

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

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

and

**2011836 ONTARIO CORP., JEFFERSON PROPERTIES LIMITED
PARTNERSHIP, 1000162801 ONTARIO CORP., AMERICAN
CORPORATION and 1000199992 ONTARIO CORP.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C., 1985 C, B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C.43, AS AMENDED**

FACTUM OF THE RESPONDENTS

December 20, 2023

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AND TO: **SERVICE LIST**

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FACTUM OF THE RESPONDENTS

PART I – OVERVIEW

1. The Applicant, Cameron Stephens Mortgage Capital Ltd., (the "**Applicant**") brings this application on an urgent basis for an Order, *inter alia*, appointing Albert Gelman Inc. as receiver (the "**Receiver**") pursuant to s. 243 of the [*Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3*](#), as amended (the "**BIA**") and section 101 of the [*Courts of Justice Act, R.S.O. 1990, c. C. 43*](#), as amended (the "**CJA**") without security, of the Respondents', 2011836 Ontario Corp. ("**201 Corp.**"), and Jefferson Properties Limited Partnership ("**JPLP**") (collectively the "**Jefferson Respondents**" unless indicated otherwise), property municipally known as 39, 53, 67 Jefferson Side Road, Richmond Hill, Ontario (the "**Property**").

2. It is not just or convenient to appoint a receiver at this time. A court-appointed receiver is not necessary to protect the interest of a single creditor seeking the Receivership. The Jefferson Respondents have secured a commitment for replacement financing to enable them to complete the development project at the Property known as the Richmond Hill Grace (the "**RHG Project**"). In addition, the Jefferson Respondents are in the process of obtaining refinancing to fully discharge the Applicant's interest in the Property. A brief reprieve to allow the refinancing to be completed will not prejudice the Applicant.

3. The Applicant does not have clean hands in respect to this application and no purpose would be served by the appointment of a Receiver other than delaying the completion date of the RHG Project and potentially terminating 79 agreements of purchase and sale of units of the Project. The Applicant led the Jefferson Respondents to believe that it would engage in good faith negotiations to provide additional financing to cover construction expenses and cost overruns. In reliance upon this assurance, the Jefferson Respondents entered into a Forbearance Agreement dated September 28, 2023 (the "**Forbearance Agreement**") as an interim measure. The primary objective of the agreement was to ensure the uninterrupted provision of funds under the loans while subsequent genuine negotiations for additional financing would be pursued. The Applicant then, provided a commitment letter dated on November 20, 2023, for additional financing to the Jefferson Borrowers. However, despite this arrangement, the Applicant has not been transparent in its dealings with the Jefferson Respondents. It has failed to honour its commitment to negotiate in good faith and hastily initiated an urgent application with less than one business day's notice, relying on findings from a report that were neither discussed nor substantiated for their veracity and accuracy.

4. Other stakeholders will be negatively affected by the Receivership. With 79 agreements of purchase and sale in place out of the available 96 units within the RHG Project, appointing the Receiver may put the Jefferson Respondents' obligations with respect to the completion of these agreements at risk, and may have severe repercussions on the lives of those purchasers who are parties to the 79 outstanding and valid agreements of purchase of sale for units in the RHG Project.

5. Pursuant to Rule 13.1.01(3) of the [*Rules of Civil Procedure, RRO 1990, Reg. 194*](#) (the "**Rules**"), this is an originating process relating to a mortgage and must be commenced in the county of Central East, where the Property is located.

PART II – FACTS

Parties

6. 201 Corp., 1000162801 Ontario Corp. ("**100016**"), and 1000199992 Ontario Corp. ("**100019**") are corporations incorporated pursuant to the laws of the Province of Ontario.¹

7. Amercan Corporation ("**AC**") is a federal corporation incorporated pursuant to the laws of Canada.²

8. JPLP is a limited partnership formed pursuant to the laws of the Province of Ontario.

9. 201 Corp., is a general partner of JPLP, and both 201 Corp and JPLP are the registered owners of the Property.³

¹Affidavit of Fengxi Fansey Wang sworn December 14, 2023 ("**Wang Affidavit**"), Responding Record of the Respondents ("**RRR**"), Tab 1, p 8 at para 6

² Wang Affidavit, RRR, Tab 1, p 8 at para 7

³ Wang Affidavit, RRR, Tab 1, p 7 at para 1

10. 100016, AC and 100019 are guarantors under the Forbearance Agreement and are the registered owners of the properties municipally known as 2,6,8 Bond Crescent and 8, 10, 12, 14, 16 and 18 Bostwick Crescent, Richmond Hill (the "**Bond/ Boswick**"), 6532 and 6544 Winston Churchill Boulevard, Mississauga (the "**Winston Churchill**") and Baby Tar Island near Rockport, Ontario (the "**Baby Tar Island**"), respectively.⁴

Background

11. The Property is a land assembly composed of 3 properties totalling approximately 2.6 acres, with two adjoining parcels located along the south side of Jefferson Side Road, west of Yonge Street in Richmond Hill. The Property was initially purchased by Ideal (JS) Development Inc. in January 2015 but subsequently transferred to the Jefferson Respondents in 2020.⁵

12. The Property is currently a development project, consisting of 96 residential units in 9 blocks, including 60 stacked townhouses, 12 back-to-back and 24 regular townhouses, along with 197 parking spaces. At present, 79 units of the 96 have been sold to purchasers pursuant to agreements of purchase and sale. The interim occupancy of the first two blocks, consisting of 12 units, is scheduled to commence as early as January 31, 2024, with the remaining blocks' occupancy stages ranging from that period to the proposed timeline of April 30, 2024. The Jefferson Respondents anticipated that closing would take place approximately 30-60 days from interim occupancy.⁶

13. The Applicant's involvement in the Property relates to a Letter of commitment for a first mortgage construction loan of \$54,878,000.00 and a Letter of Credit Facility for \$2,700,000.00

