

**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.43, AS
AMENDED

**RESPONDING MOTION RECORD OF DON FRY SCAFFOLD SERVICE INC.,
A LIEN CLAIMANT
(MOTION RETURNABLE AUGUST 19, 2024)**

August 16, 2024

WEIRFOULDS LLP

66 Wellington Street West, Suite 4100
P.O. Box 35, Toronto-Dominion Centre
Toronto, ON M5K 1B7

Sandra D. Astolfo (LSO# 36986R)

Direct: 416-947-5045
sastolfo@weirfoulds.com

**Lawyers for the Lien Claimant,
Don Fry Scaffold Service Inc.**

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

**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.43, AS
AMENDED

INDEX

Tab

- 1 Affidavit of Andrew Smith, sworn August 16, 2024
Exhibit "A" – Notices to Trades and Supplies (Nos 1, 2 and 3)

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

**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.43, AS
AMENDED**

RESPONDING AFFIDAVIT OF ANDREW SMITH

I, Andrew Smith, of the Township of Uxbridge, in the Regional Municipality of Durham, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the general manager of the lien claimant, Don Fry Scaffold Service Inc. (“**DFSS**”), and, as such, have knowledge of the matters contained in this affidavit. Where my knowledge is based on information or belief, I have stated the source of my knowledge and believe it to be true. Nothing in this affidavit is intended to waive any privilege associated with the legal advice rendered to DFSS.

2. I have reviewed the Receiver's Amended Motion Record for a motion to be heard on Monday August 19, 2024 and make this affidavit in response to that motion.
3. DFSS is a supplier of scaffolding on a rental basis. It erects and dismantles the rented scaffolding.
4. In November 2023, DFSS submitted 4 quotes to Jefferson Properties Limited Partnership ("**Jefferson Properties**"). The quotes were accepted and Jefferson Properties issued a Purchase Order dated November 20, 2023 for the sum of \$216,717.00 plus HST, for a total sum of \$244,890.21.
5. A fifth quote was submitted to Jefferson Properties dated January 17, 2024.
6. In response to the Receiver's Notice to Trades and Suppliers of January 31 and February 1, 2024, Amy of DFSS sent emails to the Receiver on February 6 and 8, 2024. An excerpt from these emails is found below:

Please find attached our documentation regarding the matter of receivership of Jefferson Properties Limited Partnership and 2011836 Ontario Corp. (as its general partner)

1. Quotes
2. PO
3. Invoices *
4. Statement of Account *
5. Timesheets with photos
6. Credit Application Net 30 Jefferson Properties Limited Partnership

* To date our scaffold remains onsite
To be billed - Dismantle \$19,536.00 as per INV 00146063
To be billed - Dismantle \$8,693.00 as per INV 00146064
To be billed - Daily rental from Jan 24 up to removal date

7. I am advised by DFSS' lawyer Sandra Astolfo and do believe Dan Woo of the Receiver confirmed receipt of DFSS' documents on February 8, 2024 and indicated the documentation would be reviewed by the Receiver and its "Director of Construction."

8. In response to the Receiver's Notice to Trades and Suppliers of January 31 and February 1, 2024, Amy of DFSS also sent an email to Elevate Construction Management ("**Elevate**") on February 6, 2024. An excerpt from this email is found below:

Please find attached our documentation regarding the matter of receivership of Jefferson Properties Limited Partnership and 2011836 Ontario Corp. (as its general partner)

1. Quotes
2. PO
3. Invoices **
4. Statement of Account **
5. Timesheets with photos

**** This is not the final billing for this project**

Additional fees to be billed:
Dismantle \$19,536.00 as per INV 00146063
Dismantle \$8,693.00 as per INV 00146064
Daily rental from Jan 24 – removal date

9. The statement of account given to the Receiver and Elevate on February 6 and 8 indicate the total sum of \$116,112.87 was owed to DFSS.

10. On June 27, 2024, Sunny Bains of DFSS emailed Terry Scott of the Receiver 8 invoices, being all 7 invoices listed in DFSS' lien action plus 1 invoice issued to Albert Gelman Inc. as directed by Elevate for the cost to dismantle the scaffolding. Attached to Mr Bains' email was an updated statement of account showing the total amount owed to DFSS was \$219,214.92 as of June 27.

11. The timesheets with photos given to the Receiver and Elevate on February 6 show that DFSS only erected rental scaffolding 3 days prior to December 21, 2023. More specifically, prior to the December 21, 2023 Receivership Order, DFSS supplied and erected scaffolding on December 18, 19 and 20, 2023. It continued to erect and supply rental scaffolding on and after December 21, 2023. The total value of the pre-receivership labour costs are \$12,730 to erect the scaffolding.

