Court of Appeal for Saskatchewan
Docket: CACV4528

Citation: ***Millhouse Farms Inc. v De Lage Landen Financial Services Canada Inc.*, 2026 SKCA 21**

Date: 2026-02-05

2026 SKCA 21 (CanLII)

Between:

Millhouse Farms Inc. and Larry Millhouse

Appellants (Defendants)

And

De Lage Landen Financial Services Canada Inc.

Respondent (Plaintiff)

Before: Schwann, Tholl and Bardai JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Justice Lian M. Schwann
In concurrence: The Honourable Justice Jerome A. Tholl
The Honourable Justice Naheed Bardai

On appeal from: QBG-SA-01314-2020 (SKKB), Saskatoon
Appeal heard: November 28, 2025

Counsel: Dwayne Braun for the Appellant
Dustin Gillanders for the Respondent

Schwann J.A.

I. INTRODUCTION

[1] In 2018, Millhouse Farms Inc. [Millhouse Farms] and Larry Millhouse (collectively, [Millhouse]) entered into a five-year lease agreement [2018 Lease] with Tingley Implements Inc. [Tingley], a farm implement dealer in Saskatchewan, for three combines and six headers. Tingley assigned the lease to a financing company, De Lage Landen Financial Services Canada Inc. [DLL], that same year.

[2] The farm machinery covered by the 2018 Lease was delivered to Millhouse in July of 2018. In August of that same year, Millhouse made the first two of five installment payments required by the 2018 Lease and used the leased machinery to harvest its 2018 crop. Unbeknownst to DLL, Millhouse returned the leased equipment to the dealer, Tingley, in the fall of 2018. In the spring of 2019, much like it had done in previous years, Millhouse pursued a new lease with Tingley for newer equipment; however, Tingley declined to enter a new lease arrangement with Millhouse.

[3] Millhouse defaulted on its 2019 payment obligation under the 2018 Lease. That led DLL to commence an action in the Court of Queen's Bench (as the Court of King's Bench then was) to recover the deficiency under the lease. In due course, a Court of King's Bench judge granted summary judgment against Millhouse for $845,796.72, plus interest accruing from July 27, 2020, to the date of judgment: *De Lage Landen Financial Services Canada Inc. v Millhouse Farms Inc.* (10 March 2025), Saskatoon QBG-SA-01314-2020 (SKKB) [*Judgment*].

[4] Millhouse appeals from the *Judgment*. It argues the judge erred by relying on extrinsic evidence to interpret the lease and by not concluding that it was void for uncertainty. As I discuss below, I conclude there was a validly formed contract and that the judge did not err in finding the commencement date of the lease could be determined without proof of a signed certificate of acceptance. Accordingly, the appeal must be dismissed.

2026 SKCA 21 (CanLII)

II. BACKGROUND

[5] DLL is a credit agency. It works with farm implement dealers to provide credit and financial services for purposes of facilitating the sale or lease of farm implements. The judge described the DLL–dealer arrangement in this way: "Dealers propose transactions to DLL and DLL determines whether, and on what terms, they would be prepared to enter into the transaction" (*Judgment* at para 3). DLL approves the terms and conditions of proposed agreements between famers and implement dealers. After the parties execute the agreement, it is assigned to DLL.

[6] Mr. Millhouse, a Saskatchewan farmer, operates a large-scale farm. He is also the president of Millhouse Farms. In 2016, Millhouse entered into a retail sales contract and lease with Tingley for various pieces of farm machinery. The 2016 lease was assigned to DLL. Millhouse used the equipment to harvest its 2016 crop and then, with the consent of Tingley, sold the equipment to a different manufacturer through a buyback program. Millhouse adopted a similar strategy for 2017: once again entering into a retail sale and lease contract with Tingley for new farm machinery, which in turn was assigned to DLL. Like he had done in 2016, Millhouse traded in the 2017 farm machinery when the farm season ended.

[7] That pattern continued in 2018. On July 9, 2018, Millhouse entered into another lease agreement with Tingley respecting three combines and six headers. Mr. Millhouse, as the president of Millhouse Farms, became a co-lessee upon signing the "Co-Lessee Schedule", which was appended to the 2018 Lease. Pursuant to its terms, this made him "jointly and severally liable under the terms and conditions of this Lease including for all amounts due or becoming due under this Lease" (item 1, at p 2). Once again, the lease was assigned to DLL.

[8] The 2018 Lease is a two-page document that includes generic terms and conditions. Page one specifies the documents that were to be appended to it, which comprised the following schedules: payment schedule, an insurance authorization, certificate of acceptance, return/maintenance schedule, trade-in schedule, purchase option schedule, co-lessee schedule, insurance authorization equipment schedule, and an equipment schedule. The lease packet also included a copy of the standard lease terms and conditions specific to Saskatchewan. As will be discussed below, there was no evidence that the certificate of acceptance had been signed or returned to DLL by Millhouse. The legal significance of its absence was central to Millhouse's defence to DLL's action, as it is on appeal.

2026 SKCA 21 (CanLII)

[9] The 2018 Lease was for a term of five years. Upon its conclusion, Millhouse had the option of either purchasing the machinery outright, for $829,803.70, or returning it in accordance with the terms of the return/maintenance schedule (which set out the process for return and the fees for wear and tear or excessive use). The payment schedule stipulated the amount and date of the required payments Millhouse was required to make over the full term of the lease. It provides as follows:

Payment Date	Amount
15 July 2018	$210,000.00
15 August 2018	$42,587,14
15 July 2019	$426,459.40
15 July 2020	$426,459.40
15 July 2021	$426,459.40
15 July 2022	$426,459.40

[10] Although the certificate of acceptance was either not signed or signed but not returned to DLL by Millhouse, the evidence adduced by DLL on the summary judgment application established the following:

(a) the farm implements described in the 2018 Lease had been delivered to Millhouse by July 23, 2018;

(b) Millhouse paid Tingley the sum of $220,500 (consisting of the first two lease payments, less an adjustment in favour of Millhouse of $45,000 for the previous year’s trade-ins, plus GST); this was the only payment Millhouse made under the lease;

(c) Millhouse used the equipment to harvest its 2018 crop; and

(d) Millhouse returned the farm equipment to the Tingley premises in the fall of 2018 after its harvest was complete.

[11] Neither Millhouse Farms nor Mr. Millhouse challenged those facts.

