

**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*, R.S.C. 1985, c. B-3, AS AMENDED AND  
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS  
AMENDED

**FACTUM OF THE RECEIVER FOR MOTION  
TO INCREASE RECEIVER'S BORROWING LIMIT  
(Returnable March 4, 2024)**

March 1, 2024

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**Lawyers for the Receiver, Albert Gelman Inc.**

**TO: Service List**

## PART I. OVERVIEW

1. This factum is filed in support of a motion by Albert Gelman Inc. (“**AGI**”), in its capacity as the receiver and manager (in such capacity, the “**Receiver**”) without security, of all present and future property, assets and undertakings of 2011836 Ontario Corp. (“**201**”) and Jefferson Properties Limited Partnership (“**JPLP**” and, together with 201, the “**Debtors**”) including the real property listed in Schedule “A” (the “**Real Property**”) to the order of Justice Cavanagh, dated December 21, 2023 (the “**Appointment Order**”).
2. The Real Property is the site of a residential development project called Richmond Hill Grace (the “**Project**”), which remains under construction.
3. On this motion, the Receiver seeks an order to, among other things, increase the Receiver’s Borrowing Limit (as defined below) from \$9,500,000 to \$20,000,000.
4. Pursuant to the Appointment Order, the Receiver is empowered to borrow such monies from time to time as it may consider necessary or desirable to fund the exercise of its powers and duties under the Appointment Order, provided the principal amount does not exceed the Borrowing Limit.
5. The Receiver seeks to increase the Receiver’s Borrowing Limit in order to fund additional work required to complete the Project.
6. Additionally, the Receiver seeks the approval of the fees of both the Receiver and its legal counsel as well as the approval of the Receiver’s interim statement of receipts and disbursements from December 21, 2023 to February 22, 2024 (the “**Interim SRD**”).

## PART II. FACTS

### A. *Appointment of the Receiver*

7. On December 21, 2024 (the “**Appointment Date**”), Justice Cavanagh appointed AGI as receiver and manager of the Debtors.

8. JPLP is a limited partnership established for the purpose of constructing the Project located on the Real Property, which is municipally known as 39, 53 and 67 Jefferson Side Road, Richmond Hill, Ontario. 201 is the general partner of JPLP.

9. The Project consists of 96 residential units, being 60 stacked condominium townhome units and 36 freehold townhome units. Construction of the Project is approximately 60% to 70% complete.<sup>1</sup>

10. Of the 96 residential units, 79 have been sold and 17 have not been sold.

11. Following its appointment on the Appointment Date, the Receiver determined that stakeholder value would be maximized by the completion of the Project.<sup>2</sup>

12. Upon review of the Project with its construction consultant, the Receiver determined that there were substantial construction, health, safety and recordkeeping deficiencies with the Project. Following this discovery, the Receiver initiated a thorough assessment of the management of the construction of the Project.<sup>3</sup>

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<sup>1</sup> Second Report of the Receiver, February 26, 2024 (“**Second Report**”) at para. 3 ([E211](#)).

<sup>2</sup> Second Report at para. 52-53 ([E220](#)).

<sup>3</sup> Second Report at paras. 60-73 ([E222](#)).

13. As part of this assessment, the Receiver obtained a report (the “**Glynn Report**”) by Glynn Group Incorporated (“**Glynn**”), a chartered quantity surveyor, that assessed the cost to complete the Project as \$23,000,000.<sup>4</sup>

14. Due to the numerous health and safety concerns identified by the Receiver, on January 24, 2024, the Receiver shutdown construction activities at the Real Properties.<sup>5</sup>

**B. Increase to Borrowing Limit**

15. Under the Appointment Order, the Receiver was empowered to borrow \$7,000,000 (the “**Borrowing Limit**”), for the purpose of funding the exercise of its powers and duties.<sup>6</sup>

