

**CITATION:** U.S. Steel Canada Inc. (Re), 2025 ONSC 1759  
**COURT FILE NO.:** CV-14-10695-00CL  
**DATE:** 20250429

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**COMMERCIAL LIST**

**RE:** **IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND:**

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO U.S. STEEL CANADA INC.**

**BEFORE:** Penny J.

**COUNSEL:** *Christopher Besant* for Cushman & Wakefield (Moving Party)

*Richard Swan, Raj Sahni and Thomas Gray* for Court Appointed Monitor

*Andrew Hatnay* for the Non-Union Active Employees et al.

*David Bish* for TELUS Health (pension plans administrator)

*Tracey Henry* for United Steelworkers Local 1005 et al.

*Lily Harmer* for USW Local 8782 WELHT

**HEARD:** March 19, 2025

**ENDORSEMENT**

**Overview**

- [1] In these proceedings under the *Companies’ Creditors Arrangement Act*, Ernst & Young Inc. was appointed by the court as Monitor of Stelco and as interim Land Restructuring Officer (“LRO”). Part of Stelco’s approved plan of compromise involved the transfer of much of Stelco’s land to a special purpose land vehicle created for the benefit of Stelco’s main stakeholders (made up of various pension and other benefit plans and trusts established for the benefit of Stelco’s existing and former employees) (the “Stakeholders”).
- [2] Cushman & Wakefield ULC was retained as a real estate broker to market and sell certain of the lands which Stelco transferred to the land vehicle.

- [3] C&W brings this motion for a declaration that it is entitled to be paid commission on a purchase by Stelco of the Stakeholders' limited partnership units (and other equity) of an entity called the Legacy Lands LP, which was a major element of the land vehicle.
- [4] E&Y (as both Monitor and LRO) and the Stakeholders oppose C&W's motion, arguing that C&W has already been paid in full for all commissions earned and that no commission attaches to Stelco's purchase of the Stakeholders' limited partnership units.
- [5] The parties agreed that the motion would proceed in two stages: first, a determination of whether C&W is entitled to payment of a commission regarding the limited partnership purchase at all; and, if yes, second, a determination of the amount of the commission payable.
- [6] There are two basic issues arising from the first stage of this motion:
- (1) as a matter of contract, did Stelco's purchase of the Stakeholders' limited partnership units of the Legacy Lands LP trigger the right to a commission? and, if not,
  - (2) do the principles of unjust enrichment or *quantum meruit* apply so as to entitle C&W to payment of a commission?
- [7] While the core issues can be stated simply, they arise in the context of a lengthy and complex series of events which comprise an essential part the factual matrix in which this dispute must be considered.

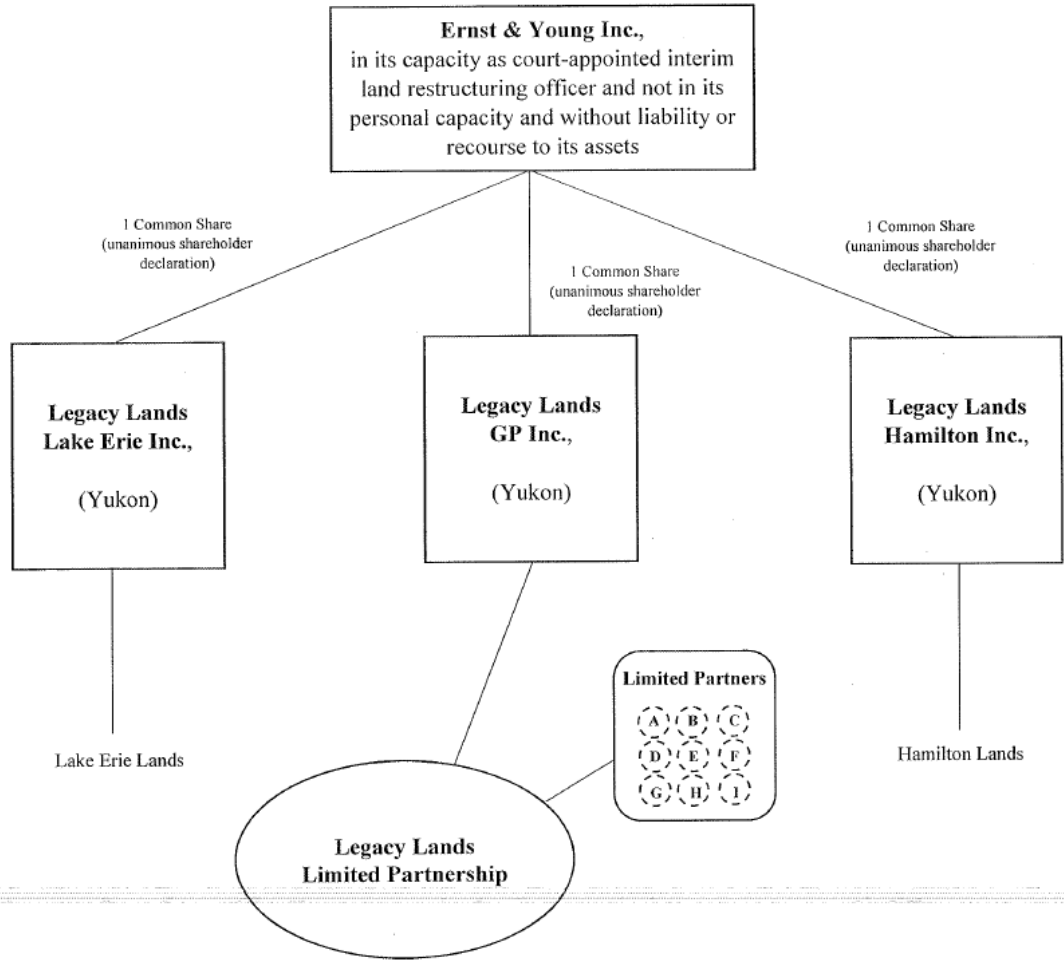
### **Background**

- [8] These CCAA proceedings were commenced by what was then U.S. Steel Canada Inc. on September 16, 2014. After several motions, significant negotiations, and the filing of various plan materials, the Court sanctioned and approved a plan of compromise on June 9, 2017. The Plan was implemented on June 30, 2017. As part of the closing of the Plan, U.S. Steel filed articles of reorganization and was renamed Stelco.
- [9] At the time of the CCAA Plan implementation, the Stakeholders in these proceedings were the various employees, retirees, and pensioners of Stelco (whose plans were in serious deficit). Under the Plan, a series of special purpose entities, Legacy Lands LP, Legacy Lands GP Inc., Legacy Lands Lake Erie Inc. (the "Lake Erie Nominee")<sup>1</sup> and Legacy Lands Hamilton Inc.) (collectively, the "Land Vehicle") were established to hold significant portions of what had formerly been Stelco's real property and other assets for the benefit of the Stakeholders. The Court issued an order appointing the Monitor as LRO of the Land

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<sup>1</sup> The focus is on the Lake Erie Nominee in particular because this is the entity which entered into the relevant brokerage agreements with C&W which govern C&W's claim to a commission on the equity transaction.