⁴Wang Affidavit, RRR, Tab 1, pp 8-9 at para 11

⁵ Wang Affidavit, RRR, Tab 1, pp 8-9 at para 11

⁶ Wang Affidavit, RRR, Tab 1, p 9 at para 13 at

entered into with the Jefferson Respondents on February 3, 2022. (the "**February 3rd Commitment**"). The February 3 Commitment was subsequently amended by Syndication Waiver dated February 18, 2022, and amended letters dated October 19, 2022, March 3, 2023, and May 26, 2023 (collectively the "**Loans**").⁷

14. On July 17, 2023, the Jefferson Respondents elected to terminate the services of their previous construction management company, DC&F Corp., as a result of escalating cost overruns and failure to complete work within agreed timelines. The decision to terminate was based on the strong recommendation of their construction consultant, Enzo Di Giovanni of EDGVOR Inc., and was communicated to the Applicant.⁸

15. On July 18, 2023, the Jefferson Respondents hired the construction management company Core Construction Ltd. ("**Core**") to replace DC&F Corp.⁹

16. At present, and contrary to the allegations of the Applicant, Core remains active and operational at the Property, continuing to fulfill its construction-related responsibilities.

17. Following the termination of services, DC&F Corp., alongside several other entities, improperly registered dubious construction liens, with the intention of bringing pressure on the Jefferson Respondents to pay their inflated and inappropriate accounts.¹⁰

⁷ Wang Affidavit, RRR, Tab 1, p 9 at para 14; Affidavit of John David sworn December 6, 2023 ("**David Affidavit**"), Application Record of the Applicant ("**ARA**"), Tab 2, p 22 at para 6

⁸ Wang Affidavit, RRR, Tab 1, p 10 at para 17;

⁹ Transcript of the examination of the non-party witness, Frank Servello, as representative of Core Constructors Inc., taken on December 18, 2023 ("**Frank Examination**") p 6, Q. 9

¹⁰ Wang Affidavit, RRR, Tab 1, p 10 at para 18

18. As a consequence of these events, in September 2023, the Applicant notified the Jefferson Respondents that it intended to cease funding the RHG Project, citing a default under the terms of the Loans.¹¹

19. On September 5, 2023, the Applicant issued demands for payment and a Notice of Intention to Enforce Security.¹²

20. To prevent any further delays, the Jefferson Respondents, on their own, paid outstanding bills owing on August 5, relying on the Applicant's promise that this amount would be returned in the following construction draw.¹³ The monthly draws to pay the tradespeople were to be made on the 5th of each month.¹⁴

21. Following the notice, the parties engaged in further negotiations with the goal of streamlining continued access to funds allocated under the Loans. They also explored avenues to discharge the improper liens registered against the title to the Property and provide supplementary financing to rectify the construction completion expenses and associated cost overruns arising from mismanagement by DC&F Corp.¹⁵

22. By September 28, 2023, the Applicant and the Jefferson Respondents entered into a Forbearance Agreement.¹⁶

¹¹ Wang Affidavit, RRR, Tab 1, p 10 at para 19

¹² David Affidavit, ARA, Tab 2, p 26 at para 14

¹³ Wang Affidavit, RRR, Tab 1, p 10 at para 20

¹⁴ Transcript of the Cross-examination of John David on his Affidavit sworn December 6, 2023 and December 15, 2023, taken on December 18, 2023 (“**David Cross-Examination**”) p 62, Q 163

¹⁵ Wang Affidavit, RRR, Tab 1, p 11 at para 21;

¹⁶ Wang Affidavit, RRR, Tab 1, p 11 at para 22; David Affidavit, ARA, Tab 2, Exhibit P, pp 273-285

23. Pursuant to the Forbearance Agreement, the Applicant agreed to continue disbursing funds under the Loans. The parties also agreed that discussions would continue to secure additional financial support to cover expenses linked with completing the construction and any ensuing cost overruns. Paragraph m of the Forbearance Agreement explicitly states the sum of \$21 million had been requested as additional financing for addressing construction completion expenses and cost overruns.¹⁷

24. Concurrently, alongside the execution of the Forbearance Agreement, 100016 and 100019 consented to act as additional guarantors, as well as providing the Applicant with collateral security on other properties owned by related companies in the form of a second mortgage of \$27,500,000.00 against Bond/ Boswick, a second mortgage of \$27,500,000.00 against Winston Churchill and a third mortgage of \$3,500,000 against Baby Tar Island.¹⁸

25. At all relevant times, it was an express and/or implied term that the Forbearance Agreement would function as an interim measure among the parties involved. Its primary objective was to ensure the uninterrupted provision of funds under the Loans while subsequent good faith negotiations pursued additional financing to manage construction expenses and associated cost overruns. The Jefferson Respondents agreed to provide mortgages as additional collateral security registered against title to the Bond/ Boswick, Winston Churchill and Baby Tar Island properties, with the understanding that these registrations were to be discharged upon obtaining additional financing to cover cost overruns.¹⁹

¹⁷ Wang Affidavit, RRR, Tab 1, p 11 at para 24;

¹⁸ Wang Affidavit, RRR, Tab 1, p 11 at para 23

¹⁹ Wang Affidavit, RRR, Tab 1, p 12 at para 25

26. At the cross-examination, the Applicant's representative, John David, Senior Vice President of Credit and Underwriting (“**David**”), testimony about the calculation of the \$21 million additionally financing for the completion of construction expenses and cost overruns was unclear.²⁰ Mr. David confirmed that the parties entering the Forbearance Agreement agreed to engage in negotiations addressing the additional financing required to deal with construction expenses and associated cost overruns.²¹

27. Mr. David further testified that the mortgages, to be held as additional collateral security and registered against the title to the Bond/Boswick, Winston Churchill, and Baby Tar Island properties, were intended for the purpose of engaging in discussions for additional financing relating to the cost overruns.²²

