contract but deciding to use another subcontractor — Subcontractor suing general contractor — Action dismissed — Subcontractor's tender never accepted by general contractor so as to give rise to contractual obligations between them.

In 1985, the owner proposed the construction of a new school and put out a call for tenders. The defendant, N Ltd., requested quotes for supplying structural steel on the project. The plaintiff and several others provided bids by telephone. N Ltd. used the plaintiff's quotation in the preparation of its tender documents and within 24 hours after submitting its tender provided the owner with a list of its proposed subcontractors. That list included the plaintiff's name. N Ltd. was awarded the general contract and proceeded to award the subcontract to another firm, claiming that the plaintiff could not perform the work according to the required schedule. The plaintiff brought an action against N Ltd. for loss of profits. The trial judge dismissed the action and the plaintiff appealed.

Held:

The appeal was dismissed.

Although the plaintiff and N Ltd. had entered into a contract, the simple fact of N Ltd. having put the plaintiff on its list of proposed subcontractors did not constitute acceptance of the plaintiff's bid. Neither could the subsequent acceptance of N Ltd.'s tender by the owner constitute an acceptance of the plaintiff's tender as between the plaintiff and N Ltd. even if the tender included the plaintiff on its list of subcontractors. The acceptance of N Ltd.'s tender by the owner only affected the rights

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23 The Alberta Court of Appeal relied on the case of *Ron Engineering* and stated at pp. 285-6:

> Was Gloge's tender revocable after close of tender? Gloge knew that Northern would select a mechanical tender and rely on it, and Gloge also knew that the tenders of the general contractors to the owner would be irrevocable for the time set out in the contract documents. Perhaps these facts of themselves might justify holding the Gloge tender to be irrevocable. But, in addition, the trial Judge accepted certain expert evidence given at the trial by two witnesses who had been in the construction industry for many years. That evidence demonstrated that it was normal and standard practice for general contractors to accept last-minute telephone tenders from subcontractors, and that it was understood and accepted by those in the industry that while such tenders could be withdrawn prior to close of tendering, if not so withdrawn, that such tenders must remain irrevocable for the same term that the general contractors' tenders to the owner are irrevocable.
> This industry practice is eminent common sense. Without such accepted practice the tendering system would become unenforceable and meaningless. Estey J. observed in *Ron Engineering*: "I share the view expressed by the Court of Appeal that the integrity of the bidding system must be protected where under the law of contracts it is possible so to do". [p. 121]
>
> Applying the industry practice to this case, Gloge could not withdraw its tender to Northern after tenders had closed, and its tender was irrevocable for the same period as Northern's. Accordingly Gloge was obligated to perform the work when Northern awarded it the subcontract, and is liable for failing to do so.

24 In *Moncton Plumbing & Supply Co. v. Brunswick Construction Ltd.* (1985), 13 C.L.R. 52 (N.B. C.A.), the general contractor was found in breach of contract A when it purported to do the work himself after having used the plaintiff subtrade's bid in its tender to the Owner and naming the plaintiff as his subtrade. However the case is clearly distinguishable from the present as the terms of contract A obligated the contractor to enter into contract B with the plaintiff. The Court found that the contractor, in availing itself of the bid depository system, as obligated by the owner, was required to abide by the rules of the system. Those rules provided that a contractor was bound to place a subcontract with one of the bidding subtrades who bid through the bid depository system and, if only one bid was received, with that subtrade. The plaintiff was the only bidding subtrade. Once the contractor's tender to the owner was accepted, he was bound to give the subcontract to the plaintiff.

25 In this case, the trial judge erred in finding that no contract A was formed between the parties. In my view, the principles in *Ron Engineering* should apply in a situation such as this one. When Scott telephoned its bid to Nicol he was doing so in accordance with the specifications and requirements set out by the Owner and known to both parties. Scott knew that Nicol could well rely on this bid in the preparation of its own tender and that Scott could therefore bind itself vis-à-vis the Owner to perform that portion of the contract in accordance with the terms of Scott's bid. It is only reasonable to conclude that the parties intended Scott's bid to remain irrevocable for the same 45 days as Nicol's tender to the Owner would be. At that point in time, Contract A was formed. However, the contract was unilateral in nature and did not impose any obligations on Scott to accept this bid or to enter into contract B. Nicol would only be liable to enter into contract B if and when it accepted Scott's bid and communicated this acceptance to Scott. The simple fact of putting Scott on its list of *proposed* subcontractors cannot constitute such an acceptance unless a term of this Contract A so provided. There was no such term in this case. Neither can the subsequent acceptance of Nicol's tender by the Owner constitute an acceptance of Scott's tender as between Scott and Nicol even if the tender includes Scott on its list of subcontractors. The acceptance of Nicol's tender by the Owner only affected the rights between Nicol and the Owner. It was still open to Nicol to change subtrades and obtain the consent of the Owner. Scott's tender was never accepted by Nicol so as to give rise to contractual obligations between the two of them.

26 The appeal is dismissed with costs to the respondent in the amount of $6500. The quantum of costs was agreed to between the parties and includes the costs of this appeal and the costs of the parties' appearance in the Court of Appeal.

Greer J. **(dissenting):**

27 I have reviewed the reasons of Charron J., with which White J. has concurred, and with respect, I disagree with their conclusion. I am of the opinion that there was acceptance by R.J. Nicol Construction (1975) Ltd. ("Nicol") of the contract with

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TAB 2K

1999 CarswellNS 291
Nova Scotia Supreme Court

Western Plumbing & Heating Ltd. v. Industrial Boiler-Tech Inc.

1999 CarswellNS 291, 180 N.S.R. (2d) 41, 48 C.L.R. (2d) 82, 557 A.P.R. 41, 92 A.C.W.S. (3d) 435

Western Plumbing and Heating Limited, Plaintiffs and Industrial Boiler-Tech Inc., Defendant

Gruchy J.

Heard: August 26, 1999
Judgment: September 24, 1999
Docket: S.H. 140040C/97

Counsel: *John Kulik* and Robert Blackie, (Articled Clerk), for Plaintiff.
Colin Bryson, for Defendant.

Subject: Contracts
Related Abridgment Classifications
Construction law
II Contracts
II.2 Subcontracts
II.2.d Miscellaneous
Headnote
Construction law --- Subcontracts — General
Plaintiff was preparing tender for construction project and asked defendant boiler supplier for quote on availability and cost of two boilers — Defendant did not know about tender and on January 17 made offer to sell two boilers to plaintiff with no reference to revocability of offer — On March 4 plaintiff contacted defendant and attempted to get defendant to reduce price of boilers — Defendant realized that price it had given was for one boiler only and that it had failed to convert American dollars to Canadian dollars with result that price it quoted for boilers was far too low — Defendant revised price and informed plaintiff who sent purchase order for original low price — When defendant refused to deliver, plaintiff purchased boilers from next lowest bidder and then brought action against plaintiff for difference in price paid and defendant's offer — Action dismissed — Plaintiff did not have actual knowledge of defendant's mistake — Defendant's offer did not contain any express term of irrevocability but it was reasonable to imply term of irrevocability for 30 days for acceptance of prime contract by plaintiff plus reasonable time thereafter for plaintiff's acceptance of subcontracts — Plaintff did not accept defendant's offer within that time — When plaintiff contacted defendant on March 4 it was to attempt to get a lower price and defendant then discovered its mistake and revised offer upward before plaintiff accepted offer — In circumstances, defendant had revoked offer so that plaintiff's purported later acceptance of it was ineffective.
Table of Authorities
Cases considered by *Gruchy J.*:

Belle River Community Arena Inc. v. W.J.C. Kaufmann Co. (1978), 87 D.L.R. (3d) 761, 20 O.R. (2d) 447, 4 B.L.R. 231 (Ont. C.A.) — distinguished

Custom Iron & Machinery Ltd. v. Calorific Construction Ltd. (1990), 39 C.L.R. 276 (Ont. Dist. Ct.) — referred to

Defence Construction (1951) Ltd. v. Municipal Enterprises Ltd. (1985), *(*sub nom. *Municipal Enterprises Ltd. v. Defence Construction (1951) Ltd.)* 71 N.S.R. (2d) 59, *(*sub nom. *Municipal Enterprises Ltd. v. Defence Construction (1951) Ltd.)*171 A.P.R. 59, 23 D.L.R. (4th) 653 (N.S. C.A.) — referred to

Northern Construction Co. v. Gloge Heating & Plumbing Ltd., [1984] 3 W.W.R. 63, 5 C.L.R. 212, 30 Alta. L.R. (2d) 1, 52 A.R. 54, 6 D.L.R. (4th) 450 (Alta. Q.B.) — considered

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(b) The owner's "instructions to bidders" specified that "bids shall remain open to acceptance and shall be irrevocable for a period of thirty (30) days after the bid closing date.

