CITATION: Home Trust Company v. 58 King Street East Hamilton Ltd. et al, 2026 ONSC 1770
COURT FILE NO.: CV-24-88153
DATE: 2026-03-30

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)
HOME TRUST COMPANY	)
Applicant	)
- and -	)
58 KING STREET EAST HAMILTON LTD. and 2238394 ONTARIO LTD.	)
Respondents	)

Rosemary A. Fisher, counsel for the court appointed receiver, msi Spergel Inc.

Gregory Govedaris, counsel for the purchaser, Spuric Canadian Ventures inc.

Heard: March 18, 2026

ENDORSEMENT ON MOTION

The Honourable Justice M. Valente

Overview

[1] This is a motion by msi Spergel Inc. in its capacity as the court appointed receiver of the Respondents (the ’Receiver’) for an order amending and varying the Approval and Vesting Order of Edwards J., dated December 2, 2025 (the ‘AVO’) to correct an error arising from an accidental slip or omission. Specifically, the Receiver seeks to vary Schedule *C* of the AVO to remove references to three instruments that were included among the encumbrances to be deleted from the title of the lands to be conveyed by the Receiver, as vendor, to Spuric Canadian Ventures Inc., as purchaser (the ‘Purchaser’).

[2] The Receiver submits that due to the Receiver’s counsel’s inadvertence, an earlier version of the subject Schedule *C* was attached to the AVO which included three instruments that the Receiver and the Purchaser never intended to be expunged from title pursuant to the terms of the court approved agreement of purchaser and sale, dated September 29, 2025, and signed on October 30, 2025 (the ‘APS’).

[3] The Purchaser objects to one of the instruments that the Receiver proposes to remain on title. The Purchaser submits that the Notice of Metrolinx Registration, registered as instrument no. WE1739020 on May 24, 2024 (the ‘Metrolinx Registration’), should be expunged from title and included in Schedule *C* to the AVO. The Purchaser submits that the parties never intended that the Metrolinx Registration remain on title because Schedule *B* of the APS does not list the Metrolinx Registration as one of the permitted encumbrances that it is required to assume on closing. The Purchaser’s position is that the law of mistake cannot be used to place a risk on a party where the

contract has allocated that risk to another. Furthermore, rectification is not available where one or both of the parties wish to amend the agreement itself.

Background Facts

[4] The APS provides that the subject lands are sold on an “as is where is” basis, that the Receiver, does not guarantee title and that the Purchaser accepts title subject to certain permitted encumbrances as defined in Schedule *B* to the APS.

[5] Section 5 of the APS specifically provides that the Purchaser acknowledges and agrees that:

> a) it is relying entirely upon its own investigations and inspections in entering into the APS and has satisfied itself with respect to such investigations and inspections;
>
> b) it is purchasing the lands on an “as is where is” basis;
>
> c) the Receiver makes no representations or warranties with respect to or in any way related to the lands;
>
> d) the Receiver does not guarantee title to the lands and the Purchaser has conducted prior to the completion of the APS such inspections of the condition of and title to the lands as it deems appropriate and has satisfied itself with respect to these matters; and

e) the Purchaser shall accept title to the lands subject to the permitted encumbrances.

[6] Schedule *B* to the APS defines “Permitted Encumbrances” in this way:

PERMITTED ENCUMBRANCES

a. any reservation or unregistered restrictions, rights of way, easements or covenants that run with the land;

b. any registered or unregistered agreements or easements with a municipality or a supplier of utility services including without limitation, electricity, water, sewage, gas, telephone or cable television or any other telecommunication service;

c. any laws, by-laws and regulations and all outstanding work orders, deficiencies notices and notices of violation affecting the land;

d. any minor easements for the supply of utility service to the land or adjacent lands;

e. any encroachments disclosed by any errors or omissions in existing surveys of the Real Property or neighbouring properties and any title defect, encroachment or breach of zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey or the Real Property and survey matters generally;

f. any exceptions and qualifications set forth in the *Land Titles Act* (Ontario);

g. any reservation contained in the original grant from the Crown;

h. any Land Registrar's registered orders;

i. If applicable, any deposited reference plans or condominium description plans; and

j. If applicable, and registered condominium declaration or condominium by-laws.