28. After the execution of the Forbearance Agreement, the Applicant disbursed the necessary funds to clear the improperly registered construction liens affecting the title to the Property. They also released monthly draws for the tradespeople due on October and November.²³

29. The Applicant also enlisted the services of Bryan Gelman of Albert Gelman Inc. and Todd Glenn, construction consultants, to oversee accounting and construction activities at the RHG Project. In accordance with the Forbearance Agreement, these individuals were engaged to oversee Core and prevent additional cost overruns and delays similar to those experienced with DC&F Corp.²⁴

²⁰ David Cross-Examination, pp 41-43, Q 108-112

²¹ David Cross-examination pp 59-60, q 156

²² David Cross-examination pp 41-42, q 110

²³ David Cross-examination pp 62-63, q 163

²⁴ Wang Affidavit, RRR, Tab 1, p 12 at paras 26-27

30. In the months that followed, Fengxi Fansay Wang (“**Wang**”), the principal for the Jefferson Respondents, regularly inquired via phone calls, text messages, emails, and in-person meetings with the Applicant about the additional financing status set out in the Forbearance Agreement. Mr. Wang also wanted to ensure that the upcoming December 5 draw for the trades would be made by the Applicant. In response, the Applicant indicated they were actively collaborating with syndicate lenders to facilitate the arrangement of additional financing.²⁵

31. By November 18, 2023, less than two months after executing the Forbearance Agreement, the Applicant provided the Jefferson Respondents with an additional Letter of Commitment dated November 20, 2023 (the "**November Letter of Commitment**"). This November Letter of Commitment provided for additional financing of \$25,412,116.00, an increase from the \$21,000,000.00 sum set out in the Forbearance Agreement.²⁶

32. Relying on the Applicant's assurance, on November 20, 2023, the Jefferson Respondents signed the November Letter of Commitment and promptly returned a copy to the Applicant.²⁷

33. By November 29, 2023, Mr. Wang emailed the Applicant to advise that one of the syndicate lenders had contacted him with respect to the additional financing.²⁸

34. On the same day, Mr. Wang and Applicant engaged in further discussions regarding the specific terms outlined in the November Letter of Commitment. The Applicant mentioned it had not yet obtained final approval from the syndicate lenders and indicated plans to review this matter

²⁵Wang Affidavit, RRR, Tab 1, pp 12-13 at para 28; Transcript of the Cross-examination of Fansay Wang on his Affidavit sworn December 14, taken on December 18, 2023 (“**Wang Cross-Examination**”) p 20, Q 53

²⁶ Wang Affidavit, RRR, Tab 1, p 13 at para 29

²⁷ Wang Affidavit, RRR, Tab 1, p 13 at para 30

²⁸ Exhibit D, Wang Affidavit, RRR, Tab 1 pp 84-85

with other investors on that day. Mr. Wang in his initial email emphasized the importance of swift action, given the impending draw for the trades due on December 5.²⁹

35. At the end of the day on Friday, December 1, 2023, the Jefferson Respondents received a letter from the lawyer for the Applicant indicating that they would not provide additional financing, thus withdrawing from the November Letter of Commitment and would be appointing a Receiver.³⁰

36. The Applicant's lawyers letter further alleged their concern with the borrowers' ability to continue to manage the project in a way that protects the lender's security, including but not limited to the borrowers' failure to encapsulate for winterizing the building envelop for Block H, and the change in key personnel to parties who lack the appropriate construction management experience to direct and make key decisions required for the project.³¹

37. The Applicant's letter did not disclose the source of its concerns. The Applicant did not communicate with the Jefferson Respondents in an attempt to alleviate these issues.

38. That weekend, Mr. Wang attempted to communicate with the Applicant's representative, Mr. David, to seek clarification and reconsideration of their position. Mr. Wang maintained that the Applicant's rationale was founded on misleading and unverifiable information, emphasizing that appointing a Receiver would impede the project's completion.³²

²⁹ Ibid

³⁰ Wang Affidavit, RRR, Tab 1, p 13 at para 31; David Affidavit, ARA, Tab 2, Exhibit AA, pp 459-460

³¹ Tab 2, Exhibit AA, pp 459-460

³² Wang Affidavit, RRR, Tab 1, p 13 at para 32

39. Simultaneously, Mr. Wang inquired whether the Applicant would be making payment of the October bills, which were to be paid on or before December 5.³³

40. Additionally, Mr. Wang requested that if the Applicant would not agree to provide additional financing, the Jefferson Respondents be provided with the opportunity to secure refinancing from another lender to ensure the competition of the project, thus negating the need for an increase in the Applicant's financing facility.³⁴

41. On the morning of December 5, 2023, the Jefferson Respondents received an issued notice of application from the Applicant's lawyer, *inter alia*, seeking the urgent application hearing returnable December 11, 2023, for the appointment of a Receiver.³⁵ The following day, December 6, 2023, the Applicant delivered its application record.

42. In support of the application, the Applicant relies on the findings of Bryan Gelman of Albert Gelman Inc., as is set out in his report dated December 5, 2023 (the "**AGI Report**").³⁶

43. Mr Gelman is the proposed receiver whom the Applicant seeks to appoint in this application.

44. The Jefferson Respondents were not informed or provided with any findings, updates, or reports from Mr. Gelman or AGI Inc. before the application was initiated. It was only after the application had been commenced that the findings outlined in the AGI Report came to the attention of the Respondents.³⁷

³³ Ibid.

³⁴ Wang Affidavit, RRR, Tab 1, p 13 at para 33

³⁵ Wang Affidavit, RRR, Tab 1, p 14 at para 34

³⁶ Wang Affidavit, RRR, Tab 1, p 14 at para 38

³⁷ David Cross-examination, p 72, q 196; Wang Cross-Examination, pp 13-14, q 33

45. Despite the above, the Jefferson Respondents have actively sought replacement financing to cover the trades draws, complete construction expenses and cost overruns.³⁸

46. On December 14, 2023, the Jefferson Respondents obtained a letter of interest from T & C Capital Management Inc. in the sum of \$16 million to complete the RHG project.³⁹

47. On December 19, 2023, the Jefferson Respondents obtained a commitment letter for replacement financing from T & C Capital Management Inc. for the sum of \$16,000,000.00.

