

**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

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

**MOTION RECORD OF HSIN YANG LEE
(returnable May 27, 2024)**

May 23, 2024

Pak Law Professional Corporation
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Lawyer for the affected purchaser, Hsin Yang Lee

TO: Service List

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TAB

DOCUMENT DESCRIPTION

1

Affidavit of Hsin Yang Lee sworn May 23, 2024

TAB | 1

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**RESPONDING AFFIDAVIT OF HSIN YANG LEE
(Sworn May 23, 2024)**

I, HSIN YANG LEE, of the Town of Aurora, in the Province of Ontario, **MAKE OATH AND
SAY:**

1. I am the purchaser identified in the Agreement of Purchase and Sale dated April 23, 2021 (the “**Agreement**”) wherein I agreed to purchase the pre-construction unit described as “POTL#8” (the “**Property**”) from Jefferson Properties Limited Partnership (the “**Vendor**”), and, as such, I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and basis for my information and believe it to be true.

2. I swear this Affidavit in opposition to the motion of the Receiver, Albert Gelman Inc. (the “**Receiver**”) to disclaim my Agreement and, in the alternative, in support of a declaration that the deposits I paid to the Vendor in accordance with the Agreement (the “**Deposit**”) are held pursuant to a statutory trust in accordance with s.81(1) and s.138(4) of the *Condominium Act*, 1998, SO 1998, c 19 (the “**Condominium Act**”) and is exempt from the claims of the Applicant and other creditors.

I Have No Relationship with the Respondents

3. I am a licenced real estate agent, but it is not my primary business nor my primary occupation.
4. Prior to April 23, 2021, I saw advertisements on social media and I contacted the Vendor’s real estate agent, Spectrum Realty Services Inc., to inquire about the possibility of purchasing a property from the Vendor.
5. All negotiations were conducted online. I did not meet the Vendor nor the Vendor’s real estate agent in person prior to electronically signing the Agreement on April 23, 2021.
6. I have no relationship with any of the Respondents, their partners, directors, officers and shareholders.

I Intend to Complete the Transaction

7. Notwithstanding my belief that the Property has decreased in value since April 23, 2021 as a result of the increase to interest rates, I still intend to honour my commitments contained in the Agreement and complete the transaction contemplated by it in accordance with its terms.

I Believe the Deposit Was to be Held in Trust

8. In accordance with the Agreement, I paid a total of \$170,000.00 to the Vendor (the “**Deposit Holder**”).
9. On or about May 9, 2023, I was advised by my lawyer, Tony Pak of Pak Law Professional Corporation, that my deposit is at risk and that the Property, under the *Ontario New Homes Warranty Plan Act*, R.S.O. 1990, c. O.31, is not defined as a condominium unit. Accordingly, I have been advised that TARION will only pay me up to a maximum of \$100,000.00 if my deposit protection claim is approved thereby resulting in a potential loss of about \$70,000.00.
10. On or about May 21, 2024, my lawyer has advised that he was unable to locate any previous court decision or other jurisprudence that would exempt the Property from the protections afforded by s.81(1) of the Condominium Act.
11. I have been further advised by my lawyer that s.138(4) of the Condominium Act strongly suggests that s.81(1) applies to the Property as it is part of a proposed common elements condominium corporation.
12. Accordingly, I believe that the Deposit ought to have been held in trust in accordance with s.81(1) of the Condominium Act.

My Discovery that the Deposit had Been Released without Security

13. On or about February 29, 2024, I received a letter from the Receiver indicating that they have been appointed and that they have not made any determinations with respect to how my Agreement would be “dealt with”.

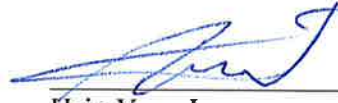
14. On or about May 8, 2024, I received a letter from Spectrum Realty Services Inc. indicating that the Receiver would be “seeking an Order permitting them to terminate and disclaim certain agreements of purchase and sale”.
15. Accordingly, on or about May 9, 2024, I instructed my lawyer to make inquiries of the Receiver.
16. I was advised that, on May 9, 2024, counsel for the Receiver replied to my lawyer’s email and indicated that if the court’s authorization is granted and the Receiver disclaims agreements, my Agreement would be included. Furthermore, there was no commitment by the Receiver or their counsel to fully refund my Deposit.
17. My lawyer subsequently advised me on or about May 10, 2024 that, in the Receiver’s Second Report dated February 26, 2024, the Receiver had advised the Court that none of the Deposit had been held in trust.

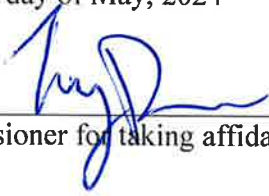
Disclaimer of My Agreement without Returning the Deposit is Unfair

18. I request that any order allowing the Receiver to disclaim my Agreement should be accompanied by a declaration that my Deposit is properly construed as trust funds in accordance with s.81(1) and s.138(4) of the Condominium Act and my claim for the return of my Deposit with interest and in full without deduction should take precedence over those of the Applicant and other secured creditors.
19. I believe to determine otherwise would be unfairly prejudicial to innocent purchasers and would be a detriment to the consumer protection objectives of the Condominium Act.
20. I make this Affidavit for the purposes described herein and for no other or improper purpose or delay.

SWORN before me in the City of Markham
in the Regional Municipality of York
on this 23rd day of May, 2024

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Hsin Yang Lee

A Commissioner for taking affidavits, etc.

Tony K.C. Pak Barrister & Solicitor
122-200 Cachet Woods Court Markham, ON, L6C 0Z8

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Lawyer for the Affected Purchaser,
Hsin Yang Lee

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