16. On February 2, 2024, Justice Steele granted an order increasing the Borrowing limit to \$9,500,000 and sealing the Glynn Report.<sup>7</sup>

17. Since the commencement of these proceedings, the Receiver has borrowed \$9,500,000, the majority of which has been used to fund the construction of the Project. Approximately \$4.1 million is currently being held in the Receiver’s trust account.<sup>8</sup>

18. Cameron Stephens Mortgage Capital Ltd. (“**CS**”), the first mortgagee of the Real Property, has agreed to fund the increased borrowings by the Receiver, as contemplated by this motion, to continue construction of the Project.<sup>9</sup>

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<sup>4</sup> Second Report at para. 85-88 ([E229](#)). See also First Report of the Receiver, January 29, 2024 at paras. 6-20 (the “**First Report**”). The Glynn Report was filed with this Court as a confidential appendix to the First Report and sealed by order of Justice Steele.

<sup>5</sup> Second Report at paras. 82-83 ([E228](#)).

<sup>6</sup> Appointment Order, s. 20 ([E245](#)).

<sup>7</sup> Order of Steele J, February 2, 2024 ([E258](#)).

<sup>8</sup> Interim SRD, Appendix O to the Second Report ([E445](#)).

<sup>9</sup> Second Report at para. 19 ([E214](#)).

### PART III. ISSUES AND THE LAW

19. This motion raises two issues:

- (a) Whether this Court should approve the increase to the Receiver's Borrowing Limit to \$20,000,000; and
- (b) Whether this Court should approve the activities of the Receiver as set out in the Second Report, as well as the professional fees of the Receiver and its legal counsel and the Interim SRD.

#### **A. The Increased Borrowing Limit Should be Approved**

20. Subsection 243(1) of the *Bankruptcy and Insolvency Act* allows a court to appoint a receiver to, among other things, "take any action that the court considers advisable."<sup>10</sup>

21. Paragraph 20 of the Appointment Order provides that the Borrowing Limit may be increased if so authorized by further Court order.

22. . The approximately \$4.1 million currently being held in the Receiver's trust account is not sufficient to fund the completion of the Project, which is projected to cost (at least) \$23,000,000, as per the Glynn Report.

23. Without the additional borrowing contemplated by this motion, the Receiver will be unable to complete the Project and this will lead to a deterioration in the value of the Debtors' primary asset to the detriment of its stakeholders.

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<sup>10</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, [s. 243\(1\)\(c\)](#). See also *DGDP-BC Holdings Ltd. v. Third Eye Capital Corporation*, [2021 ABCA 226](#) at [para. 20](#) and *KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al.*, [2023 ONSC 5881](#) at [paras. 54-55](#).

24. Similar relief has been granted in other non-contested motions by Receivers.<sup>11</sup>

**B. *The Activities, Fees and Interim SRD of the Receiver, and the Fees of its Legal Counsel, Should be Approved***

25. Paragraph 18 of the Appointment Order requires the accounts of the Receiver and its legal counsel to be passed from time to time by a judge of the Ontario Superior Court of Justice. In approving the accounts of the Receiver and its legal counsel, the compensation sought must be fair and reasonable in the circumstances.<sup>12</sup>

26. The Receiver submits that the fees and disbursements of the Receiver and those of its legal counsel as detailed in the Second Report should be approved because the Receiver and its counsel engaged diligently since the date of the Appointment Order to, among other things:

- (a) Respond to extensive correspondence and requests for information from the Debtors' and their principal, Fanshay Wang;<sup>13</sup>
- (b) Correspond with various creditors and other stakeholders;<sup>14</sup>
- (c) Work with its construction consultant to carry out a comprehensive assessment of the Project which included:

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<sup>11</sup> For example, see: *BCIMC Construction Fund Corporation v. The Clover on Yonge Inc.*, CV-20-00637301-00CL ([Order of Koehnen J dated May 15, 2020](#), [Endorsement of Koehnen J dated May 18, 2020](#)) and *BCIMC Construction Fund Corporation v. 33 Yorkville Residences Inc.*, CV-20-00637297-00CL ([Endorsement of Conway J. dated October 9, 2020](#)).