48. The Jefferson Respondents also obtained a letter of interest from Firm Capital Corporation dated December 12, 2023, to fully discharge the Applicant's Loan in its entirety.⁴⁰

49. The funds to be received from the refinancing of T & C Capital Management Inc. will be sufficient for the construction-related expenses to complete the Project and associated cost overruns.

50. The Project is progressing accordingly despite setbacks in the payment schedule of tradespeople. A number of the block units have been sold pursuant to agreements of purchase and sale and will be ready for occupancy starting as early as January 2024 and continuing until May 2024.⁴¹ The Jefferson Respondents are concerned that the Receiver may terminate the agreements of purchase and sale entered into with purchasers of the units.

³⁸ Wang Affidavit, RRR, Tab 1, p 18 at para 50

³⁹ Wang Affidavit, RRR, Tab 1, p 18 at para 51

⁴⁰ Wang Affidavit, RRR, Tab 1, p 18 at para 52

⁴¹ Wang Affidavit, RRR, Tab 1, p 18 at para 53; Frank Examination, p 15, 24-25, Q 65, 108;

51. On December 18, 2023, the winterization of Block H began at the Property and is expected to take approximately five days to complete.⁴²

52. The Applicant has not provided the Jefferson Respondents with the opportunity to rectify any additional defaults within the specified 14 business days outlined in paragraph IV(b) of the Forbearance Agreement before the application was initiated.⁴³

PART III – ISSUES AND THE LAW

53. This Application raises the following issues:

Issue 1: Is the Application brought in the appropriate venue or should it be brought in the county where the Property is located?

Issue 2: Should the court appoint a Receiver over the assets and property of the Jefferson Respondents?

Issue 1: Is the Application brought in the appropriate venue or should it be brought in the county where the Property is located?

54. All actions subject to Rule 13.1.01(3) of the [Rules](#), as amended, must be brought in the region in which the Property is located. The Rule states as follows:

In the case of an originating process, whether it is brought under Rule 64 (Mortgage Actions) or otherwise, that contains a claim relating to a mortgage, including a claim for payment of a mortgage debt or for possession of a mortgaged property, the proceeding shall be commenced in the country that the regional senior judge of a region in which the property is located, in whole or in part, designates within that region for such claims.

55. As it is apparent that the application, which is an originating process, contains claims relating to a mortgage, the claim is subject to the requirements of Rule 13.1.01(1) and (3) of the

⁴² Frank Examination, pp 11-12, Q 43-45

⁴³ Wang Affidavit, RRR, Tab 1, p 14 at para 35

[Rules](#). The Property is located in Richmond Hill, Ontario, which is within the Central East Region of the Ontario Superior Court. Pursuant to the Consolidated Practice Directions, Barrie or Oshawa have been designated as the locations where mortgage proceedings may be commenced for property located anywhere in the Central East Region.⁴⁴

56. The application was improperly commenced in Toronto. Where a proceeding is commenced in a location contrary to Rule 13.1.01, Rule 13.1.02(1) authorizes the court to transfer the proceeding to the county where it should have been commenced. Rule 13.1.02(1) of the Rules provides:

If subrule 13.1.01 (1) applies to a proceeding but a plaintiff or applicant commences it in another place, the court may, on its own initiative or on any party's motion, order that the proceeding be transferred to the county where it should have been commenced.

Issue 2: Should the court appoint a Receiver over the assets and property of the Jefferson Respondents?

57. If the court exercises its discretion not to transfer the proceeding to the Central East Region, the issue on this application is whether Albert Gelman Inc. should be appointed as Receiver.

58. Sections 243 of the [BIA](#) and 101 of the [CJA](#) govern the appointment of a Receiver and permit the court to appoint a Receiver and manager where it is just or convenient to do so.

59. In *Ryder Truck Rental Canada Ltd. v. 568907 Ontario Ltd. (Trustee of) (“Ryder”)*, the court discussed the application of the two criteria of “just” and convenient and stated that the authorities are clear that they are to be read and interpreted conjunctively.⁴⁵

⁴⁴ [1806700 Ontario Inc. v Khan, 2018 ONSC 6364](#) at para 85-91.

⁴⁵ 1987 CarswellOnt 383, Applicant Book of Authorities XXX.

60. The court in *Ryder* stated:

There is always a risk that a judgment may never be satisfied. It can also probably be said that whenever A claims money from B, it is "just" or "convenient" or both that a receiver be appointed or an interlocutory injunction be issued restraining the debtor from dealing with his assets. The Courts, however, have never been prepared to grant to a creditor such extraordinary relief, which is, in effect, an execution before judgment unless there is strong evidence the creditor's right to recovery is in serious jeopardy.⁴⁶

61. When determining whether the appointment of a Receiver is just or convenient, the court should take all the circumstances of the case into account, including:

- a. The nature of the property over which the Receiver is to be appointed;
- b. The rights and interests of all parties in relation to the property over which the Receiver is to be appointed; and
- c. Whether the secured creditor has a right under its security to appoint a Receiver privately.⁴⁷

62. The appointment of a Receiver is particularly intrusive and is therefore a relief that should only be granted sparingly. In the exercise of its discretion, the court should consider the effect of such an order on the parties and any other persons with an interest in the property, including purchasers of the property or parts thereof. As well, since it is an equitable remedy, the conduct of the parties is a relevant factor.⁴⁸

63. The analysis of whether the appointment of a Receiver is just or convenient requires the court to determine whether the appointment is in the interests of all stakeholders. In making that determination, the court should take the following factors into account:

⁴⁶ *Ryder Truck Rental Canada Ltd. v. 568907 Ontario Ltd. (Trustee of)*, 1987 CarswellOnt 383, at para 6, Book of Authorities of the Respondents ("BOA"), Tab 1

⁴⁷ [*Callidus Capital Corp. v. Carcap Inc.*, 2012 ONSC 163](#), at para. 41.