[12] In the spring of 2019, Millhouse once again sought to negotiate a new lease purchase arrangement with Tingley. Those negotiations broke down because Tingley was not prepared to offer the same trade differentials to Millhouse as it had done in prior years.

2026 SKCA 21 (CanLII)

[13] Millhouse failed to make the July of 2019 payment as stipulated in the 2018 Lease payment schedule when it came due. Mr. Millhouse contended that he and Millhouse Farms had no further obligations to DLL under the 2018 Lease because of the impasse in their negotiations with Tingley and the fact that Millhouse had returned the farm implements to the dealer. At that point, DLL pursued a voluntary surrender agreement with Millhouse, which Millhouse refused to execute.

2026 SKCA 21 (CanLII)

[14] Those events led DLL to serve Millhouse with a notice of intent by secured creditor under s. 21 of the *Farm Debt Mediation Act*, SC 1997, c 21, notice to take possession of the farm implements, pursuant to s. 48 of *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1 [*SFSA*], and notice of intention to enforce security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

[15] In October of 2019, Millhouse applied to the Court of Queen's Bench for a hearing under s. 50 of the *SFSA*. A judge of that court determined that the 2018 Lease was a true lease and that s. 46 of the *SFSA* did not apply. An order to that effect issued on January 21, 2020.

[16] After issuance of the January 21, 2020, court order, DLL took possession of the farm implements (which were located on Tingley's sales lot) and arranged for them to be auctioned. The machinery eventually sold for $1,930,000. After deducting auction commission, fees, and expenses, the net sale proceeds of $1,736,255 were credited to Millhouse against the outstanding amounts owing under the 2018 Lease, leaving a total deficiency of $845,796.72.

[17] DLL commenced an action in the Court of Queen's Bench against Millhouse to recover the deficiency. Millhouse defended that action and brought a third party claim against Tingley and one of Tingley's employees. In April of 2022, DLL applied for a summary judgement of its claim.

III. THE *JUDGMENT*

[18] Millhouse defended against the summary judgment application by arguing the 2018 Lease was invalid for two reasons. First, it alleged that, because Tingley did not own the implements leased to Millhouse, the doctrine of *nemo dat quod non habet* (one cannot give what they do not have) applied to make the lease invalid. Second, Millhouse submitted that the certificate of acceptance was a fundamental term of the contract and that its absence created uncertainty about the commencement date of the 2018 Lease.

[19] The judge soundly rejected the *nemo dat* argument. Based on the evidence before him, he was satisfied that Tingley was indeed the owner of the farm equipment covered by the 2018 Lease and that the "invoices for these implements all indicate that the implements were sold to or billed to [Tingley] or its predecessor" (*Judgment* at para 45).

[20] Millhouse's second argument focussed on the significance of the missing certificate of acceptance. Millhouse argued the 2018 Lease was invalid because of the plain wording found on page 1 of the lease, which reads as follows: "This Lease shall commence on the Commencement Date (as set out in the Certificate of Acceptance)". Millhouse asserted the commencement date for the 2018 Lease was fixed by the receipt of an executed certificate of acceptance. It contended that, as an essential term of the lease, its absence meant that "the lease did not commence, the payment obligations remain unfixed so there can be no default of those obligations, and there is no proof as to the capacity in which [Millhouse] accepted the implements, that is, as a one-year rental or a five-year lease" (*Judgment* at para 49).

[21] DLL, in contrast, argued the existence of the certificate of acceptance was not, in and of itself, a term of the 2018 Lease: it simply operated to establish the date on which the lessee received the implements and when the lease payments became due. According to DLL, the fact that no signed certificate of acceptance was put into evidence was not fatal to its application.

[22] The judge rejected Millhouse's argument. He interpreted the lease to stipulate the commencement date as being the date of delivery to and acceptance of the farm implements by the lessee. The certificate of acceptance, he said, was merely proof that those things had occurred: "A signed Certificate of Acceptance is unequivocal evidence that the terms of a lease have commenced and makes it difficult for the parties to resile from the lease. But, if a Certificate of Acceptance was never signed, it does not mean the implement was never delivered and accepted, and that the lease did not commence" (at para 52).

[23] Conversely, the judge reasoned that the absence of a certificate of acceptance did not mean the implements were not delivered to or accepted by Millhouse such that the lease did not commence. He drew support for his conclusion from the following findings of fact:

2026 SKCA 21 (CanLII)

(a) the 2018 Lease was signed on July 10, 2018, by Tingley, and on July 12, 2018, by Mr. Millhouse on behalf of Millhouse Farms (as president) and as the co-lessee;

(b) Millhouse provided a cheque payable to Tingley in the amount of $220,500 on July 12, 2018;

(c) DLL contacted Mr. Millhouse on July 23, 2018, to confirm delivery of the machinery, and there was no evidence the implements were not in working order or not acceptable to Millhouse when they were delivered; and

(d) Mr. Millhouse confirmed that he had received the implements and used them for the 2018 harvest.

[24] Based on those findings, the judge inferred that the latest commencement date for the 2018 Lease was July 23, 2018, and that, since it occurred after the initial payment had been made, the terms of the 2018 Lease dictated that the payment dates should be adjusted: the next occurring on the first or the fifteenth of the month following the commencement date. Without saying so directly, the judge implicitly found the lease to be both valid and enforceable.

[25] As mentioned, the judge granted summary judgment in favour of DLL in the amount of $845,796.72, plus interest.

IV. ISSUES

[26] Millhouse asserts that the judge erred by improperly relying on evidence extrinsic to the 2018 Lease, by allowing that evidence to overwhelm the interpretation of the document, and by placing undue reliance on the factual matrix, which caused the judge to fail to grasp the *nemo dat* arguments it had made.

[27] In its factum and in oral submissions, Millhouse reframed the first ground of appeal and abandoned the *nemo dat* argument. As such, this appeal can be resolved by answering the following questions:

(a) Is the 2018 Lease a standard form contract?

2026 SKCA 21 (CanLII)

(b) Is the 2018 Lease of no force and effect because of a lack of acceptance?

(c) Is the 2018 Lease void for uncertainty?

(d) Did the judge err in his interpretation of the 2018 Lease?

I will deal with each issue in turn.

2026 SKCA 21 (CanLII)

V. THE STANDARD OF REVIEW

A. Standard form contracts

[28] Millhouse submits the 2018 Lease is a standard form contract, thereby attracting the correctness standard of appellate review in relation to the judge's interpretation of it. This is so, it says, because the document is reduced to writing, uses boilerplate language, and is identical to earlier versions of the lease arrangement that the parties had signed in 2016 and 2017.