<sup>12</sup> See *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [paras. 33-35](#) for a description of the factors that Courts will consider in determining whether a Receiver's accounts are fair and reasonable.

<sup>13</sup> Second Supplementary Report of the Receiver, February 1, 2024, paras. 9-23 ([E565](#)).

<sup>14</sup> Second Report at paras. 26-49 ([E215](#)).

- (i) Identifying health and safety issues on the site;
- (ii) Reviewing the records of the Debtors' concerning the Project, which contained significant gaps; and
- (iii) Identifying construction deficiencies in the Project;<sup>15</sup>
- (d) Retain a new construction manager to complete the Project;<sup>16</sup>
- (e) Temporarily shut down the Project site and facilitate the review and remediation of health and safety issues;<sup>17</sup>
- (f) Establish a new process for the review and payment of invoices submitted by trades and suppliers to replace the inadequate recordkeeping processes that prevailed before the Appointment Date;<sup>18</sup>
- (g) Commission the Glynn Report;<sup>19</sup> and
- (h) Review the invoices and contracts of trades and suppliers.<sup>20</sup>

27. The fees and disbursements of the Receiver and its legal counsel were incurred at each respective party's standard rates and charges as set out in the fee affidavits appended to the Second Report. Given the complicated nature of Project's prospective completion and the significant issues with the management of the construction up to the

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<sup>15</sup> Second Report at paras. 60-73 ([E222](#)).

<sup>16</sup> Second Report at paras. 79-81 ([E227](#)).

<sup>17</sup> Second Report at paras. 82-84 ([E228](#)).

<sup>18</sup> Second Report at para. 84(c) ([E228](#)).

<sup>19</sup> Second Report at paras. 85-88 ([E229](#)).

<sup>20</sup> Second Report at paras. 91-93, 97 ([E230](#)).

Appointment Date, these fees and disbursements are fair, reasonable and justified in the circumstances.<sup>21</sup>

28. The Receiver also seeks approval of the Interim SRD. The Receiver has received and paid monies on behalf of the Debtors for the benefit of all stakeholders, and with a view to completing the Project, as set out in the Interim SRD and Second Report. Accordingly, this Court should approve the Interim SRD.

#### **PART IV – ORDER REQUESTED**

29. The Receiver requests that this Court make an order in the form of the draft order included in the Receiver's Motion Record, dated February 26, 2024.<sup>22</sup>

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 1<sup>st</sup> of March, 2024.



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Jeff Larry / Ryan Shah

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<sup>21</sup> Affidavit of Bryan Gelman, sworn February 26, 2024, Appendix P to the Second Report ([E447](#)); Affidavit of Beatrice Loschiavo, sworn February 26, 2024, Appendix Q to the Second Report ([E502](#)).

<sup>22</sup> Draft Order, Tab 3 to the Motion Record of the Receiver, p. 327 ([E521](#)).

## SCHEDULE "A"

1. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [para. 33](#).
2. *BCIMC Construction Fund Corporation v. 33 Yorkville Residences Inc.*, CV-20-00637297-00CL ([Endorsement of Conway J. dated October 9, 2020](#)).
3. *BCIMC Construction Fund Corporation v. The Clover on Yonge Inc.*, CV-20-00637301-00CL ([Endorsement of Koehnen J dated May 18, 2020](#)).
4. *DGDP-BC Holdings Ltd. v. Third Eye Capital Corporation*, [2021 ABCA 226](#).
5. *KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al.*, [2023 ONSC 5881](#).

## **SCHEDULE “B”**

*Bankruptcy and Insolvency Act*, RSC 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.

**CAMERON STEPHENS MORTGAGE  
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Court File No. CV-23-00710795-00CL

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