⁴⁸ [*Royal Bank of Canada v Chongsim Investments Ltd.*, 1997 CanLII 12112 \(CanLII\)](#), at para. 18.

- a. The potential costs of the Receiver;
- b. The relationship between the debtor and the creditors;
- c. The likelihood of preserving and maximizing the return of the subject property; and
- d. The best way of facilitating the work and duties of the Receiver.⁴⁹

64. Furthermore, when the court deliberates whether it is more in the interest of all concerned to have the Receiver appointed or not, it must consider all the circumstances of the case, particularly:

- a. The effect of on the parties appointing the receiver. This includes potential costs and the likelihood of maximizing the return on and preserving the subject property;
- b. The parties' conduct; and
- c. The nature of the property and the rights and interest of all parties in relation to it.⁵⁰

65. The court should also take the following factors into account in determining whether the appointment of a Receiver is just or convenient in the circumstances:

- a. Whether irreparable harm might be caused if no appointment is made;
- b. The risk to the security holder, taking into account the size of the debtor's equity in the assets and the need to protect the assets during the course of litigation;

⁴⁹ [Bank of Nova Scotia v. Freure Village on Clair Creek](#), 1996 CanLII 8258 (ON SC) at paras. 10 – 12; [Canadian Tire Corp. v. Healy](#), 2011 ONSC 4616, at para. 18; [Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited](#), 2011 ONSC 1007, at para. 27; [Anderson v. Hunking](#), 2010 ONSC 4008, at para. 15.

⁵⁰ [Callidus Capital Corp. v. Carcap Inc.](#), 2012 ONSC 163, at para. 41.

- c. The nature of the property and the potential or actual waste of the debtor's assets;
- d. Whether the applicable security agreement grants the secured creditor the right to appoint a Receiver;
- e. The likelihood of maximizing the return to the parties if a Receiver is appointed;
- f. The balance of convenience to the parties; and
- g. Whether a court appointment is necessary to enable the Receiver to carry out its duties more efficiently.⁵¹

66. In [*M & K Construction Ltd. et al v. Kingdom Covenant International*](#), Justice McEwen held it was not just and convenient to appoint a Receiver in circumstances where appointing a Receiver would put an end to the Respondent's rights to continue their business, where the property was not a diminishing asset and the value of the property exceeded the outstanding indebtedness, the appointment of the Receiver would add significant expenses and there was no urgency to have the land sold, and there were no other creditors.⁵²

67. In [*Canadian Imperial Bank of Commerce v. John Taylor's Truck Sales Ltd.*](#), Justice Ground held that where there was no urgency and the costs of a Receiver would be expensive, where there was no function for the Receiver other than the sale of the property, which would adversely affect

⁵¹ [*Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 \(ON SC\) at paras. 10 – 12; *Canadian Tire Corp. v. Healy*, 2011 ONSC 4616, at para. 18; *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007, at para. 27; *Anderson v. Hunking*, 2010 ONSC 4008, at para. 15.](#)

⁵² [*M & K Construction Ltd. et al. v. Kingdom Covenant International*, 2015 ONSC 2241 \(CanLII\).](#)

the debtor's entitlement to redeem the property, and where the replacement financing would clearly result in sufficient proceeds to pay off the mortgage, a Receivership was not just and convenient.⁵³

68. In [*Royal Bank of Canada v. Chongsim Investments Ltd.*](#), where the appointment of a Receiver would have a serious and potentially permanent adverse effect on the business, where a sale would most certainly result in a lower price and where there will be substantial Receivership fees, a Receiver was not appointed.⁵⁴

69. In the present case, the Applicant suggest that its entitlement to seek the appointment of the Receiver is set out in the Forbearance Agreement. The Applicant further alleges its decision to proceed with an urgent appointment pertains to a number of factors outlined in the AGI Report, including but not limited to:

- a. The construction manager appointed by Jefferson Respondents has resigned and, Mr. Wang appointed his wife, Jessica Wang (“**Jessica**”), to manage the RHG Project.;
- b. The Project is being mismanaged and the progress of the construction delayed, given Jessica’s poor and untimely decisions, including failing to authorize the encapsulation of the building envelope for Block H, in order to winterize it; and
- c. The cost overruns are projected to be \$5,700,000.00 in excess of what was previously suggested.⁵⁵

⁵³ [*Canadian Imperial Bank of Commerce v. John Taylor's Truck Sales Ltd.*, 2003 CanLII 38796 \(ON SC\)](#) .

⁵⁴ [1997 CanLII 12112 \(ONSC\) at para 18.](#)

⁵⁵ David Affidavit, ARA, Tab 2, pp29-30 at para 23.

70. In contrast to this, the fact is that the Jefferson Respondents were never advised of or provided with a copy of the AGI Report, either in its interim or final basis, before the Applicant abruptly commenced this application.

71. Furthermore, neither the Applicant nor the proposed Receiver contacted the principal of the Applicant to inquire about these urgent issues. If the Applicant or the proposed Receiver had sought clarification from the Jefferson Respondents, the inquiries would have determined that the findings were based on incorrect assumptions.

72. With reference to the allegation of the resignation of the construction manager, Core is the present construction manager and remains active and operational and continues to fulfill its construction-related responsibilities at the Property.⁵⁶ While the Jefferson Respondents' consultant, Enzo Di Giovanni, did provide a 30-day notice of termination on November 27, 2023, he does not hold the position of construction manager. Mr. Di Giovanni was employed by the Jefferson Respondents to provide consulting services on the construction of the project and remains at the Property until December 27, 2023.⁵⁷

73. There is no evidence that Mr. Di Giovanni resignation will, in turn, jeopardize the completion of the Property. There is also no evidence that Mr. Di Giovanni's resignation will jeopardize the completion of the Property if the trades are paid. Core has confirmed its intention to remain and the Property and seeks to extend its contract with the Jefferson Respondents.⁵⁸

⁵⁶ Wang Affidavit, RRR, Tab 1, pp 14-15 at paras 39-40.