(the 'Permitted Encumbrances')

[7] Pursuant to section 6 of the APS, the purchase and sale transaction is to be completed ten business days (as defined by the APS) after the date on which the Receiver obtains the AVO (the 'Closing Date').

[8] Section 13 of the APS further provides that the Purchaser's obligations contained in the APS are subject to certain conditions, including the Receiver having obtained the AVO that is in full force and effect, and in the event that the Receiver fails to fulfill its conditions at or prior to the Closing Date, the Purchaser may at its absolute and unfettered discretion terminate the APS by written notice without liability and have its deposit returned.

[9] Finally, section 14 of the APS stipulates that the Receiver shall deliver to the Purchaser on the Closing Date a copy of the AVO authorizing the APS and vesting in the

Purchaser all right, title and interest of the Respondent, 2238394 Ontario Ltd., in the lands free and clear of all claims save and except for the Permitted Encumbrances.

[10] On December 2, 2025, this court approved the proposed sale of the Respondents' assets by the Receiver to the Purchaser and granted the AVO.

[11] On the cross-examination of her affidavit, sworn January 30, 2026, the Receiver's commercial counsel, Gokcin Nalsok, testified that on December 8, 2025 in preparation for closing, she reviewed the AVO and discovered that three instruments were incorrectly included in Schedule *C* to the AVO to be expunged from title of the lands. Ms. Nalsok further testified that on that same day she advised Rosemary Fisher, the Receiver's litigation counsel, of the error who confirmed that the subject three instruments should not have been listed in Schedule *C* to the AVO.

[12] The evidence of Tanisha Lashley, senior law clerk with the Receiver's counsel's firm, is that the Schedule *C* appended to the AVO was the originally drafted Schedule *C* that she had prepared. Some time on or after December 8, 2025, she was advised by Ms. Fisher that the original Schedule *C* had been amended by her handwritten changes. However, Ms. Lashley testified that she never received from Ms. Fisher her changes to the original Schedule *C*. Ms. Lashley further testified on her cross-examination of her affidavit, sworn January 30, 2026, that her normal practice in drafting a vesting order is to list the instruments that she thinks are to be expunged from title and submit her draft list to counsel for vetting.

[13] The Receiver submits that the three instruments that were inadvertently included in Schedule *C* to AVO are two city of Hamilton encroachment registrations, being instrument nos. WE1447724 and WE1660191 (collectively, 'the City of Hamilton Registrations') and the Metrolinx Registration.

[14] The City of Hamilton Registrations permit encroachment onto City property for the continued operation of an outdoor patio. These registrations benefit the Purchaser, and the Purchaser takes no issue with the City of Hamilton Registrations being deleted from Schedule *C* to the AVO.

[15] The Metrolinx Registration arises from an Order in Council issued pursuant to the *Building Transit Faster Act*, 2020, S.O. 2020, c. 12 (the '*Act*'). The Order in Council designates the lands as transit corridor land and by its terms requires notice of that designation to be registered on title.

[16] The Purchaser objects to the Metrolinx Registration being deleted from Schedule *C* to the AVO because it asserts that it bargained for the Metrolinx Registration to be expunged from title.

[17] On December 9, 2025, Ms. Nalsok corresponded with Purchaser's counsel to advise that it had come to the counsel's attention that the City of Hamilton Registrations and the Metrolinx Registrations were included to Schedule *C* to the AVO notwithstanding that they could not be deleted from title. Ms. Nalsok requested in her correspondence the Purchaser's confirmation that the instruments could not be expunged from title on the anticipated closing of December 16, 2025.

[18] In response, on January 12, 2026, the Purchaser's counsel provided written notice to the Receiver's lawyers that pursuant to section 13 of the APS, the Purchaser was terminating the APS by virtue of the Receiver's inability to convey the lands in accordance with the APS, and in particular, "Schedule *B* – Permitted Encumbrances".