Vehicle to provide temporary governance and administration. The structure is set out in the chart reproduced below:



	Limited Partners	No. and Class of Units
A	Lake Erie USW Plan	10,604,492 Class C Units
B	Lake Erie Salaried Plan	3,188,324 Class C Units
C	Hamilton USW Plan	46,534,186 Class C Units
D	Hamilton Salaried Plan	9,341,720 Class C Units
E	Pickle Line Plan	97,673 Class C Units
F	ELHT 8782	1,212 Class A Units, 8,455,687.07 Class B Units
G	ELHT 1005	6,061 Class A Units, 42,285,412.01 Class B Units, 6,900 Class D Units
H	Non-USW ELHT	2,727 Class A Units, 19,025,295.92 Class B Units, 3,100 Class D Units
I	Pension Trust	10,000 Class A Units

- [10] This motion concerns the Lake Erie Nominee and the Legacy Lands LP specifically. The limited partners of the Legacy Lands LP are the Stakeholders: three Employee Life and Health Trusts (the Non-USW ELHT, the USW Local 1005 ELHT, the USW Local 8782 ELHT), the main registered Stelco pension plans (as administered by TELUS Health (Canada) Ltd., the administrator to the Stelco Plans) and the Pension Deficit Funding Trust.
- [11] Following Plan approval, steel prices improved worldwide and Stelco's fortunes with them. Stelco initially expressed an interest in leasing more of its former land back from the Land Vehicle. Then, Stelco's approach shifted to buying all of the leased land back. This was attractive to the Stakeholders as it would monetize the Stakeholders' interests arising out of the Plan more rapidly.
- [12] In June 2018, the Court issued an Order confirming the authority of the LRO to execute documents for the Land Vehicle to sell the Land Vehicle's premises that were being leased by the Land Vehicle to Stelco at the Lake Erie and Hamilton works, as well as an additional 480 acres of non-leased land in Hamilton. The Land Vehicle and Stelco executed an agreement of purchase and sale to sell these lands to Stelco. This transaction was the product of extensive negotiations involving the LRO, the Land Vehicle, Stelco, the Stakeholders, the Province of Ontario, and the Financial Regulatory Services Authority of Ontario. No real estate broker assisted with that transaction.
- [13] For *Planning Act* reasons, Stelco repurchased more land than it needed. As a result, the purchase transaction contemplated that Stelco would later sever and reconvey a portion of those lands not needed for Stelco's purposes (the "Reconveyance Lands") back to the Land Vehicle. A reconveyance agreement was entered into between the Land Vehicle and Stelco to this effect. As the Reconveyance Lands abutted existing Stelco land in some cases, the reconveyance agreement required Stelco to obtain severance approvals prior to completing the reconveyances. Some of the Reconveyance Lands consisted not only of a portion of the DGAP Lands transaction (discussed below) but included some or all of what came to be called the Southern and Northern Sites, which is the land in issue in this motion.
- [14] Following the closing of Stelco's land purchase transaction, the LRO, in consultation with the Stakeholders, worked toward monetizing the remaining lands owned by the Land Vehicle. After meeting with various real estate brokerage firms and reviewing their proposals, the LRO, in consultation with the Stakeholders, retained C&W to market and sell the remaining lands for the ultimate benefit of the Stakeholders. The first Master Services Agreement ("MSA") was for a one year term and expired in August 2019. The parties seem to agree, however, that the relevant contractual documents governing C&W's rights and obligations for the purpose of this motion are the June 2021 Amended Master Services Agreement ("AMSA") and various OREA Form 520 commercial Listing Agreements from June 2021 for each parcel of land being offered for sale through C&W.
- [15] Further complications developed. In March 2021, the Court approved a sale of 4,100 acres of the Land Vehicle's property to a real estate developer, DGAP Investments Ltd. (the DGAP Lands transaction). This transaction represented the majority of the Land Vehicle's assets and had been facilitated by C&W under the AMSA. Some of the lands to be

purchased by DGAP in this transaction included Reconveyance Lands which were to be transferred by Stelco back to the Land Vehicle. It was a requirement of the DGAP Lands transaction that the Reconveyance Lands be reconveyed by Stelco prior to closing.

- [16] However, the DGAP Lands transaction did not close as planned. Among other things, these CCAA proceedings became the forum for long-running, highly contentious litigation between Stelco and DGAP over the DGAP Lands transaction and other issues. The disputes involved both DGAP's purchase of the 4,100 acres adjacent to Stelco's Lake Erie operations, and, subsequently, a proposed securities purchase agreement ("SPA"), by which Stelco proposed to acquire the Stakeholders' limited partnership units and other equity associated with the Legacy Lands LP.
- [17] The SPA transaction was attractive to the Stakeholders because, like the earlier transaction with Stelco, it would have the effect of speeding up the Stakeholders' monetization of the benefits of the original Plan and, it was hoped, bringing the outstanding disputes between Stelco and DGAP, and the CCAA proceedings themselves, to end.
- [18] The SPA transaction was originally approved by the Court in May 2023.
- [19] DGAP's proposed development of the DGAP Lands included light industrial, commercial *and residential* development. Stelco viewed this proposed development as an "existential threat" to Stelco's ongoing viability as a steel producer at the Lake Erie works. As a result, Stelco vehemently opposed the proposed DGAP Lands transaction on various grounds, resulting in contested proceedings before Justice McEwen and before me, both of which decisions Stelco unsuccessfully appealed to the Court of Appeal for Ontario.
- [20] Similarly, DGAP vehemently opposed Stelco's proposed purchase of the Stakeholders' limited partnership units in the Legacy Lands LP, resulting in a contested proceeding before Justice McEwen, which DGAP unsuccessfully appealed to the Court of Appeal for Ontario.
- [21] After much litigation and delay, the disputes between Stelco and DGAP and the Stakeholders were ultimately resolved in mid-2024. All parties agreed that:
- (a) DGAP (unopposed by Stelco) would close the previously approved sale agreement with the Lake Erie Nominee, on behalf of the Land Vehicle, by which DGAP would purchase 4,100 acres of land held by the Land Vehicle; and
  - (b) Stelco (unopposed by DGAP) would enter into an amended version of the previously approved SPA by which it would purchase all of the Stakeholders' limited partnership units and other equity in the Land Vehicle (the "Amended SPA").
- [22] On June 17, 2024, the Court issued the DGAP approval and vesting order approving the DGAP Lands transaction and vesting in the purchaser all of the Land Vehicle's right, title and interest in and to the property free and clear of any claims and encumbrances.

