

CITATION: GG Kingspa Enterprises Limited Partnership v. 1107051 Ontario Ltd., 2026 ONSC 4442

COURT FILE NO's.: CL-26-00000235-0000 & CL-26-00000280-0000

DATE: 20260804

ONTARIO

SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

BETWEEN:

GG KINGSPA ENTERPRISES LIMITED
PARTNERSHIP and GG YSC LIMITED
PARTNERSHIP

Applicants

– and –

1107051 ONTARIO LTD., KINGSPA GGT
INC., KINGSPA INC., YONGE- CLAIR
PROPERTIES INC., GGT CLAIR INC.,
YSC PROPERTIES INC., GGT CLAIR II
INC. and YSC II PROPERTIES INC.

Respondents

*Brendan F. Morrison, Jonathan Mertz
Meghan Bridges, for the GG Kingspa
Enterprises Limited Partnership and GG YSC
Limited Partnership (“Great Gulf” or the
“Great Gulf Parties”)*

*James W.E. Doris, Maria Naimark &
Martina Bellisario, for 1107051 Ontario Ltd.,
Kingspa GGT Inc., Yonge-Clair Properties
Inc., GGT Clair Inc., YSC Properties Inc.,
GGT Clair II Inc. and YSC II Properties Inc.
 (“Terracap or the Terracap Parties”)*

AND BETWEEN:

1107051 ONTARIO LTD., YONGE-
CLAIR PROPERTIES INC., KINGSPA
GGT INC., KINGSPA INC., GGT CLAIR
INC., YSC PROPERTIES INC., GGT
CLAIR II INC., and YSC II PROPERTIES
INC.

Applicants

– and –

GG KINGSPA ENTERPRISES LIMITED
PARTNERSHIP and GG YSC LIMITED
PARTNERSHIP

Respondents

HEARD: July 6, 2026

KIMMEL J.

The Applications

[1] These two applications¹ each seek to enforce (and require the performance by the opposite parties of) Minutes of Settlement dated September 22, 2025 (the “Minutes of Settlement”) that were entered into after more than five years of litigation, just prior to the set commencement date of a four-week trial.

[2] The Minutes of Settlement were the product of extensive negotiations between sophisticated counsel and parties. They were entered into after robust judicial mediation, first by Morawetz C.J.S.C. (between March and August 2025), followed by multiple pre-trial conferences before me held on September 9, 12, 15, and 16, 2025. To avoid further litigation delays if issues were to arise out of the Minutes of Settlement, the parties agreed and asked the court to approve the inclusion of para. 17 in their Minutes of Settlement, which provides that either me² or another designated judge sitting on the Commercial List has the exclusive jurisdiction “... to adjudicate any disputes arising out of the interpretation, application or performance of, or the legal obligations created by, these Minutes of Settlement.”

[3] When these applications were commenced, the parties jointly requested that I adjudicate the issues raised by each side in their respective applications on the basis that they arise “out of the interpretation, application or performance of, or the legal obligations created by, these Minutes

¹ Great Gulf’s application was commenced first. Terracap brought a second application, and the two were timetabled on the basis that they were reciprocal or mirror image applications that would be heard together. At the hearing on July 6, 2026, the court signed an order to that effect.

² Given my role as pre-trial judge, I was only prepared to agree to the inclusion of this paragraph in the Minutes of Settlement (at the parties’ request) upon their further agreement to the following: “The Parties acknowledge that Justice Kimmel acted as the pre-trial judge for this Action over the course of four pre-trial conferences and that Justice Kimmel received without-prejudice communications and settlement privileged positions from and between the Parties prior to and during those pre-trial conferences. The Parties have been advised by their counsel of the risks and benefits of submitting to the exclusive jurisdiction of Justice Kimmel in light of her role as the pre-trial judge, and expressly consent to Justice Kimmel having jurisdiction as set out in this paragraph. The Parties expressly agree that they will not hereafter take the position that Justice Kimmel is in any way prevented from having jurisdiction in the manner set out in this paragraph or from making any decision arising from that assumption of jurisdiction because of her role as the pre-trial judge, her receipt of confidential information from the parties in the course of the settlement negotiations, her knowledge of the without-prejudice offers exchanged between the parties, or for any other reason.”

of Settlement.” The hearing was expedited and I have tried to prioritize the release of this decision because these parties need to move forward with their separation of interests. They began litigating, first by arbitration in 2020, then by formal court proceedings commenced in 2022 that was eventually settled by the Minutes of Settlement signed in 2025, only to find themselves right back in court again in 2026 on these enforcement applications.

[4] These prime Toronto development sites have been sitting in limbo for far too long due to the inability of the parties to agree on anything from the outset of their partnership, which began in 2018. This same sentiment was expressed by Black J. in *1107051 Ontario Ltd., et al. v. GG Kingspa Enterprises Limited Partnership, et al.* (February 28, 2024), Toronto, CV-22-00688162-00CL, CV-22-00685894-00CL, CV-22-00685891-00CL (S.C.) (denying a motion to strike certain claims brought by the Terracap parties), when he stated, at para. 96: “I find that it is time for the parties to get on with the litigation. It is not in anyone’s interests to allow the claims to languish further while the Projects remain dormant.” This is a sentiment that is even more compelling now, almost 2.5 years later when the parties finally settled and yet have still been unable to disentangle themselves.