⁵⁷ Wang Affidavit, RRR, Tab 1, pp 14-15 at para 39.

⁵⁸ Frank Examination, p 23, Q 99-101

74. On the contrary, the Applicant's abrupt decision to cease payments of the draw due on December 5 for the trades without adequate notice to the Jefferson Respondents has, in fact, delayed the completion of the project.

75. The Jefferson Respondents have not appointed Jessica to manage the Property, nor has she caused mismanagement and construction delays at the RHG Project. Jessica role at the RHF Project is Vice President of Marketing and Customer Relations. She brings with her over 23 years of professional experience in accounting, auditing, and project management, holding two master's degrees, including a Master of Business Administration.⁵⁹

76. Since joining the project, Jessica has worked with the administrative assistants to ensure that the purchasers' inquiries were checked daily, and timely responses were provided therein. Jessica also assisted in following up on the status of occupancy certificates and registrations as purchasers were enquiring about interim occupancy dates and closing requirements. Jessica would keep Mr. Wang informed and he had the final decision-making authority for all agreements made on behalf of the project.⁶⁰

77. With respect to the contention that Jessica's failure to authorize purchaser orders resulted in Block H not being winterized is inaccurate. Jessica did not refuse to authorize the encapsulation of the building envelope for Block H. Instead, she inquired if additional quotes can be obtained to compare with the only quote presented for approval, and if there were other options to avoid or reduce the extra costs of \$245K (\$129K for Block H and \$119K for Block B). She deferred her queries to Mr. Di Giovanni in this regard.⁶¹

⁵⁹ Wang Affidavit, RRR, Tab 1, pp 15-16 at para 43.

⁶⁰ Wang Affidavit, RRR, Tab 1, pp 15-16 at para 43

⁶¹ Wang Affidavit, RRR, Tab 1, p 16 at para 44.

78. In fact, the encapsulation of Block H commenced on December 18 and is scheduled to be completed in five days.⁶²

79. When the question was posed to the witness, Frank Servello of Core about his dealings with Jessica, he testified the following:

11 218. Q. Frank, you indicated at some point that for
12 about seven days Fansey had some health issues and
13 Jessica was your point of contact. Is that correct in
14 what I -- in my -- my summary?
15 A. Correct.
16 219. Q. After that seven days, did you commence
17 communications with Fansey?
18 A. If Fansey reached out and his, you know,
19 his health was the -- the -- the issue.
20 220. Q. No. After the ---
21 A. (Inaudible).
22 221. Q. --- seven days. So, you said within seven
23 days Jessica ---
24 A. Approximately seven days.
25 222. Q. Approximately seven days. So, after
1 approximately seven days.
2 A. (Inaudible). Yeah.
3 223. Q. Did -- did you commence your discussions
4 back with Fansey? Or was Jessica the lead up
5 until ---
6 A. I -- I just answered that question. Fansey
7 did engage again. Jessica is involved, yes. She's --
8 that's her job to be involved. But Fansey did take
9 lead the minute his -- whatever situation he was
10 dealing with. So, it was -- it was -- I'm going to
11 say it was two weeks. Seven to 10 days approximately.
12 And I'd have to go back through some correspondence to⁶³

80. Additionally, Mr. David testified that he never raised the issue with Fansey about Jessica's role in advance of this commencing this application:

1 141. Q. Okay. Well, Mr. Gelman also refers to the
2 fact that it appears by Enzo resigning, Jessica would
3 be taking on that role. Do you recall ever bringing
4 that to the attention of Fansey, that Jessica cannot

⁶² Frank Examination, pp 11-12, qq 40-47

⁶³ Frank Examination, p 60, q 218-223

5 be a construction manager?
4 that to the attention of Fansey, that Jessica cannot
5 be a construction manager?
6 A. I don't recall that.
7 142. Q. Do you know if Mr. Gelman had brought that
8 to the attention of Fansey to clarify the role of
9 Jessica?⁶⁴
10 A. I -- I can't answer that, not because I
11 don't want to answer, because I don't -- I don't know.

81. With respect to the projected cost overruns, the \$21 million sum initially included in the Forbearance Agreement had been determined by the Applicant in consultation with its financial consultants and the representative of the Jefferson Respondents. However, the Applicant contends that after receiving reports from Glynn Group dated September 29, 2023 (one day after the execution of the Forbearance Agreement) and in November, it reconsidered its position on December 1, 2023, regarding providing additional financing, citing the reason as the increased cost overruns compared to the initial projections.⁶⁵

The Applicant's Right to Recovery is not in Jeopardy

82. There is no strong evidence that the Applicant's right to recovery is in serious jeopardy. The development of the project is proceeding to the interim occupancy stage, with the first two blocks, consisting of 12 units, is scheduled to commence as early as January 31, 2024, with the remaining blocks' occupancy stages ranging from that period to the proposed timeline of April 30, 2024. It is anticipated that closing will take place approximately 30-60 days from interim occupancy.

83. While the Applicant's sudden refusal to provide payment to the trades on December 5 has temporarily delayed some occupancy dates, the financing secured by the Jefferson Respondents

⁶⁴ David Cross-examination, p 55, qq 141-142

⁶⁵ David Affidavit, ARA, Tab 2, pp 29-30 at para 23

will ensure that the project proceeds as planned. Upon receiving financing from Firm Capital Corporation the Applicant's Loans will be fully discharged and repaid.⁶⁶

84. At cross-examination, the Applicant's representative did not know budgeted costs for appointing a receiver, including the legal costs, disbursements and the receiver costs.⁶⁷

85. If a party seeking the appointment of a receiver has not shown that its security is in serious jeopardy and there is no real evidence of a real risk there should be no appointment of a receiver.⁶⁸

Impact of the appointment of a receiver on the parties

86. The appointment of the Receiver at this time would have a lasting detrimental impact on the Respondents. A receivership will have a chilling effect on the Jefferson Respondents' other development projects and funding for those projects may discourage any purchasers from registering and entering into agreements on other projects.

