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

FACTUM OF THE RESPONDENT, 1604706 ONTARIO INC. (MOTION RETURNABLE NOVEMBER 18, 2026)

October 22, 2026

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PART I – THE RECEIVER'S MOTION AGAINST 1604706 ONTARIO INC.

1. This Factum is in response to the portion of the Receiver's claim and Motion against 1604706 Ontario Inc. ("160 Inc.").

2. The Receiver solicited Bids from Interested Parties for the purchase of lands known as the Toronto Property, pursuant to which (i) the sales process and all Bids were governed by the Rules, procedures, disqualifications, exclusions, prohibitions and pre-conditions in a published Sale Procedure and (ii) all bids were required to be submitted in the form of the Receiver's template agreement of purchase and sale including the Sale Procedure as Schedule D.

3. 160 Inc. partially submitted a Bid for the Toronto Property using the template agreement of purchase and sale which incorporated the Sale Procedure as Schedule D thereto. The 160 Inc. Bid did not comply with the Sale Procedure and, more than that, was disqualified, excluded and prohibited by the express terms of the Sale Procedure. There was no privilege or discretion clause in the Bid or the Sale Procedure allowing the Receiver to accept the non-compliant 160 Inc. Bid.

4. On November 13, 2025, the Receiver purported to accept the 160 Inc. Bid and to demand payment of a deposit on the Bid by 1:00 PM, November 14, 2025. On November 14, 2025, the Receiver purported to claim that 160 Inc. had repudiated the 160 Inc. Bid and further purported to terminate the Bid. The Receiver is now claiming damages from 160 Inc. equal to the difference between the amount of the Bid and the lesser price for which the Property was sold.

5. There is no basis for the Receiver's Motion for Judgment against 160 Inc. The 160 Inc. Bid was never open for acceptance by the Receiver. There was never any agreement of purchase

and sale between 160 Inc. and the Receiver. The 160 Inc. Bid was disqualified, excluded, prohibited and otherwise non-compliant as unconditionally stipulated in the Sale Procedure and by its own terms. The 160 Inc. Bid was not a Qualifying Bid as stipulated in ss. 1 and 7 of the Sale Procedure and was never open for determination by the Receiver as a Successful Bid. Only a Qualifying Bid could be determined to be a Successful Bid for Court approval. Not only was the Receiver precluded from considering, let alone accepting, the 160 Inc. Bid as a Successful Bid and for Court approval but the Receiver was precluded by the Sale Procedure and the 160 Inc. Bid itself from doing so.

6. The 160 Inc. Bid was, in any case by both the Sale Procedure and the express terms of the Bid, subject to Court approval. The Receiver could only select a proposed Successful Bid from a Qualified Bid, if any, for Court approval. Court approval was never obtained. Accordingly, there is no possible agreement of purchase and sale on account of the 160 Inc. Bid.

7. The Receiver's Motion against 160 Inc. is a non-starter and must be dismissed.

PART II – OVERVIEW OF ISSUES FOR DETERMINATION

8. The Receiver solicited Bids for the Toronto Property. The Bids were required to conform with the Receiver's Sale Procedure and template agreement of purchase and sale for all Bids. The Receiver admits the Sale Procedure governed the sale process for all bidding and Bids.

9. 160 Inc. partially submitted a Bid for the Toronto Property on December 16, 2025 ("the 160 Inc. Bid"). The Sale Procedure was incorporated in and formed part of the 160 Inc. Bid.

10. By reason of the Sale Procedure both imposed by the Receiver and incorporated in and forming part of the 160 Inc. Bid, the 160 Inc. Bid (i) was disqualified, (ii) was excluded from

participation and consideration in the sale process, (iii) was not a Qualified Bid as required for all Bids, (iv) could not be selected as a Successful Bid for Court approval as it was not a Qualified Bid, (v) was subject to prior Court approval for acceptance by the Receiver. In addition, ss. 2.15(a)(i) and (ii), 4.1(d), 4.3(e) and 4.5 of the 160 Inc. Bid all made the Bid subject to and conditionally precedent upon Court approval and otherwise null and void with neither 160 Inc. nor the Receiver having any obligations pursuant thereto.

11. On November 13, 2025, the Receiver purported to accept the 160 Inc. Bid. On November 14, 2025, the Receiver purported to terminate the 160 Inc. Bid and to assert a claim against 160 Inc. for breach of contract on account of non-payment of a deposit.

12. The Receiver never did obtain or even apply for Court approval for the 160 Inc. Bid. The Receiver has since obtained Court approval for a compliant Bid for the Toronto Property and closed the sale pursuant thereto. Accordingly, the Receiver in any case had no right to purport to accept and then terminate the 160 Inc. Bid. There was never any agreement, let alone an enforceable agreement, with respect to the 160 Inc. Bid.

13. The positions of 160 Inc. are therefore as follows:

(a) Procurement law applies. This is not in dispute;

(b) A Contract A was not formed on partial submission of the 160 Inc. Bid. This is because of the disqualification, exclusion, prohibition and termination provisions of the Sale Procedure in the Bid, which are all inconsistent with and preclude the formation of a Contact A. If there is no Contract A, the 160 Inc. Bid is a nullity;

(c) Even if a Contract A had been formed, the law is clear that the Receiver had no right to enter into a Contract B based on the 160 Inc. Bid because the Bid was disqualified, excluded, prohibited and materially non-compliant pursuant to the provisions of the Sale Procedure and the 160 Inc. Bid itself;

(d) In addition, and in any event, a possible Contract B was conditionally precedent upon Court Approval. As Court approval was never obtained and is now impossible, there is no possible Contract B or any other possible agreement;