- [23] The Court also issued the Amended SPA order authorizing the Monitor as LRO to execute the Amended SPA between Stelco and each of the vendors set out in Schedule “A” to the Amended SPA (these are the Stakeholders).
- [24] These transactions subsequently closed. The Monitor has since completed a distribution to the Stakeholders authorized by this Court on July 31, 2024. The Monitor was also authorized to retain a reserve, to be held by the Monitor to the credit of the claims asserted by C&W in this motion for payment of a commission in respect of the Amended SPA transaction.
- [25] C&W was the real estate broker on the DGAP Lands transaction. C&W had also been involved in the sale of various other parcels of Land Vehicle lands in accordance with the AMSA and the Listing Agreements entered into for those lands. Prior to the closing of the DGAP Lands transaction, the commissions paid to C&W on the other sales totalled about \$450,000.
- [26] After the DGAP Lands transaction finally closed, the Monitor, with the consent of the Stakeholders, paid C&W about \$2.1 million in commission in respect of the DGAP Lands sale, which brought the total commissions paid to C&W to approximately \$2.6 million.
- [27] The contested C&W commission claim which is the subject of this motion is, according to the Monitor, the last issue of any controversy needing be resolved in this long standing CCAA proceeding.

## **Analysis**

### ***The Issue for Determination***

- [28] In this motion, the sole issue for determination is whether C&W is entitled to payment of a commission in respect of the Amended SPA transaction.
- [29] C&W advances two alternative theories in support of its claimed entitlement:
1. a contract entitlement which turns on the interpretation of the real estate brokerage contracts C&W entered into with the Lake Erie Nominee; and
  2. an entitlement based on the equitable principles of unjust enrichment and/or *quantum meruit*.

### ***Contract***

- [30] It is well settled that, when interpreting a contract, the court must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances reasonably known to the parties at the time of formation of the contract. In doing so, courts should avoid any interpretation that would result in a commercial absurdity; the provisions should be considered with the rest of the contract as a whole in light of its purposes and commercial context: *Sattva Capital Corp v Creston*

*Moly Corp*, 2014 SCC 53 at para 47; *2484234 Ontario Inc v Hanley Park Developments Inc*, 2020 ONCA 273 at para 64.

[31] C&W’s main argument for a contractual entitlement to a commission resulting from the Amended SPA transaction turns on two brokerage/realty services contracts between C&W, as the real estate broker, and the Lake Erie Nominee, as the client:

- (a) the June 2021 AMSA; and
  - (b) the June 2021 Listing Agreements,
- (collectively the “C&W Agreements”).

Since C&W’s motion is about whether the Amended SPA transaction triggered a commission payment obligation, I will consider the terms of the Amended SPA as well.

### The AMSA

[32] The only parties to the C&W Agreements are C&W and the Lake Erie Nominee.

[33] The LRO held the sole share of the Lake Erie Nominee (and the sole share of the Legacy Lands LP general partner). None of the LRO, the Stakeholders or the Legacy Lands LP general partner were parties to the C&W Agreements.

[34] Article 2 of the AMSA appoints C&W as the client’s (Lake Erie Nominee) real estate broker with the “exclusive” right to represent the client. The real estate lands subject to the agreement are listed in Schedule “1” to Exhibit “A” of the AMSA. The lands listed in Schedule “1” are referred to in the material as the Southern Sites. It is common ground that title to the Southern Sites was in the name of the Lake Erie Nominee. Prior to the commencement of any work by C&W, the parties agreed they would mutually execute a “Request for Services” in the form specified in Exhibit “A”. It is common ground that a Request for Services was executed in 2021.

[35] Exhibit “B” to the AMSA sets out the real estate brokerage services to be performed by C&W. These services include establishing appropriate listing prices for the Southern Sites, marketing and exposing the Sites to the public, arranging tours of the Sites, assisting in negotiations with prospective purchasers and the financial analysis of any offers to purchase.

[36] There are three categories of services listed in Exhibit “B”. The part (a) listed services appear to be informational, reporting and process-oriented in nature. Part (b) services are said to be “leasehold and fee simple acquisition services”. It is not clear that any such services were ever performed because the Land Vehicle was (apart from the reconveyance agreement, which pre-existed the C&W Agreements) never engaged in acquiring any land; its only objective was to sell the Schedule “1” properties. The part (c) services list the “leasehold and fee simple disposition services” that C&W will provide.

- [37] Article 3 of the AMSA purports to set out the terms of compensation. Article 3.2 provides that in consideration of C&W's performance of the services, the Lake Erie Nominee "shall make or cause to be made the payments to or for the benefit of C&W" described in Exhibit "C". Oddly, Exhibit "C" merely repeats the essence of Article 3.2 but goes on to indicate that the Lake Erie Nominee "shall pay to C&W a commission set out in Exhibit "A"".
- [38] Exhibit "A" is the Request for Services. The Request for Services is a brief, but important, component of the AMSA. It stipulates the term of the assignment: commencing July 1, 2021 and expiring June 30, 2022 "subject to automatic renewals" for up to five years. The Listing Price/Rate is stipulated to be: "Based on proposed pricing set out in Schedule "1" attached hereto". The same clause also requires that: "Each project shall have a separate MLS Agreement."
- [39] Under the heading "Compensation due C&W", the Request for Services provides:
- ...the commission payable with respect to the sites set out in Schedule "1" attached hereto shall be 5% of total sale price of the sites with a minimum of \$15,000 per closing.

The "Timing of Payment" is defined in Exhibit "A" as being "Upon Successful closing".

- [40] Article 9.2 of the AMSA provides that the term "shall be automatically renewed for a period of up to five (5) successive years unless either party gives the other party written notice of non-renewal of the Term at least thirty (30) days prior to the expiry of the then current term". If the Lake Erie Nominee "consummates a transaction with a prospect within six months after the expiration or termination" of the AMSA, C&W "shall be entitled to receive the compensation provided for hereunder". The right to payment of a commission with respect to any transaction consummated prior to the expiration or termination of the AMSA "shall survive the expiration or termination of" the AMSA.
- [41] C&W maintains that after the AMSA and the Request for Services was executed, C&W and the LRO agreed in a series of emails from March 29 to April 1, 2022 to add four additional parcels (comprising what is described in the material as "the Northern Sites" (Sites #22-25), to C&W's brokerage and realty services mandate set out in the AMSA, with a commission rate for those Sites of 4.5%. No formal amendment or additional Listing Agreements were ever executed regarding the Northern Sites.

### The Listing Agreements

- [42] C&W and the Lake Erie Nominee entered into Standard Form Ontario Real Estate Association Listing Agreements for each of the Southern Sites. Each Listing Agreement described each property using the descriptions provided in Schedule "1" to the AMSA.
- [43] According to the Monitor's 59<sup>th</sup> Report (which I accept as accurate, as will be discussed in more detail below) the Listing Agreements are dated June 30, 2021 and contain a listing

period that expired on December 15, 2021. It is not in dispute that the parties never executed Listing Agreements for the Northern Sites.