[5] The parties jointly own two properties under a co-tenancy arrangement. The co-tenancy was intended to be for the joint ownership and development of two properties located in Toronto, one at the South East corner of Yonge and St. Clair (“YSC”), and the other on the South-East corner of King St. W. and Spadina Ave (“Kingspa”). The Minutes of Settlement provided for the timely and complete separation of the parties’ business relationship, through a division of the two properties. In the Minutes of Settlement:

- a. Terracap agreed to buy YSC on terms that were settled in a form of agreement of purchase and sale that was appended to the Minutes of Settlement.
- b. The parties agreed to a 3-stage process for the marketing and sale of Kingspa, the third stage of which (if no sale materialized under either Stage 1 or 2) is a Backstop Purchase (as defined in paragraph 2 (k) of the Minutes of Settlement), by Great Gulf, at a set price.
- c. The closing of the YSC purchase is triggered by the closing of the Kingspa purchase.

[6] A dispute has arisen in connection with the backstop purchase of Kingspa by Great Gulf, which has delayed both intended transactions under the Minutes of Settlement.

[7] The Great Gulf parties request an Order:

- a. directing 1107051 Ontario Ltd. (“110”) to:
 - i. Execute the Backstop APS (attached as Schedule “A” to the Notice of Application), and comply with its terms;

- ii. Take all steps necessary to close the Backstop Purchase within 30 days of entering into the Backstop APS; and
 - iii. Comply with all other obligations in the Minutes of Settlement;
- b. directing Yonge-Clair Properties Inc. (“Yonge-Clair”) to:
 - i. Pay the Financing Payment (pursuant to paragraph 1(a)(iv) of the Minutes of Settlement) of \$100,000 per month (pro-rated for partial months) for each month beyond February 4, 2026;
 - ii. Take all steps necessary to close the YSC APS (defined below); and
 - iii. Comply with all other obligations in the Minutes of Settlement; and
- c. dismissing the application of the Terracap Parties; and
- d. awarding them their the costs of the applications, plus all applicable taxes.

[8] Conversely, Terracap seeks an Order:

- a. requiring the Great Gulf Parties to comply with the Minutes of Settlement by extending the Public Marketing Period for the Kingspa Assets (defined below) by a period of not less than 51 days, or such other period as the court may deem just;
- b. declaring that the Financing Payment of \$100,000 per month (pro-rated for partial months) otherwise payable by Yonge-Clair pursuant to paragraph 1(a)(iv) of the Minutes of Settlement is waived, reduced, or deferred for any period during which the closing of the sale of the Kingspa Assets has been delayed as a result of the conduct of GG Kingspa and the Great Gulf Parties;
- c. In the alternative to sub-paragraph (b), an Order that the Financing Payment shall only accrue from the date on which the Kingspa Assets close, not from any period attributable to delay caused by the Great Gulf Parties;
- d. declaring that the 50% share of the costs, expenses and taxes for the Kingspa Assets otherwise payable pursuant to paragraph 2(m) of the Minutes of Settlement shall be waived for any period during which the closing of the sale of the Kingspa Assets has been delayed as a result of the conduct of the Great Gulf Parties³;

³ Great Gulf properly points out that this head of relief was not sought expressly in Terracap’s Notice of Application. It is sought in Terracap’s factum filed on this motion.

- e. dismissing the application of the Great Gulf Parties; and
- f. awarding them their costs of the applications, plus all applicable taxes.

The Minutes of Settlement

[9] The Minutes of Settlement provide that:

- a. Terracap will purchase the YSC Property for \$21,150,000.00, plus HST, pursuant to a form of agreement of purchase and sale that the parties settled when the Minutes of Settlement were signed and appended thereto (the “YSC APS”), in a transaction that will close two days after the closing of the Kingspa transaction; and
- b. The Kingspa property is to be sold pursuant to a sequential auction process culminating, if necessary, in a mandatory Backstop Purchase by Great Gulf at \$21,250,000, on substantially the same terms as the Terracap’s acquisition pursuant to the YSC APS. The Backstop Purchase must be completed within strict, non-extendable deadlines: 10 days to execute an agreement of purchase and sale, followed by 30 days to close.