(e) Nor was any sort of other agreement of purchase and sale entered into with respect to the 160 Inc. Bid. The Bid was not only conditionally precedent upon Court approval but upon the Receiver being able to select and propose a Successful Bid from a Qualified Bid. As the 160 Inc. Bid was not a Qualified Bid, there was no possible Successful Bid; again, there was also no Court approval. It is impossible for the 160 Inc. Bid to have resulted in an agreement of purchase and sale;

(f) Had the Receiver sought Court approval for the 160 Inc. Bid, the Court would have refused approval. This is because approval of the disqualified and non-compliant 160 Inc. Bid would have been a breach of the duty of good faith owed to the compliant bidder to whom the Toronto Property was subsequently sold. This is black letter law;

(g) The Receiver could not terminate the 160 Inc. Bid. Acceptance of the 160 Inc. Bid was conditionally precedent upon Court approval. Without Court approval, there is no possible agreement of purchase and sale with respect to the 160 Inc.

Bid and nothing to terminate by the Receiver. The Receiver's only choice with respect to the 160 Inc. Bid was to have rejected the Bid as disqualified and non-compliant but the Receiver failed to do so. As to the deposit, payment at the same time as the making of the Bid and the only consequence of non-payment is non-compliance and disqualification of the Bid as a Qualifying Bid for consideration as a Successful Bid and for Court approval.

PART III – THE FACTS

The Governing Sale Procedure Imposed by the Receiver for All Bids

14. The Receiver admits soliciting Bids from Interested Parties for the Toronto Property by correspondence requiring Bidders (i) to submit Bids in the form of the Receiver's template agreement of purchase and sale ("the Template APS") which incorporated a Sale Procedure at Schedule D thereto ("the Sale Procedure").[1]

15. The Receiver further admits (i) that the Sale Procedure stipulates "the following Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the Property" and (ii) that Bidders were thereby notified of the Rules and procedures for the sales process for the solicitation of Bids.[2]

16. S. 7(a) of the Sale Procedure stipulates that Bids for the Toronto Property must be in the form of the text of the Template APS including the Sale Procedure at Schedule D.[3]

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[1] Receiver's Sixth Report ("Sixth Report") at para. 15, Template APS at Appendix G of Sixth Report, Receiver's Factum at para. 10 and Sale Procedure at Receiver's Hearing Brief ("RHB") at Tab 2, pp. 120-125
[2] Sale Procedure, Sixth Report at para. 16.2, Receiver's Factum, para. 10 and Sale Procedure, Sixth Report at Appendix G and at RHB, p. 120
[3] Sale Procedure, Sixth Report, Appendix G, s. 7(a) and at RHB at Tab 2, p. 122 at s. 7(a)

17. The solicitation of and governing Sale Procedure for Bids for the Toronto Property was first of all, only for a Qualified Bid. S. 1 of the Sale Procedure defines Qualified Bid as "a Bid that satisfies the conditions set out in s. 7 hereof as determined by the Receiver and further defines Qualified Bidder as a Bidder submitting a Qualified Bid".[4]

18. The fact the Sale Procedure was only for Qualified Bids is unconditionally confirmed in the last sentence of s. 10 of the Sale Procedure which states "If no Qualified Bid is received by the Bid Deadline, then the Sale Procedure shall be terminated."[5]

19. S. 7 of the Sale Procedure under the heading of "Bid Requirements" requires that "In order to be considered a Qualified Bid, as determined by the Receiver, a Bid must satisfy each of the following conditions:

> (a) Written Submission of Agreement of Purchase and Sale. The Bid must be submitted by the Bid deadline.
>
> (b) Irrevocable. A Bid must be received by the Bid Deadline, in accordance with Section 3 above, and must be irrevocable until the date on which the Receiver obtains Court approval of the Successful Bid…
>
> (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."[6]

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[4] Sale Procedure, Sixth Report, Appendix G, and at RHB at Tab 2, p. 121
[5] Sale Procedure, Sixth Report, Appendix G and at RHB, Tab 2, p. 124 at last para. of s. 10
[6] Sale Procedure, Sixth Report, Appendix G and at RHB, Tab 2, pp. 122-123, s. 7(a), (b) and (f)

20. The Sale Procedure also stipulated other disqualifications, exclusions and pre-conditions for participating in the Sale Procedure process for bidding on the Toronto Property including the following:

(a) There is a Participant Requirement in s. 4 of the Sale Procedure unconditionally stating "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 Acknowledgment of Sale Procedure."

(b) There is a Bidding Requirement in s. 3 of the Sale Procedure unconditionally requiring all Bids to be submitted to and actually received by three Notice Parties, being the Receiver, its counsel and the Listing Agent, at the same time and no later than the Bid Deadline and further unconditionally stipulating that "A Bid received after the Bid Deadline shall not constitute a Bid and shall be disqualified."[7]

21. In the event of a Qualified Bid, (i) s. 10 of the Sale Procedure and, for that matter, ss. 2.15 (a)-(c) and 4.1(e) of the text of the Template APS (i) restricts the Receiver to determining a Successful Bid and a Back-Up Bid, if any, from a Qualified Bid and, in such a case, (ii) required the Receiver to seek Court approval of the Successful Bid and authority to consummate the Agreement of Purchase and Sale included in the Bid.[8]

22. S. 12 of the Sale Procedure unconditionally stipulates "the Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court.