- [44] Paragraph 1 of the Listing Agreements provides that a purchase shall be deemed to include “an agreement to sell or transfer shares or assets.”
- [45] Under paragraph 2 of the Listing Agreements, the Lake Erie Nominee’s obligation to pay a commission only arises in respect of “any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period”. Paragraph 2 of the Listing Agreement also provides that a commission will be paid on the sale price of a property “if an agreement to purchase is agreed to or accepted by the Seller ...within 90 days after the expiry of the Listing Period (Holdover Period) as long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period.”
- [46] Unlike the AMSA, which contains an automatic renewal provision, the Listing Agreements expressly provide (as required by the *Real Estate and Business Brokers Act, 2002*) that they cannot have a term longer than six months unless expressly agreed by the parties and initialed by the client, in this case the Lake Erie Nominee. None of the Listing Agreements were initialed by the Lake Erie Nominee to indicate consent to a listing period longer than six months. As a result, any entitlement C&W had to be paid a commission under the Listing Agreements for the Southern Sites expired on December 15, 2021 (or 90 days thereafter if the holdover conditions were met). As noted above, there were no Listing Agreements entered for the Northern Sites.

#### The SPA and Amended SPA

- [47] In January 2023 (after Stelco had unsuccessfully sought to derail the DGAP Lands transaction before this Court and the Court of Appeal), Stelco made an unsolicited offer to acquire all of the Land Vehicle’s lands. E&Y advised Stelco that this offer to purchase was unacceptable because it included lands which the Land Vehicle was already contractually obliged to sell to DGAP. As a result, in February 2023, Stelco made an offer to acquire all of the Stakeholders’ limited partnership units in the Legacy Lands LP and the shares of the Legacy Lands LP general partner and of the Lake Erie Nominee. One condition of closing, among others, was that the court approve the SPA transaction. That approval was originally granted, over DGAP’s objection, by order of this Court in May 2023. DGAP’s appeal was later dismissed but other litigation between Stelco and DGAP was ongoing. The transaction under the original SPA never closed due to this ongoing litigation.
- [48] In the end, however, the parties were able to negotiate a resolution which involved agreement to the terms of an Amended SPA, which was ultimately approved by the Court in June 2024. This transaction closed shortly thereafter. Agreement on the Amended SPA also enabled the DGAP Lands transaction to close. The closing of the DGAP Lands transaction benefited the Stakeholders, DGAP, Stelco and the Monitor/LRO. It also benefitted C&W because, following the closing of the DGAP Lands transaction, C&W became entitled to, and was eventually paid, a \$2.1 million commission.

[49] The Stakeholders (as owners of the limited partnership units in the Legacy Lands LP) are all Vendors under the Amended SPA. The Lake Erie Nominee is not a Vendor under the Amended SPA; nor is the general partner of the Legacy Lands LP. E&Y, in its capacity as LRO (holding the sole share of the Lake Erie Nominee and the sole share of the general partner of the Legacy Lands LP), is a Vendor. The share of the Lake Erie Nominee and the share of the Legacy Lands LP general partner held by the LRO are listed among the securities being acquired by Stelco in the Amended SPA. The redacted record does not disclose what, if any, value was ascribed to those two shares.

C&W's Position on the Motion

[50] A central fact, for purposes of C&W's motion, is that at the time of the SPA and the Amended SPA, the Northern and Southern sites (or what I will refer to collectively as the Remaining Lands) were the only remaining lands owned by the Lake Erie Nominee that had not been sold to DGAP or to others.

[51] It is not in dispute that C&W performed certain services required under the AMSA with respect to the Remaining Lands, including developing a marketing strategy and preparing marketing brochures, listing the Southern Sites on MLS, preparing valuations, and soliciting DGAP, among others, to make an offer to purchase the Remaining Lands (DGAP never made any formal offer to purchase the Remaining Lands).<sup>2</sup>

[52] C&W argues that the Legacy Lands LP and the Lake Erie Nominee were set up for the purpose of holding and liquidating real property transferred to them by Stelco as part of the approved CCAA Plan. C&W was retained to assist in that process. C&W argues that whether Stelco bought the land, bought the sole share of the Lake Erie Nominee or bought the entire equity in Legacy Lands LP was immaterial. In each transaction, beneficial ownership of the land would pass to Stelco and a commission would therefore be payable.

[53] Further, C&W argues that its right to a commission on a successful transaction is not affected by: a) the identity or nature of the buyer; b) whether the buyer was identified or introduced to the opportunity by C &W; or c) whether there was a causal link of any kind between the performance of C&W's services and a successful closing of the purchase. It is sufficient, C&W argues, that there is an accepted transaction during the currency of the AMSA (as well as any holdover period specified in the C&W Agreements).

[54] C&W's first argument is that the AMSA creates an independent right to a commission in respect of the Amended SPA transaction.

[55] C&W places considerable reliance on its status as exclusive representative of the Lake Erie Nominee. Further, it takes the position that the language of the AMSA is not restricted only to purchases of the fee simple in land. The AMSA in various places refers to a "transaction", although this term is not defined. C&W says the form of any transaction was

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<sup>2</sup> Apart from the Listing Agreements expiring and not being renewed, E&Y's argument does not allege or depend upon any failure on the part of C&W to perform required services under the AMSA.

intentionally left open to allow for flexibility in structuring a deal. C&W argues, therefore, that the right to a commission under the AMSA is not restricted to a standard purchase of the fee simple in land. C&W says this was consistent with “industry practice”.

- [56] C&W bolsters this argument with reference to para. 1 of the Listing Agreements, which provides that a commission is payable upon a successful purchase, where “purchase” is deemed to include “an agreement to sell or transfer *shares or assets*” (emphasis added). Thus, C&W argues that as long as a successful sale resulted in “effective ownership” of a listed property moving to different hands, a commission would be payable under the AMSA.
- [57] C&W also argues in the alternative that the Listing Agreements represent an independent basis for its entitlement to a commission. While acknowledging that the Listing Agreements executed for the Southern Sites expired at the end of 2021, the Listing Agreements, it submits, or at least the commitment to pay commission on a purchase of assets or shares, were “as a matter of law” extended for as long as the AMSA was in force due to the automatic renewal clause in the AMSA.
- [58] Although conceding that no Listing Agreements were ever executed in relation to the Northern Sites, C&W argues that the parties agreed to amend the AMSA Request for Services (and Schedule “1”) to include the Northern Sites and that there was, in addition, an agreement that Listing Agreements for the Northern Sites would be entered into (although neither was ever executed).
- [59] In the further alternative, C&W argues that the Listing Agreements were merely ancillary to the AMSA. They were not needed to create an entitlement to payment of a commission, as that was provided under the AMSA and the Request for Services. Rather, says C&W, the Listing Agreements only had an operational marketing function - to get the properties listed on the MLS and TREB listing systems.
- [60] Although not addressed in C&W’s factum or in oral argument, Mr. Morrow argues in his reply affidavit that although the MSA expired in August 2019, article 9.3 of the MSA provides that a commission is still payable if the Lake Erie Nominee “consummates a transaction with a prospect” within one year of expiration or “for so long as negotiations are continuing.” Mr. Morrow deposes that Stelco was a “prospect from the very beginning” and claims that negotiations involving Stelco about the Remaining Lands were ongoing from 2019 to 2024.