12. Copies of the Receiver's first, second and third Notice to Trades and Suppliers are collective attached and marked as **Exhibit "A"**.

13. Following submission of DFSS' documents on February 6 and 8, 2024, neither the Receiver nor Elevate advised me that there was any issue with the documentation provided or quantum claimed. Although the third Notice indicates "a representative from the office of the Receiver will contact trades and suppliers falling into this category [being incomplete document packages], to request any outstanding information in due course", no one contacted me to advise that DFSS' submissions were incomplete. The third notice also indicates "The Receiver intends to pay trades and suppliers for duly performed work and the delivery of supplies from the date of its appointment on December 21, 2023 through January 24, 2024." Despite the statements made in the Receiver's notices, none of DFSS' invoices rendered after December 21, 2023 have been paid or disputed "on the record" or "on a with prejudice basis".

14. I am advised by DFSS' lawyer Sandra Astolfo and do believe that she spoke with Dan Woo of the Receiver on February 5. I am further advised and do believe that in response to a request for an update on whether DFSS' invoices would be paid, whether

DFSS will be paid to dismantle its scaffolding and whether the Receiver needed “any additional information to facilitate the approval of our client’s invoices”, Dan Woo indicated in his email response (excerpt found below) as follows (emphasis added):

As you may appreciate our inbox has been inundated with emails. Our cost consultant is in the process of reviewing documents and will be updating our office with their findings and recommendations. We await this information before we are able to confirm invoices for payment.

In respect of removing the scaffolding, we are awaiting confirmation from our Director of Construction. We will advise once we hear back from them.

15. On February 15, 2024, Mr. Woo sent an email requesting DFSS submit a final invoice.

16. Earlier that same day (February 15), Elevate advised me as follows:

From: Ross Karlin <ross@elevatecm.com>

Date: February 15, 2024 at 3:47:29 PM EST

To: Andrew Smith <andrew@donfryscaffold.com>

Cc: Jim Follett <jim@elevatecm.com>, Daniel DuPerrouzel <daniel@elevatecm.com>

Subject: FW: Matter of Jefferson Properties Limited Partnership and 2011836 Ontario Corp. - Don Fry Scaffold Service Inc.

Andrew,

As discussed today – ***I definitely think its best to leave the scaffolding in place as I hope to start using it come March. The fact that you are willing to freeze rental charges until March 18th is great and I will speak with the receiver about your outstanding invoices tomorrow.***

In the meantime can you give me a quick coles notes breakdown on the following:

1. Take down fee
2. Erecting fee
3. Current standard monthly rental rate

17. I spoke with Ross Karlin of Elevate on February 20 about leaving the scaffolding in place and payment. Mr Karlin advised me that he was waiting to hear from the Receiver.

18. On February 29, Ross Karlin of Elevate sent me an email with the following text (emphasis added):

I spoke with the receiver yesterday and I'm confident that you will be paid as your work on site took place after the receiver too over. Terry should be in touch with you and I will push him to get this resolved.

19. By emails dated February 29 and March 5, I am advised by Ms Astolfo and do believe she sent emails to the Receiver asking if a determination has been made on DFSS' claim including payment for DFSS' post Receivership costs.

20. DFSS returned to the site on February 16, 2024 to repair tarps covering the scaffolding in accordance with Elevate's instructions.

21. I am advised by Ms Astolfo and do believe that prior to registering DFSS' construction lien, she had exchanges with the Receiver (emphasis added). Excerpts from these exchanges are found below:

Although Elevate has confirmed that our client, Don Fry Scaffold, supplied its scaffolding after the appointment of the Receiver (see email below), no one has addressed or confirmed Don Fry Scaffold will be paid. As noted below, our client has done everything required of it by the Receiver.

We are working as quickly as possible to address payment concerns with the trades/suppliers, however, we are not able to guarantee a date

to resolve this specific query. Please proceed to take the necessary steps that your client feels is appropriate.

As a result of Mr Woo's response on behalf of the Receiver and no payment for the scaffolding supplied on and after December 21, 2023, DFSS had no choice but to register a construction lien.

22. I am advised by Ms Astolfo and do believe that at no time between the date DFSS' lien was registered and the issuance of DFSS's lien action did the Receiver, or its lawyers advise Ms Astolfo of any issue with DFSS' claim or the documents it submitted in February 2024.

23. On April 4, 2024, I received an email from Mr Karlin (emphasis added). An excerpt from that email is found below:

Do you want to take down the scaffolding now or wait until a potential AP settlement date? Right now I can tell you that the court date to potentially release more funds is set for May 2nd.