[29] For appellate review purposes, the Supreme Court in *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 [*Sattva*], realigned the matter of contract interpretation from questions of law to questions of mixed fact and law. The Supreme Court concluded that, absent an extricable question of law – which continues to be reviewable on the correctness standard – appellate intervention is only warranted in the face of a palpable and overriding error: "Contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix" (at para 50). See also *Earthco Soil Mixtures Inc. v Pine Valley Enterprises Inc.*, 2024 SCC 20 at paras 27-28 [*Earthco*].

[30] The Supreme Court modified the *Sattva* approach several years later in *Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.*, 2016 SCC 37 [*Ledcor*]. Where the contract under interpretation is in standard form, appellate review employs the correctness standard. However, the *Ledcor* rule is not absolute. As discussed in *Earthco*, "where meaningful evidence of the factual matrix does exist and where there is a contract of 'utter particularity' due to a unique set of circumstances, the modern contractual interpretation approach from *Sattva* continues to apply" (at para 29).

[31] In *Mosten Investments LP v The Manufacturers Life Insurance Company (Manulife Financial)*, 2021 SKCA 36 [*Mosten*], leave to appeal to SCC refused 2021 CanLII 109595, 2021 CanLII 109580, 2021 CanLII 109579, this Court clarified how *Ledcor* should be applied. It is the factual matrix itself that informs whether a correctness review applies to standard form contracts (*Mosten*):

> [33] … The factors relevant to whether the correctness standard applies do not establish whether there are surrounding circumstances relevant to the interpretation of such a contract. It is the reverse; the existence or non-existence of a factual matrix or of circumstances surrounding contract formation <u>specific to the parties</u> to such a contract determines the standard of review. As we will explain, this is not to say that circumstances that are not specific to the contracting parties are irrelevant to issues of standard form contract interpretation. But, if the contract is in a standard form and there are no such surrounding circumstances, its interpretation may *have precedential value* and, therefore, the correctness standard of appellate review applies. If the contract is not in a standard form or there are circumstances surrounding its formation particular to the parties and that are relevant to the issue of interpretation, the standard of review—absent an "extricable" question of law—is palpable and overriding error.
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> (Underline emphasis in original, italic emphasis added)

[32] *Mosten* also examined the question of when a contract is standard form for appellate review purposes by adopting the following approach, as was carved out in *Ledcor*:

(a) "First, there must be an identical or a substantially identical form of contract language capable of standardised use by multiple, different parties" (*Mosten* at para 52);

(b) "Second, there must be no factual matrix that is specific to the parties to the contract and that is probative of the issue of contract interpretation" (at para 53); and

(c) "Third, the standard form contract must be one that has been or will be repeatedly entered into" (at para 54).

[33] Putting aside the classification of the contract at issue, *Mosten* also makes the important point that the standard of review does not turn on whether the contract *as a whole* qualifies as a standard form contract. Rather, the standard of appellate review is contingent on the issue or issues of interpretation raised on appeal:

2026 SKCA 21 (CanLII)

> [34] Although we have referred here to a standard form contract, we would emphasise that it is misleading to speak as if the question as to the applicable standard of review relates to the contract *as a whole*. The question is the applicability of a standard of review to the *issue* or *issues* of interpretation put before the appellate court. An issue may relate to the contract as a whole. It may relate only to a single clause that is itself in a standard form and that is not affected by the circumstances surrounding contract formation specific to the parties. The interpreting court may be faced with issues of interpretation that, on appeal, attract the correctness standard along with issues that attract the palpable and overriding error standard. With these considerations in mind, we have chosen to use the phrase *issue of standard form contract interpretation* in these reasons when speaking about the interpretation of standard form contract language in the absence of a meaningful factual matrix that is specific to the parties. To be clear, the terms of the contract as a whole, which must always be considered, may still affect an issue of standard form contract interpretation.
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> …
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> [57] … In our respectful opinion, referring to such contracts as "standard form contracts" for purposes of interpretation and determining the standard of review may be the source of some of the confusion referred to in the academic commentary. In our view, it is both preferable and more accurate to use the term "standard form contracts" in reference only to those contracts that, in their entirety, meet all three conditions described above. More specifically, it is preferable and more accurate to address contract interpretation on an issue-by-issue basis to determine whether each issue is an *issue of standard form contract interpretation*. Approached in this manner, a contract or contractual provision that has been modified or that is subject to interpretation based on a meaningful factual matrix specific to the parties to it is not a standard form contract at all and does not involve an issue of standard form contract interpretation.
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> (Emphasis in original)

[34] Before turning to the specific issues in this appeal, I will briefly address Millhouse's submission that the 2018 Lease is a standard form contract. Applying the *Ledcor* and *Mosten* framework, the following reasons support the conclusion that the 2018 Lease is not.

[35] DLL concedes that the 2018 Lease arguably meets the first prong of the *Mosten* test. It employs standardized language to facilitate the leasing of various types of farm equipment to multiple prospective lessees. The language is generic and, where necessary, a blank space is inserted for the parties to fill in specified information such as names, dates, and the farm implements under lease. Moreover, the 2018 Lease is capable for use by multiple parties looking to lease farm equipment from DLL. These features are largely consistent with a standard form contract.

2026 SKCA 21 (CanLII)

[36] That said, I am not satisfied the 2018 Lease clears the second stage of the *Mosten* test. There is undoubtedly a specific factual matrix probative of how it should be interpreted. The missing certificate of acceptance – and its role in how this agreement should be interpreted in its absence – is key. Indeed, it was a central issue on summary judgment and lies at the heart of this appeal. As I will touch on below, the absence of this schedule is central to issues of (a) whether a contract was formed, and (b) if the absence of this document creates uncertainty of contract. Put another way, it involves the question of interpreting a term (commencement date) in the absence of a schedule that alludes to that issue. A similar conclusion was reached on the question of a standard form contract, in the absence of certain clauses, in *Ter Keur Bros. Inc. v Last Mountain Valley (Rural Municipality)*, 2021 SKCA 55 at paras 40-41.

[37] I add, as well, that the payment schedule was specifically negotiated between Tingley and Millhouse and has some bearing on the interpretation of the commencement date, which is also relevant to the interpretive question. Further, contrary to Millhouse's argument, the evidence indicates that Tingley prepared the lease with input from DLL. Put another way, there is nothing to suggest that DLL imposed the wording on Millhouse.