E&Y’s Position (as Monitor and LRO and on behalf of the Stakeholders) on the Motion

- [61] E&Y points out that the C&W Agreements were solely between C&W and the Lake Erie Nominee. The Stakeholders, the LRO and the Legacy Lands LP were not parties to the C&W Agreements. Accordingly, the Stakeholders have no contractual obligations to C&W.

- [62] Unlike the DGAP Lands transaction, the Amended SPA transaction did not involve a sale of any land; rather, the Amended SPA transaction was, in substance, an acquisition by a Stelco subsidiary of the Stakeholders' limited partnership units in the Legacy Lands LP.
- [63] Further, C&W did not introduce Stelco to the Legacy Lands LP acquisition opportunity; Stelco and the Stakeholders already had a deep and existing relationship and had already done material lands deals (including the Reconveyance Agreement which remained to be performed) before C&W arrived on the scene. C&W did not bring any offer from Stelco for the purchase of any lands or shares. C&W had no involvement in the SPA/Amended SPA negotiations or in the parties reaching those agreements. Those agreements arose as a result of events and relationships which predated C&W's retainer. C&W's suggestion that its work product was used to facilitate the Stakeholders' negotiations with Stelco regarding the SPA/Amended SPA is pure speculation and flatly denied by E&Y and the Stakeholders.
- [64] C&W's argument that the Amended SPA was nothing more than an indirect means by which Stelco acquired the Remaining Lands is a gross oversimplification and a misreading of what was actually going on.
- [65] Stelco had its own motivation for acquiring the Land Vehicle through the Amended SPA. The DGAP Lands included a parcel of land that Stelco had purchased in the original 2018 transaction which it was contractually required to reconvey to the Land Vehicle before the DGAP Lands transaction could close. Stelco took the position its obligation to reconvey the Reconveyance Lands had expired. The reconveyance of this land also required the negotiation of certain easements which Stelco and E&Y/DGAP could not agree on. Both these issues were major contentions in the litigation between DGAP and Stelco. Stelco was vehemently opposed to, among other things, any residential development in the vicinity of its Lake Erie works. Acquiring the Land Vehicle itself, as opposed to a mere acquisition of the Remaining Lands, would permit Stelco to step into the shoes of the Land Vehicle, legally opposite DGAP in the DGAP Lands transaction and in the easement and other ongoing disputes. This gave Stelco additional leverage in the litigation. On the flip side, the Amended SPA had the benefit to the Stakeholders of extricating them completely from further involvement in and exposure to the effects of this bitter and protracted litigation.
- [66] E&Y argues that the AMSA contains no provision for payment of commission in the event of a purchase of equity rather than land and certainly not in the unique circumstances of this case. The potential for an equity deal was contemplated only in the Listing Agreements, which as dealt with below, expired long before the SPA and Amended SPA.
- [67] The Listing Agreements are an integral part of the contract between the Lake Erie Nominee and C&W. The AMSA requires that each property to be sold must have its own separate Listing Agreement. The Listing Agreements were limited to a maximum of six months unless the "client" (the Lake Erie Nominee) expressly consented to a longer term by initialing the appropriate clause in each Listing Agreement. No such consent was ever given in any Listing Agreement. The relevant Listing Agreements for the Southern Sites were all signed in June 2021. Therefore, the Listing Agreements under the AMSA all expired in December 2021. None were ever renewed. No Listing Agreements were ever

signed for the Northern Sites. Thus, at the time of the original SPA (in April 2023 – 15 months after expiry) and at the time of the Amended SPA (in June 2024 – 30 months after expiry), there were no valid Listing Agreements for any Northern or Southern Sites extant.

- [68] Further, under para. 2 of the Listing Agreements, the Lake Erie Nominee’s obligation to pay a commission only arises in respect of “any valid offer to purchase the Property from any source whatsoever obtained *during the Listing Period*” (emphasis added). The holdover provisions simply do not apply on the facts.
- [69] In the absence of a valid Listing Agreement, C&W cannot claim a commission for the Southern Sites resulting from the Amended SPA transaction. As no Listing Agreements were ever signed regarding the Northern Sites, C&W has no basis to claim a commission for the Northern Sites either.
- [70] E&Y submits that the argument advanced by Mr. Morrow in his reply affidavit is without merit. Although Mr. Morrow claims that Stelco was a “prospect” throughout C&W’s tenure, it was not a “prospect” introduced by C&W or during the term of the MSA because there was a preexisting relationship. There is no evidence that C&W ever had any communications with Stelco about acquiring the Remaining Lands, directly or indirectly. Further, there is no basis to suggest that Stelco began negotiations to acquire the Land Vehicle in 2020 (i.e., within a year of the expiry of the MSA), much less continued negotiations continuously thereafter. Stelco did not make the unsolicited offer to acquire the Land Vehicle until February 2023; the Amended SPA did not close until June 2024.

#### The Questions to be Answered

- [71] The parties’ competing arguments highlight a number of issues to be resolved which can be stated as three basic questions. These questions are:
- (1) Does the AMSA provide for a commission payable upon acquisition of the Stakeholders’ limited partnership units and the single shares of the Legacy Lands LP general partner and of the Lake Erie Nominee?
  - (2) (a) Did the Listing Agreements for the Southern Sites expire?
    - (b) If yes, does the expiry of the Southern Sites’ Listing Agreements preclude C&W’s claim to a commission on the Amended SPA transaction?
    - (c) Does the absence of any Listing Agreement for the Northern Sites preclude C&W’s claim to a commission on the Amended SPA transaction? and
  - (3) Do the provisions of para. 9.3 of the MSA apply so as to entitle C&W to the payment of a commission on the Amended SPA transaction?
- [72] I shall, in the section below, address each of these questions.

Disposition

Does the AMSA provide for a commission payable upon acquisition of the Stakeholders' limited partnership units?