[10] For the sale of Kingspa, the Minutes of Settlement provided for a three-stage process that would determine the ultimate form that the Kingspa transaction would take:

- a. Stage 1: Sale to Fitzrovia Real Estate Inc. (“Fitzrovia”) at a minimum price of \$52,000,000 plus HST, with an agreement of purchase and sale to be secured within 21 days and with the closing to occur by June 1, 2026 (the “Initial Marketing Period”);
- b. Stage 2: If the sale to Fitzrovia in Stage 1 is not successful, then a sale to the highest bidder on the open market for no less than \$42,500,000 plus HST, with a binding agreement of purchase and sale to be secured by March 2, 2026 through a process facilitated by Jones Lang LaSalle (“JLL”) as broker, and with the closing to occur by June 1, 2026, subject to the limited deadline extension mechanism in paragraph 2(j) of the Minutes of Settlement. JLL was required to list Kingspa for sale on the open market within 45 days of being retained. The Terracap Parties were permitted to be a bidder in this open market process during the Public Marketing Period. The Great Gulf Parties were not.
- c. Stage 3: Great Gulf would complete the “Backstop Purchase” and buy Terracap’s interest in Kingspa for \$21,250,000.00, plus HST, on the substantially same terms as the YSC APS for Terracap’s acquisition of YSC (appended to the Minutes of Settlement), with a closing in 30 days.

[11] The ability of each side to purchase Kingspa was clearly delineated in the Minutes of Settlement. The Terracap Parties had the option to participate in the Stage 2 public auction that

JLL was engaged to run. If the Terracap Parties elected to participate in the Stage 2 JLL sale process, they were to be treated like the other bidders in that process and would not have access to information about the other bids. Conversely, the Great Gulf Parties did not have the option to participate in the Stage 2 sale process but retained the right, and assumed the obligation, to complete the Backstop Purchase under Stage 3 if no superior qualified bid arose out of either Stages 1 or 2.

[12] The paragraphs of the Minutes of Settlement that have come under scrutiny in these Applications are sub-paragraphs 2(j), (k) and (l) relating to the Kingspa transaction, reproduced below for ease of reference:

j. If a binding agreement for the purchase and sale of the Kingspa Assets at an aggregate purchase price of no less than \$52,000,000.00 plus HST is reached within the Initial Marketing Period [defined in 2 (a) (i) to be 21 days after the signing of the Minutes of Settlement], but the transaction does not close for any reason, then the deadline for the Public Marketing Period set forth in paragraph 2(d) [which provides that the Independent Broker shall place the Kingspa Assets on the open market within 45 days of being retained and shall] have until March 2, 2026 (the “Public Marketing Period”) to secure a binding agreement for the sale of the Kingspa Assets in an amount no less than \$42,500,000.00, plus HST and the deadline for closing by no later than June 1, 2026 provided for in paragraph] 2(f)(vi), respectively, shall be extended by the time that passed between the execution of the purchase and sale agreement and the termination of the contract.

k. If a binding agreement of purchase and sale for the Kingspa Assets has not been reached by February 28, 2026, or has not closed by June 1, 2026 (subject to the deadline extensions contemplated by paragraph 2(j) above) (the “Failed Transaction Date”), then GG Kingspa or such other related entity(s) as GG Kingspa may direct (the “GG Kingspa Buyer”) shall purchase 110’s interest in the Kingspa Assets for \$21,250,000 CAD, plus HST, free and clear of all encumbrances, except normal course permitted encumbrances and encumbrances registered on title to the Kingspa Lands as of the date hereof (the “Backstop Purchase”). If the 110 Buyer [Terracap affiliate] purchases the Kingspa Assets during the Public Marking Period or the GG Kingspa Buyer purchases the Kingspa Assets pursuant to the Backstop Purchase, it shall do so pursuant to an agreement of purchase and sale that shall be in substantial conformity with the YSC APS (and shall be entered into within 10 days of the Failed Transaction Date in the case of the Backstop Purchase). In the case that the 110 Buyer is the purchaser of the Kingspa Assets, and there is any conflict between the terms of the YSC APS and paragraph 2(f), above, the terms of

paragraph 2(f), above, shall prevail. All of the “Additional Sale Terms” at Schedule B hereto would apply to the purchase by the 110 Buyer or the GG Kingspa Buyer, as the case may be, and the Kingspa Assets shall also include the other Party’s shares in Kingspa Inc. and Kingspa GGT Inc. The closing of the Backstop Purchase shall occur 30 days following the entering into of the agreement of purchase and sale respecting the Backstop Purchase.

1. The deadlines applicable herein to the sale processes described above for a third party purchase of the Kingspa Assets may be extended on the consent of GG Kingspa and 110, acting reasonably. There shall be no [agreed upon] extension of the deadlines applicable to the closing of the Backstop Purchase.

[13] The crux of the interpretative dispute is about whether, as a result of two failed Fitzrovia transactions (one in Stage 1 and the other in Stage 2), Great Gulf was required to not only extend the Public Marketing Period (the end of which is demarcated by a requirement to have a signed APS with a third party purchaser that includes the prescribed terms), as it did to April 23, 2026 at the same time as the June 1, 2026 Closing Date for the Kingspa transaction was extended to July 23, 2026, but also to extend the March 3, 2026 bid deadline that JLL had recommended keeping in place.