[38] Lastly, apart from an identification of general principles of contract law, I am not persuaded that the interpretation of this particular contract offers any precedential value for other matters. The interpretative questions raised by Millhouse turn on its distinct factual context and are related to the circumstances at hand, these parties, and their agreement.

[39] In sum, the interpretation issues raised by Millhouse in this appeal will not be analyzed from the standpoint that the 2018 Lease is a standard form contract. The standard of review, rather, will turn on the nature of the issue or issues raised on appeal. Allegations of error in the interpretation of this contract attract the palpable and overriding error standard of review. An extricable question of law – such as "'the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor'" – will attract the correctness standard of review (*Sattva* at para 53, quoting *King v Operating Engineers Training Institute of Manitoba Inc.*, 2011 MBCA 80 at para 21).

2026 SKCA 21 (CanLII)

B. The standard of review for the issues on appeal

[40] On appeal, Millhouse takes the position that the judge erred in three ways.

[41] First, it says the absence of a certificate of acceptance necessarily means the contract was not accepted. What follows from that argument is the proposition that there was no validly binding contract. Second, Millhouse argues the 2018 Lease is void for uncertainty because the absence of the certificate of acceptance necessarily meant the lease did not commence, with the commencement date being an essential term of the lease. Without it, Millhouse argues, the payment obligations remained unfixed; and, in the result, there could be no default. And, since commencement is a fundamental term of the lease, Millhouse says its absence necessarily makes the lease void for uncertainty. Third, Millhouse contends the judge erred by tying the commencement of the lease to the date of delivery and acceptance of the machinery as opposed to receipt of an executed certificate of acceptance. This, it says, gives rise to a *Sattva*-type error because the judge improperly used the factual matrix to overwhelm the plain wording of the 2018 Lease and thereby created a new agreement.

[42] The first issue largely engages basic principles of contract law, including the question about whether the elements necessary for the formation of a contract have been established: *Sattva* at para 53 and *Curry v Athabasca Resources Inc*., 2024 SKCA 7 at para 31, leave to appeal to SCC refused 2024 CanLII 80689. The correctness standard of appellate review applies to such matters. However, to the extent the second and third issues engage questions about "the application of the appropriate legal standard to a set of facts", that is a matter "of mixed fact and law, reviewable for palpable and overriding error" (*Curry* at para 32). As quoted above, "contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix" (*Sattva* at para 50).

2026 SKCA 21 (CanLII)

VI. ANALYSIS

A. Principles of contract law

1. Contract formation

[43] Before addressing Millhouse's arguments, I will canvass the principles of contract law that are engaged on this appeal.

[44] The law with respect to the formation of a contract is settled: "A contract is formed where there is 'an offer by one party accepted by the other with the intention of creating a legal relationship, and supported by consideration'" (*Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga*, 2021 SCC 22 at para 35 [*Aga*], quoting *Scotsburn Co-op Services Limited v W.T. Goodwin Limited*, 1985 CanLII 57 at para 19, [1985] 1 SCR 54 (SCC)): see also *Achter Land & Cattle Ltd. v South West Terminal Ltd.*, 2024 SKCA 115 at para 41, leave to appeal to SCC refused 2025 CanLII 71474, and *AlumaSafway Inc. v The International Association of Heat & Frost Insulators and Asbestos Workes, Local 119*, 2022 SKCA 99 at para 48 [*AlumaSafway*].

[45] Determining whether a contract has been formed and, if so, its terms, calls for an objective approach. This requires a court "to examine 'how each party's conduct would appear to a reasonable person in the position of the other party'" (*Aga* at para 35, quoting *Owners, Strata Plan LMS 3905 v Crystal Square Parking Corp.*, 2020 SCC 29 at para 33).

[46] Millhouse puts in issue the question of whether there was acceptance. Acceptance has been defined as "an expression, through words or conduct, of a willingness to be bound by the terms contained in the offer" (footnotes omitted, Jason W. Neyers, ed, *Fridman's The Law of Contract in Canada*, 7th ed (Thomson Reuters, 2024) at s. 2:19, p 54 [Neyers]). Acceptance must be "clear, unambiguous and absolute" (*Ziola v Petrie*, 2021 SKCA 97 at para 45, citing *Harvey v Perry*, 1953 CanLII 64, [1953] 1 SCR 233 at 237 (SCC)). Where there is a written agreement, a court assesses if there is a "plain and unambiguous intention" expressed by the parties (*Ziola* at para 41). If there is, that usually ends the inquiry: *Central Service Station Ltd. v Newfoundland Light & Power Co.*, 1991 CanLII 7559 at para 16, 90 Nfld & PEIR 118 (NLSC). A court should not "make a new agreement for the parties as to which they themselves were never *ad idem*" (*Kelly v Watson*, 1921 CanLII 23 at p 483, 61 SCR 482 (SCC)).

2026 SKCA 21 (CanLII)

[47] Communication of acceptance by an offeree need not always be expressly conveyed in writing. As this Court outlined in *AlumaSafway*, the conduct of the parties, *in substantially performing the terms of the offeror*, can amount to acceptance:

> [53] The common law does not always require that acceptance be in express written terms. Acceptance may be found in the language or conduct of the offeree, if that language or conduct is sufficiently clear, unambiguous and absolute to objectively demonstrate an intention to create binding legal relations (see: *Aga* at paras 46-48). In that respect, conduct which, in the eyes of a reasonable observer, is unequivocally tied to the performance of a contract on the terms proposed by the offeror, may be treated as acceptance (see, for example: S*aint John Tug Boat* [1964 CanLII 88] at paras 17-18).

[48] That said, I recognize that an offeror may impose specific terms, spelling out how the way the contract must be accepted. This Court in *Humble Investments Ltd. v N.M. Skalbania Ltd.*, 1983 CanLII 2563 at para 25, 22 Sask R 81 (SKCA), leave to appeal to SCC refused (1983), 24 Sask R 240 (note), endorsed the following passage from *Manchester Diocesan Council for Education v Commercial and General Investments Ltd*., [1969] 3 All ER 1593 (ChD) (United Kingdom):

> [25] I adopt with respect the following principles enunciated by Buckley, J., in *Manchester Diocesan Council for Education v. Commercial and General Investments Ltd.*, [1969] 3 All E.R. 1593, at pp. 1597-1598 where he says:
>
> > The offer contained in the tender was to the effect that in the event of its being accepted in accordance with the conditions of sale on or before the day named therein for that purpose — and none was so named — the defendant would pay the price and complete the purchase. An offeror may by the terms of his offer indicate that it may be accepted in a particular manner. … *If an offeror intends that he shall be bound only if his offer is accepted in some particular manner, it must be for him to make this clear*.
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> (Emphasis added in *Humble Investments*)

2. Certainty of terms

[49] The focal point of Millhouse's appeal concerns the commencement date of the 2018 Lease, and its submission that the certainty of that date was essential to the contract.