[19] The Receiver's motion to amend Schedule *C* of the AVO to remove reference to the subject three instruments was before this court on January 13, 2026. At that time, Bordin J. dismissed the Receiver's motion without prejudice to the Receiver bringing another motion with an enhanced evidentiary record. The presiding motion judge found that he was unable to determine, based on the record before him, whether the inclusion of the three instruments in Schedule *C* was because of an accidental slip or omission.

Was there an Accidental Slip or Omission ?

[20] Based on the enhanced record before me, I am satisfied that the inclusion of the City of Hamilton Registrations and the Metrolinx Registration in Schedule *C* to the AVO was due to counsel's inadvertence. I find that on the balance of probabilities that the evidence establishes that the inclusion of the subject three instruments in Schedule *C* resulted from counsel's oversight in attaching an earlier version of the Schedule that had not been vetted by counsel. Counsel's amended version of Schedule *C* ought to have been attached to the AVO before it was brought to court for approval.

[21] The Purchaser submits that I cannot make this finding based on the hearsay evidence of Ms. Lashley. While I may not disagree with the Purchaser's position, the submission ignores the direct evidence from each of Ms. Nalsok and Ms. Lashley. In

addition, there is no evidentiary rule prohibiting this court from considering the hearsay evidence of Ms. Lashley as narrative. Finally, there is no evidence to suggest that the inclusion of the three instruments in Schedule *C* of the AVO was anything other than the result of Receiver's counsel's inadvertence.

[22] Having found that the City of Hamilton Registrations and the Metrolinx Registration were included in Schedule *C* by reason of counsel's inadvertence, the analysis does not end there. I must next decide whether the Receiver's proposed amendment to the AVO is reflective of the parties' agreement as memorialized in the APS. The APS is the governing document that defines the parties' bargain while the AVO is the procedural mechanism through which the court might approve the transaction contemplated by the APS.

Guiding Principles

[23] In *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 ('*Sattva*'), the Supreme Court directs judges to determine the intent of the parties and the scope of their understanding by reading the contract as a whole, giving the words their ordinary and grammatical meaning, consistent with the surrounding circumstances, including those facts that both parties knew or should have known at the time of entering into the contract (at para. 47; see also *SS&C Technologies Canada Corp. v. The Bank of New York Mellon Corporation*, [2024] ONCA 675 ('*SS&C*'), at para. 42).

[24] The Court of Appeal in *Salah v. Timothy's Coffees of the World Inc.*, (2010) 74 B.L.R. (4th) 161 ('*Salah*'), held that when interpreting a contract, the court is to determine

the intention of the parties in accordance with the language used in the written document and is to presume that the parties have intended what they have said (at para. 16). The Court also clarified that this rule prohibits considering a party's subjective intention (see: *SS&C*, at para. 42).

[25] The Court of Appeal in *Weyerhaeuser Company Limited v. Ontario (Attorney General)*, 2017 ONCA 1007, at para. 65 summarized the general principles guiding judges on how to interpret a commercial contract, including that a court must:

> (iii) read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties.

[26] Finally, it is a well established principle of contract interpretation that contracts should be interpreted to accord with sound commercial principles and good business sense to avoid commercial absurdity (see: *Salah*, at para. 16). In other words, judges are to use "commercial reasonableness as a tool to interpret the text because parties are unlikely to have intended to strike bargains that make no business sense" (see: *SS&C*, at para. 48).

What was the Parties' Agreement ?

[27] The Purchaser submits that it never agreed to assume the risk of the Metrolinx Registration. Its intention is clear from a review of Schedule *B* to the APS which defines the encumbrances to the lands that are permitted or agreed to by the parties to remain on title on completion of the sale transaction. Because the Metrolinx Registration is not specifically listed in Schedule *B*, the Purchaser submits that the parties necessarily bargained that it falls outside of the scope of permitted encumbrances.

[28] For its part, the Receiver submits that the APS' Permitted Encumbrances include rights of way, easements or covenants that run with the lands, and for this reason, the City of Hamilton Registrations are not to be expunged. Likewise, the parties intended that the Metrolinx Registration remain on title because the parties specifically agreed by the terms of the APS that Permitted Encumbrances on closing include any laws affecting the lands.

[29] I accept the Receiver's submission.