[14] There are some other paragraphs of the Minutes of Settlement that are relevant to the ancillary relief sought by Terracap that are discussed, where relevant to the analysis, later in this decision.

The Events Leading up to this Dispute

[15] The following is a summary of the events leading up to this dispute relating to the Kingspa transaction:

Stage 1

- a. September 25, 2025: Fitzrovia delivers a non-binding letter of intent to acquire Kingspa.
- b. October 13, 2025: Fitzrovia executes a binding APS for Kingspa (the “First Fitzrovia Kingspa APS”), exactly 21 days after the Minutes of Settlement were signed and on the last day of the Initial Marketing Period. This APS was subject to, among other conditions, a financing condition.
- c. November 18, 2025: JLL is jointly engaged by the parties as the Independent Broker as their exclusive and sole agent to arrange a sale or other disposition of the identified Kingspa Assets on the open market or to Terracap (through a bid for GG Kingspa Enterprises Limited Partnership's interest in the Owner). Their services

and responsibilities included marketing, data room and due diligence for prospective purchasers, contract negotiations and liaising with Great Gulf (who were to be their sole point of contact on behalf of the Owner regarding the status of the marketing efforts, discussions, and terms and conditions of any and all offers), and the closing of any transaction that comes to fruition, including the coordination of activities required to consummate the Kingspa Transaction.

- d. December 2, 2025: Fitzrovia notifies the parties that it will not close the first Fitzrovia Kingspa APS.

Stage 2

- e. December 9, 2025: The parties confirm in writing through counsel that the deadline for the Public Marketing Period and to have a signed APS for Kingspa was extended from March 2, 2026 to April 22 [later confirmed April 23], 2026 and the outside Closing Date was extended from July 1 to July 22 [later confirmed July 23], 2026. This extension corresponded with the period of time that Fitzrovia was under contract in Stage 1 (from October 13 to December 2, 2025, or 51 days).
- f. January - February, 2026: JLL deploys a phased-bid auction and enters into non-disclosure agreements with over 40 parties, including Terracap.
- g. February 5, 2026: JLL advises bidders (including Terracap) of a bid deadline of March 3, 2026.
- h. March 1, 2026: Terracap writes to Great Gulf indicating that the March 3 bid deadline should be extended by 51 days, corresponding with the period during which Fitzrovia was under contract and corresponding with the 51-day extensions of the Public Marketing Period (to April 23, 2026) and the outside date for closing a transaction (July 23, 2026).
- i. March 2, 2026: JLL confirms to Great Gulf that “the JLL team recommends maintaining the bid date as previously communicated to the market of March 3, 2026” and provides its main reasons for making that recommendation.
- j. March 3, 2026: JLL receives five bids for Kingspa, including a bid from Terracap at a value of \$42,550,000 that was \$50,000 above the Backstop Purchase Price and submitted without prejudice to its position that the bid deadline should have been extended by 51 days. Only two other of the five bids received were higher than the Backstop Purchase Price, a second bid from Fitzrovia and a bid from Hullmark.
- k. March 13, 2026: Terracap advises JLL that it is neither increasing its bid nor continuing with its bid into the second round of bidding. Fitzrovia continues to the second round of bidding in Stage 2 with a new offer, again conditional upon, among other things, financing that it held out there was some prospect of obtaining.

- l. April 8, 2026: Fitzrovia advises JLL that it will not proceed with the acquisition of the Kingspa.
- m. April 10-16, 2026: Great Gulf and Terracap agree on a strategy to jointly instruct JLL to continue negotiations with Hullmark to improve their bid, since the parties agreed that its bid did not conform with the Minutes of Settlement and was otherwise not attractive.
- n. April 15, 2026: Great Gulf advises Terracap that: “If Hullmark declines, Great Gulf will execute the back-up purchase as per the Minutes of Settlement. Should the partners dispute this path, Great Gulf will seek Court direction on proceeding with the back-up purchase.”
- o. April 16, 2026: Terracap’s proposed negotiation strategy for Hullmark was for JLL to “go back based on a \$46m purchase price, 45 days dd, 30 days to close and April 23rd for acceptance of LOI” and the parties continued to work, together with JLL, on a revised LOI to send back to Hullmark as these negotiations continued. They agreed to give Hullmark an extra day to respond when it had not done so by April 23, 2026, but, in the meantime, Great Gulf confirmed with Terracap that Great Gulf would proceed with the steps required to effect the Backstop Purchase.
- p. April 24, 2026: Hullmark does not make a revised offer for Kingspa.
- q. April 24, 2026: Great Gulf sends notice to Terracap that: “In accordance with paragraph 2(k) of the Minutes of Settlement, the Backstop Purchase provisions have now been triggered.”

