

**HARVELA INVESTMENTS LIMITED V. ROYAL TRUST CO OF CANADA (1985) 2 ALL ER 966**

House of Lords (UK) – 11 July 1995

**FACTS**

Harvela and Sir Leonard were invited by Royal Trust to make sealed competitive bids for shares on certain terms and Royal Trust stated that it bound itself to no one except the highest bid. Royal Trust also stated that it would only accept a sealed and confidential single offer for the shares.

Harvela lodged a bid of \$2,175,000 for the shares while Sir Leonard bid \$2,100,000 or \$101,000 in excess of Harvela's offer. The Royal Trust purported to accept the bid by the Sir Leonard of \$2,276,000.

Harvela obtained an injunction to stop the sale of the shares and sought an order for specific performance of the alleged contract between it and Royal Trust to purchase the shares.

**ISSUES**

When a person invites tenders and expressly binds itself to accept the highest bid is that person liable for breach of contract if the highest bidder is not accepted.

Was Royal Trust allowed to accept the referential bid (that is the bid to pay \$101,000 over the other bid) from Sir Leonard or bound to accept the highest fixed bid?

**FINDING**

The invitation to tender by Royal Trust was an invitation to make a fixed bid for the shares and Royal Trust had offered to accept the highest bid provided it was confidential.

Royal Trust was not entitled to accept the referential bid by Sir Leonard as its offer to the bidders was read to be an invitation for a fixed bid only and it would be illogical to find that referential bids were possible.

**QUOTE**

Lord Diplock said

*“the whole business purpose of unilateral contracts inviting two or more promisees to submit sealed tenders of a purchase price of a property which are not to be disclosed to any competing promisee and imposing on the promisor a legal obligation to transfer the property to the promisee whose tender specifies the highest price is that each promisee should make up his mind as to the maximum sum which he estimates the property is worth to him, not as a sum of money the amount of which cannot be determined accepted with reference to amounts specified in sealed tenders received from other promisees of which, under the terms of the unilateral contract, he is to be denied all knowledge before the time before making his own tender has expired.” – page 970 of [1985] 2 All ER 966.*

## **IMPACT**

Parties inviting tenders should carefully consider the terms, conditions and wording of the invitation.

Failure to do this may result in unintended contracts being created between the tenderer and the party inviting tenders.

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Jim Doyle  
1800 888 783

[jdoyle@doylesconstructionlawyers.com](mailto:jdoyle@doylesconstructionlawyers.com)  
[www.doylesconstructionlawyers.com](http://www.doylesconstructionlawyers.com)