(c) Western was aware of that period of irrevocability.

(d) Industrial was not aware of the context of the tender call or of the instructions to bidders.

(e) Industrial was not aware of any extensions of the closing date.

(f) Industrial was not aware of any further delays in the awarding of the contract.

(g) The other two bidders on the boilers specified periods of non-revocability: 30 days and 60 days respectively.

(h) As a result of economic conditions in the construction business it has not been unusual (according to one witness, George Himmelman,. whose testimony I will explore more fully below) for subtrades to hold their bids open for periods much longer than 30 days. According to Mr. Himmelman, however, his practice in such cases was to go back to the subtrades to see if the bid is still open.

(I) Industrial had bid on boilers manufactured in the United States and accordingly, was vulnerable to the extra uncertainties of changes in currency exchange rates and potential problems of delivery dates.

30 As mentioned earlier, as soon as Industrial realized its mistake, and on Western's request to revise its price, it faxed Western and said "our prices are the industry standard 30 days unless otherwise noted." On cross-examination, Mr. Godin said in effect he would have felt bound by an acceptance of the offer by Western within 30 days.

31 As there was no express term of irrevocability in the documents between Industrial and Western, and the matter had not been discussed or expressly agreed upon, evidence concerning the practice of the trade would have been helpful. I have no evidence before me of the general practice of the trade. Mr. Himmelman is the president and chief executive of Himmelman Contractors and has been in that business since 1956. He has personally been involved in the tendering process for forty years. He spoke of his practice but no attempt was made have him qualified as an expert and he did not assert any opinion as an expert. Any opinions he did assert were clearly related to his personal experience only. It was also agreed by counsel prior to trial that Mr. Himmelman's evidence would not be put forth as an expert's opinion and would represent only his personal experience and practice.

32 Clearly, a bid by a subcontractor in a tendering situation should be open for acceptance for a reasonable period of time. I accept that the 30 days for acceptance of a prime contract is reasonable and the period for acceptance of subcontracts obviously must be within a reasonable period after that closing date. In this case, Industrial could reasonably have concluded that 30 days would be the time for acceptance of the prime contract and its bid would have to be open for acceptance for a reasonable time thereafter so as to allow Western an opportunity to make its acceptance known. But 16 days elapsed with no attempt by Western to follow Mr. Himmelman's practice. I conclude that the period of 16 days is unreasonable. It was therefore open for Industrial to revoke its offer which, as I find below, was what it did.

33 I reach this conclusion keeping in mind Mr. Ross Marshall's remark that prices can change daily. That was presumably more so with Industrial's offer as it was subject to the uncertainties as I have set forth above. In the circumstances, it would be unreasonable to assume that Industrial would hold its bid open for acceptance indefinitely.

34 It is obvious that irrevocability of a tender is an essential requirement for the efficacy of a formal tendering process. In that process the "General Conditions" or "Information for Tenderers" would ordinarily set out the precise terms of that requirement. That was precisely the subject considered by Estey, J. in *Ron Engineering* (p. 122-23). But Iacobucci, J. (at paragraph 17) pointed out in *Defence Construction* that the analysis of Estey, J. was "... rooted in the terms and conditions of the tender call...". In the case before me it cannot be argued that Industrial was involved in the formation of Contract A (to use the short hand phrase coined by Estey, J.) and accordingly, cannot be bound by the terms and conditions of the tender call.

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35 It is appropriate, however, to find an implied term of Industrial's offer to Western and I have concluded above that irrevocability for thirty days plus a reasonable period for the subcontractor to exercise its right of acceptance to suppliers is appropriate. Western did not accept Industrial's offer within that period.

3 (a) Was there a valid acceptance?

36 With respect to the matter of acceptance, I have set forth my findings of fact above and it is unnecessary to repeat them. Mr. Hill of Western did not accept Industrial's bid. Rather, he called Industrial and asked that the price be revised and on no apparent rationale, asked that the price be dropped by $2,000. Industrial responded to the request for revision only and revised the price upwards. That upwards revision was complete before Mr. Hill purportedly accepted the original offer.

3 (b) Was there a valid revocation?

37 I conclude that by revising its offer at Western's invitation, Industrial revoked the original bid and reoffered the boilers at the higher price, which offer was not accepted.

38 Industrial's letter of March 4, 1997 was express: it would not honour the original January 17, 1997 price.

39 Western's purchase order of March 7, 1997 was ineffective. It was forwarded to Industrial subsequent to revocation.

40 I therefore conclude that there was no valid acceptance of the January 17, 1997 bid by Industrial and that bid was validly revoked prior to purported acceptance by Western.

4. Bid Shopping

41 In view of the findings I have expressed above it is likely unnecessary to address this subject. Nonetheless, as the parties have made submissions on this matter I feel some compulsion to express my views and conclusions on it.

42 All the witnesses who spoke on the matter of bid shopping agreed that a practice of bargaining after close of tenders has developed in the informal tendering process. I find that the practice as described to me by the parties and the various witnesses is unacceptable.

43 Mr. Himmelman explained that in his experience subcontractors are requested routinely to lower their bids after the prime contract has been awarded. He and the other witnesses testified that is how contractors make extra money. The contractor obtains bids from subcontractors who in turn obtains bids from suppliers or other subcontractors and those bids are taken into consideration in its bids to the prime contractor. The prime contractor then presents a tender formally to the owner. If the tender is accepted the contractor and the subcontractors then set about to negotiate with the subcontractors and suppliers to lower their bids. Mr. Himmelman said that he bases his tenders on the assumption that he would obtain lower bids from suppliers and as a result an anticipated but uncertain reduction of cost is passed on to the owner. But there is no certainty the savings effected by the contractors are passed on to the owner; they are profit to the contractors. Mr. Himmelman said that in his experience it was unusual for the contractor not to attempt to bargain. In return, the subcontractors and suppliers almost never refuse to bargain and they accept that practice.

44 Various witnesses said bid shopping is not ethical but the practice described above, according to them, is not bid shopping. The witnesses said that bid shopping is when a contractor obtains a price from a subcontractor and then uses that price as a bargaining chip to bargain with other suppliers or subcontrators. The witnesses distinguish that practice from a subcontractor going back to a supplier and asking for a price revision.

45 It is my conclusion, in the circumstances as described to me by the various witnesses, that the contractors and subcontractors have turned the tendering process into a sham. The assertion that the practice described to me is not bid shopping appears to be sophistry and hypocritical. The practice encourages subcontractors and suppliers to put in inflated bids, keeping in mind that ultimately the contractor will attempt to force them to lower their prices. The lowered prices will result in a profit to the

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TAB 2L

CITATION: Di Sarra v. Ontario Association of Architects, 2021 ONSC 2697
DIVISIONAL COURT FILE NO.: 288/20
DATE: 20210412

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

MOLLOY, SACHS and BLOOM JJ.

BETWEEN:	)	
	)	
FRANCESCO DI SARRA and FRANKFRANCO ARCHITECTS INC.	)	*Jordan Glick and Jordan Stone*, for the Appellants
	)	
Appellants	)	
	)	
– and –	)	
	)	*Paul Davis*, for the Respondent
ONTARIO ASSOCIATION OF ARCHITECTS	)	
	)	
Respondent	)	
	)	
	)	
	)	**HEARD:** March 17, 2021 remotely

MOLLOY J.:

REASONS FOR DECISION

A. INTRODUCTION

[1] Francesco Di Sarra is a professional architect licensed by the Ontario Association of Architects ("OAA"), which is the self-governing professional regulator for architects in Ontario. Mr. Di Sarra appeals to this Court from the February 25, 2020 decision of the OAA's Discipline Committee finding him guilty of professional misconduct.