Stage 3

- r. April 29, 2026: Great Gulf provides Terracap with a draft copy of an APS for the Backstop Purchase of Kingspa, blacklined against the YSC purchase agreement already signed.
- s. May 4, 2026: Terracap provides Great Gulf with a revised draft APS for the Backstop Purchase.
- t. May 7, 2026: Terracap informs Great Gulf that it intends to introduce a new option into the APS for Terracap or a third-party to buy Kingspa at a minimum price of \$44,000,000 plus HST (“Article 7”).
- u. May 8, 2026: Terracap provides Great Gulf with a draft Backstop APS that includes the new Article 7.
- v. May 11, 2026: Great Gulf accepts all of Terracap’s changes to the Backstop APS except for Article 7.

Issues to be Decided

[16] Since the applications are reciprocal, the issues are, for the most part, joined. The outcome will depend upon which side is found to be in breach of the Minutes of Settlement. Both sides are effectively seeking specific performance of the Minutes of Settlement, if they are found to be in the right. Terracap's application seeks various ancillary relief that flows from delayed performance.

a. From Terracap's perspective the issues are:

- i. Did Great Gulf breach the Minutes of Settlement by not instructing JLL to extend the March 3, 2026 bid deadline?

If so, should the Ancillary Relief (described below) sought by Terracap be granted?

1. Should the bid deadline now be ordered to be extended by 51 days and the auction (Stage 2) be re-opened, or alternatively, should Great Gulf be ordered to sign the now proposed Backstop APS that includes Article 7?
2. Should the payment of \$100,000 per month (pro-rated for partial months), otherwise payable by Yonge-Clair pursuant to paragraph 1(a)(iv) of the Minutes of Settlement, be waived for any period during which the closing of the sale of the Kingspa Assets has been delayed as a result of the conduct of Great Gulf?
3. Should Terracap be required to pay the 50% share of the costs, expenses and taxes for the Kingspa Assets otherwise payable by 110 pursuant to paragraph 2(m) of the Minutes of Settlement (or should those be waived) for any period during which the closing of the sale of the Kingspa Assets has been delayed as a result of the conduct of Great Gulf?

b. From Great Gulf's perspective, the issues are:

- i. Is Terracap in breach of the Minutes of Settlement by refusing to sign the form of Kingspa APS for the Backstop Transaction that is substantially the same as the YSC APS and by insisting that a new Article 7 be added?

If so,

- ii. Should Terracap be compelled to execute the Backstop APS without Article 7 (and without JLL being directed to extend the Public Marketing Period and to re-open the bidding for a further 51 days)?⁴
 - iii. Is there any basis on which Terracap can or should be relieved of payment obligations under ss. 1(a)(iv) or s (m) of the Minutes of Settlement?
- c. Is any party entitled to costs?

Analysis

[17] This is a too-familiar scenario in which the applicable law regarding the interpretation of contracts is not in dispute, and the opposing sides both say that their contract (the Minutes of Settlement in this case) is comprehensive, clear and unambiguously requires the parties opposite to do what they each seek in their respective Notices of Application. However, they are diametrically opposed about what it is that the Minutes of Settlement require.

[18] Although Great Gulf commenced its application first, I will deal with Terracap's allegations that Great Gulf is in breach of the Minutes of Settlement first. Terracap's refusal to sign the Kingspa Backstop APS, that is otherwise in a form that both parties have signed off on and that is substantially the same as the YSC APS without Article 7, places Terracap squarely in breach of the Minutes of Settlement unless Terracap can persuade the court that Great Gulf is in breach of the Minutes of Settlement for failing to extend the March 3, 2026 bid deadline and that Terracap is entitled to some relief as a result, whether that be the inclusion of its new proposed Article 7 (that the Minutes of Settlement clearly do not provide for) or a further extension of the bid deadline and the re-opening of the Phase 2 auction process.

Is Great Gulf in breach of the Minutes of Settlement and, if so, should any of the Ancillary Relief be granted?

[19] Terracap's Notice of Application alleges that Great Gulf caused JLL to actively stop the marketing process. That allegation is not borne out on the facts.

[20] Now Terracap alleges that Great Gulf breached the Minutes of Settlement when it did not instruct JLL to extend March 3, 2026 bid deadline to April 23, 2026 (or just prior to that date) after the Public Marketing Period was extended from March 3 until April 23, 2026. To make this finding of breach, the court would have to find that Great Gulf had a contractual duty to disregard the advice of the independent broker that both parties had jointly engaged, JLL, that recommended

⁴ It is noted that Terracap's Notice of Application did not explicitly seek this, but it was requested in Terracap's factum, under the Notice of Application basket clause of "such further and other relief", para. 1(e) of the relief.

against extending the March 3, 2026 bid deadline and provided the following as the main reasons for its recommendation:

- a. JLL has been marketing the opportunity since January 8, 2026, or 7+ weeks. Our typical marketing period is 4 to 6 weeks; hence our team is confident we have properly exposed the opportunity to the broader market, and any additional time risks the offering becoming 'stale'.
- b. We provided over two weeks' notice to the broader market in regards the to the Bid Date (longer than our typical 15 days) by way of three email 'blasts' to the broader market. JLL has also had direct conversations with the 'likely' bidders and geared them towards submitting on the current timeline.
- c. Our experience is that an extension of a Bid Date is typically portrayed as weakness by the market and result in 'softer' bids from both a pricing and quality standpoint.
- d. At this point an extension of the bid date will cause confusion for potential buyers, further raising questions regarding our process that the market publicly knows has some complexities due to the current partnership. A last-minute change to the bid process may result in potential buyers taking a step back from this opportunity and refocusing on one of many other land sites available in the GTA.
- e. Put simply, JLL believes the opportunity has been marketed fully at this point, a bid date has been formally communicated and is roughly 24hrs away, the expectation is to receive multiple bids, any change at this moment can negatively impact the process and we recommend continuing as currently planned.