[30] The Metrolinx Registration arises from an Order in Counsil issued pursuant to the *Act*. The registration provides notice on title that the lands have been designated as transit corridor land under the statutory framework established by the *Act*.

[31] Subsection 62(1) of the *Act* provides that the Lieutenant Governor in Council may designate land as a transit corridor where, in its opinion, the land is or may be required for a provincial transit project. Subsection 62(2) further provides that land may be

designated for certain purposes of the *Act* and later designated for additional purposes. Once lands are designated as transit corridor land, subsection 62(3) requires the Minister to provide notice of that designation under the *Land Titles Act* or *Registry Act* or carry out the prescribed public notice process. Finally, subsection 62(4) contemplates the Lieutenant Governor in Counsil revoking a designation in which event, the Minister is required to register the documents necessary to affect the removal of any notice.

[32] In sum, I find that the Metrolinx Registration is a statutory notice arising by operation of law. The registration reflects statutory restrictions affecting the use of the lands and has the force of law.

[33] Furthermore, this statutory designation was not unknown to the parties at the time that their agreement was struck. The notice of designation was registered on title on February 8, 2024, well before the APS, dated September 23, 2025. The Metrolinx Registration formed part of the public record available to any prospective purchaser conducting a title search of the lands, an investigation expressly required of the Purchaser pursuant to the terms of the APS.

[34] The Purchaser submits that any consideration of the Metrolinx Registration as a Permitted Encumbrance would lead to the absurd result of depriving it of marketable title. It would be put in that impossible position because the Metrolinx Registration contemplates an active expropriation process.

[35] I disagree.

[36] The Metrolinx Registration is not an expropriation of property but rather a statutory notice designation. The legislation does not initiate an expropriation process or affect a taking of land. Indeed, the *Act* expressly contemplates that any designation of land as a transit corridor may be revoked.

[37] Moreover, the Purchaser's submission ignores the allocation of responsibility and risk contained in the APS and its agreement to accept the Permitted Encumbrances as defined by Schedule *B* to the APS. Having assumed responsibility for investigating title and agreeing that the Permitted Encumbrances remain on title, it cannot now resist that which it had already agreed to by asking the court to rewrite the APS.

Does the Court have the Jurisdiction to Amend or Vary the Approval and Vesting Order

[38] Having decided that the Receiver's proposed amendment to the AVO accurately reflects the parties' agreement in the APS, the next issue to be addressed is whether this court has the jurisdiction to amend the AVO.

[39] The Receiver submits that this court has the jurisdiction to amend its order where it is necessary to ensure that the order reflects the court's intention and record before it. The Receiver specifically relies on ss. 187(5) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the '*BIA*') and *Rule* 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Subsection 187(5) of the *BIA* authorizes the court to review, rescind or vary orders made pursuant to its bankruptcy jurisdiction. *Rule* 59.06 permits the court to

amend an order that contains an error arising from an accidental slip or omission or where the order requires amendment in any particular on which the court did not adjudicate.

[40] For its part, the Purchaser submits neither ss. 187(5) of the *BIA* nor *Rule* 59.06(1) are of assistance to the court in this instance. The Purchaser's position is that the court lacks the jurisdiction to amend the AVO. Subsection 187(5) of the *BIA* is to be "sparingly exercised" and "does not authorize the recalling of the judgment in order to deal with a collateral matter not actually or constructively involved in the court's decision" (see: *HOJ National Leasing Corp. (Re)*, 2008 ONCA 390 ('*HOJ*') at paras. 28 and 34). Furthermore, *Rule* 59.06(1) cannot be used by the Receiver for an alleged error made by its counsel arising from counsel's oversight.

[41] I agree with the Purchaser's submission that ss. 187(5) should be "sparingly exercised". However, the Court of Appeal in *HOJ* made equally clear that the purpose of the provision is "to permit the court to rectify an order or judgment that fails to correctly state what the court actually decided or intended" (at para. 32). Therefore, it is my view that ss. 187(5) of the *BIA* is applicable to the matter before me. In the AVO, the court intended to approve and allow the purchase and sale transaction contemplated by the APS but because of a drafting error, failed to do so.