- [73] As all parties acknowledge, this was not a run-of-the-mill real estate transaction. The parties were experienced and sophisticated in contractual and commercial real estate matters. All parties had access to competent legal and other professional advice. C&W was retained to facilitate the sale of lands formerly owned by Stelco in a unique and complex environment.
- [74] The Lake Erie Nominee and C&W are the only parties to the AMSA. C&W was granted the "exclusive right" to represent the Lake Erie Nominee "in respect of" the lands described in Schedule "1".
- [75] C&W submits that because it was exclusive agent there is no requirement that a purchase be introduced by C&W during the term of the AMSA. It is sufficient that there be a successful closing during the term of the AMSA. The only authority cited by C&W to support of this proposition is an article from the *McGill Law Journal* published in 1958. The cases cited by the author in this journal article are largely Quebec cases, where property and contract law are subject to the Civil Code. Further, the passage cited is qualified by the particular facts of each case and the language of the particular agreement in question.
- [76] It seems to me the concept of exclusive representation in the AMSA is primarily related to the right to represent the client as agent. Here, there is no issue of another broker purporting to represent the Lake Erie Nominee. Whether there needs to be a causal relationship between the broker's services and a successful sale, it seems to me, ought properly to be determined, not by whether the broker's representation of the client is exclusive, but by the interpretation of the contract as a whole (which may include the broker's status as exclusive agent) in accordance with basic principles of commercial contract interpretation.
- [77] The AMSA provides in Article 2 that the Request for Services will, among other things, contain a description of the "compensation due C&W for the Services; the timing of payment; and the person responsible for compensating C&W." The Request for Services provides, under the heading "Compensation due C&W", that the "commission payable with respect to the sites set out in Schedule "1" ... shall be 5% of the total sales price of the sites". The timing of payment is stipulated to be "Upon Successful closing". The party responsible for paying compensation is the Lake Erie Nominee.
- [78] C&W relies on the fact that in other contexts (such as the post-termination holdover provision in Article 9.4 -- a provision which is not applicable here because there has been no termination), the AMSA refers to "transactions". The term "transaction" is not defined. I fail to see how the use of the term "transaction" helps C&W. A transaction *could* include a purchase of equity or property, just as a "sale" *could* include the purchase of equity or property. The interpretation question is whether a purchase of the Stakeholders' limited partnership units triggers the obligation to pay a commission. In this case, the provision of

the agreement which expressly determines under what conditions a commission is payable expressly refers to 5% of total *sale price of the sites* (in other words, a sale of the property). In addition, the relevant services to be performed by C&W listed in Exhibit “B” to the AMSA are specifically described as “leasehold and *fee simple disposition* services” (emphasis added).

- [79] These provisions suggest that the expectation under the AMSA was that commission would become payable upon successful sales or leases of the properties themselves. It was the Listing Agreements (which I will deal with below) that were, at the time, relied upon to propound the broader definition of a purchase to include the acquisition of assets or shares.
- [80] C&W also relies on industry practice to argue that the Amended SPA triggered the right to a commission, relying on the provision of the Listing Agreements which deems a “purchase” to include an agreement to transfer assets or shares. In my view, this argument stands the analysis on its head. The undefined use of the term “transaction” in the AMSA is in contrast to the *express* use of an expanded definition of “purchase” in the Listing Agreements. This illustrates that when the parties wanted to include equity transactions within the scope of commission entitlement, they knew how to do so.
- [81] C&W also relies on Mr. Morrow’s opinion to the effect that the practice in the industry is that equity deals are caught in the broker’s commission net. Mr. Morrow is a senior executive with C&W and, as such, has a clear financial interest in the outcome of this motion. Mr. Morrow was not (and did not seek to be) qualified as an expert able to express opinions on matters of disputed fact. Nor, given his financial interest and obvious lack of independence, could he have been so qualified. Mr. Morrow is in no position to give opinion evidence in this case and his evidence in this regard is to be disregarded.
- [82] The AMSA and Listing Agreements were between the Lake Erie Nominee, which held title to the Sites, and C&W. E&Y, as Monitor/LRO, the Legacy Lands LP general partner and the Legacy Lands LP unit holders were not parties to the AMSA or the Listing Agreements. They owed no obligations to C&W nor are they liable for any commission, if found to be owing. As non-parties to the AMSA, the Stakeholders were at liberty to deal with their limited partnership units in the Legacy Lands LP as they saw fit, without restraint or obligation to C&W.<sup>3</sup>
- [83] Stelco was not a prospect identified or introduced by C&W. Stelco had already transferred most of its lands to the Stakeholders as part of the CCAA Plan and had already done leasehold and fee simple deals with the Stakeholders during Plan implementation. Although C&W’s affiant states that Stelco was always a “prospect”, this is not supported by the evidence. The Stelco SPA proposal was unsolicited and came as a total shock to the participants.

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<sup>3</sup> It is the Lake Erie Nominee which holds the reserve in respect of the C&W claim.

- [84] More specifically, C&W did not introduce Stelco to the Land Vehicle opportunity; Stelco and the Stakeholders already had a deep and existing relationship and had already done material lands deals (including the Reconveyance Agreement which remained to be performed) before C&W arrived on the scene. C&W did not solicit Stelco or bring any offer from Stelco for the purchase of any lands or shares. C&W had no involvement in the SPA/Amended SPA negotiations or in the parties reaching those agreements; that arose as a result of events and relationships which predated C&W's retainer. C&W's suggestion that its work product was used to facilitate the Stakeholders' negotiations with Stelco regarding the SPA/Amended SPA is pure speculation and flatly denied by E&Y and the Stakeholders.
- [85] These latter facts, standing alone, might not be sufficient to disentitle C&W from payment of a commission under the AMSA, but in the unique circumstances of this case they are relevant factors among all the others to be weighed.
- [86] The Amended SPA transaction did not involve a sale of any land; rather, the Amended SPA transaction was, in substance, an acquisition by a Stelco subsidiary of the Stakeholders' limited partnership units in the Legacy Lands LP. As noted above, on a proper interpretation of the AMSA, the kind of equity deal represented by the Amended SPA was not contemplated by the commission provisions of the AMSA. The Amended SPA was not, in the words of the Request for Services, a fee simple disposition or a sale of the Sites.
- [87] It is certainly true that there are judicial precedents where real estate deals have been structured as a share purchase of the vendor to avoid payment of commission. In such cases, the court may order that commission has nevertheless been earned. However, as E&Y points out, the Amended SPA involves far more than an acquisition of the sole share of the Lake Erie Nominee. The substance of the Amended SPA transaction was the acquisition of the Stakeholders' limited partnership units in the Legacy Lands LP. The Stakeholders were not parties to or bound by the AMSA and owed no obligations to C&W. They were free to negotiate with and sell their limited partnership units to whomever they chose.
- [88] This is not a case where the vendor and purchaser structured the transaction as a share purchase of the vendor in order to avoid paying a commission. C&W does not make such an argument, nor, on these facts, would it be possible to do so. Stelco's offer to acquire the Land Vehicle came as a complete surprise to everyone. There is no evidence to support any suggestion that C&W, or a potential commission, had anything to do with this transaction. The most reasonable inference is that the parties to the SPA/Amended SPA simply did not turn their minds to C&W at all.
- [89] I also agree with E&Y and the Stakeholders that Stelco had its own motivation for acquiring the Land Vehicle through the Amended SPA which had nothing to do with acquiring the land *per se*. The DGAP Lands included a parcel of land that Stelco had purchased in the original 2018 transaction which it was contractually required to reconvey to the Land Vehicle before the DGAP Lands transaction could close. During the DGAP/Stelco dispute, Stelco took the position that its obligation to reconvey the land had