[21] The original March 2 (later confirmed to be March 3) bid deadline was set after the Public Marketing Period had already been extended to April 23, 2026, pursuant to the Minutes of Settlement. This was to account for the time that the Kingspa property was under contract with Fitzrovia in Stage 1.

[22] The Public Marketing Period was not truncated, as Terracap alleges. It was extended exactly the same number of days as Fitzrovia was under contract in Stage 1, 51 days. A lot had to be done within that period: not just listing and market exposure of Kingspa, but deal negotiations, settling contracts, etc. Great Gulf accepted JLL's advice about preserving the bid deadline, consistent with its view that it would be impractical to have bids coming in right up to the extended Public Marketing Period that was expiring on April 23, 2026 and still be able to get an agreement signed by that date.

[23] After the bid deadline passed, on March 4, 2026, JLL evaluated the five offers received and narrowed the negotiating field to the three that had made offers above the Backstop Purchase Price. It then proposed a re-submission deadline of March 10, 2026, being set for the three bidders that made it to the next round of bidding: Fitzrovia, Terracap and Hullmark. Once Fitzrovia and Terracap fell away as potential bidders, the remaining time during the extended Public Marketing

Period was used to try to negotiate a deal with Hullmark, based on the bid that it submitted by the March 3, 2026, bid deadline. Negotiations continued right up until April 23, 2026, but no binding agreement was reached.

[24] The parties agreed to jointly appoint JLL as the independent broker and engaged JLL to run the auction/bidding process. It is reasonable to infer that the parties named and jointly retained JLL as the broker because both sides were satisfied with JLL's expertise and abilities to carry out the Stage 2 process that their Minutes of Settlement provided for. JLL selected the bid deadline, which was not dictated by the Minutes of Settlement. However, the approach that was recommended and adopted by JLL is consistent with the plain words of the Minutes of Settlement and did not truncate the Public Marketing Period, as Terracap alleges.

[25] Terracap's position is based on an erroneous interpretation of the Minutes of Settlement that reads in a requirement that the bid deadline correspond with the defined term Public Marketing Period. The Minutes of Settlement do not say that, nor would that be a commercially reasonable term to read, or imply, into the Minutes of Settlement, having regard to the practicalities and commercial realities of the situation (discussed above).

[26] To imply a term into a contract it must be: 1) based on custom or usage; (2) as the legal incidents of a particular class or kind of contract; or (3) based on the presumed intention of the parties where the implied term must be necessary "to give business efficacy to a contract or as otherwise meeting the 'officious bystander' test as a term which the parties would say, if questioned, that they had obviously assumed". It is not the role of the court to impose terms into an agreement: see *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONCA 54, 175 O.R. (3d) 371, at paras. 42 – 44; citing *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, 1999 CanLII 677 (SCC), [1999] 1 S.C.R. 619, at paras. 27-29; citing in turn, *Canadian Pacific Hotels Ltd. v. Bank of Montreal*, 1987 CanLII 55 (SCC), [1987] 1 S.C.R. 711, at p. 775.

[27] Terracap says that this public marketing process did not result in the highest possible price on the open market for the Kingspa Assets, and it thus contends that the goal or the objective of the Minutes of Settlement was somehow defeated and it did not get what it bargained for. However, there is no evidence of a higher or better available price than the four arm's-length open market bids that were submitted by the March 3, 2026 bid deadline that JLL, the independent broker, advised had provided more than its standard market exposure and time to canvass the market.

[28] What Terracap is asking the court to do by the relief it seeks is to re-write the Minutes of Settlement to try to get a better deal after the negotiated deadlines for doing so have already expired, or alternatively to give Terracap another chance to buy the Kingspa Assets after it chose to drop out of the bidding process, by requiring the inclusion of Article 7. Article 7 introduces a new Stage 4 return to market that was not provided for in the Minutes of Settlement. JLL is no longer engaged, yet Article 7 contemplates JLL will re-open the bids and the auction process and Terracap will be permitted to participate in it.

[29] Terracap could have stayed in as a bidder, but it withdrew during Stage 2. Terracap argues that that truncated bidding period impeded its ability to find a partner to bid with but it does not offer up any concrete evidence of having tried, but failed, to do this or what its increased bid would have been. Clearly it had sufficient funds to make the original bid that it made and, as it turns out, if it had increased its bid ever so slightly and stuck it out in the Stage 2 bidding process, it could well have been the successful bidder. It chose not to do that.