[42] Otherwise, I disagree with the Purchaser's submission that *Rule* 59.06 cannot be used to amend an error in an order of this court due to counsel's drafting error. The scope of *Rule* 59.06(1) was comprehensively reviewed in *Trustees of the Millwright Regional Council of Ontario Pension Trust Fund v. Celestica Inc.*, 2013 ONSC 1502 ('*Celestica*').

[43] In *Celestica*, Perell J. provided the following guidance respecting the applicability and purpose of *Rule* 59.06(1):

- "The rule is only operative in exceptional circumstances given the public interest in the principle of finality to the litigation process [citation omitted]" (at para. 31).

- "*Rule* 59.06(1) is designed to amend judgments containing a slip or error, errors which are clerical, mathematical or due to misadventure or oversight. The rule is designed to amend judgments containing a slip, not to set aside judgements resulting from a slip in judicial reasoning [citations omitted]" (at para. 30).

- "Under *Rule* 59.06(1) the Court has the power to amend an order where there has been an error in expressing the manifest intention of the Court [citations omitted]" (at para. 32).

- "The rule permits amendments where the order obviously or indubitably does not reflect what the court intended to do, either by error or oversight [citations omitted]" (at para. 33).

[44] I find that the relief sought by the Receiver in its motion falls squarely within the court's corrective jurisdiction afforded to it pursuant to *Rule* 59.06(1). The Receiver is not seeking to alter the transaction between the parties, the court's approval of the transaction, or to revisit an adjudicated issue. Rather the Receiver seeks to amend an

error that resulted in the AVO failing to express what the court intended to do; namely, approve the terms of the parties' purchase and sale agreement.

Does the Purchaser have the Right to Terminate the APS ?

[45] In the end, the Purchaser submits that the findings I have made are moot because pursuant to the provisions of the APS, it had the "absolute and unfettered discretion" to terminate the APS "without any penalty, liability, cost or compensation whatsoever" in the event the Receiver failed to complete the transaction within ten business days after the date on which the Receiver obtained the AVO. Because the transaction was not completed within ten business days after issuance of the AVO on December 2, 2025, the Purchaser submits that it was entitled on January 12, 2026, in accordance with sections 6 and 13 of the APS, to terminate the APS and obtain the return of its deposit.

[46] I disagree.

[47] The Purchaser's interpretation of sections 6 and 13 of the APS is too narrow. Surely the parties' intended the transaction to be completed within ten business days of the Receiver securing an AVO that properly implemented their negotiated APS; and not just any AVO. This intention is clear when the APS is read as a whole, as I am required to do, by the Supreme Court's direction in *Sattva*. Section 14 of the APS specifically requires the Receiver to deliver to the Purchaser a copy of the AVO "authorizing and approving [the] Agreement of Purchase and Sale and vesting in the Purchaser all right, in and to the Purchased Assets free and clear of all claims and encumbrances save and except for the Permitted Encumbrances, in accordance with the provisions of this

Agreement (the “Approval and Vesting Order”)”. The Receiver was not able to deliver the AVO as defined by the parties’ contract until the issuance of this Endorsement.

Disposition

[48] For all of the reasons as I have explained them, an Order shall issue amending Schedule *C* to the AVO to delete any reference to the following three instruments:

1) Instrument No. WE1447724 – Notice from 2238394 Ontario Ltd. to the City of Hamilton registered on August 14, 2020.

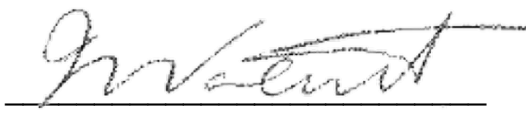
2) Instrument No. WE1660191 – Notice from 2238394 Ontario Ltd. to the City of Hamilton registered on February 9, 2023.

3) Instrument No. WE1739020 – Metrolinx Notice registered on May 24, 2024.

Costs

[49] Pursuant to the parties’ agreement, the Purchaser shall pay the Receiver its costs of the motion in the all-inclusive sum of $10,000.

[50] I am most grateful to counsel for their helpful submissions and having reached a consensus on costs.



Justice M. Valente

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