[2] The Discipline Committee found that Mr. Di Sarra was in a conflict of interest because as an architect on a renovation project he provided millwork drawings used by the owner of the home to solicit quotes for the work, and at the same time was an owner in a company that submitted a

2021 ONSC 2697 (CanLII)

[23] The formalities referred to in paragraph 12 of the Agreed Statement of Facts, which the Committee held were not prerequisites to the applicability of s. 43(1)(f) were:

- a formal process governing the selection of the successful contractor;
- written terms for how offers were to be submitted;
- formal requests for proposal issued;
- a requirement that contractors pay a deposit upon submitting bids;
- a contractual relationship created between the owner and the offeror by virtue of the offer; and,
- any offers being subject to negotiation and requiring the owner and contractor to agree on a contract.

G. ANALYSIS

The Supreme Court of Canada Decision in R. v. Ron Engineering

[24] The decision of the Supreme Court of Canada in *R. v. Ron Engineering* is considered a landmark development in the law of tendering. The underlying facts are of no consequence here. The particular impact of the decision is the recognition that a formal tendering process creates two contracts: Contract A (which is a unilateral contract created upon a contractor submitting a bid to do certain work in response to a formal tender package), and Contract B (which is the contract formed between the parties when a bid is accepted). In the tendering process at issue in that case, there was a tendering package calling for bids within a specific period of time. Any contractor submitting a bid was required to pay a deposit. After the time for submitting bids had closed, bids could no longer be withdrawn or amended. If a bid was selected, the offeror was called upon to enter into Contract B in accordance with the submitted bid. A failure to do so would result in forfeiture of the deposit. If a bid was not selected, the deposit would be returned.

[25] These, however, were already the terms of the agreements before the Supreme Court of Canada in that case. The Supreme Court of Canada did not stipulate that in future all tender packages must contain such terms; it merely ruled that in these types of situations there would be a Contract A and a Contract B and that certain rights and obligations would flow from that.

[26] More importantly, at no point in *Ron Engineering* did the Supreme Court of Canada provide a definition of “tender,” or “bid,” or “tender package,” and nothing in the case turned on the meaning of those terms.

[27] The appellant also relies on *Chippewas of Mnjikaning First Nation v. Chiefs of Ontario* and in particular on para. 179 of that decision which states:

2021 ONSC 2697 (CanLII)

TAB 2M

COURT FILE NO.: 31-1159124
DATE: 20090716

2009 CanLII 37909 (ON SC)

SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST

RE: **IN THE MATTER OF THE RECEIVERSHIP OF 1730960 ONTARIO LTD.**

BEFORE: Justice Cumming

COUNSEL: ***H. Manis,*** for the Receiver, Ira Smith Trustee and Receiver Inc.

G. Benchetrit, for Portuguese Canadian Credit Union Limited

David Preger and E. Giacomelli, for SF Partners Inc.

David Jackson, for Pocrnic Realty Advisers Ltd.

A. Habas, for 2148393 Ontario Inc. and Rudan Holdings Limited

Brett D. Moldaver and A. Tiberini, for 2205305 Ontario Inc.

DATE HEARD: July 9 and 10, 2009

E N D O R S E M E N T

The Motion

[1] The Receiver, appointed pursuant to s. 47.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as am., and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as am., moved July 9, 2009 for an Order approving, *inter alia*, the sale of three properties of the debtor, 1730960 Ontario Ltd. ("173"), to Pocrnic Realty Advisors Inc. ("Pocrnic") for a total price of $3.5 million.

submissions of this secured creditor criticising the Receiver's handling of the sales process to be of no merit or import.

[20] The Receiver in its Supplementary Second Report again asked the Court to approve the sale to Pocrnic.

[21] The principles applicable to the sale of assets in a receivership set forth by the Court of Appeal in *Royal Bank v. Soundair Corp.* (1991) 4 O.R. (3d) 1 (C.A.) have been met in the proceeding at hand.

[22] The Receiver has properly and diligently considered the interests of all stakeholders, including the creditors and prospective purchasers, in recommending approval of the Pocrnic agreement to purchase. There is no real evidence of any unfairness in the working out of the sales process.

[23] The integrity of the sales process is maintained by approval of the Pocrnic offer. The Court should not foster uncertainty in the bid process which would only discourage bids from prospective purchasers and lessen the objective of obtaining the highest possible price in the marketplace.

[24] On the evidentiary record, the Receiver has made a significant effort to obtain the best price for the three properties and has not acted improvidently.

[25] The record indicates the purchaser Pocrnic followed the Court-approved sales process, bargained at length in good faith, expended time and resources in doing its diligence and engaged professional advisors at considerable cost. There is a significant reliance interest (i.e. change of position through out-of-pocket expenditures)) in a bidder such as Pocrnic submitting an offer with the belief that if it is accepted the resulting agreement will be approved by the Court so long as there has been a proper and fair sales process. There is as well, of course, a reasonable expectation interest to Pocrnic with respect to the realization of the bargained-for benefits of the contractual exchange.

[26] Neither 220's July 8 offer nor 220's July 10 offer, being some $275, 000 or about 8% higher than the offer of Pocrnic, is a materially higher offer such as to suggest that the Pocrnic offer was not for fair market value. The comparative difference in prices does not imply that the Pocrnic price offer is artificially low. The well-publicized, lengthy marketing process for the properties supports the conclusion the $3.5 million price offered by Pocrnic is fair market value for the properties. It is unfair and objectionable for a party to wait until another bid is made and has been accepted by the Receiver and then to make a bid which is marginally higher and ask the Court to not approve the agreement of purchase and sale resulting from the accepted bid.

Conclusion

[27] For the reasons given, the motion of the Receiver was granted.

2009 CanLII 37909 (ON SC)

TAB 3A

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT made the <*> day of <*> 2024.

BETWEEN:

TDB RESTRUCTURING LIMITED (the "**Receiver**")

in its capacity as Court-Appointed Receiver over the lands and premises set out on Schedule "A" attached hereto and not in its personal or corporate capacity

(the "**Vendor**")

and

1604706 Ontario Inc

(the "**Purchaser**")

RECITALS:

A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 6, 2023, (the "**Appointment Order**") RSM Canada Limited was appointed as Receiver over the lands legally described in Schedule "A" attached hereto, effective December 22, 2023;

B. Pursuant to the Substitution Order of the Ontario Court of Justice (Commercial List) dated March 1, 2024, (the "**Substitution Order**") the Receiver's name was substituted in the place of the name of RSM Canada Limited;

C. The Vendor desires to sell and the Purchaser desires to purchase the Purchased Assets, as more particularly set out herein, subject to the terms and conditions hereof.

NOW THEREFORE in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Parties covenant and agree as follows:

SECTION 1 - INTERPRETATION

1.1 Definitions

In this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

MB

(a) "**Acceptance Date**" means the date that this Agreement is executed and delivered by the Parties;

(b) "**Agent**" shall mean Colliers Macaulay Nicolls Inc.;

(c) "**Agreement**" means this Agreement of Purchase and Sale, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

(d) "**Applicable Laws**" means, with respect to the Purchased Assets or to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event;

(e) "**Assumed Liabilities**" has the meaning ascribed to it in Section 2.10.

(f) "**Business Day**" means a day on which banks and the Land Registry Office for the City of Toronto are open for business but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;

(g) Intentionally deleted.

(h) "**Claim**" means any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including legal fees on a substantial indemnity basis) and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing;

(i) "**Closing**" means the successful completion of the Transaction;

(j) "**Closing Date**" means the date which is three (3) days immediately following the date upon which the Approval and Vesting Order is granted, or the next Business Day, as applicable, or such other date as the Parties may mutually agree upon;

(k) Intentionally deleted.

(l) "**Court**" means the Court defined in the first recital of this Agreement;

(m) Intentionally deleted.

(n) "**Data Room**" means the electronic data room established by or on behalf of the Vendor containing documents related to the Purchased Assets for review by the Purchaser;

(o) Intentionally deleted.