87. Furthermore, 100016, AC and 100019 entered into a guarantor arrangement and provided collateral security in the properties Bond/ Boswick, Winston Churchill and Baby Tar Island, respectively, under the Forbearance Agreement, on the basis that additional financing would be subsequently negotiated and agreed to. The value of this security is in excess of the Applicant Loan, considering its interest in the Property and was to provide for additional financing of the cost overruns which financing the Applicant withdrew and has been obtained by the Jefferson Respondents from a third party lender..

88. At cross-examination, the Applicant's representative even confirmed the following:

⁶⁶ Wang Affidavit, RRR, Tab 1, p 18 at para 52.

⁶⁷ Question 211-212 pp 82-83

⁶⁸ *Ryder Truck Rental Canada Ltd. v. 568907 Ontario Ltd. (Trustee of)*, 1987 CarswellOnt 383, at para 6 BOA, Tab 1

12 112. Q. So was the additional securities, which are
13 a second mortgage, the amount of 27 million, the
14 second mortgage, the amount of 27-500,000. Sorry, the
15 first -- the first statement I said for the court's
16 clarification was a second mortgage in the amount of
17 \$27,500,000 for bond, Botswick Security, second
18 mortgage in escrow in the amount of \$27,500,000 for
19 Winston Churchill Security, and a -- and a third
20 mortgage in the amount of 3.5 million against the
21 property, Baby Tar Island Security. Do you recall if
22 those securities was in relation to this additional
23 financing of 21 million?

24 A. Yes. Yeah. They were simply -- it was a,
25 call it a gross up of -- of the estimated financing
1 required on those properties. And the reason the
2 number was different for Baby Tar Island was because
3 it was a significantly smaller property and it really
4 didn't seem to make sense to register a mortgage for -
5 - for that property given that we had an appraisal on
6 that property and it was -- we didn't need a mortgage
7 that was more than that.⁶⁹

89. There is a significant concern that the Receivership may terminate some or all of the 79 agreements of purchase and sale and attempt to resell these units. The guarantors' security could be called upon if the Receiver's and Lenders fees diminish the value and equity in the Property.⁷⁰

Conduct of the parties

90. The Jefferson Respondents relied on the assurance of the Applicant that, by entering a Forbearance Agreement, the dubious registered liens would be discharged, and a subsequent agreement for additional financing would be negotiated. To secure this arrangement, the Jefferson Respondents provided collateral security in other properties.

91. The Jefferson Respondents were forthright with the Applicant throughout the process and were working toward obtaining additional financing to have the project proceed to its completion.

⁶⁹ David Cross-examination Pg 43 question 112

⁷⁰ Wang Affidavit, RRR, Tab 1, p 19 at para 55

92. Despite these assurances, the Applicant notwithstanding issuing the November Letter of Commitment for additional financing which it did not proceed with and ten days thereafter hastily issued a notice of receivership application on the day the payment for trades would have been due. The Applicant did not provide the Jefferson Respondents with the reasonable time to secure alternate refinancing before payment of the trades would have been due.

93. The Applicant relies on the findings of a report that was not discussed or deliberated with the Jefferson Respondents. It is respectfully submitted the proposed receiver is not an independent party and has a prior arrangement with the Applicant, which is to the detriment of the Jefferson Respondents

94. Furthermore, the urgency issues raised in the application are based on incorrect assumptions. The Applicant decision to deliver a notice letter on the end of the business day on Friday, December 1, 2023, and provide one business day to the Jefferson Respondents, knowing the trades had to be paid on the 5th of each month, has caused unnecessary delays to the project.

95. The Jefferson Respondents submit that similar to the approach in [*Royal Bank of Canada v. Chongsim Investments Ltd.*](#), the conduct of the parties must be considered and there is ample evidence here to suggest that the Applicant was being less than straightforward with its dealings with the Respondents.

Nature of the property and the rights and interests of all parties in relation thereto

96. In deciding whether or not to appoint a receiver the court must have regard to all of the circumstances but, in particular, the nature of the Property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered, but so, in such circumstances, is the question of whether

or not an appointment by the court is necessary to enable the receiver to carry out its work and duties more efficiently.⁷¹

97. The rights and interests of the purchasers of the units in the RHG Project would certainly be impacted if the Jefferson Respondents are not given sufficient time to complete the final steps of the development as well as ensure the replacement financing to allow it to pay the Applicant in full and resolve this matter in its entirety.

Irreparable harm

98. The nature of irreparable harm is such that it cannot be quantified in monetary terms or cannot be cured, usually because one party cannot collect damages from the other.⁷²

99. Although the Applicants may not be required to establish irreparable harm in the event that a receiver is not appointed, the Respondents submit that there would be no irreparable harm to the Applicant, and this fact should be considered when considering the effect of appointing the Receiver on the parties.

100. The Applicant's damages are quantifiable and secured. There has been no evidence to suggest that harm suffered by the Applicant, if any, in the event that the Receiver is not appointed or if the appointment is postponed to allow the Jefferson Respondents to pay out the Loan, would be anything other than quantifiable, curable, monetary harm.

101. The balance of convenience in the subject application is similar to that which was assessed by the court in [Anderson v. Hunking](#). The appointment of the Receiver could have drastic

⁷¹ [Bank of Nova Scotia v. Freure Village on Clair Creek, 1996 CanLII 8258 \(ON SC\)](#) at para 11

⁷² [Anderson v. Hunking, 2010 ONSC 4008](#) para 27.

consequences in terms of the business itself and the confidence of other lenders, financial institutions, contractors, and purchasers.