24. Regarding the review of DFSS' claim, I am advised by Ms Astolfo and do believe she had email exchanges with the Receiver prior to issuing DFSS' lien action (emphasis added). An excerpt from this email exchange is found below:

The Receiver is still working through all vendor accounts verifying materials and/or services provided. Many accounts are complex and are taking time. We have cc'd our legal counsel who is assisting the Receiver on any pre-receivership claims as well.

As a result of these communications, DFSS had no choice but to issue its lien action and certificate of action, register a certificate of action on title and serve its lien action.

25. I am advised by Ms Astolfo and do believe she and her partner Philip Cho spoke with the Receiver's lawyer on May 21 seeking some clarity on the Receiver's position regarding payment for DFSS' invoices for post-receivership amounts owing, plus costs associated with preserving lien rights due to the delay, and were advised that "the Receiver has been actively looking into this issue. However, given that the contract was entered into prior to the receivership and that the Receiver has had no involvement with your client (and limited knowledge about this contract generally), the Receiver continues to make inquiries and needs more time to do so."

26. On June 5, I am advised by Ms Astolfo and do believe that she had an exchange with the Receiver's lawyer regarding the Receiver's review of DFSS' claim. As of June 5, most of DFSS' scaffolding was removed from the site. All of DFSS' scaffolding was removed by July 22. The last invoice to the Receiver is dated May 28 reflecting the cost to dismantle the scaffolding. The last invoice for the scaffold rental was for rental costs up to February 16, 2024. Despite some pieces of DFSS's scaffolding being on site until early July 2024, DFSS has not claimed or invoiced for any rental charges after February 16, 2024.

27. With respect to dismantling DFSS' scaffolding and payment, I had an email exchange with Mr. Karlin of Elevate (emphasis added). Excerpts from this exchange are found below:

Morning Andrew,

As discussed yesterday, Don Fry is willing to take down the scaffolding and remove it from site as long as payment is made for the dismantling. Your team can be on site Tuesday and the work will be done by Thursday. All other outstanding invoices will need to wait until after the May 27th court date.

Please send me all the current outstanding invoices and current AP + confirm the true cost of the dismantle. I need this information first thing this morning

Andrew,

Apologies for the hiccup this morning with your team showing up – I needed the approval from the receiver. Please take this email as formal approval that the scaffolding can be removed and Don Fry will be paid for the dismantling fee.

Please address all invoices to the following billing name:

- ***ALBERT GELMAN INC., solely in its capacity as Court appointed Receiver of Jefferson Properties Limited Partnership and 2011836 Ontario Corp. (as general partner) and not in its personal or corporate capacity.***

The invoice requested by Mr Karlin in his May 28 email was sent to him that same day.

28. I am advised by Ms Astolfo and do believe she sent a follow up email on June 18 to the Receiver's lawyer asking if he has had a chance to look at DFSS' documents.

29. I am advised by Ms Astolfo and do believe that she received a without prejudice email from the Receiver on June 24, and that she had a meeting with the Receiver on June 27, with additional documentation being requested and sent to the Receiver shortly thereafter.

30. I am advised by Ms Astolfo and do believe she sent additional information to the Receiver following the June 27 meeting and was advised as follows (emphasis added):

From: Terry Scott <tscott@albertgelman.com>
Sent: Friday, July 12, 2024 1:09 PM
To: Sandra Astolfo <SASTOLFO@weirfoulds.com>
Cc: Philip Cho <pcho@weirfoulds.com>; Tom McElroy <tmcelroy@albertgelman.com>
Subject: Re: Don Fry Scaffold v Jefferson Properties - Chronology of Events (dealings with Elevate)

Thank you, Sandra,

The Receiver expects to receive court approval for a claims process next month and Don Fry is contemplated to be included in the claims proceedings.

31. I am advised by Mr Cho and do believe he sent the following email to the Receiver's lawyers on July 22 (emphasis added):

From: Philip Cho <pcho@weirfoulds.com>
Sent: Monday, July 22, 2024 4:12 PM
To: Jeff.Larry@paliareroland.com
Cc: ryan.shah@paliareroland.com; Sandra Astolfo <SASTOLFO@weirfoulds.com>
Subject: Don Fry re Jefferson Properties Receivership

Jeff,

Hope you had a good weekend. I'm writing on this matter to express concern and frustration with the Receiver's most recent response regarding the unpaid amounts. I will set out a brief summary for you and have attached some information that will assist.