[30] Hindsight is 20/20 vision. This settlement was expressly structured so that if Terracap decided to participate as a bidder, it would not be able to know what other market bidders were offering. However, it knows this now because when it withdrew, it gained access to information about the other bids, and apparently with some regret, it appears to be trying to get another kick at that can. The court will not re-write the parties' agreement to afford Terracap this do-over.

[31] Settlement agreements are enforceable contracts: see *L-Jalco Holdings Inc. v. Lawrynnowicz & Associates*, 2018 ONSC 4002, at para. 34. In keeping with the general principles of contractual interpretation, the court will not re-write a settlement agreement reached by the parties: see *Kalinitchenko v. Allure at the Gates of Aurora Inc.*, 2021 ONSC 438, 63 C.P.C. (8th) 145, at para. 26. Rather, it will interpret it, like any commercial contract, "as a whole" to give meaning and effect to all of its terms: see *2651171 Ontario Inc. v. Brey*, 2022 ONCA 148, 468 D.L.R. (4th) 545, at para. 16, citing *Ventas, Inc. v. Sunrise Senior Living Real Estate Investment Trust*, 2007 ONCA 205, 85 O.R. (3d) 254, at para. 24.

[32] The plain words of the Minutes of Settlement, read in the context of that agreement as a whole, do not require that the bid deadline be extended to coincide with the extension of the Public Marketing Period. Great Gulf did not breach of the Minutes of Settlement by not instructing JLL to extend the March 3, 2026 bid deadline by 51 days, or for any other reason that arises from the allegations made by Terracap in these applications. It did not have an obligation or duty to disregard JLL's advice and insist on an extension of the bid deadline.

[33] All of the other Ancillary Relief requested by Terracap was tied to a finding of breach by Great Gulf, so that relief must fail, since Great Gulf is not in breach. The equities also do not favour Terracap being relieved of its contractual payment obligations during the periods of delay, which were not caused by any breach or misconduct by Great Gulf but are, rather, the product of circumstances expressly contemplated by the Minutes of Settlement. These are the contractual requirements that the parties agreed to. Since Great Gulf has not been found to be in breach of the Minutes of Settlement, there is no foundation for the request by Terracap to be relieved of its obligations under paras. 1 (a) (iv) and 2 (m) of the Minutes of Settlement. The Ancillary Relief is not granted.

Is Terracap in Breach of the Minutes of Settlement and, if so, What Flows From that Breach?

[34] Terracap's only defence or excuse for not signing the form of Backstop Agreement that does not contain added Article 7 was that Great Gulf was itself in breach of the Minutes of Settlement. The court has found that Great Gulf did not, and is not in, breach of the Minutes of

Settlement, and it never was. It follows that Terracap is in breach of the Minutes of Settlement by refusing to sign the otherwise agreed form of Backstop APS, without Article 7, which the Minutes of Settlement do not provide for and the court is not prepared to imply or read in or add to the parties' agreement (as discussed in the previous section of these Reasons). Without a defence or legal excuse, Terracap is in breach of the Minutes of Settlement by refusing to sign the form of Kingspa APS for the Backstop Transaction that is substantially the same as the YSC APS and by insisting that a new Article 7 be added.

[35] In *Paterson Veterinary Professional Corporation v. Stilton Corp. Ltd.*, 2019 ONCA 746, 438 D.L.R. (4th) 374, at para. 18, in the interests of finality and predictability, the Court of Appeal enforced the parties' settlement agreement and ordered specific performance requiring the sale of real estate, notwithstanding the appellant's arguments that the value of the property had changed and impacted the fairness of the settlement. The same reasoning applies here where the Kingspa Assets (as defined in Schedule A to the Minutes of Settlement) are jointly owned and the overarching objective of Minutes of Settlement was for these parties to end that relationship, so there needs to be a transaction in respect of the Kingspa Assets. Both parties recognize this by the relief they are seeking.

[36] Specific performance is a common remedy imposed in transactions involved the purchase and sale of real property, where monetary damages will not provide an adequate remedy: see 2730453 *Ontario Inc. v. 2380673 Ontario Inc.*, 2022 ONSC 6660, 51 R.P.R. (6th) 259, at para. 147, *aff'd*, 2025 ONCA 112, 175 O.R. (3d) 768, leave to appeal to S.C.C. refused, 41758 (October 2, 2025). This is even more so when it arises in the context of a separation of a commercial relationship: see *FSC (Annex) Limited Partnership v. ADI 64 Prince Arthur L.P.*, 2020 ONSC 5055, 152 O.R. (3d) 568, at paras. 38-40. Finality and predictability in contractual relations have been recognized as foundational principles of our economy: see *Paterson*, at para. 18. Applying these principles to the enforcement of Minutes of Settlement in litigation, and holding parties to their agreement as written, is foundational to the orderly administration of justice.