102. By way of contrast, the Applicant would simply have to wait a short time further to be paid in full.

103. This court must determine, in the exercise of its discretion, whether it is more in the interests of all concerned to have the Receiver appointed by the court or not. This involves an examination of all circumstances, including the potential costs, the relationship between the debtor and the creditors, the likelihood of maximizing the return on, and preserving the subject property.⁷³

104. The appointment of a receiver in this case will result in significant unnecessary costs. The Jefferson Respondents and the Applicant have the same goal, which is to complete the project, and the Jefferson Respondents pay, and the Applicant receives, the money owing under the Loan.

105. Replacement financing is in place to pay the Loan, and the Jefferson Respondents have signed a letter of intent with Firm Capital on December 14, 2023 for \$60,000,000.00.

106. Accordingly, the Jefferson Respondents respectfully submit that the above-noted factors weigh in favour of them, and this court should not exercise its jurisdiction to appoint a Receiver:

107. Alternatively, if this court decides to appoint a Receiver, the Jefferson Respondents respectfully submit such an appointment should only take effect at the end of January 2024. It is respectfully submitted that the Jefferson Respondents anticipate securing funds to fully discharge the Applicant's Loan before that date.

⁷³ [*Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 \(ON SC\)](#) at para 13

PART IV – ORDER REQUESTED

108. For all of the foregoing reasons, the Respondents requests:

- a. A transfer of the proceedings to the Central East Region;
- b. In the alternative, the dismissal of the application, with costs to the Respondents;
- c. In the further alternative, a delay in the appointment of a Receiver until January 30, 2024, 2023, to allow the Respondents an opportunity to complete its proposed transaction for refinancing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this December 20, 2023



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SCHEDULE "A"
LIST OF AUTHORITIES

TAB	DESCRIPTION
1.	<u>Anderson v. Hunking, 2010 ONSC 4008</u>
2.	<u>Bank of Nova Scotia v. Freure Village on Clair Creek, 1996 CanLII 8258 (ON SC)</u>
3.	<u>Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited, 2011 ONSC 1007</u>
4.	<u>Callidus Capital Corp. v. Carcap Inc., 2012 ONSC 163</u>
5.	<u>Canadian Imperial Bank of Commerce v. John Taylor's Truck Sales Ltd., 2003 CanLII 38796 (ON SC)</u>
6.	<u>Canadian Tire Corp. v. Healy, 2011 ONSC 4616,</u>
7.	<u>M & K Construction Ltd. et al. v. Kingdom Covenant International, 2015 ONSC 2241 (CanLII)</u>
8.	<u>Royal Bank of Canada v. Chongsim Investments Ltd., 1997 CanLII 12112 (ONSC)</u>
9.	<u>Ryder Truck Rental Canada Ltd. v. 568907 Ontario Ltd. (Trustee of), 1987 CarswellOnt 383</u>
10.	<u>1806700 Ontario Inc. v Khan, 2018 ONSC 6364</u>

SCHEDULE "B"
RELEVANT LEGISLATION PROVISIONS

RULES OF CIVIL PROCEDURE, R.R.O. 1990 REG. 194

Statute or Rule Governing Place of Commencement, Trial or Hearing

13.1.01 (1) If a statute or rule requires a proceeding to be commenced, brought, tried or heard in a particular county, the proceeding shall be commenced at a court office in that county and the county shall be named in the originating process. O. Reg. 14/04, s. 10.

Choice of Place

(2) If subrule (1) does not apply, the proceeding may be commenced at any court office in any county named in the originating process. O. Reg. 14/04, s. 10.

Mortgage Claims

(3) In the case of an originating process, whether it is brought under Rule 64 (Mortgage Actions) or otherwise, that contains a claim relating to a mortgage, including a claim for payment of a mortgage debt or for possession of a mortgaged property, the proceeding shall be commenced in the county that the regional senior judge of a region in which the property is located, in whole or in part, designates within that region for such claims. O. Reg. 259/14, s. 4.

Transfer

Motion to Transfer to Another County

13.1.02 (1) If [subrule 13.1.01 \(1\)](#) applies to a proceeding but a plaintiff or applicant commences it in another place, the court may, on its own initiative or on any party's motion, order that the proceeding be transferred to the county where it should have been commenced. O. Reg. 14/04, s. 10.

(2) If subrule (1) does not apply, the court may, on any party's motion, make an order to transfer the proceeding to a county other than the one where it was commenced, if the court is satisfied,

- (a) that it is likely that a fair hearing cannot be held in the county where the proceeding was commenced; or
- (b) that a transfer is desirable in the interest of justice, having regard to,
 - (i) where a substantial part of the events or omissions that gave rise to the claim occurred,
 - (ii) where a substantial part of the damages were sustained,
 - (iii) where the subject-matter of the proceeding is or was located,
 - (iv) any local community's interest in the subject-matter of the proceeding,

- (v) the convenience of the parties, the witnesses and the court,
- (vi) whether there are counterclaims, crossclaims, or third or subsequent party claims,
- (vii) any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits,
- (viii) whether judges and court facilities are available at the other county, and
- (ix) any other relevant matter. O. Reg. 14/04, s. 10.

(3) If an order has previously been made under subrule (2), any party may make a further motion, and in that case subrule (2) applies with necessary modifications. O. Reg. 14/04, s. 10.

COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under [subsection 244\(2\)](#); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of *receiver*

(2) Subject to subsections (3) and (4), in this Part, *receiver* means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of *receiver* — [subsection 248\(2\)](#)

(3) For the purposes of [subsection 248\(2\)](#), the definition *receiver* in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of *disbursements*

(7) In subsection (6), *disbursements* does not include payments made in the operation of a business of the insolvent person or bankrupt.

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

-and-

2011836 ONTARIO CORP.

Applicant

Respondents

Court File No. CV-23-00710795-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE RESPONDENTS

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RCP-E 4C (May 1, 2016)