[50] It is trite law that for an agreement to be enforceable, the parties must have reached agreement on all essential terms. A helpful summary of this principle is found in John D. McCamus, *The Law of Contracts*, 3d ed (Irwin Law, 2020) [McCamus], as follows (at p 97):

> In order for an agreement to be enforceable, the parties must have reached agreement on all the essential terms of their agreement. As is often said, the parties must make the agreement, the courts will not make it for them. Further, the parties "must so express themselves that their meaning can be determined with a reasonable degree of certainty"

2026 SKCA 21 (CanLII)

> (*Scammell and Nephew Ltd v Ouston*, [1941] AC 251). Where the parties either fail to reach agreement on all the essential terms of the agreement or express themselves in such fashion that their intentions cannot be divined by the court, the agreement will fail for lack of certainty of terms. In such circumstances, the parties have not reached a sufficient *consensus ad idem* to enable the courts to enforce their agreement.

2026 SKCA 21 (CanLII)

[51] McCamus identifies three aspects of the doctrine of certainty that often underpin arguments about a lack of certainty. As noted, this appeal engages one of them: an assertion that the parties' agreement suffers "from incompleteness in the sense that an essential term is simply not present" (at p 98).

[52] The identification of essential and non-essential terms is context-specific. So long as "the parties provide some *mechanism* or formula for generating the essential information as required, the contract will not fail" (emphasis added, Neyers at s 2:39, p 95). Further, the "parties must be able to determine their rights and obligations, to know what must be done and what can be demanded. Likewise, a judge must be able to determine whether a party has satisfied or breached the agreement" (at s 2:37, p 89).

[53] There is a tension "between a requirement that the parties reach a complete and intelligible agreement and a reluctance to defeat the expectations of the parties that an enforceable agreement has been created" (McCamus at p 98). Moreover, as McCamus points out, a rigid application of the doctrine can lead to mischief, especially where one party to the agreement has relied "on the assumption that a valid and enforceable agreement has been created" (at p 98). Furthermore, since contract law operates to facilitate, not frustrate, commerce, there is some judicial reluctance to declare a contract void for uncertainty: *Canada Square Corp. v VS Services Ltd.*, 1981 CanLII 1893, (1982) 130 DLR (3rd) 205 (ONCA) [*Canada Square*], and *Hillis Oil & Sales v Wynn's Canada*, 1986 CanLII 44, [1986] 1 SCR 57 (SCC). This sentiment is captured in the following passage from *Hunt River Camps / Air Northland Ltd. v Canamera Geological Ltd.*, 1998 CanLII 18009 at para 28, 517 APR 207 (NLCA), where the Newfoundland and Labrador Court of Appeal said as follows:

> [28] The Court will generally take a broad view of the dealings between the parties with a view to making an objective determination of their reasonable common expectations and within that framework will strive to give effect to them by using all reasonable means to advance, rather than frustrate, the commercial intent. In other words, the court will attempt to give meaning to what the parties tried to do once it is satisfied that the parties intended to make an agreement.

[54] Finally, building on my earlier comments, there is law to the effect that "[w]hen courts find that there has been an agreement on essential terms, they will often imply non-essential terms into the agreement" (*Apotex Inc. v Allergen, Inc.*, 2016 FCA 155 at para 33). Said another way, while a court cannot make a new agreement, it "will nevertheless be reluctant to hold the apparent agreement void on grounds of uncertainty but will strive to give meaning and effect to the bargain contemplated by" the parties (*McCabe v Verge*, 1999 CanLII 18936 at para 17, 554 APR 135 (NLCA)): similarly, see McCamus at p 98.

2026 SKCA 21 (CanLII)

B. The 2018 Lease was properly formed and is not void

1. Contract formation

[55] In the Millhouse factum, although housed in a discussion about the standard of review, it framed its argument in this way: "The Certificate of Acceptance goes to the heart of the acceptance requirement, so if the trial judge erred in his decision regarding this fundamental requirement, it is almost certainly an extricable question of law"; and then, later on, Millhouse states, "The trial judge has effectively made a new agreement between the parties when it comes to the issue of that fundamental requirement *of the formation of a contract, that being acceptance*" (emphasis added).

[56] The judge's reasons do not seem to engage with the threshold question of whether a valid contract had been formed. The absence of any reasoning on this point is likely because Millhouse never put that matter squarely into issue at the time of the summary judgment hearing. In fact, at the appeal hearing, Millhouse agreed that a valid contract had come into existence but contended that the absence of the certificate of acceptance made it void for uncertainty. Before turning to the certainty of contract issue, I will briefly touch on why a contract undoubtably came into existence in this case.

[57] As noted above, Millhouse framed the issue as a lack of acceptance.

[58] To start, there is nothing in the 2018 Lease that stipulates how Millhouse was to accept it, let alone elevating the certificate of acceptance as the means by which Millhouse had to express its acceptance and agree to be bound by its terms. Further, consistent with the law of contract, the conduct of the offeree – how they responded or performed with respect to the terms – may demonstrate an intention to create binding legal relations.

[59] Viewed through the eyes of an objective observer, Millhouse's actions demonstrate a manifest intention to be bound by the 2018 Lease. The judge's findings of fact (identified in paragraph 23 of these reasons) support this conclusion.

[60] Not only was that body of evidence uncontroverted, but Mr. Millhouse himself deposed to similar effect in his November 25, 2019, affidavit, filed in the summary judgment application.

[61] Millhouse's argument that completion of the certificate of acceptance was necessary for there to be acceptance of the parties' agreement is plainly contradicted by its partial performance of the 2018 Lease, including the fact that Millhouse took possession of the farm implements.

2026 SKCA 21 (CanLII)

2. Void for uncertainty

[62] As mentioned, Millhouse's primary argument is that, even if the parties had a mutual intention to enter into contractual relations, they failed to agree on an essential term of the contract: the commencement date. This argument flows from the idea that the commencement date is an essential term of the 2018 Lease and that the certificate of acceptance expresses when the lease was to commence. It follows, says Millhouse, that the absence of the certificate of acceptance made the 2018 Lease void for uncertainty.