[37] Terracap's only argument against the remedy of specific performance of the Minutes of Settlement (e.g., an order requiring it to sign the agreed form of the Kingspa Backstop APS without Article 7 included and requiring it to close YSC, as sought by Great Gulf in consequence of Terracap's breaches) is predicated upon the alleged breaches of Great Gulf, that have not been established (as discussed earlier in these Reasons). Had they been proven, they might have deprived Great Gulf of an equitable remedy such as specific performance.

[38] However, Great Gulf's breaches have not been proven. The remedy of specific performance otherwise appears to be the chosen remedy of both sides, and an appropriate one to grant in the circumstances of this case. Terracap should be required to execute the version of the Backstop APS attached to the May 11, 2026 email from Jamie Orzech to Daniel Weinryb, attaching the final version of the Backstop APS that accepted all of Terracap's proposed changes to the Backstop APS except the new Article 7.

[39] As previously determined, and to close the loop on the questions posed by Great Gulf's application, there is no basis on which Terracap can or should be relieved of the payment-obligations under paragraph 1(a)(iv) of the Minutes of Settlement that were triggered when the APS transactions under the Minutes of Settlement had not closed within 135 days of the minutes being signed. Nor, for that matter, is there any basis on which Terracap can or should be relieved of the obligations under paragraph 2 (m) of the Minutes of Settlement which were not the subject of specific relief sought by Great Gulf in its application because Terracap only recently requested this further relief, which has been denied.

Costs

[40] At the conclusion of the hearing, the parties agreed to exchange their Bills of Costs/Costs Outlines for these applications by July 10, 2026, and to try to agree upon the appropriate scale and quantum of costs to be paid by the losing party to the winning party after they receive this decision. The Great Gulf Parties have uploaded a Bill of Costs in Case Center and the Terracap Parties have uploaded a Costs Outline.

[41] The relief sought by the Great Gulf Parties in their application is granted. The Terracap Parties' application is dismissed. Costs should follow those events.

[42] Great Gulf's certified partial indemnity costs for the applications is \$100,061.27 for fees and HST plus \$1,907.23 for disbursements and applicable taxes. Terracap's certified partial indemnity costs for these applications is \$91,146.04, inclusive of all fees, disbursements and applicable taxes. This is not a great divide and it is one that the court hopes can be bridged by an agreement regarding the amount of costs to be paid by the Terracap Parties to the Great Gulf Parties for these applications.

[43] If the parties are not able to agree on costs, they may arrange to appear before me on a case conference. Once scheduled, and no less than two days before they are scheduled to appear, the parties shall upload their respective Bill of Costs and Costs Outline (as exchanged prior to the release of this decision) together with Aide Memoires of no more than 2 pages double spaced, each outlining what the points of disagreement are regarding the appropriate costs award. The court will consider at the case conference whether to fix the costs based on the filings and submissions at the case conference, or whether further submissions on costs are warranted.

Final Disposition

[44] For the foregoing reasons, Great Gulf's application and the relief outlined in sub-paragraphs 1 (a) and (b) of their Notice of Application and further detailed in sub-paragraphs 72 (a) and (b) of their factum and summarized in paragraph 7 of these Reasons is granted. The Terracap application is dismissed. Costs of both applications are awarded in favour of Great Gulf, in an amount to be agreed to, or failing agreement to be determined by the court following a further case conference to be arranged by the parties, as outlined in paragraph 43 above.

[45] Great Gulf claimed damages in sub-paragraph (c) of its Notice of Application but no evidence or submissions were made about those damages at the hearing, so no order regarding damages is made at this time.

KIMMEL J.

Released: August 4, 2026

CITATION: GG Kingspa Enterprises Limited Partnership v. 1107051 Ontario Ltd., 2026 ONSC 4442

COURT FILE NO's.: CL-26-00000235-0000 & CL-26-00000280-0000

DATE: 20260804

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

GG KINGSPA ENTERPRISES LIMITED
PARTNERSHIP and GG YSC LIMITED
PARTNERSHIP

Applicants

– and –

1107051 ONTARIO LTD ., KINGSPA GGT
INC ., KINGSPA INC ., YONGE- CLAIR
PROPERTIES INC ., GGT CLAIR INC .,
YSC PROPERTIES INC ., GGT CLAIR II
INC. and YSC II PROPERTIES INC.

Respondents

AND BETWEEN:

1107051 ONTARIO LTD ., YONGE-
CLAIR PROPERTIES INC ., KINGSPA
GGT INC ., KINGSPA INC ., GGT CLAIR
INC ., YSC PROPERTIES INC ., GGT
CLAIR II INC ., and YSC II PROPERTIES
INC.

Applicants

– and –

GG KINGSPA ENTERPRISES LIMITED
PARTNERSHIP and GG YSC LIMITED
PARTNERSHIP

Respondents

REASONS FOR DECISION

Kimmel J.

Released: August 4, 2026