expired. The reconveyance of this land also required the negotiation of easements which Stelco and DGAP could not agree on. These issues were a huge dispute in the litigation between DGAP and Stelco. Stelco was vehemently opposed to any residential development in the vicinity of its Lake Erie works, regarding it as an existential threat. Acquiring the Land Vehicle itself, as opposed to a mere acquisition of the Remaining Lands, permitted Stelco to step into the shoes of the Land Vehicle, legally opposite DGAP in that transaction and in the reconveyance transaction. This gave Stelco additional leverage in the litigation.

- [90] The Amended SPA transaction was a significant factor in the parties' ability to settle the DGAP/Stelco litigation. This was neither something C&W proposed or was involved in, nor a result C&W was even capable of bringing about. Nevertheless, closing the Amended SPA transaction had a direct and immediate benefit to C&W because it enabled the DGAP transaction, in which C&W acted as broker during the currency of the C&W Agreements, to close. This, in turn, led to C&W being paid a \$2.1 million commission that might not otherwise have occurred.
- [91] For all these reasons, I find that the AMSA does not provide for a commission payable on the Amended SPA transaction.

*Did the Listing Agreements for the Southern Sites expire?*

- [92] In his initial affidavit, Mr. Morrow claimed that the Listing Agreements were still in force in February 2023 when the SPA transaction was first raised. No evidence was adduced to prove this statement. Neither party put all the Listing Agreements for the Southern Sites into evidence.
- [93] The Monitor's 59<sup>th</sup> Report states that the Listing Agreements for the Southern Sites were dated June 30, 2021 and expired on December 15, 2021. One such Listing Agreement is attached to illustrate the point. No further or reply evidence was adduced to contradict the Monitor's statements. I therefore accept the Monitor's 59<sup>th</sup> Report as an accurate assessment of the facts.
- [94] In its factum, C&W appears to concede that the terms of Southern Site Listing Agreements expired in December 2021 but advances the argument that, because of the automatic renewal term in the AMSA, the Listing Agreements were also renewed "as a matter of law". I am unable to accept this argument.
- [95] The *Real Estate and Business Brokers Act* required the Lake Erie Nominee to expressly consent to any term of the Listing Agreements in excess of six months. The Lake Erie Nominee never did so. There is no evidence the Listing Agreements were ever renewed.
- [96] C&W's argument that these Listing Agreements were extended "as a matter of law" by the AMSA is without any support or legal foundation. It is also contrary to the requirements of the *Real Estate and Business Brokers Act*. While the AMSA has a renewal provision, it is the AMSA (in the Request for Services) which also requires there to be a separate Listing Agreement for each property. This is plain, unambiguous and mandatory language.

- [97] Without a Listing Agreement for a particular Site, the Request for Services cannot be effective with respect to that Site. Without a valid Request for Services there is no obligation on the Lake Erie Nominee under the AMSA. The Listing Agreements entered into in this case lasted for only six months, expiring over 15 months before the SPA transaction. No consent to a longer term under the *Real Estate and Business Brokers Act* was ever given. The Listing Agreements were never renewed. There could be (and was) no extension of the term of the Listing Agreements “as a matter of law”.
- [98] For these reasons, I find that the Listing Agreements for the Southern Sites had all expired well before the initial SPA transaction and the Amended SPA transaction.

*Does the expiry of the Listing Agreements for the Southern Sites preclude C&W’s claim to a commission on the Amended SPA transaction?*

- [99] In light of my previous conclusions, the expiry of the Listing Agreements for the Southern Sites disentitles C&W from payment of a commission on the Amended SPA transaction. I come to this conclusion for two reasons.
- [100] First, as noted above, the AMSA contains a clear and mandatory requirement for a valid Listing Agreement for each Site. Without a valid Listing Agreement for a particular Site, the Request for Services cannot be effective with respect to that Site. Without a valid Request for Services there is no obligation on the Lake Erie Nominee under the AMSA.
- [101] Second, because the AMSA itself did not contemplate a commission payable to C&W on an equity transaction of the kind represented by the Amended SPA, C&W’s entitlement to a commission on an acquisition of equity would necessarily turn on the Listing Agreement and its extended definition of purchase to include a purchase of assets or shares. If there is no valid Listing Agreement as required by the AMSA/Request for Services, the extended definition of a purchase in the Listing Agreements is inapplicable and unavailable to C&W as a basis for claiming that a commission is payable.
- [102] C&W also argues, in the further alternative, that the Listing Agreements were merely ancillary marketing tools, such that the lack of a Listing Agreement is unimportant and without consequence. I cannot accept this argument.
- [103] C&W argues both that: a) the Listing Agreements are substantively material to the question of whether a commission is payable (based on the extended definition of “purchase” in para. 1 of the Listing Agreements); and b) that the Listing Agreements are unimportant “ancillary” provisions that serve no more than a marketing function. Both cannot be true.
- [104] As noted earlier, the Request for Services is an important component of the AMSA. The Request for Services expressly requires, with mandatory language, that each property “will have a separate” Listing Agreement. These are not words to describe an ancillary marketing function. Further, the Listing Agreements contain provisions which set out substantive rights of the parties which are not in, or which supplement, the provisions of the AMSA (the extended definition of what is included in a “purchase” being one of them).

[105] I cannot accept that the Listing Agreements are merely “ancillary”. They are important components of the AMSA, required by the AMSA and required in order for C&W to comply with its obligations under the AMSA. The fact that the Listing Agreements for the Southern Sites expired over 15 months prior to the SPA transaction and were never renewed is, therefore, an independent basis upon which to deny C&W’s request for a declaration that it is entitled to a commission in respect of the Amended SPA transaction.

*Does the absence of any Listing Agreements for the Northern Sites preclude C&W’s claim to a commission on the Amended SPA transaction?*

[106] C&W makes two arguments in support of its position on this issue. First, it says there was an agreement to include the four Northern Sites in Schedule “1” of the Request for Services. Second, it says there was another agreement to execute Listing Agreements in respect of the Northern Sites. It is conceded that neither form of agreement was ever signed.

[107] In my view, the evidence supports the conclusion that there was an agreement concluded around March/April 2022 to include the four Northern Sites in Schedule “1” to the AMSA. The fact that no specific amendment was executed does not take away from this conclusion.

