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

REPLY FACTUM OF THE RECEIVER, TDB RESTRUCTURING LIMITED (MOTION RETURNABLE NOVEMBER 18, 2026)

November 13, 2026

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PART I. OVERVIEW

1. In this motion, TDB Restructuring Limited, in its capacity as receiver ("**Receiver**") seeks judgment against 1604706 Ontario Inc. ("**160 Inc.**") and 1001079582 ("**100 Inc.**") as parties who participated in a bid process overseen by the Receiver for the sale of real property ("**Toronto Property**").[1]

2. The Receiver prepares this reply factum to address arguments raised in 160 Inc.'s and 100 Inc.'s responding factums, being:

(a) purported irregularities in the terms of 160 Inc.'s offer rendered it technically incapable of acceptance by the Receiver;

(b) 100 Inc.'s apparent non-compliance with the "Sale Procedure" terms for the Toronto Property circulated by the Receiver meant that the Receiver and 100 Inc. did not agree to the irrevocability of 100 Inc.'s offer; and

(c) the Receiver failed to notify 100 Inc. that 100 Inc. was the successful bid, meaning that the Receiver did not "accept" 100 Inc.'s offer to purchase the Toronto Property.

3. These over-technical arguments side-step the real substance of what transpired between the Receiver, 100 Inc. and 160 Inc. The parties' conduct, the underlying documents and the broader imperatives of a Court-supervised insolvency sale process all support the conclusion that (a) each of 100 Inc. and 160 Inc. submitted an offer to purchase the Toronto Property capable of acceptance by the Receiver and (b) the

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[1] Capitalized terms not otherwise defined herein adopt the definitions given to them in the Receiver's factum dated September 28, 2026.

Receiver was entitled to rely on and accept those offers when it purported to do so, notwithstanding 100 Inc.'s purported revocation of its offer.

4. Accordingly, the Court should dismiss these arguments and grant the judgment being sought by the Receiver.

PART II. ISSUES

5. This reply factum addresses the following issues, which should be answered as follows:

(a) do the purported technical irregularities on the face of 160 Inc.'s offer render it null and void? **No**

(b) does 100 Inc.'s apparent non-compliance with the Sale Procedure schedule prevent the Court from finding that 100 Inc. agreed that its offer was irrevocable? **No**

(c) Did the Receiver notify 100 Inc. that it was the successful bidder? **Yes**

PART III. LAW

A. The "deficiencies" identified by 160 Inc. do not invalidate their offer

6. 160 Inc. raises extremely minor and inconsequential "defects" within their bid to claim the bid was void and incapable of acceptance. For example, 160 Inc. argues that sending their offer to only the Receiver, rather than the Receiver and their counsel, should render their offer incapable of acceptance.[2]

7. Minor irregularities in the way offer or acceptance of a contract is communicated do not affect the validity of such offer/acceptance. For example, in *Wang v. Tribute,* the

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[2] Factum of 160 Inc. dated October 22, 2026, at paras. 32-33.

Court rejected the argument that an agreement was invalid because all parties were not given a signed copy.[3]

8. The other "deficiencies" – failure by 160 Inc. to immediately pay a deposit alongside their offer and failure by 160 Inc. to sign an acknowledgement of the Sale Procedure schedule - are similarly irrelevant to the fundamental terms of an agreement for the sale of land. Indeed, the case law is clear that minor, immaterial defects in a party's performance of an agreement do not render it void.[4]

9. This practice accords with the principle of commercial efficacy, which aims to interpret perceived contractual ambiguity in a manner than avoids absurdity.[5] It would defeat this principle if the Court accepted that these technical defects negated 160 Inc.'s clear intention to make an offer to purchase the Toronto Property in the sales process.

B. It is Irrelevant that 100 Inc.'s offer did not comply with the Sale Procedure

10. 100 Inc. argues that it and the Receiver did not form a "Contract A" agreement because its bid was "non-compliant" with the Sale Procedure schedule's terms set out in the Template APS.

11. Whether 100 Inc.'s offer strictly complied with such Sale Procedure terms is simply not relevant.

12. The Receiver does not rely on the Sale Procedure terms as setting out the definitive terms of the "Contract A" that was formed with 100 Inc. Instead, the "Contract A" arose as a result of, among other things, (1) the Receiver's communication to parties

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[3] *Wang v. Tribute (Grandview) Ltd.,* 2019 ONSC 201 at para. 43.

[4] See *Royt v. Goldenberg*, 2006 CanLII 29932 (ON SC), at paras. 18-21 citing *LeMesurier v. Andrus* (1986), 1986 CanLII 2623 (ON CA) and *VanderMolen Homes Inc. v. Mani*, 2025 ONCA 45, at para. 29.