(p) Intentionally deleted.

(q) **"Debtor or Debtors"** means all or any one of Kings Townhomes Limited (formerly Conacher Kingston Holdings Inc.) and 5004591 Ontario Inc.;

(r) "**Deposit**" has the meaning ascribed to it in Section 2.5;

(s) "**Encumbrance**" means any mortgage, charge, pledge, hypothecation, security interest, trust, deemed trust (statutory or otherwise) assignment, lien (statutory or otherwise), Claim, title retention agreement or arrangement, restrictive covenant, rights of way, easements, encroachments, reserves, or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation;

(t) "**Environmental Condition**" has the meaning ascribed to it in Section 2.2(a).

(u) "**Environmental Laws**" means all Applicable Laws concerning pollution or protection of the natural environment or otherwise relating to the environment or health or safety matters, including Applicable Laws pertaining to (i) reporting, licensing, permitting, investigating and remediating the presence of Hazardous Materials, and (ii) the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of Hazardous Materials including without limiting the generality of the foregoing the following any written policies and guidelines and directives, administrative rulings or interpretations, that are in effect and applicable to the Vendor or the Property on the Closing Date, as well as the common law and any judicial or administrative order, consent decree or judgment that is in effect and applicable to the Vendor or the Property on the Closing Date, that relates to pollution or the protection of the environment, including, without limitation, the *Atomic Energy Control Act* (Canada), the *Canadian Environmental Protection Act* (Canada), the *Pest Control Products Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Environmental Assessment Act* (Ontario), the *Ontario Water Resources Act* (Ontario) and the *Occupational Health & Safety Act* (Ontario), and the regulations and guidelines promulgated pursuant thereto or issued by any Government Authority in respect thereof, and equivalent or similar local and provincial ordinances and statutory programs and the regulations and guidelines promulgated pursuant thereto.

(v) "**Ereg**" has the meaning ascribed to it in Section 5.7;

(w) "**ETA**" means the *Excise Tax Act* (Canada), as it may be amended from time to time;

(x) **"Excluded Assets"** means the assets, if any, listed in Schedule "C";

(y) **"Final Order"** means, in respect of any order, such order after i) the expiry of applicable appeal periods; or (ii) in the event of an appeal or application for leave to appeal or to stay, vary, supersede, set aside or vacate such order, final determination of such appeal or application by the applicable court or apelet tribunal;

(z) **"Governmental Authority"** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Purchased Assets, the Transaction or one or both of the Parties and shall include a board, commission, courts, bureau, agency or any quasi-governmental or private body exercising any regulatory authority including an association of insurance underwriters;

(aa) **"Hazardous Materials"** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Governmental Authority and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health or safety matters;

(bb) **"HST"** means all goods and services taxes and harmonized sales tax payable under the ETA;

(cc) **"Land Transfer Tax"** means all the taxes payable under the *Land Transfer Tax Act* (Ontario) and any other applicable provincial or municipal land transfer tax legislation, including all registration fees, license fees, and other like charges payable upon a transfer of real property, together with interest, penalties and additions thereto;

(dd) **"Leases"** means any leases with any tenants relating to the Property;

(ee) Intentionally deleted.

(ff) "**Liabilities**" means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, liquidated or unliquidated under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and Taxes.

(gg) **"Parties"** means the Vendor, the Purchaser and any other Person who may

become a party to this Agreement. "**Party**" means any one of the foregoing;

(hh) "**Permits**" means all permits, licenses and applications that may have been issued or applied for in the name of the Debtor and/or the Vendor in connection with the servicing and/or development of the Property;

(ii) "**Permitted Encumbrances**" means those Encumbrances listed in Schedule "B" attached hereto;

(jj) "**Person**" means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

(kk) "**Plans**" means all plans and documentation in the possession or control of the Vendor relevant to the development of the Property including, without limitation, any project documents, engineering drawings, architectural plans and working drawings, landscaping plans, reports, project documents other documentation prepared to illustrate or define a particular aspect of the development of the Property, in each instance, to the extent forming part of the Data Room created by the Vendor in respect of the Transaction;

(ll) "**Property**" means the real property described in Schedule "A" attached hereto;

(mm) "**Property Documents**" means the documents in the Data Room;

(nn) "**Purchaser Closing Conditions**" has the meaning ascribed to it in Section 4.1;

(oo) "**Purchase Price**" shall have the meaning ascribed to it in Section 2.4. For greater certainty, the Purchase Price shall be exclusive of Transfer Taxes and any other taxes payable as a result of or in connection with the Transaction;

(pp) "**Purchaser's Solicitors**" means the law firm of •;

(qq) "**Purchased Assets**" means those assets being the lands which are the subject of this Agreement;

(rr) "**Receiver**" has the meaning described thereto in the Recitals;

(ss) "**Reports**" means collectively any written reports or documents received or obtained by the Receiver from any third party regarding any aspect of the Property;

(tt) "**Rights**" has the meaning ascribed to it in Section 2.13;

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

(vv) Intentionally deleted.

(ww) **"Successful Bid"** has the meaning given to it in the Sale Procedure;

(xx) **"Successful Bidder"** has the meaning given to it in the Sale Procedure;

(yy) **"Transaction"** means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;

(zz) **"Transfer Taxes"** means all HST, Land Transfer Tax, sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated together with interest, penalties and additional amounts imposed with respect thereto;

(aaa) Intentionally deleted.

(bbb) "**Vendor Closing Conditions**" has the meaning ascribed to it in Section 4.3;

(ccc) "**Vendor's Solicitor**" means the law firm of Garfinkle Biderman LLP;

(ddd) **"Approval and Vesting Order"** means the order of the Court approving the sale by the Receiver to the Purchaser of the Subject Assets and vesting all rights, title and interest of the Subject Assets in favour of the Purchaser free and clear of all Encumbrances (other than Permitted Encumbrances) (in a form to be agreed upon by the parties);

(eee) **"Vesting Order Motion"** means a motion by the Receiver seeking the granting of the Approval and Vesting Order; and

(fff) "**Work Orders**" means any work orders, deficiency notices, outstanding building permits, orders, or requirements to comply with any Applicable Laws or issued by any Governmental Authorities.

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof.

1.3 Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

1.4 Schedules

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

Schedule "A" Property

Schedule "B" Permitted Encumbrances

Schedule "C" Excluded Assets

Schedule "D" Sale Procedure

SECTION 2 — SALE AND PURCHASE AND ASSIGNMENT

2.1 Sale and Purchase of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Liabilities, all in accordance with and pursuant to the terms hereof and the Approval and Vesting Order. The Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Purchased Assets.

2.2 "As is, Where is"

The Purchaser acknowledges and agrees that:

(a) the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Materials or deficiencies which may exist on the Closing Date, including, without limiting the generality of the foregoing, any latent or patent defects in the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to any matter including, title, encumbrances, description, fitness for purpose or use, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, zoning, permitted uses, permits, compliance with Applicable Laws of Government Authorities, threatened claims, litigation, the existence or non-existence of Hazardous Materials flowing onto or from the Property or any part thereof, or in the air, surface or ground water flowing through, onto or from the Property, or any part thereof, any non-compliance with Environmental Laws including any adverse

matters contained in the Reports (the "**Environmental Condition**"), compliance with any or all Environmental Laws, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Vendor to sell or assign same save and except as expressly provided for in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and are hereby waived by the Purchaser. The descriptions of the Purchased Assets set out in this Agreement or in the Property Documents are for the purposes of identification only and no representation, warranty or condition has or will be given by the Vendor concerning the completeness or accuracy of such descriptions. The Purchaser further acknowledges that the Property Documents and all other written and oral information (including, without limitation, any analyses, financial information and projections, compilations, studies and the Plans) obtained by the Purchaser from the Vendor or the Agent with respect to the Purchased Assets or otherwise relating to the Transaction has been provided for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall not be under any obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

(b) notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding Work Orders, and the Purchaser shall accept the title to the Property subject to the Permitted Encumbrances and the Environmental Condition.