[7] Sale Procedure, Sixth Report, Appendix G and at RHB, Tab 2, p. 122, s. 3
[8] Sale Procedure, Sixth Report, Appendix G and at RHB, Tab 2, pp. 123-124, s. 10

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."[9]

23. There is no privilege clause or other provision in the Sale Procedure that gives the Receiver a right to waive, forgive or not insist upon compliance with the provisions of the Sale Procedure. Nor was the Sale Procedure ever amended. To this date, the Receiver admits that the Sale Procedure governs the bidding and bids for the Toronto Property.[10]

24. There is a further explicit and unconditional provision in the Sale Procedure which confirms that good faith deposits pursuant to s. 7(f) of the Sale Procedure must accompany all Bids in order for a Bid to be a Qualified Bid for the Property. See s. 17 of the Sale Procedure. [11]

25. Nor does the text of the Template APS require a Bidder such as 160 Inc. to pay the Good Faith Deposit. Instead, consistent with the Sale Procedure requiring a Good Faith Deposit to accompany delivery of a Bid for the Bid to be a Qualified Bid, s. 4.5 of the APS states that the Receiver must acknowledge and agree that 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."[12]

26. In other words, the Receiver is required to have the Good Faith Deposit in hand before accepting and considering a Bid, including signing back the Bid. Accordingly, payment of the Deposit is a precondition to any Bid being a Qualified Bid for consideration as a Successful Bid. In turn, a Bid without a deposit is not a breach of the Bid but no bid at all. The only other

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[9] Sale Procedure, Sixth Report, Appendix G and at RHB, Tab 2, p. 124, s. 12
[10] Sale Procedure, Sixth Report, Appendix G and at RHB, Tab 2, pp. 120-125
[11] Sale Procedure, Sixth Report, Appendix G and at RHB, Tab 2, p. 125, s. 17
[12] Template APS, Sixth Report, Appendix G

possible consequence from non-payment would be a waiver of the deposit by the Receiver where, unlike here, waiver is possible. The pre-condition for payment of the deposit is also confirmed by s. 2.5(a)-(c) which all provide for what is to occur to the deposit when a Bid with the deposit has been approved.

27. S. 3 of the Receiver's Sale Procedure incorporated in and forming part of the 160 Bid as Schedule D stipulates that a Bid received after the Bid Deadline shall not constitute a Bid and shall be disqualified.

28. The Receiver has never alleged that the 160 Inc. Bid was a Qualified Bid which had been selected as a Successful Bid. Instead, the Receiver purported to accept, without any right or authority, the 160 Inc. Bid because it was the highest and best Bid. Apart from the fact that the Receiver had no right to accept anything, as acceptance could only flow from Court approval, that position was a violation of the Sale Procedure and the terms of the 160 Inc. Bid which only allowed the Receiver to select and propose a Successful Bid from a Qualified Bid and because the 160 Inc. Bid was not a Qualified Bid.

The Materially Non-Compliant, Disqualified and Excluded 160 Inc. Bid

29. The Sale Procedure was incorporated in and formed a material part of the 160 Inc. Bid as Schedule D thereto as stipulated in section 1.4 of that Bid.[13]

30. The Receiver further confirmed and agreed that the provisions of the Sale Procedure are a material part of the 160 Inc. Bid, when the Receiver signed the 160 Inc. Bid on November 13,

[13] Andy Bakhtiari ("Bakhtiari") Affidavit Affirmed July 26, 2026 ("Affidavit"), 1604706 Ontario Inc. Responding Motion Record ("160 RMR"), Tab 1, p. 2, para. 8

2025. The Receiver is bound by the Sale Procedure, as also confirmed in the Receiver's Sixth Report.[14]

31. By virtue of the very terms of the 160 Inc. Bid, including the incorporated Sale Procedure at Schedule D thereto, the 160 Inc. Bid was never a Bid which qualified for or that was available for acceptance.[15]

First Reason for Disqualification of the 160 Inc. Bid

32. Pursuant to section 3 of the Sale Procedure which was incorporated in and formed 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 are 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." Section 1 of the Sale Procedure defined the Notice Parties as "the Receiver, its counsel and the Listing Agent." The Bid Deadline was set by the Black Order as 5:00 PM on December 16, 2024.[16]

33. Accordingly, for the 160 Inc. Bid to constitute a Bid for the Toronto Property and not be disqualified from consideration by the Receiver, the Bid had to be delivered to each of the Receiver, its counsel and the Listing Agent by 5:00 PM December 16, 2024.[17]

34. The 160 Inc. Bid was delivered to and received by the Receiver and its Listing Agent by an email at 2:55 PM on December 16, 2024. However, the 160 Inc. Bid was not submitted to the Receiver's counsel by 5:00 PM on December 16, 2024, or at all. Nor did 160 Inc. or anyone else

[14] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 2, para. 9
[15] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 2, para. 10
[16] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 3, paras. 11-12 and 160 Inc. Bid, 160 RMR at Tab A
[17] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 3, para. 13

on behalf of 160 Inc. submit the 160 Inc. Bid to counsel for the Receiver by 5:00 PM, December 16, 2024, or at all.[18]

35. Accordingly, (i) as the 160 Inc. Bid for the Property, including the Sale Procedure, disqualified the Bid from being a Bid for consideration by the Receiver for the purchase of the Toronto Property unless delivered by 5:00 PM, December 16, 2024, to not just the Receiver and its Listing Agent but also to its counsel and (ii) as the 160 Inc. Bid was not submitted to the Receiver's counsel by 5:00 PM, December 16, 2024, or at all, the 160 Inc. Bid did not constitute a Bid for the Property and was disqualified by its own terms and provisions from being a Bid for consideration and possible acceptance in accordance with the other provisions of that Bid.[19]