[5] *Project Freeway Inc. v. ABC Technologies Inc*., 2025 ONCA 855, at para. 16.

of the necessity that bids to purchase the Toronto Property be irrevocable pending the Receiver's selection of a successful bid and (2) 100 Inc.'s submission of an offer to purchase the Toronto Property to the Receiver. In particular:

(a) because 100 Inc.'s offer was submitted in a Court-ordered auction after the Receiver had previously accepted a lower offer, many of the specific terms set out in the Sale Procedure terms (such as the bid deadline) were no longer applicable to the auction. Therefore, it is not sensible to suggest that those requirements were somehow pre-conditions to the Receiver and 100 Inc. having formed a "Contract A" providing for the irrevocability of 100 Inc.'s bid;

(b) there are no formal requirements for the law of tender and the "Contract A/Contract B" framework to apply to a sale process.[6] The question is simply whether the parties, objectively, intended to form a "Contract A," an intention that can be manifest through the context and the parties' conduct.[7] The Court has explicitly applied such principles to Court-supervised insolvency sale processes;[8] and

(c) the case law is clear that any defects in a party's compliance with a call for tenders is irrelevant if they are immaterial.[9] This case concerns a

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[6] *Di Sarra v. Ontario Association of Architects*, 2021 ONSC 2697 at para 26.

[7] See *Northern Construction Co. v. Gloge Heating & Plumbing Ltd.*, 1986 ABCA 3 at paras. 14-16 and *Slave Lake (Town) v. Appleton Construction Ltd.*, 1987 CanLII 3395 at para. 46 (Alta. Q.B.).

[8] See *Business Development Bank v. Devine Brokers & Appraisal Ltd.*, 2013 NSSC 435 at paras. 30-34 and *Engrais Chaleur Ltée - Chaleur Fertilizers Ltd. v. Méga Bleu Inc. / Mega Blue Inc. (Receiver of)*, 2003 NBQB 227.

[9] *Double N Earthmovers Ltd. v. Edmonton (City)*, 2007 SCC 3 at para. 41.

straightforward offer to purchase land – none of the instances of purported "non-compliance" identified by 100 Inc. are material to such a transaction in any way.

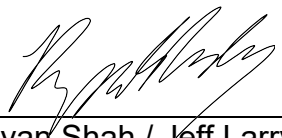
C. The Receiver did accept 100 Inc.'s offer

13. 100 Inc. argues that the Receiver failed to properly accept its offer to purchase the Toronto Property because the Receiver failed to seek Court approval of 100 Inc.'s offer.

14. Respectfully, this argument is absurd. Once the Receiver determined that 100 Inc. had submitted the highest offer, the Receiver notified 100 Inc. of this fact and signed back the written agreement submitted by 100 Inc.

15. The Receiver would have, of course, then proceeded to seek approval of such agreement, but for 100 Inc. advancing its position that it had revoked its offer and that it was not bound by the same.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of November, 2026



Ryan Shah / Jeff Larry

SCHEDULE A – AUTHORITIES CITED

Business Development Bank v. Devine Brokers & Appraisal Ltd., 2013 NSSC 435

Di Sarra v. Ontario Association of Architects, 2021 ONSC 2697

Double N Earthmovers Ltd. v. Edmonton (City), 2007 SCC 3

Engrais Chaleur Ltée - Chaleur Fertilizers Ltd. v. Méga Bleu Inc. / Mega Blue Inc. (Receiver of), 2003 NBQB 227

LeMesurier v. Andrus (1986), 1986 CanLII 2623 (ON CA)

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Project Freeway Inc. v. ABC Technologies Inc., 2025 ONCA 855

Royt v. Goldenberg, 2006 CanLII 29932 (ON SC)

Slave Lake (Town) v. Appleton Construction Ltd., 1987 CanLII 3395 (Alta. Q.B.).

Wang v. Tribute (Grandview) Ltd., 2019 ONSC 201

VanderMolen Homes Inc. v. Mani, 2025 ONCA 45

1634584 Ontario Inc. v. Canada (Attorney General), 2013 ONSC 6664.

I, Ryan Shah, counsel to the Receiver, hereby certify that I am satisfied as to the authenticity of the authorities cited above, on this 12th day of November, 2026.

I, Ryan Shah, counsel to the Receiver, hereby certify that I am satisfied as to the accuracy

that every quotation accurately reproduces the text of the authority on this 12th day of November, 2026.



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