(c) the various parties who prepared the Property Documents may have restricted the use thereof to the Debtor only, in their respective retainers with the Debtor and any purported conveyance of any of the Property Documents by the Vendor to the Purchaser may be subject to such limitations.

(d) Without limiting the generality of this Section 2.2, the Purchaser acknowledges and agrees that the parties have expressly agreed to exclude from this Agreement all express or implied representations and warranties with respect to the following matters:

(i) the compliance of the Property with Applicable Laws, by-laws or regulations including without limitation, municipal zoning by-laws and regulations;

(ii) any easements, rights of way, instruments, documents, agreements or other registered or unregistered interest in the Property which impacts the use, enjoyment, income or development opportunities connected with the Property;

(iii) that the present use or any future use of the Purchased Assets intended by the Purchaser is or will be lawful or permitted;

(iv) the execution, good standing, validity, binding effect or enforceability of the Permitted Encumbrances;

(v) that the Vendor has any right, title or interest in any goodwill associated with the Purchased Assets, or the use of any name associated with the operation of the Purchased Assets;

(vi) the description, title, condition, value, state of repair and fitness for any purpose of the Purchased Assets; and

(vii) the compliance of the Property with Environmental Laws, Reports or the existence or non-existence of Hazardous Materials, environmental, soil or water contamination or pollution on or about the Property, or otherwise with respect to the environmental condition of the Property;

(e) the Property Documents and any assets lists, information packages and other material concerning the Purchased Assets or the sale thereof provided by or on behalf of the Vendor and the Agent have been prepared solely for the convenience of the Purchaser and are not warranted or represented to be complete or accurate and are not part of this Agreement (unless specifically provided in such material) and the descriptions of the Purchased Assets provided to the Purchaser are for the purposes of identification only, no conditions, warranty or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning such descriptions;

(f) the Vendor is entering into this Agreement solely in its capacity as Receiver of the Property pursuant to the Appointment Order and not in its personal or other capacity and the Vendor and its agents (including the Vendor's Solicitors), officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith;

(g) save as to any valid objection to title made in respect of matters arising after the Acceptance Date, the Purchaser shall be conclusively deemed to have accepted the title to the Property and to have accepted the Property subject to the Permitted Encumbrances and the Environmental Condition and subject to all Applicable Laws, by-laws and regulations affecting its use. If any valid objection to title expressly permitted herein is made by the Purchaser prior to the Closing Date, which the Vendor is unwilling or unable to remove, remedy, or satisfy and which the Purchaser will not waive or is not satisfied by title insurance, then the Receiver may terminate this Agreement by notice to the Purchaser, whereupon, except as herein expressly set forth, the Deposit without interest accrued thereon shall be forthwith returned to the Purchaser in accordance with and subject to the terms in Section 2.5 and 2.12 each of the Purchaser and the Receiver shall be released from all obligations under this Agreement;

(h) the Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title except such of the foregoing as are in the possession or control of the Receiver;

(i) the Purchaser acknowledges that, the Vendor has provided the Purchaser access to the Data Room and that the Purchaser has had sufficient opportunity to review, and has satisfied itself with respect to, the Property Documents. If for any reason the transaction is not completed, the Purchaser shall forthwith return the Property Documents, and delete any electronic copies of them in its possession or control. The Vendor makes no representation or warranty, express or implied, as to the accuracy or completeness of any information contained in any of the Property Documents; and

(j) in entering into this Agreement, the Purchaser has relied and will rely entirely and solely upon its own inspections and investigations with respect to the Property and the Purchased Assets, including the physical condition and the Environmental Condition of the Purchased Assets including compliance with Applicable Laws and has relied solely upon its own judgement resulting from doing so and has not relied and will not rely on any information, written or oral, furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor including the Agent, including with respect to value of the Purchased Assets, the development potential of the Property, adequacy, marketability, quantity, location, condition, quality, fitness or state of repair. The information in the Data Room and description of the Purchased Assets in any marketing material, listing information, and any like material delivered or made available by the Vendor and/or the Agent, the Vendor's agents or any other party on its behalf to the Purchaser or its representatives are believed to be correct, but if any misstatement, error, inaccuracy or omission (collectively the "**Inaccuracies**") is found in the them, the Purchaser shall not be entitled to any abatement, damages, reimbursement, costs or to termination of this Agreement as a result of them and the Purchaser releases the Vendor and its agents from any Claims the Purchaser had, has or may have as a result of such Inaccuracies.

2.3 Permitted Encumbrances

The Purchaser acknowledges that the Vendor is selling the Purchased Assets subject to the Assumed Liabilities and that the Vendor undertakes no obligation to discharge the Permitted Encumbrances on Closing or thereafter.

2.4 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the "**Purchase Price**") shall be an amount of $ 3,688,000.00 allocated as set out in paragraph 2.7.

Three Million & Six Hundred Eighty Eight Thousand Dollars

2.5 Deposit

The Parties acknowledge and agree that the sum of $ 368,800.00, being ten (10%) percent of the Purchase Price (the "**Deposit**") has been delivered by the Purchaser to the Vendor's solicitor in trust upon submission by the Purchaser of an executed copy of the Agreement to the Vendor. The Deposit shall be held in a non-interest bearing account of a Canadian chartered bank or trust company, in trust and to be disbursed in accordance with the following provisions:

MB

TAB 3B

COURT OF APPEAL FOR ONTARIO

CITATION: Downey v. Ecore International Inc., 2012 ONCA 480
DATE: 20120706
DOCKET: C54648

2012 ONCA 480 (CanLII)

Feldman, Simmons and Cronk JJ.A.

BETWEEN

Paul Downey

Plaintiff
(Respondent/Cross-Appellant)

and

Ecore International Inc.

Defendant
(Appellant/Respondent to Cross-Appeal)

L. David Roebuck and Mark Hines, for the appellant/respondent to cross-appeal

Timothy M. Lowman and Patrick J. Cotter, for the respondent/cross-appellant

Heard: April 12, 2012

On appeal and cross-appeal from the order of Justice John S. Fregeau of the Superior Court of Justice, dated November 8, 2011, with reasons reported at 2011 ONSC 6617.

Cronk J.A.:

I. Overview

[1] Ecore International Inc. ("Ecore") appeals from the dismissal of its motion for an order staying or dismissing an Ontario action commenced against it by the

information and that he was entering into the agreement to grant Ecore protection in respect of that information.

[36] For the reasons that follow, I agree with Ecore that the motion judge erred by holding that the Confidentiality Agreement "fails" and is unenforceable against Downey due to a lack of consideration.

(i) Principles of Contractual Interpretation

[37] I begin with the well-established principles of contractual interpretation. As the courts have repeatedly affirmed, the aim of contractual interpretation is to determine the intentions of the parties in accordance with the language used in the written document, having regard to the context in which the contract was signed: see *Dumbrell v. Regional Group of Companies* (2007), 85 O.R. (3d) 616 (C.A.), at paras. 47-56; *Salah v. Timothy's Coffees of the World Inc.*, 2010 ONCA 673, 268 O.A.C. 673, at para. 16; and *SeaWorld Parks & Entertainment LLC v. Marineland of Canada Inc.*, 2011 ONCA 616, 282 O.A.C. 339, at para. 16.

[38] The contours of the exact bargain between the parties may sometimes require consideration of more than one contract. Nonetheless, the same principles of contractual interpretation apply. In *Salah*, at para. 16, Winkler C.J.O. provided this instructive overview of the applicable principles:

> When interpreting a contract, the court aims to determine the intentions of the parties in accordance with the language used in the written document and presumes that the parties have intended what they have

2012 ONCA 480 (CanLII)

TAB 3C

CITATION: Salah v. Timothy's Coffees of the World Inc., 2010 ONCA 673
DATE: 20101014
DOCKET: C51317

COURT OF APPEAL FOR ONTARIO

2010 ONCA 673 (CanLII)

Winkler C.J.O., Rosenberg J.A. and Pitt J. (*ad hoc*)

BETWEEN:

Abdulhamid Salah and 1470256 Ontario Inc.

Plaintiffs (Respondents)

and

Timothy's Coffees of the World Inc.