36. As such, the Receiver had no right or authority to at any time consider, let alone sign and take any steps to accept, the 160 Inc. Bid for the purchase of the Toronto Property. The 160 Inc. Bid did not constitute a valid Bid and was disqualified from being a Bid. The Receiver had no right to purport to in any way partially or otherwise sign or take steps to have the Bid accepted. The Bid was of no force and effect because of prior non-compliance with the delivery pre-condition in the Sale Procedure which disqualified the Bid. Accordingly, the Receiver has no possible claim against 160 Inc. on account of the Bid.[20]

37. In that regard, the disqualification of the 160 Inc. Bid was no different than the disqualification of an earlier Bid for the Toronto Property by 160 Inc. on or about December 2, 2024. The First 160 Inc. Bid was submitted after what was then the September 26, 2024, Bid Deadline for Bids for the purchase of the Toronto Property. The Receiver refused to accept the

[18] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 3, paras. 14-15 and Email from Ayoub to Receiver and listing agent at 2:55 PM on December 16, 2024, 160 RMR, Tab B
[19] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 4, para. 16
[20] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 4, para. 17

First 160 Inc. Bid for consideration because it was delivered after September 26, 2024, and was therefore disqualified from consideration by the Receiver for the purchase of the Toronto Property and, at that, even though the $2.8 million purchase price was more than the highest purchase price in the Bids submitted for the purchase of the Toronto Property before the September 26, 2024, then Bid deadline. Just as the First 160 Inc. Bid was disqualified from being a valid Bid for the purchase of the Toronto Property from the Receiver, so was the 160 Inc. Bid.[21]

Second Reason for Disqualification of the 160 Inc. Bid.

38. Section 1 of the Sale Procedure incorporated in and forming part of the 160 Inc. Bid as Schedule D thereto defines a "Qualified Bid" as "a Bid that satisfies the conditions set out in Section 7 hereof." In order for a Bid for the Property "to be considered a Qualified Bid…a Bid must satisfy each of the following conditions":

> "(f) Good-Faith Deposit. Each Bid must be accompanied by a Good-Faith Deposit that shall be paid to the Receiver's counsel by wire transfer or banker's draft to beheld 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;"[22]

39. Sections 9 and 10 of the Sale Procedure require that any Successful Bid for the purchase of the Toronto Property must be a Qualified Bid pursuant to section 7 including, more particularly, a Bid for which a Good-Faith Deposit is paid as required by sub-paragraph (f). Furthermore, section 10 of the Sale Procedure in part stipulates "If no Qualified Bid is received

[21] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 2, paras. 18-19 and 160 Inc. Bid dated December 2, 2024, 160 RMR, Tab C
[22] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 5, paras. 20-21 and 160 Inc. Bid, 160 RMR, Tab A

by the Bid Deadline, then the Sale Procedure shall be terminated." Sections 1, 7, 9 and 10 of the Sale Procedure are all incorporated in and form part of the 160 Inc. Bid.[23]

40. In addition, section 2.15(a)(ii), (b) and (c) of the 160 Inc. Bid all stipulate that the 160 Inc. Bid is subject to compliance with the Sale Procedure including the requirement for the 160 Inc. Bid to be a Qualified Bid as defined in section 7 of the Sale Procedure and the requirement that there can be no Successful Bid for the Property unless the Bid is a Qualified Bid.[24]

41. Accordingly, if the 160 Inc. Bid is not a Qualified Bid for the purchase of the Toronto Property, the 160 Inc. Bid cannot possibly be a Successful Bid for the purchase of the Toronto Property for the purpose of taking steps for acceptance of the Bid by Court Approval. Again, this is because the requirement that the 160 Inc. Bid be a Qualified Bid for the purchase of the Property is a pre-condition or condition precedent for consideration by the Receiver and possible acceptance for the purchase of the Toronto Property.[25]

42. In this case, 160 Inc. did not pay the Good-Faith Deposit of $368,800, with respect to the 160 Inc. Bid. No deposit of any kind was paid or tendered by or on behalf of 160 Inc. with respect to the 160 Inc. Bid. Because 160 Inc. did not pay the Good-Faith Deposit as required by section 7(f) of the Sale Procedure, the 160 Inc. Bid was never a Qualified Bid for the purchase of the Toronto Property which could be considered for determination as a Successful Bid by the Receiver. As the Good-Faith Deposit payment pre-condition for the 160 Inc. Bid qualifying as a Qualified Bid was never complied with or satisfied, the 160 Inc. Bid was never a Qualified Bid

[23] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 5, paras. 22-24 and 160 Inc. Bid, 160 RMR, Tab A
[24] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 6, para. 25
[25] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 6, para. 26

and the 160 Inc. Bid was therefore never open or available for consideration by the Receiver as a Successful Bid or, in turn, for acceptance by Court Approval.[26]

43. In turn, the 160 Inc. Bid therefore never resulted in any sort of agreement with the Receiver. The Bid was no more than an offer which expired in accordance with its terms without any legal consequences whatsoever because the subject pre-condition for its qualification as a Qualified Bid, being the payment of the Good-Faith Deposit, was never complied with by 160 Inc. Nor was there any default with respect to non-payment of the Good-Faith Deposit. There was no default because there was no agreement between 160 Inc. and the Receiver. Again, this was because of non-compliance with a pre-condition for the 160 Inc. Bid to qualify for consideration by the Receiver pursuant to the Sale Procedure.[27]

44. Accordingly, the Receiver has no claim against 160 Inc. on account of the 160 Inc. Bid because there were two separate and independent disqualifications of the 160 Inc. Bid from possible consideration by the Receiver.[28]

Third Reason for Disqualification of the 160 Inc. Bid

45. S. 4 of the Receiver's Sale Procedure incorporated in and forming part of the 160 Bid stipulated Participant Requirements for Bids to the Receiver stating "To participate in the Sale Procedure or to otherwise be considered for any purpose hereunder, each Interested Party must