[63] The judge agreed with Millhouse's basic premise, stating as follows: "A commencement date is an invariable requirement for a valid lease" (*Judgment* at para 49). However, he determined that the production of a signed certificate in specie was not in and of itself a term of the 2018 Lease. Rather, as he said, it was "simply a document that establishes the date upon which the lease payments set out in the payment schedule become due" and "confirms that the implements have been delivered, accepted and are properly functioning" (at para 51). In other words, the judge saw the purpose of the certificate of acceptance to be no more than "unequivocal evidence that the terms" of the lease had commenced (at para 52). In the context of Millhouse's position, it meant production of the certificate was not necessary because commencement turned on the mechanism described in the lease: that being the date of delivery and acceptance of the machinery.

[64] In the face of those findings, Millhouse asserts the judge erred by ignoring the intention of the parties and impermissibly allowing the commencement date to be established in a way that was not contemplated by the specific terms of the contract.

2026 SKCA 21 (CanLII)

a. The modern approach to contractual interpretation

[65] Before turning to the discreet arguments posed by Millhouse, I find it useful to begin with a summary of the modern approach to contractual interpretation.

[66] In *Sattva*, the Supreme Court established what is now recognized as the modern approach to the interpretation of contracts. Central to the interpretive exercise are the words chosen by the parties. Decision makers "must read the contract as a whole giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of contract formation" (at para 47). However, the words of the contract cannot be read in isolation: "In furtherance of the court's goal of understanding the mutual and objective intentions of the parties as expressed in the contract, the factual matrix must be considered when construing contractual provisions" (*Pinnacle International (One Young) Ltd. v Torstar Corporation*, 2024 ONCA 755 at para 61).

[67] Although the interpretation of a written contract must always be grounded in the text and read in light of the entire contract, an examination of the surrounding circumstances serves a valuable purpose, which is "to deepen a decision maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract" (*Sattva* at para 57). Objective evidence of the factual matrix is limited to "the background facts at the time of the execution of the contract", which consists of anything that would have affected the way in which the language of the contract should be understood by a reasonable person. Finally, "[w]hether something was or reasonably ought to have been within the common knowledge of the parties at the time of execution of the contract is a question of fact" (at para 58).

[68] These principles were affirmed in *Earthco*. In dissent (but not on this point), Coté J. offered this summation of the current law:

> [160] To interpret a written contract, a reviewing court must give the words used in the contract "their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract" (*Sattva*, at para. 47). The goal of this exercise is to ascertain the objective intentions of the parties, that is, to determine what the parties reasonably understood the words to mean at the time. The surrounding circumstances serve to "deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract" (para. 57).

[69] Although *Sattva* allows for the factual matrix to be used to interpret ambiguous language in a contract, those circumstances cannot overwhelm the terms of the parties' agreement. Further, as suggested by the jurisprudence, the scope of what constitutes a surrounding circumstance does not include *subsequent* conduct. This is so because, strictly speaking, subsequent conduct is not part of the factual matrix at the time that the parties entered into the contract: see *Mosten* at paras 134, 180, *Jans Estate v Jans*, 2020 SKCA 61 at paras 47-48, and *Shewchuck v Blamont Capital Inc.*, 2016 ONCA 912 at paras 41-50.

2026 SKCA 21 (CanLII)

b. No error in the interpretation of the 2018 Lease

[70] The following aspects of the 2018 Lease are relevant to this issue (at p 1-2):

LEASE TERM	**LEASE TERM (IN MONTHS)** 60	**COMMENCEMENT DATE**. This Lease shall commence on the Commencement Date (as set out in the Certificate of Acceptance) and shall continue until the last day of the last month of the Lease Term, and for the purposes of the Lease, the "Lease Term" shall include any extensions or renewals of this Lease.
LEASE PAYMENT AND DATES	Lessee agrees to pay the lease payments set out in the Payment Schedule attached hereto, plus applicable taxes, payable in advance on each "Payment Due Date" set out in the Payment Schedule, provided the Commencement Date occurs prior to the first "Payment Due Date". In the event the Commencement Date occurs after the first "Payment Due Date", the initial "Payment Due Date" shall be adjusted to the next occurring 1st or 15th day of a month following the Commencement Date, and each subsequent "Payment Due Date" shall be adjusted by the same number of months as the initial "Payment Due Date" and shall each be due on the same day of the month (either the 1st or 15th) as the initial payment (the "**Lease Payments**").	

…

TERMS AND CONDITIONS

IN CONSIDERATION of the mutual covenants contained herein, the parties agree as follows:

…

3. ENTIRE LEASE AGREEMENT. THIS LEASE INCLUDING ANY SCHEDULES SPECIFIED ABOVE ("Schedules") AND THE STANDARD LEASE TERMS AND CONDITIONS (SASKATCHEWAN) … CONSTITUTE THE ENTIRE AGREEMENT BETWEEN LESSOR AND LESSEE RELATING TO THE LEASE OF THE EQUIPMENT and supersedes all prior agreements or understandings, oral or written, with respect thereto and shall not be modified or amended except by *written agreement signed by the parties*. Any Schedules and the Standard Lease Terms are hereby incorporated into this Lease by this reference. *This Lease shall not become binding upon the Lessor until accepted in writing by Lessor as evidenced by the signature of a duly authorized person of Lessor in the space provided below*. Lessee agrees that any photocopy, faxed copy or other reproduction of this Lease as executed by Lessee shall be binding on Lessee to the same extent as an originally executed version of this Lease, and Lessor's photocopy, faxed copy or reproduction of this Lease may be used by Lessor in any court proceeding.

…

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the day and year first above written. **LESSEE ACKNOWLEDGES THAT LESSEE HAS READ, UNDERSTOOD AND AGREES TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS LEASE, ANY SCHEDULES AND THE STANDARD LEASE TERMS** … .

(Bold emphasis in original, italic emphasis added)

[71] To begin, contrary to Millhouse's position, the commencement date is differentiated from the effective date of the 2018 Lease, that being July 9, 2018. As noted above, the parties agreed to be bound when it was "accepted in writing by Lessor as evidenced by the signature of a duly authorized person of Lessor in the space provided below". The plain meaning of this wording is that it becomes binding on execution. Put another way, the lease does *not* stipulate that it is to take effect and bind the parties on the date when the certificate of acceptance is signed or submitted (or both) to Tingley or DLL.