[108] The Listing Agreement situation is different. Only the vaguest of explanation is offered for why no Listing Agreement for the Northern Sites was ever executed. Mr. Morrow merely says it was not done due to delays in Stelco’s severance application regarding Site 25, which was required before that Site could be reconveyed to the Land Vehicle (and thus offered for sale by the Land Vehicle with C&W as the exclusive real estate broker). Mr. Morrow elsewhere makes the generic point that the Stelco/DGAP litigation was a cloud over the listings which created uncertainty and made it difficult to proceed with marketing plans and efforts.

[109] Mr. Morrow says “instead” of executing Listing Agreements for the Northern Sites “it was agreed” that the Northern Sites would be treated as being added to Schedule “1”. The problem with this approach is that it ignores the requirement under the AMSA/Request for Services for a Listing Agreement for each Site, including the express need for the client’s consent to a listing term of more than six months. Even if one assumed a Listing Agreement for the Northern Sites was signed in April 2022, there is no basis to conclude that the Listing Agreement would have remained valid and effective in February 2023, ten months later, at the time of the initial SPA proposal.

[110] An effective Listing Agreement was a precondition to an effective Request for Services and thus, to any entitlement to a commission. The evidence does not rise to the level of a promissory estoppel (nor is that pleaded). It was in C&W’s power to have insisted upon and obtained a Listing Agreement. It appears not to have done so because the relevant lands were not yet ready to be offered to the market for sale in any event.

[111] For these reasons, I find that C&W has not met the threshold for payment of a commission in respect of the Northern Sites arising out of the Amended SPA transaction.

Do the provisions of para. 9.3 of the MSA apply so as to entitle C&W to the payment of a commission on the Amended SPA transaction?

- [112] As noted, this argument was not pursued in C&W's factum or in oral argument. In the interests of completeness, however, I will address it briefly.
- [113] Mr. Morrow's assertion of an entitlement under Art. 9.3 (the holdover provision) of the MSA involves several requirements. First, C&W was required, within 30 days after the expiration of the MSA, to deliver a list of prospects submitted to the Lake Erie Nominee during the term of the MSA. There is no evidence this was done. Second, a transaction had to have been either consummated within one year (i.e., by August 2019) or as long as negotiations were continuing. The evidence is clear that neither requirement was met. The SPA transaction was never consummated. The Amended SPA did not close until June 2024. There is no evidence Stelco commenced negotiations with the Lake Erie Nominee, or with anyone else, about the acquisition of the Land Vehicle during the term of the MSA (August 2018 to August 2019) or even within one year after the MSA terminated. Those negotiations, the evidence is clear, did not begin until February 2023.
- [114] For these reasons, I find C&W is not entitled to payment of any commission in respect of the Amended SPA transaction by virtue of Art. 9.3 of the MSA.

***Unjust Enrichment/Quantum Meruit***

- [115] In the alternative to its contractual claim to a commission payment, C&W also invokes the law of equity to advance a claim based on unjust enrichment. To succeed with this claim, C&W is required to prove that the Lake Erie Nominee has been enriched as a result of the services provided by C&W; that C&W suffered a corresponding deprivation; and that there is no juristic reason entitling the Lake Erie Nominee to that enrichment.
- [116] In this case, there is no evidence that C&W contributed in any way to the Stelco purchase of the Stakeholders' limited partnership units in the Legacy Lands LP. C&W's claims in this regard are, as noted earlier, speculative and denied by E&Y and the Stakeholders. There is, therefore, no evidence of deprivation or corresponding enrichment.
- [117] Even if that were not the case, the third requirement cannot be met either. C&W's principal arguments are based on a contractual entitlement to payment of commission. I have found, earlier in these reasons, that C&W has no contractual entitlement to payment of commission in respect of the Amended SPA transaction. As such, in the proven circumstances of this case, C&W could have had no reasonable expectation of any commission payable as a result of the Amended SPA transaction closing in June 2024.
- [118] C&W's motion for a declaration of entitlement based on unjust enrichment is dismissed.

Conclusion on the issue of C&W's entitlement to a commission

- [119] To summarize, with respect to the question of C&W's entitlement to a commission, given:

- the terms of the AMSA
- the fact that the Stakeholders, the LRO and the Legay Lands LP were not parties to the AMSA
- the expiry of the Listing Agreements
- the pre-existing relationship between the Stakeholders and Stelco
- the fact that no proposal or approach was made by C&W to Stelco at any time
- C&W's lack of any involvement in the SPA/Amended SPA transactions
- the fact that C&W's work product was not a factor in the Amended SPA transaction, and
- the fact that the resolution of the DGAP/Stelco dispute, which including the Amended SPA, enabled the DGAP Lands purchase to close, enabling C&W to receive a commission payment of \$2.1 million,

C&W could have no reasonable expectation of a commission payment arising out of the Stelco's purchase of the Stakeholders' limited partnership units in the Legay Lands LP.

### **Other Matters**

- [120] C&W also sought various orders for further disclosure. Chief among these requests is a request for disclosure of the purchase price paid by Stelco (and how it was allocated) for the Land Vehicle.
- [121] I find that the disclosure orders sought, assuming they are otherwise valid, all relate to the quantification of C&W's commission claim. As such, they are relevant only to the contemplated second phase of C&W's motion. Because I have decided the entitlement portion of the motion adversely to C&W, there is no need for the second, quantification phase. Thus, there is no basis to order production of further documents from the Lake Erie Nominee and/or E&Y.
- [122] The request for a sealing order regarding the pricing of the Amended SPA is made by E&Y as Monitor/LRO. In essence, the sealing order is requested because part of the purchase price is by way of a vendor take back mortgage. The Monitor is concerned that, if resort in future has to be taken to the vendors' mortgage remedies, public disclosure of the value paid for the Land Vehicle could impair the mortgagees' ability to maximize value on realization, to the detriment of all stakeholders involved.
- [123] Sealing orders of this nature are routinely made in CCAA and receivership proceedings to preserve the ability to maximize value in the future. Value maximization in insolvency proceedings is well recognized as a public interest worthy of protection which has minimal

public interest detriment under the *Sherman Estate* test. The sealing order is granted until the VTB mortgage is either discharged or otherwise resolved.

**Conclusion**

[124] The C&W motion for a declaration of entitlement to payment of commission on the Amended SPA transaction is dismissed. The request for a limited sealing order, redacting the pricing of the Amended SPA transaction, is granted.

**Costs**

- [125] Both sides made requests for costs in their factums. I stand to be corrected, but I do not recall this issue being addressed at the hearing of the motion.
- [126] If the parties are unable to agree on costs, both shall submit their cost summaries together with a brief written submission not to exceed two typed, double-spaced pages. E&Y shall do so within seven days; C&W shall have a further seven days to respond.

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Penny J.

**Date:** April 29, 2025