[26] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 6, paras. 27-28
[27] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 7, paras. 29-30
[28] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 7, para. 31

provide the Receiver with each of the following:…(ii) an executed Acknowledgment of Sale Procedure."[29]

46. The Acknowledgment of Sale Procedure is defined in s. 1 of the subject Sale Procedure as meaning "an acknowledgment of the Sale Procedure in the form attached as Schedule "A" hereto." "Interested Party" is defined as "a party participating in the Sale Procedure". 160 Inc. never provided the Receiver with an executed Acknowledgment of Sale Procedure as unconditionally required by s. 4 of the Receiver's Sale Procedure incorporated in and forming part of the 160 Bid.[30]

47. Accordingly, again as unconditionally provided for and required by the operative terms of the 160 Bid, the 160 Bid was a non-compliant bid which was disqualified and could not be considered or accepted by the Receiver for Court Approval or otherwise.[31]

Disqualification/Non-Compliance of the 160 Inc. Bid Conclusion

48. The disqualification and non-qualification of the 160 Inc. Bid for possible acceptance is easily summarized as follows:

(a) By its own terms, the 160 Inc. Bid was subject to strict prior compliance with a number of pre-conditions or qualifying conditions;

(b) Failing strict compliance by 160 Inc. with the pre-conditions and qualifying conditions for the 160 Inc. Bid, the 160 Inc. Bid is undeniably disqualified and/or

[29] Bakhtiari Supplementary Affidavit affirmed September 25, 2026, 160 Inc. Supplementary Responding Motion Record ("160 SRMR"), Tab 1, p. 2, para. 6
[30] Bakhtiari Supplementary Affidavit affirmed September 25, 2026, 160 SRMR, Tab 1, p. 2, para. 7 and 160 Inc. Bid, RMR, Tab A
[31] Bakhtiari Supplementary Affidavit affirmed September 25, 2026, 160 SRMR, Tab 1, p. 2, para. 7

cannot be considered for determination as a Successful Bid or for possible acceptance pursuant to the Sale Procedure;

(c) By reason of not only (i) the Receiver's Template with the incorporated Sale Procedure for Bids for the Toronto Property and (ii) the incorporation of the Sale Procedure in the 160 Inc. Bid but (iii) the Receiver's affirmation and confirmation that the 160 Inc. Bid was subject to/conditional upon prior compliance with the disqualifying conditions and pre-conditions thereto in the Sale Procedure, there is no doubt and it is undeniable that the 160 Inc. Bid is disqualified and does not qualify as a Qualified Bid in the event of prior non-compliance with the disqualifying conditions and the pre-conditions for qualification in the Sales Procedure;

(d) Pursuant to section 3 of the Sale Procedure, the 160 Inc. Bid was therefore disqualified from possible consideration and acceptance because it was not delivered to the Receiver's Counsel by 5:00 PM on December 16, 2024;

(e) Pursuant to sections 1, 7, 9 and 10 of the Sale Procedure, section 2.15 of the 160 Inc. Bid and the very terms of the Bid, the 160 Inc. Bid was therefore also separately disqualified from possible consideration and acceptance because it was never a Qualifying Bid for consideration as a Successful Bid and for acceptance by Court approval due to non-payment of the required Good-Faith deposit of $368,800;

(f) Since the 160 Inc. Bid is a disqualified Bid and a Bid which did not qualify as a Qualifying Bid for consideration and possible acceptance, the 160 Inc. Bid was

never open for consideration and possible acceptance pursuant to the Sale Procedure or otherwise and is of no legal force or effect whatsoever. No agreement and certainly no accepted agreement arose from the 160 Inc. Bid. This is a complete defence to the Receiver's alleged, but non-existent, claim against 160 Inc.;

(g) In addition, the 160 Inc. Bid was excluded and disqualified from participation and consideration in the sale process and for bidding because 160 Inc. did not execute and deliver the Acknowledgment of Sale Procedure required by s. 4 of the Sale Procedure in the 160 Inc. Bid.[32]

Additional Complete Defence Due to No Valid Acceptance of The 160 Inc. Bid

49. Section 16 of the Sales Procedure is also incorporated in and forms part of the 160 Inc. Bid, as set out in section 1.3 of the Bid and Schedule A thereto. In addition, section 2.15(a)(i) of the 160 Inc. Bid also separately stipulates that the 160 Inc. Bid is subject to Court approval.[33]

50. Section 12 of the Sales Procedure stipulates that "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."[34]

[32] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 7-8, para. 32
[33] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 9, paras. 33-34 and 160 Inc. Bid, RMR at Tab A
[34] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 9, para. 35 and 160 Inc. Bid, RMR at Tab A

51. Accordingly, by the very terms of the 160 Inc. Bid, Court Approval of the Bid was required for acceptance of the 160 Inc. Bid.[35]

52. In this case, the 160 Inc. Bid was not determined and could not have been determined to be a Successful Bid pursuant to the Sale Procedure and the 160 Inc. Bid incorporating that Procedure. Again, this is because the 160 Inc. Bid was not a Qualified Bid as defined in the Sale Procedure and, in turn, did not qualify for consideration as a Successful Bid.[36]

53. On or about November 13, 2025, the Receiver purported to sign back the 160 Inc. Bid as set out in paragraph 37.2 and the letter at Appendix Y to the Sixth Report. However, the purported sign back was unauthorized and ineffective for the reasons already set out above. In that regard, the Receiver did not purport to assert in its November 13, 2025, letter that the 160 Inc. Bid was a "Successful Bid" as defined and required by sections 7, 9 and 10 of the Sale Procedure. In addition, the 160 Inc. Bid could not be accepted by the Receiver and was prohibited from doing so by the very terms of the 160 Inc. Bid. Acceptance required Court Approval.[37]