Defendant (Appellant)

Alan J. Lenczner, Q.C., and Jaan E. Lilles, for the appellant

Stephen S. Appotive, for the respondents

Heard: September 16, 2010

On appeal from the judgment of Justice Monique Métivier[1] of the Superior Court of Justice dated October 26, 2009, with amended reasons dated January 21, 2010, and reported at (2010), 65 B.L.R. (4th) 235.

Winkler C.J.O.:

[1] Timothy's Coffees of the World Inc. ("Timothy's") appeals a decision of the Superior Court of Justice finding that it breached a franchise agreement with the respondents. The trial

[1] The case was tried over a period of 12 days by Justice A. de Lotbinière Panet. However, due to illness, he was unable to deliver judgment. The Chief Justice of the Superior Court of Justice made an order under ss. 123(4) and (7) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, appointing Métivier J. to rehear the matter. On consent, the rehearing was based on a review of all of the transcripts, exhibits, and oral and written submissions from counsel.

[16] The basic principles of commercial contractual interpretation may be summarized as follows. When interpreting a contract, the court aims to determine the intentions of the parties in accordance with the language used in the written document and presumes that the parties have intended what they have said. The court construes the contract as a whole, in a manner that gives meaning to all of its terms, and avoids an interpretation that would render one or more of its terms ineffective. In interpreting the contract, the court must have regard to the objective evidence of the "factual matrix" or context underlying the negotiation of the contract, but not the subjective evidence of the intention of the parties. The court should interpret the contract so as to accord with sound commercial principles and good business sense, and avoid commercial absurdity. If the court finds that the contract is ambiguous, it may then resort to extrinsic evidence to clear up the ambiguity. Where a transaction involves the execution of several documents that form parts of a larger composite whole—like a complex commercial transaction—and each agreement is entered into on the faith of the others being executed, then assistance in the interpretation of one agreement may be drawn from the related agreements. See *3869130 Canada Inc. v. I.C.B. Distributing Inc.* (2008), 66 C.C.E.L. (3d) 89 (Ont. C.A.), at paras. 30-34; *Drumbrell v. The Regional Group of Companies Inc.* (2007), 85 O.R. (3d) 616 (C.A.), at paras. 47-56; *SimEx Inc. v. IMAX Corp.* (2005), 11 B.L.R. (4th) 214 (Ont. C.A.), at paras. 19-23; *Kentucky Fried Chicken Canada v. Scott's Food Service Inc.* (1998), 41 B.L.R. (2d) 42 (Ont. C.A.), at paras. 24-27; and Professor John D. McCamus, *The Law of Contracts* (Toronto: Irwin Law Inc., 2005), at pp. 705-722.

[17] I see no error in the manner in which the trial judge applied the principles of construction of commercial agreements. The trial judge considered all of the relevant documents and found that the seminal document, the franchise agreement, was not ambiguous. All of the documents

2010 ONCA 673 (CanLII)

TAB 3D

Court File No CV-23-00701672-00CL
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

Cross-Examination of
Andy Bakhtiari, Deponent
taken upon affirmation this
18th day of August, 2026,
via videoconference hosted by the offices of
VERITEXT NIMIGAN

APPEARANCES:

For Receiver: TDB Restructuring Limited
Ryan Shah and Arif Dhanani
Paliare Roland Rosenberg Rothstein LLP
Ryan.shah@paliareroland.com

For Deponent AJGL Inc., 1001079582 Inc.
Dale Denis
Denis Litigation
Dale@dilitigation.com.

For 1604706 Ontario Inc. and Andy Bakhtiari
Maurice Neiringk
Maurice J. Neiringk & Associates
Mjn@mjnlaw.ca.

Also present: Isabella Harris, Articling Student with Paliare Roland Rosenberg Rothstein LLP

Bryan A. Tannenbaum, Insolvency Trustee, Representative of the Trustee

didn't see they're doing the professional way to do it, the procedure of the sales.

57 Q. I'm going to put to you, Mr. Bakhtiari, that you did not believe that this agreement and proposal was a waste of time because you submitted it to the Receiver and you wanted the Receiver to accept it, otherwise you wouldn't have sent it in the first place; isn't that right?

A. Yeah. Yeah, definitely I was, I was interesting to. Yeah, I was interesting to buy the property December 2nd, 2024, even when I was --

MR. NEIRINCK: Mr. Bakhtiari, he's referring to the December 16 Offer here.

THE WITNESS: Maurice, doesn't matter say 16 or 2nd, both is interesting on the -- am I interested to buy the property? Yes, I was interested to buy the property.

BY MR. SHAH:

58 Q. So, Mr. Bakhtiari, I just want to take you to Schedule D of the December 16th, 2024 offer, and looking at Page 60 of the PDF of 160 Inc. Motion Record, for the record, it's the case that you read this Schedule D before 160 Inc. submitted its December 16th, 2024 offer, right?

A. Um-hmn.

A. December 2nd or 16?

67 Q. Sixteen?

A. Why they're not pushing for December 2nd? I'm asking you, that December 16 -- December 2nd we, we send the Offer. From December 2nd.

68 Q. Can you please answer my question?

A. December 2nd to December 16, you don't want to even talk about it. And now, December 16, did Ayoub send the Offer to everybody? No, he didn't.

69 Q. So, Mr. Bakhtiari, you didn't answer my question. I'm going to ask it again.

A. Okay.

70 Q. The question is: At the time that Ayoub submitted the December 16th, 2024 Offer, were you, at that time, of the view that the Offer was not a qualified Bid within the meaning of the Sales Procedure, and the --

A. No.

71 Q. -- Receiver was not capable of accepting it?

A. Not that time. Not time after.

72 Q. And, in fact, at the time you

submitted the December 16th, 2024 Offer, it was your hope and intention that the Receiver would consider it an Offer to Purchase the Property and sign it back, right?

A. Yeah. Yeah. Yes.

73 Q. And, at the time that you submitted the 160 Inc. Offer on December 16th, 2024, you were aware that the Receiver had obtained Offers to Purchase the property from other parties, right?

A. Nobody informed us. But again, again, lack of information from another side. I don't, I don't -- because what Ayoub, I guess, was try to deliver it there, he didn't remember after 5:00, 5:30, whatever he was delivering, forget about the email, a couple of emails but, again, was going to deliver it. Except the minute, when I got there, it was late. "They're not going to accept your offer," because I was, I was in the traffic, I got there late. When he was delivering the offer, it past 5:00.

MR. NEIRINCK: Mr. Bakhtiari, he's asking you if you were aware that other people had made Offers for the Toronto property; that's the question?

THE WITNESS: The question, yes,

probably I heard about it.
BY MR. SHAH:
74 Q. And --
A. It's normal, it's a normal everybody -- I mean, there's more Offers coming.
75 Q. On December 16th, 2024, when you submitted that Offer, would you agree with me that it was your hope that the Receiver would choose your Offer instead of the other Offers it had received and was considering?
A. Probably at that moment, yes. That, that, to 24, yes, December 24, yes, I was hoping.
76 Q. So, I'm just taking you back to your Affidavit, Mr. Bakhtiari, and I'm showing you Paragraph 11 of your Affidavit, if you can read that? It says that, "Pursuant to Section 3 of the Sales Procedure, which was incorporated in and forms part of the 160 Inc. Bid, bids for the Toronto property were required to be submitted to certain notice parties by email, so that they were actually received by each of the notice parties no later than the bid deadline. And any bids received after the bid deadline, shall not constitute a bid, and shall be disqualified." At paragraphs 12 and 13, you then

TAB 3E

COMPENDIUM OF THE RECEIVER, P. 118

Novopharm Limited *Appellant*

v.

Eli Lilly and Company and Eli Lilly Canada Inc. *Respondents*

and

The Minister of National Health and Welfare *Respondent*

and between

Apotex Inc. *Appellant*

v.

Eli Lilly and Company and Eli Lilly Canada Inc. *Respondents*

and

The Minister of National Health and Welfare *Respondent*

INDEXED AS: ELI LILLY & CO. *v.* NOVOPHARM LTD.

File Nos.: 25402, 25348.

1998: January 21; 1998: July 9.