[72] I offer two reasons why the judge's interpretation also aligns with the wording of the term entitled "Commencement Date". First, as is plain from the text of this agreement, its objective is to trigger when payments begin for purposes of the "Lease Payments and Dates" and "Lease Term" clauses. Put more directly, it is tied to the payment schedule for the lessee. Second, if the commencement date was to be linked to receipt of a signed certificate (which appears to be something solely within the control of the lessee), the following wording, or wording to the same effect, would have been expected: "This lease shall commence on the date the Certificate of Acceptance is signed and delivered to the Lessor". But it does not.

[73] Millhouse submits *Seven Oaks Inn Partnership (Best Western Seven Oaks) v Directcash Management Inc.*, 2013 SKQB 342, aff'd 2014 SKCA 106 [*Directcash*], lends support to its argument that the judge conflated the concept of acceptance of the equipment with the commencement date of the lease. These are two separate matters: Millhouse's acceptance of the farm machinery cannot override the plain wording of the lease.

[74] In *Directcash*, the owner of an ATM machine – Directcash Management Inc. – installed an ATM at a Best Western location one month before the parties' agreement was signed. This timing was important when it came to the renewal of the contract because that rested on the commencement date of the initial five-year term. The central issue before the trial judge was the commencement date of the contract because the initial term determined whether the contract was automatically renewed for an additional five-year term.

2026 SKCA 21 (CanLII)

[75] In my view, *Directcash* does not assist Millhouse; if anything, it supports DLL's position that the 2018 Lease differentiated between the effective date and commencement date, which, on its own, does not make the lease uncertain. The trial judge in *Directcash* framed the question before him as turning on an interpretation of the parties' agreement, which stipulated that it became binding on a specified date. Yet the question the trial judge was asked to resolve was whether the initial term of the contract had commenced one month beforehand, when the ATM was installed. The trial judge concluded the wording of the contract at issue contemplated the possibility that the effective date and commencement date could be different. As noted above, that was the case here as well.

2026 SKCA 21 (CanLII)

[76] The lack of a specified commencement date in a lease, where it is predicated on specific contingencies, has been found to be an insufficient basis to invalidate the parties agreement: see *Canada Square*; *Cedar Investments Ltd. v Koehler*, 1985 CanLII 2393, 40 RPR 75 (SKQB); and *1252668 Ontario Inc. v Wyndham Street Investments Inc*. (1999), 27 RPR (3d) 58, [1999] OTC 692 (ONSC), leave to appeal to ONSCDC granted (in Chambers), 1999 CarswellOnt 3348, [1999] OTC Uned 693 (ONSC).

[77] In addition, although the judge placed little weight on the wording of the certificates of acceptance contained in the 2016 and 2017 leases, in the context of Millhouse's *nemo dat* argument (see the *Judgment* at para 41), the text of the 2017 document was considered. At the time of the appeal hearing, the parties agreed that it could be inferred that the 2018 certificate of acceptance was worded in the same way as it had been in the 2016 and 2017 leases. The text of the 2017 certificate of acceptance, identified as "Contract No. R034243", stipulates as follows:

> 1. Creditor and Obligor have heretofore entered into Contract No. R034243 (the "**Contract**"). The Contract provides for the execution and delivery of a Certificate of Acceptance substantially in the form hereof for the purpose of confirming the unconditional acceptance of the equipment described in the Contract (the "**Equipment**") in accordance with the terms thereof and hereof. Unless otherwise defined herein, capitalized terms used herein shall have the same meanings specified in the Contract.
>
> 2. Obligor (and Co-Obligor, if applicable) hereby certify(ies) and agree(s) that:
>
>> a) Obligor has selected the manufacturer(s) and supplier(s) of the Equipment;
>>
>> b) The Equipment is situated at the location(s) set out in the Contract;

> c) The Equipment has been assembled and installed, is ready for use, is in good working condition and is satisfactory for all of the Obligor's purposes;
>
> d) Obligor has accepted delivery of the Equipment for all purposes on the 12 day of Aug, 2017: (the "**Commencement Date**");
>
> e) Obligor hereby approves and authorizes payment to be made by Creditor to the supplier of the Equipment; and,
>
> f) A facsimile copy of this Certificate of Acceptance as executed by Obligor and Co-Obligor (if applicable) may be treated as an original and will be admissible as evidence of this Certificate and Obligor's and Co-Obligor's (if applicable) acceptance of the Equipment.

(Bold and underline notation in original, delivery date in (d) had been hand-written in)

[78] Millhouse says clause 2(d) (quoted immediately above) – which contains a space for the date to be filled in – is indicative that the purpose of the certificate of acceptance is to denote when the lease commences. While it is fair to say that the purpose of clause 2(d) of the certificate of acceptance is to establish and confirm the date of equipment delivery, in my view, it cannot be read as eliminating the possibility that the parties had agreed to *other* methods for determining the commencement date. Read together with the balance of the certificate, wording which all relates to payment and acceptance of equipment, a reasonable interpretation is that the parties tied the commencement date of the 2018 Lease to the date of substantial completion of those conditions. That is exactly what the judge said.

[79] Millhouse also focuses on clause 2(f), which is to be read in conjunction with clause 1. Clause 2(f) provides that the certificate of acceptance is to be "executed by [the] Obligor", with clause 1 stating the expectation that the "execution and delivery" is to be "substantially in the form hereof for the purpose of confirming the unconditional acceptance of the equipment described in the Contract". While I agree that this wording provides some basis to argue that delivery of the certificate is required, the reason for its existence also suggests another purpose: to confirm delivery and acceptance of the machinery. In other words, the purpose is larger than what Millhouse's narrow interpretation would accommodate.

[80] To conclude on this point, while useful in being objective evidence of the parties' prior conduct, the 2017 certificate is not determinative of the interpretation question and, even if it were significant, it does not lend credence to Millhouse's argument.

2026 SKCA 21 (CanLII)

[81] In the result, the judge's determination (i.e., that the certificate of acceptance simply established the date on which the lease payments became due) is not tainted by a palpable and overriding error. In short, the commencement date had crystalized. His interpretation flowed from that voiced in *Earthco*:

> [95] … A flexible approach, focused on the objective intention of the parties, will allow courts to give effect to the parties' bargain while taking into account the nature of the contract and the contracting parties, what the parties would have reasonably understood their words to mean and to ensure the parties' objective intention is not thwarted by strict rules of interpretation and to control for unfairness by unconscionability and public policy considerations.
>
> …
>
> [97] … commercial certainty is best served by the law giving effect to their actual bargain. Searching for the parties' objective intention furthers that purpose, whereas an overly technical and legalistic interpretation of exclusion clauses does not.