54. In that regard, the Receiver never obtained nor even applied for Court Approval of the 160 Inc. Bid as required by section 12 of the Sale Procedure. As there was no Court Approval of the 160 Inc. Bid, there was never any acceptance of the 160 Inc. Bid as required by section 12 of the Sale Procedure and, once again, by the very terms of the 160 Inc. Bid. The Receiver is contractually barred from even alleging otherwise. In addition to the requirement for Court

[35] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 9, para. 36
[36] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 9, para. 37
[37] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 9, para. 38

Approval for acceptance of the 160 Inc. Bid by the very terms of the Bid, Court Approval for the 160 Inc. Bid was also required by paragraph 8(b) of the Black Order.[38]

55. Since there was no Court approval and, in turn, acceptance of the 160 Inc. Bid as required by the very terms of the 160 Inc. Bid and not to mention the Black Order, although the Bid was in any event not open for acceptance because of disqualification, there was no agreement of any kind between the Receiver and 160 Inc. that resulted from the Receiver's signing and purported acceptance of the 160 Inc. Bid by its November 13, 2025, letter.[39]

Complete Defence Conclusion Based on No Acceptance of the 160 Inc. Bid

56. Pursuant to section 12 of the Sale Procedure, there is no acceptance of the 160 Inc. Bid until a Successful Bid, as defined in sections 7, 9 and 10 of the Sale Procedure, has been approved by the Court. That requirement is confirmed in section 2.15(a)(i) of the 160 Inc. Bid. Nor is there any provision to the contrary in the 160 Inc. Bid.[40]

57. Acceptance of the 160 Bid by Court Approval is the last step in the Sale Procedure. First, a Bid must not be disqualified by non-compliance with section 3 of the Sale Procedure. Second, a Bid must be a Qualified Bid to be considered as a possible Successful Bid as required by sections 7, 9 and 10 of the Sale Procedure and section 2.15 of the 160 Inc. Bid. Third, assuming that a Bid is not disqualified and is a Qualified Bid (which is not the case here), the Receiver may determine if one or more of the Qualified Bids is a Successful Bid. Fourth, if a Qualified Bid is determined to be a Successful Bid, the Receiver is required to seek Court Approval of the Bid and of the transaction contemplated by the Bid; however, if there is no Qualified Bid, the

[38] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 10, paras. 39-40
[39] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 10, para. 41
[40] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 10, para. 42 and 160 Inc. Bid, RMR at Tab A

Sale Procedure is terminated or terminated with respect to any Bid which is disqualified or is not a Qualified Bid. Fifth, a Bid is only accepted when a Qualified Successful Bid has been approved by the Court.[41]

58. Here, the Receiver never obtained nor even applied for Court Approval of the 160 Inc. Bid. Nor will the Receiver ever do so because the Receiver instead sought Court Approval for another Bid which was approved by the Court and which was subsequently completed by a sale of the Toronto Property pursuant to the terms of that Bid.[42]

59. Accordingly, even if the 160 Inc. Bid had not been disqualified and had been a Qualified Bid instead of being disqualified and not a Qualified Bid, the 160 Inc. Bid was never accepted as provided for and required by the very terms of the 160 Inc. Bid including the Sale Procedure. Nor was the Bid approved as required by the Black Order. As a result, there is no accepted enforceable agreement between the Receiver and 160 Inc. with respect to the 160 Inc. Bid.[43]

60. Since there is no Court approval and, in turn, accepted agreement which resulted from the 160 Inc. Bid, the Receiver has no claim against 160 Inc. on account of the Bid. There was never any default by 160 Inc. because there were no underlying obligations on the part of 160 Inc. There was no breach of any kind by 160 Inc. because there was nothing to breach. The Receiver has purported to reserve its rights against 160 Inc. and to make a claim on account of that reservation but the Receiver had no rights to reserve. There is no possible contractual basis or any other basis for the Receiver's alleged claim against 160 Inc.[44]

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[41] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 11, para. 43
[42] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 11, para. 44
[43] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 11, para. 45
[44] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 12, para. 46

Further Complete Defence as a Result of No Acceptance of the 160 Inc. Bid

61. Section 5.6 of the 160 Inc. Bid specifically precludes the Receiver from asserting repudiation and claiming damages for the difference between the amount of the Bid and the price for which the Toronto Property was sold unless "all of the Purchaser Closing Conditions have been complied with" and unless 160 Inc. has failed to comply with the terms of the Bid.[45]

62. Apart from the fact the 160 Inc. Bid was never accepted and the further fact that 160 Inc. has not failed to comply with any obligations, the fact is that the "Purchaser Closing Conditions" as defined in section 4.1 of the 160 Inc. Bid were not all complied with including, more particularly, the condition requiring the Receiver to obtain an Approval and Vesting Order. As the Receiver did not comply with all of the Purchaser Closing Conditions and as the conditions were never waived by 160 Inc., the Receiver would in any event be contractually barred from making its alleged, albeit non-existent, claim against 160 Inc. This is yet another further alternative complete defence to the Claim.[46]

The Nullity of the 160 Inc. Bid

63. Section 4.5 of the 160 Inc. Bid stipulates (i) that the obligations of 160 Inc. are conditional upon an Order being obtained for approval of the Bid and for the vesting of the Toronto Property in 160 Inc. pursuant to that approval, (ii) that the said condition "is incapable of waiver" and (iii) that the transaction contemplated by the 160 Inc. Bid "shall automatically be