Present: L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Major and Bastarache JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Patents — Infringement — Sublicensing — Licensee agreeing to supply patented medicine to unlicensed third party — Licence expressly prohibiting sublicensing — Breach of licence terms grounds for termination of licence — Whether supply agreement between licence holder and third party a sublicence or having legal effect of creating a sublicence.

Agency — Supply agreement — Licensed party to obtain patented bulk medicine for unlicensed party —

Novopharm Limited *Appelante*

c.

Eli Lilly and Company et Eli Lilly Canada Inc. *Intimées*

et

Le ministre de la Santé nationale et du Bien-être social *Intimé*

et entre

Apotex Inc. *Appelante*

c.

Eli Lilly and Company et Eli Lilly Canada Inc. *Intimées*

et

Le ministre de la Santé nationale et du Bien-être social *Intimé*

RÉPERTORIÉ: ELI LILLY & CO. *c.* NOVOPHARM LTD.

N^os^ du greffe: 25402, 25348.

1998: 21 janvier; 1998: 9 juillet.

Présents: Les juges L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Major et Bastarache.

EN APPEL DE LA COUR D'APPEL FÉDÉRALE

Brevets — Contrefaçon — Sous-licence — Titulaire d'une licence acceptant de fournir un médicament breveté à un tiers non titulaire d'une licence — Licence interdisant expressément d'accorder une sous-licence — Violation des conditions de la licence justifiant son annulation — L'accord d'approvisionnement intervenu entre le titulaire d'une licence et un tiers constitue-t-il une sous-licence ou a-t-il pour effet juridique de créer une sous-licence?

Mandat — Accord d'approvisionnement — Partie titulaire d'une licence devant obtenir un médicament breveté en vrac auprès d'une partie non titulaire d'une

1998 CanLII 791 (CSC)

COMPENDIUM OF THE RECEIVER, P. 119

1998 CanLII 791 (CSC)

nary matter, reject the suggestion that the doctrine should apply to read any ambiguity in the contract against the drafting parties, in this case both Novopharm and Apotex.

54 The trial judge appeared to take *Consolidated-Bathurst* to stand for the proposition that the ultimate goal of contractual interpretation should be to ascertain the true intent of the parties at the time of entry into the contract, and that, in undertaking this inquiry, it is open to the trier of fact to admit extrinsic evidence as to the subjective intentions of the parties at that time. In my view, this approach is not quite accurate. The contractual intent of the parties is to be determined by reference to the words they used in drafting the document, possibly read in light of the surrounding circumstances which were prevalent at the time. Evidence of one party's subjective intention has no independent place in this determination.

55 Indeed, it is unnecessary to consider any extrinsic evidence at all when the document is clear and unambiguous on its face. In the words of Lord Atkinson in *Lampson v. City of Quebec* (1920), 54 D.L.R. 344 (P.C.), at p. 350:

> . . . the intention by which the deed is to be construed is that of the parties as revealed by the language they have chosen to use in the deed itself. . . . [I]f the meaning of the deed, reading its words in their ordinary sense, be plain and unambiguous it is not permissible for the parties to it, while it stands unreformed, to come into a Court of justice and say: "Our intention was wholly different from that which the language of our deed expresses. . . ."

56 When there is no ambiguity in the wording of the document, the notion in *Consolidated-Bathurst* that the interpretation which produces a "fair result" or a "sensible commercial result" should be adopted is not determinative. Admittedly, it would be absurd to adopt an interpretation which is clearly inconsistent with the commercial interests of the parties, if the goal is to ascertain their true

The Law of Contract in Canada (3e éd. 1994), à la p. 471. En conséquence, je suis d'avis, à titre préliminaire, de repousser la proposition selon laquelle cette règle devrait s'appliquer de manière à interpréter toute ambiguïté du contrat au détriment des parties qui l'on rédigé, en l'occurrence tant Novopharm qu'Apotex.

Le juge de première instance semble avoir considéré que, d'après l'arrêt *Consolidated Bathurst*, l'interprétation du contrat devrait viser en définitive à vérifier l'intention véritable des parties au moment de conclure le contrat et que, ce faisant, le juge des faits peut admettre des éléments de preuve extrinsèques concernant les intentions subjectives des parties à ce moment-là. À mon avis, cela n'est pas tout à fait exact. L'intention des parties contractantes doit être déterminée en fonction des mots qu'elles ont employés en rédigeant le document, éventuellement interprétés à la lumière des circonstances du moment. La preuve de l'intention subjective d'une partie n'occupe aucune place indépendante dans cette décision.

En fait, il n'est pas nécessaire de prendre en considération quelque preuve extrinsèque que ce soit lorsque le document est, à première vue, clair et sans ambiguïté. Pour reprendre les propos de lord Atkinson dans *Lampson c. City of Quebec* (1920), 54 D.L.R. 344 (C.P.), à la p. 350:

> [TRADUCTION] . . . l'intention qu'il faut rechercher en interprétant l'acte est celle des parties telle qu'elle se dégage des termes qu'elles ont utilisés dans l'acte lui-même. [. . .] [S]i la signification de l'acte, selon le sens ordinaire des mots qui y sont employés, est claire et sans ambiguïté, il n'est pas permis aux parties à cet acte, aussi longtemps qu'il n'est pas modifié, de venir affirmer devant une cour de justice: «Notre intention était tout à fait différente de celle qui est exprimée par les termes de l'acte . . .»

Quand le texte du document est sans ambiguïté, l'idée exprimée dans *Consolidated Bathurst*, selon laquelle il y a lieu de retenir l'interprétation qui assure un «résultat équitable» ou un «résultat commercial raisonnable», n'est pas déterminante. Certes, il serait absurde d'adopter une interprétation nettement incompatible avec les intérêts commerciaux des parties, si l'objectif est de vérifier leur

TAB 3F

CITATION: Wang v. Tribute (Grandview) Ltd., 2019 ONSC 201
NEWMARKET COURT FILE NO.: CV-17-132998-00
DATE: 20190108

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Yaqiong Wang Plaintiff/Applicant	Dheeraj Bhatia, for the Plaintiff/Applicant
– and –	
Tribute (Grandview) Ltd. Defendant/Respondent	Scott McGrath and James Hardy, for the Defendant/Respondent
	HEARD: September 12 and October 15, 2018

RULING ON MOTION

DE SA J.

Overview

[1] The plaintiff, Yaqiong (Joan) Wang, agreed to buy a new-build house in Oshawa from the defendant, Tribute (Grandview) Ltd. ("Tribute") which was scheduled to close in 2019. After the conditional period of the contract expired, the housing market dropped. Ms. Wang sought to get out of the deal. Tribute refused.

[2] Ms. Wang sued Tribute to get her deposit back. Tribute counterclaimed for specific performance.

[3] Tribute has brought a motion for summary judgment. It seeks the dismissal of Ms. Wang's action against it, and judgment against Ms. Wang on its counterclaim. Tribute no longer seeks specific performance. It seeks damages only.

[4] Having reviewed the record before me, I grant judgment in favour of Tribute. The particulars of my decision are outlined below.

2019 ONSC 201 (CanLII)

[42] In this case, an agreement to purchase the Property was clearly complete. Even Ms. Wang's conduct after the APS was signed makes this evident.

[43] I do not accept the plaintiff's suggestion that the Contract was invalid because Ms. Wang did not receive a signed copy of it. Even a failure to sign an agreement does not invalidate it, provided that the parties have agreed to its terms. As explained in *Kernwood Ltd. v. Renegade Capital Corp.*, 1997 CanLII 846 (ON CA), both words and conduct are considered in making the assessment.

> With respect, I do not agree that Blair's failure to sign the Share Purchase Agreement establishes that he did not assent to it on November 21, 1989. It is well-settled law that, except in certain situations, a party's intention to be bound can be manifested by *words or conduct:* Calvan Consolidated Oil & Gas Company Limited v. M.E. Manning, 1959 CanLII 56 (SCC), [1959] S.C.R. 253 at 261. A manifest intention to be bound can be established by conduct or words where an objective interpretation of the conduct or words of the parties would lead a reasonable person to conclude that the parties intended to be bound: Industrial Tanning Co. v. Reliable Leather Sportwear Ltd., 1953 CanLII 345 (ON CA), [1953] 4 D.L.R. 522 at 525 (Ont. C.A.). *In such cases, the requirement of a signature is treated as a mere formality.*

[44] I am satisfied that the Contract was completed. It had been settled in all of its material terms. Both the words and the conduct of the parties make this clear.