[82] Finally, even if Millhouse is correct that production of the signed certificate of acceptance was required for the lease to commence, that does not inexorably lead to the conclusion that the 2018 Lease is void for uncertainty. Millhouse's preferred interpretation represents a rigid application of the doctrine of certainty and ignores the jurisprudence which, generally speaking, holds that (a) a lease will not fail if the terms of a contract allow for the missing term to be discerned by a court, and (b) the current judicial tendency is to give effect to the parties' expectations that they had entered into a valid and enforceable contract.

[83] As I indicated above, Millhouse's narrow interpretation of the commencement date is not in line with the wording of the 2018 Lease. The lease provides that it shall commence on the "Commencement Date (as set out in the Certificate Of Acceptance)". Although the lease refers to and incorporates the certificate of acceptance – and, as such, that document plays a role in how the parties are to ascertain the commencement date – it does *not* say that the lease commences when the certificate is signed and an executed copy is delivered. Moreover, it describes the purpose of the certificate as "confirming the unconditional acceptance of the equipment described in the Contract". Payments under the lease were to commence after the delivery of the machinery. The fact that the delivery and acceptance were communicated to DLL verbally, and not in the form of a physical certificate of acceptance, is not determinative.

2026 SKCA 21 (CanLII)

[84] Neither is the Millhouse interpretation in line with how a rational, objective observer would construe the meaning of the 2018 Lease's commencement date. Simply put, Millhouse's interpretation does not comport with the overarching objectives of the parties to facilitate the leasing of machinery for the harvest season and to confirm delivery of acceptable machinery.

[85] In summary, the absence of an actual signed certificate of acceptance did not make the 2018 Lease uncertain as the wording of the certificate offers a mechanism for the parties to ascertain the commencement date of payments. Put in *Sattva* terms, the judge can be taken to have adopted an interpretation of a commencement date that fits with the "nature of the relationship created by the agreement" (at para 48).

2026 SKCA 21 (CanLII)

c. The *Sattva* error was inconsequential

[86] Next, Millhouse claims the judge committed a *Sattva*-type error by relying on the factual matrix in a way that overwhelmed the wording of the 2018 Lease.

[87] I agree with Millhouse to this extent: in the judge's interpretation of the lease, he seemingly relied on surrounding circumstances that post-dated its execution. For example, he referred to the fact that Millhouse had made the first two payments under the lease and used the machinery for its 2018 harvest. Reliance on those facts in the interpretative exercise constituted an error of law.

[88] However, despite the judge's error, I do not see it as a basis to set aside the *Judgment*. I say this because, apart from that legal error, there is no palpable and overriding error in the way in which the judge interpreted the 2018 Lease, and it has no effect on the outcome of this appeal in any event. As the Supreme Court discussed in *Sattva*, when called upon to interpret a contract, judges are entitled to consider the objective evidence of the background facts at the time of its execution. This includes "[k]nowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting" (at para 58). In the context of the matter at hand, that included the parties' understanding of their mutual intentions derived from the 2016 and 2017 leases. None of this was unknown to the parties.

2026 SKCA 21 (CanLII)

d. Millhouse's executory-contract argument fails

[89] In oral submissions made at the time of the appeal hearing, Millhouse argued that, although a contract had been formed, it remained executory until such time as the certificate of acceptance was signed and delivered to Tingley.

[90] Not only does this appear to be a new argument on appeal, it was not pleaded by Millhouse in its statement of defence. Even if I were to overlook these obvious shortcomings, I am not persuaded this argument is of any assistance. In B.A. Garner, ed, *Black's Law Dictionary*, 12th ed (Thomson Reuters, 2024) "executory contract", the following definition on *executory* is provided: "A contract that remains wholly unperformed or for which there remains something still to be done on both sides, often as a component of a larger transaction and sometimes memorialized by an informal letter agreement, by a memorandum, or by oral agreement".

[91] I am doubtful that the 2018 Lease can be properly characterized as executory in nature for two reasons: Millhouse concedes there was a validly written contract signed by both parties and the 2018 Lease was partly performed by both sides – i.e., the farm implements specified in the lease were delivered to Millhouse, Millhouse made the first two payments required by the terms of the 2018 Lease, and those implements were used by Millhouse for its 2018 harvest.

[92] Further, executory contracts typically arise in connection with the doctrine of part performance and relief from the application of the *Statute of Frauds*, RSNB 1973, c S-14. It proceeds in circumstances where "acts done by the respondent in performance of the agreement [would be] sufficient to take it out of the operation of the *Statute of Frauds* and that [the contract] ought to be specifically enforced" (*Deglman v Guarantee Trust Co. of Canada*, 1954 CanLII 2, [1954] SCR 725 at para 12 (WestLaw) (SCC)). Where relief from the strictures of that legislation is unavailable (meaning the contract will not be enforced), plaintiffs often pursue payment for services rendered on a *quantum meruit* basis (i.e., on the amount earned or deserved, rather than the full performance).

[93] Millhouse cites no case authority for the proposition that concepts of executory contract and *quantum meruit* can be used as a shield in defence of an action to enforce a validly written agreement.

[94] I would give no effect to this argument.

3. Conclusion on void for uncertainty issue

[95] The judge, correctly in my view, concluded that the party's intention with respect to the commencement date had to be discerned from the wording contained in the 2018 Lease, objectively understood in the context of the surrounding circumstances when they made the contract. I see no palpable and overriding error in how the judge interpreted the 2018 Lease. He was alive to its text, having referred to the payment terms and discussed the factual matrix of the parties, by appropriately referencing their conduct (but for the inconsequential *Sattva* error discussed above).

[96] Although his analysis was brief and did not refer to the guiding principles of contract law or contractual interpretation, in the end result he did not run afoul of the operating legal principles nor is the decision tainted by any palpable and overriding error.

VII. CONCLUSION

[97] I would dismiss the appeal with costs to DLL in the usual way.

"Schwann J.A."
Schwann J.A.

I concur.

"Tholl J.A."
Tholl J.A.

I concur.

"Bardai J.A."
Bardai J.A.

2026 SKCA 21 (CanLII)