[45] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 12, para. 47 and 160 Inc. Bid, RMR at Tab A
[46] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 12, paras. 48-49

deemed to be null and void and of no further force and effect" should the Order not be obtained.[47]

64. As no Court Order was obtained or will ever be obtained for approval of the 160 Inc. Bid, any obligations which 160 Inc. may have had pursuant to the 160 Inc. Bid (although there were none) are null, void and of no force and effect. This is yet another reason for why the Receiver has no basis for making a claim against 160 Inc. on account of the 160 Inc. Bid.[48]

65. Section 4.5 of the 160 Inc. Bid is further proof that (i) the 160 Inc. Bid was disqualified from possible acceptance, (ii) that the 160 Inc. Bid was not a Qualified Bid for possible acceptance and (iii) that Court Approval was required for acceptance of the 160 Inc. Bid. There are other provisions in the 160 Inc. Bid which further prove those facts and 160 Inc. will rely upon them at the hearing of the Motion should the Motion have to be argued.[49]

PART IV – ISSUE, LAW AND ARGUMENT

Overview of Claim and Defences

66. The Receiver's claim is against 160 Inc. for alleged breach of agreement of purchase and sale on account of (i) the Receiver's purported acceptance of the 160 Inc. Bid on November 13, 2025, and (ii) the Receiver's purported termination of the accepted Bid on November 14, 2025, for non-payment of the aforementioned Good Faith Deposit.

67. However, there is no enforceable agreement of purchase and sale on account of the 160 Inc. Bid. There are four separate reasons. First, the 160 Inc. Bid is a nullity because it did not

[47] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 13, para. 50 and 160 Inc. Bid, RMR at Tab A
[48] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 13, para. 51
[49] Bakhtiari Affidavit, 160 RMR, Tab 1, p. 13, para. 52

form a Contract A with the Receiver. Second, even if there had been a Contract A, there could not be and was no Contract B based on the 160 Inc. Bid because of the Bid's non-compliance with the Sale Procedure. Third, the 160 Inc. Bid was subject to, conditional on and conditionally precedent upon Court approval but Court approval was never obtained and the 160 Inc. Bid is therefore again a nullity. Fourth, there is no possible enforceable agreement on the terms of the 160 Inc Bid.

68. Those four Defences are concisely set out below, starting with the overriding "No Court Approval" Defence. Nor can the Receiver even make a purported claim for damages

The Overriding "No Court Approval" Defence

69. As set out above, the 160 Inc. Bid stipulates that the Bid including all listed obligations is not only subject to and conditional on but, more that that, conditionally precedent upon Court approval and that the Bid is null and void and of no force and effect without Court approval. An agreement never came into existence. The Schedule D Sale Procedure to the Bid also only deems the Receiver to have accepted the 160 Inc. Bid if and when the Bid is Court approved.

70. There are no amendments, waivers or modifications affecting the 160 Inc. Bid and its provisions. They would in any event be precluded by the "No Amendment" and "Entire Agreement" provisions in ss. 6.6 and 6.67 of the 160 Inc. Bid.

71. The 160 Inc. Bid has never been Court approved. Nor will there ever be Court approval for the Bid as the Toronto Property has been sold to a compliant bidder with Court approval.

72. The Receiver purported to accept the 160 Inc. Bid on November 13, 2025, but that did not create an enforceable agreement of purchase and sale based on the 160 Inc. Bid. The legal

effect of the Receiver's purported termination of the accepted Bid was to notify 160 Inc. the Receiver would not be seeking Court approval causing the 160 Inc. Bid to be a nullity.

73. Accordingly, as the 160 Inc. Bid was never approved as provided for and required by the 160 Inc. Bid, there was never an enforceable agreement of purchase and sale based on the 160 Inc. Bid, the 160 Inc. Bid is now a nullity and the Receiver has no possible claim against 160 Inc. for that reason alone. There is no answer to the nullity in the Receiver's Factum.

74. 160 Inc. adds that the Receiver has no claim of any kind against 160 Inc. on account of its acceptance of the 160 Inc. Bid. 160 Inc. adds that the Receiver had no right to purport to terminate the alleged, but non-existent, accepted 160 Inc. Bid because the Bid was not previously approved by the Court and because an agreement never came into existence.

The No Contract At All Defence

75. The 160 Inc. Bid stipulates that it is subject to and conditionally precedent upon, *inter alia*, (i) the Bid being a Successful Bid pursuant to the Schedule D Sale Procedure and (ii) the Receiver's prior receipt of the Good Faith Deposit that was a pre-condition to a Qualified Bid for consideration as a Successful Bid. Again, the Entire Agreement and No Amendment clauses in the Bid preclude any other interpretation or application of those stipulations.

76. For the reasons set out above, it is undeniable that the 160 Inc. Bid was not a Successful Bid required by the 160 Inc. Bid and that the Good Faith Deposit was not paid despite being required by the Bid. Accordingly, on its own terms, being terms required by the Receiver, the 160 Inc. Bid could never be accepted and become an enforceable agreement of purchase and sale.

77. Nor is the Receiver able to effectively rewrite the 160 Inc. Bid to make it read otherwise. Terms cannot be implied unless they fit and are the necessary implication of the express terms; if there is any evidence against the proposed terms, they cannot be implied. Proposed terms must have a certain degree of uncontradicted obviousness.[50] The Court begins with the words of the contract and presumes the parties intended what is written.[51] The Receiver admits that the language used in the written document is predominant in paragraph 81 of its Factum.

78. 160 Inc. also realized on the construction canons of Winkler C.J.O. in *Salah v. Timothy's Coffees of the World Inc.* including construing the contract as a whole to give meaning to its terms and avoiding interpretations rendering them ineffective, with good business sense and to avoid commercial absurdity.[52]

79. Accordingly, apart from the overriding defence, the 160 Inc. Bid never gave rise to an agreement or an enforceable agreement of purchase and sale. Again, there is no answer to this.