Was there a Subsequent Agreement to Settle for the Deposit Only

[45] The Respondent takes the position that even if there was a "contract", Tribute agreed to terminate the APS in exchange for forfeiting her deposit. Essentially, the Respondent argues that Tribute is precluded from claiming anything further given their agreement to accept the deposit in lieu of any breach. In short, the Respondent's position is that Tribute, through its agents, entered a settlement agreement which prevents them from pursuing any additional damages.

[46] As with any other contract, a settlement agreement is binding when the parties have reached an agreement on all essential terms. As explained in *Hedayat Amirvar v. Murlee Holdings Limited*, 2011 ONSC 5826 (CanLII) at para. 5:

> There is a two part test to determine whether a binding settlement agreement exists. First, there must have been a mutual intention to create a legally binding contract; and second, the parties must have reached agreement on all of the essential terms of the settlement. See *Olivieri v. Sherman* (2007), 2007 ONCA 491 (CanLII), 86 O.R. (3d) 778 (Ont. C.A.) at para 41.

2019 ONSC 201 (CanLII)

TAB 3G

COURT FILE NO.: 06-CV-316199PD1
DATE: 2006-09-01

2006 CanLII 29932 (ON SC)

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
ALEXANDER ROYT AND TAMAR ROYT	)	David N. Bleiwas, for the Applicants/Purchasers
	)	
Applicants/Purchasers	)	
	)	
- and -	)	
	)	
HILARY J. GOLDENBERG	)	Barbara L. Grossman, for the Respondent/Vendor
	)	
Respondent/Vendor	)	
	)	
	)	**HEARD:** August 14, 2006

REASONS FOR DECISION

[1] The purchasers applied for a declaration that their objection to title had not been satisfactorily met and that they were entitled to rescind the agreement of purchase and sale entered into on March 8, 2006 regarding 114 Vesta Drive in Toronto. As alternative relief, they sought a declaration rescinding the agreement based upon alleged misrepresentations by the vendors concerning the existence of encroachments onto a road allowance. The application was brought under section 3(1) of the *Vendors and Purchasers Act,* R.S.O. 1990, c.V.2 and Rule 14.05(2) and (3) of the *Rules of Civil*

purchaser's title objection in appropriate circumstances: see Kathleen A. Waters, "Saving the Deal with Title Insurance", *Law Society of Upper Canada Special Lectures* (2002) *Real Property Law*; Mark L. Karoly, "Requisitions", *Solid Footings: The Commercial Real Estate Transaction*, Ontario Bar Association Conference, May 12, 2004 at 28; *The Law Society of Upper Canada, 48th Bar Admission Course*, Academic Phase 2005. Title insurance is a way of allowing a transaction to close while addressing a possible problem. Here, the respondent went so far as obtaining a commitment to insure. In my view, the applicants took an unreasonable position by rejecting the proposals offered. The applicants said they found the responses unacceptable but their reasons for doing so were without foundation. As a result, I find that the requisition made on July 4, 2006 was not a valid objection.

[14] In the decision of *Stefanovska v. Kok* (1990), 73 O.R. (2d) 368 (Ont.H.C.), Moldaver J. said at 378:

> In my respectful opinion, the test to be applied in cases of this nature is whether the vendor can convey substantially what the purchaser contracted to get. In this regard, all of the surrounding circumstances must be considered to determine if the alleged impediment to title would, in any significant way, affect the purchasers' use or enjoyment of the property.

[15] Applying this test to the case at bar, I find that the structures in question do not affect the use or enjoyment of the property and any deficiency is not material nor would it affect marketability. The plans expressed by the purchaser to tear down the house and structures and redevelop the property demonstrated their intention at the time of entering the agreement. Although the purchasers are at liberty to do what they wish with the property including retaining the house and structures, that does not alter the situation. The stairs and walls are easy to remove and rebuild can be done at a minor cost. If the structures are encroachments, they are a trivial risk and are commonplace. Since the vendor is able to convey all the land and buildings under the contract,

2006 CanLII 29932 (ON SC)

rescission is not an available remedy for the purchasers. In the text, P. Perrell and B. Engell, *Remedies and the Sale of Land, Second Edition* (Butterworths: Toronto, 1998) at 50, the authors write, "A good title is defined as a marketable title and one that can, at all times and under all circumstances, be forced upon an unwilling purchaser who is not compelled to take a title with defects, clouds or the reasonable threat of litigation to mar peaceful possession." In my view, the vendor was able to provide good title to the purchasers in this case. This is one of those cases where the purchasers' objection is about a minor or trivial matter which does not justify termination of the agreement.

2006 CanLII 29932 (ON SC)

[16] I now turn to the issue of whether the purchasers were entitled to rescind the agreement on the basis that the vendor made misrepresentations by checking off "no encroachments" on the Seller Property Information Statement. In *Rampersad v. Rose*, [1997] O.J. No. 2012, Deputy Judge Searle of the Small Claims Court discussed the use of the SPIS in real estate transactions:

> It is a form adopted by the local real estate board about 1993 and is a form of disclosure ostensibly used to provide potential purchasers with information about the property…. The form contains a number of explanatory and qualifying statements.

[17] The term encroachment refers to an "unauthorized" or "illegal" or "unlawful" intrusion onto another's land: see *Black's Law Dictionary*, *Eighth Edition*, (West Publishing Co.: St. Paul, 2000); *Concise Oxford Dictionary, Eleventh Edition* (Oxford University Press: New York, 2004). In this case, the stairs, landing and retaining walls extend over the front lot line onto City owned property but were constructed with permission of the City and, certainly, without objection. The survey report obtained by the purchaser did not characterize the structures as encroachments. The Seller Property Information Statement (SPIS) had notations on it that the information is provided for information purposes only and is not a warranty even if attached to an agreement of purchase and sale. The form also stated "Buyers must still make their own enquiries". While the vendor's husband agrees that if he was now asked about

encroachments (after seeing the recent survey), he would answer the question differently, he has provided an explanation for completing the SPIS the way he did. I do not consider the statements made on the form to be misrepresentations.

[18] Furthermore, there is no evidence adduced by the purchasers that the statements regarding alleged encroachments were *material* to the making or were inducements to entering the purchase agreement. The applicants make an assertion that had they known of the encroachments, they would not have entered into the agreement; however, there is no other evidence supporting that contention and the evidence that is available suggests that the purchasers had plans to redevelop the property and remove the stairs and retaining walls.

[19] Misrepresentations involve a misstatement of a fact which is *material* to the making or inducement of a contract: see Fridman, G.H.L. *The Law of Contract, Third Edition* (Carswell:Toronto), 293. It cannot be said that the representation was of an existing fact and that it induced the purchaser to enter into the contract.

[20] I apply the policy approach outlined by Grange J.A. in *LeMesurier v. Andrus* (1986), 54 O.R. (2d) 1 at 7 where he said:

> I think the purchaser's reliance upon this clause can be described as "capricious or arbitrary" where the vendors had removed the curb and replaced it within the lot line so that it did not encroach on the adjacent lot, and I cannot find her action to be "reasonable and in good faith". If we were to give the clause the meaning and force ascribed to it by the trial judge, there would be very few contracts for the sale of urban land that could survive. It would be a rare case where a careful survey would not disclose some minor discrepancy. Vendors and purchasers owe a duty to each other honestly to perform a contract honestly made. As Middleton J. put it in *Hurley v. Roy* (1921), 50 O.L.R. 281 at p. 285, 64 D.L.R. 375 at p. 377: "The policy of the Court ought to be in favour of the enforcement of honest bargains…."

2006 CanLII 29932 (ON SC)

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

CAMERON STEPHENS MORTGAGE CAPITAL LTD. Applicant	-and-	**CONACHER KINGSTON HOLDINGS INC. et al.** Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

COMPENDIUM OF THE RECEIVER
(MOTION RETURNABLE NOVEMBER 18, 2026)

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