The Threshold No Contract A Defence

80. Due to the Receiver's request for Bids from interested parties to bid for a contract for the Toronto Property, and as most recently set out by the Court of Appeal in *Canada Forgings Inc. v. Atomic Energy of Canada Limited*:

> "the law divides the procurement process into two separate contracts: "Contract A" and "Contract B". Contract A is the agreement entered into when a bidder submits a compliant bid in response to an invitation to tender. It imposes certain obligations on the procuring authority about how bidders will be treated. Contract B is the agreement between the procuring authority and the winning bidder: *The Queen (Ontario) v. Ron Engineering & Construction (Eastern) Ltd.*, 1981 CanLII 17 (SCC), [1981] 1 S.C.R. 111. The Supreme Court in *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, 1999

[50] *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, 1999 CanLII 677 (SCC), at para. 29
[51] *McLean v. McLean*, 2013 ONCA 788, at para. 54
[52] *Salah v. Timothy's Coffees of the World Inc.*, 2010 ONCA 673, at para. 16

> CanLII 677 (SCC), [1999] 1 S.C.R. 619, held that Contract A can only be formed between a procuring authority and compliant bidders; in other words, a procuring authority is contractually obliged, by Contract A, to accept only compliant bids and, more importantly for present purposes, only compliant bidders have legal remedies arising from the procurement process as against the procurement authority. Whether Contract A is formed depends on the parties' intentions to create a legal relationship through a call for tenders and the submission of a compliant bid."[53]

81. If there is no Contract A, from a Bid, the Bid is rejected and becomes a nullity if a Contract A is formed from a Bid, the question becomes whether the Bid can be selected for a Contract B (*in this case being a sale contract*).

82. The 160 Inc. Bid was completely and totally non-compliant with, disqualified from and excluded from the sale process by the operative terms of the Sale Procedure required by the Receiver. The Bid could not be considered by the Receiver. The Bid was not a Qualified Bid from which a Successful Bid could be selected. Had the Bid been the only Bid, the Sale Procedure was required to be terminated. The 160 Inc. Bid was not allowed by the Sale Procedure. Finally, the 160 Inc. Bid amounted to no Bid at all.

83. In the circumstances, it is not possible that the Receiver could have intended to enter into contractual relations with 160 Inc. pursuant to the 160 Inc. Bid to form a Contract A. Allowing the 160 Inc. Bid to form a Contract A was barred by and would make a mockery of the Sale Procedure. The 160 Inc. Bid simply did not accept the mandated Sale Procedure.

84. Because the 160 Inc. Bid did not accept the Sale Procedure terms offered by the Receiver and as set out in *Graillen Holdings Inc. v. Orangeville*, the 160 Inc. Bid did not give rise to a

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[53] *Canada Forgings Inc. v. Atomic Energy of Canada Limited*, 2024 ONCA 677, at para. 38

Contract A.[54] Also, there was no acceptance of the Sale Procedure and a Contract A did not come into existence as set out in *R. v. Ron Engineering & Construction (Eastern) Ltd.*[55]

The Further No Contract B Defence

85. Although there is no Contract A, the Receiver presumably purported to decide there was and to propose the 160 Inc. Bid for Court approval as Contract B. If the Court should find there was a Contract A, the Receiver could not propose the 160 Inc. Bid as a Contract B, at all or for Court approval. This is because the Contract B must materially comply with the explicit and mandatory Sale Procedure terms. There is no precedent to the contrary.

86. Accordingly, apart from the fact that the 160 Inc. Bid is a nullity by its own terms and because of no Court Approval as set out above, there is also no possible or enforceable Contract B as it would violate the Sale Procedure. It is also precluded because of the duty of good faith owed by the Receiver to compliant bidders not to enter into a Contract B which violates the terms of the Sale Procedure that is in any Contract A with compliant bidders.

No Right to Claim Damages

87. Apart from the fact the Receiver has no right to even make a claim against 160 Inc., the Receiver is in any event barred from being able to claim alleged damages. S. 5.6 of the 160 Inc. Bid is a complete bar to claiming damages for alleged, albeit non-existent, repudiation. This is because of no Approval Order and no Successful Bid pursuant to the Sale Procedure in s. 4.1(d)

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[54] *Graillen Holdings Inc. v Orangeville*, 2016 ONSC 3687, at para. 39

[55] *R. v. Ron Engineering & Construction (Eastern) Ltd.*, [1981] 1 S.C.R. 111, 1981 CarswellOnt 109 at paras. 14 and 16, Book of Authorities of the Receiver, Tab 12, p. 254

and (e) of the 160 Inc. Bid. Also, for the reasons set out above, the Receiver had no right to terminate.

PART V – ORDER SOUGHT

88. The Respondent, 1604706 Ontario Inc. ("160 Inc."), requests that the Receiver's Motion for Judgment against 160 Inc. be dismissed with costs together with HST thereon.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of October 2026.

Maurice J. Neirinck

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, 1999 CanLII 677 (SCC)
2. *McLean v. McLean*, 2013 ONCA 788
3. *Salah v. Timothy's Coffees of the World Inc.*, 2010 ONCA 673
4. *Canada Forgings Inc. v. Atomic Energy of Canada Limited*, 2024 ONCA 677
5. *Graillen Holdings Inc. v Orangeville*, 2016 ONSC 3687

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

FACTUM OF THE RESPONDENT, 1604706 ONTARIO INC. (MOTION RETURNABLE NOVEMBER 18, 2026)

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