Our client was engaged by the owner to provide rental scaffolding for use by the masonry contractor. The scaffolding costs are made up of a rental fee component, labour for erecting the scaffolding and labour to dismantle the scaffolding. While the work to erect the scaffolding commenced before the Receivership Order, it was only 3-days pre-receivership. All of the remaining time and rental costs were incurred following the Receivership Order appointing Albert Gelman as receiver and manager of all property, assets and undertakings of the debtor companies.

The Receiver permitted work to continue on the project until January 24, 2024 when it temporarily halted construction. In a notice sent on January 31, 2024, the Receiver advised that a review of all outstanding accounts was being completed and that it would notify parties of accounts that will be paid. The next day, on February 1, 2024, the Receiver sent a second notice to the trades outlining the preferred process for submitting

invoices for payment. Our client provided the necessary information to the new construction manager, Elevate, as requested and to the Receiver.

Over the course of several months, Elevate requested that our client provide some additional services, leave its scaffolding in place, and assured our client that it would be paid. Our client accommodated Elevate's requests and waited patiently for payment and instructions with respect to any continued work/rental of the scaffolding. During February and March, there were several conflicting instructions given to our client (see the chronology). It was not until April 18, 2024 that our client was instructed to removed the scaffolding and to submit an invoice to the Receiver (despite Elevate earlier the same day expressing their hope for the scaffolding to remain in place rather than have the mason install its own scaffolding).

However, there continued to be no confirmation that the Receiver would pay for the charges post-Receivership, nor for the costs to dismantle. Elevate indicated it was seeking confirmation that our client's invoices would be paid, and that the Receiver will pay for the dismantling labour charges, but to date, this has not been provided. Eventually, even without payment or assurances, our client took down the scaffolding and removed the materials from site.

Since the Receiver did not provide its position on the merits of our client's claim, we had no choice but to register a lien and start a lien action. The value claimed in the lien proceedings is \$197,139.24 as of February 16, 2024.

All invoices have been submitted as required. ***To date, the Receiver has not articulated any reason why the invoices are not being paid, nor why the invoices should be submitted through a claims process – as again stated by Mr. Terry Scott.*** See his email attached dated July 12, 2024. This is following a meeting with Mr. Scott and Bryan Gelman where our client was asked to submit a chronology to assist Mr. Scott review the invoices and understand why the scaffolding remained on site after February 2, 2024. ***Following that process, Mr. Scott inexplicably advised that our client's invoices will be included in the claims process but again, without specifying why, and what issues the Receiver has or is unable to determine before paying. This position taken by the Receiver is contrary and inconsistent with the representations and advice given by Elevate to our client.***

The three days pre-receivership (December 18, 19 and 20) amount to \$12,730 in labour charges. Our client's total claim is \$197,139.24. As you know, following its appointment, the Receiver elected to continue the project with some of the trades, including our client, which it did exclusively and to the exclusion of the debtors. ***If the Receiver has issues with the charges (rental or labour), then it should articulate and particularize these concerns so that the parties can address them in a commercially reasonable manner. Instead, your client forced our client to incur the cost of registering and perfecting a lien, and is now advising that our client's invoices (for post Receivership costs) will be vetted in a claims process, which is at significant costs to our client, and unnecessarily delays payment. Again, this is without having provided any indication of what the Receiver's concerns are regarding payment of the invoices.***

We urge you to review this matter with your client and set out the Receiver's position on the invoices. It is not appropriate for the Receiver to keep our client on the job for

months, with its construction manager assuring payment, and then not only refuse to pay, but to not even provide a reason for the delay or refusal to pay.

We understand a hearing will be scheduled for the creation of a claims process. If this matter continues to be unresolved, we will seek instruction from our client to file material at that hearing so that the court is aware of post receivership costs that are not being paid.

32. In response to these July emails, I am advised by Ms Astolfo and do believe she received a response (excerpt found below) and was served with the Receiver's motion and amended motion on August 7 and 8 respectively.

The Receiver intends to deal with your client's lien claim as part of this process (assuming that the court approves same).

At present, the Receiver has not been able to satisfy itself about as to the merits of your client's claim.

33. Although I am aware of two without prejudice communications from the Receiver regarding DFSS' claim, one having been sent on June 24 and the second communication being sent on August 15, as of the date of this my affidavit the Receiver has not provided its position regarding why some or all of DFSS' claim is being disputed "on the record" or "with prejudice". As of the date of this my affidavit no one from the Receiver's office has called me to discuss any issue or concerns with DFSS' claim or sought further details regarding DFSS' claim and how it is made up. I am now in the process of reviewing and preparing a response to the August 15 without prejudice response from the Receiver.

34. In response to the Receiver's motion record and amended motion record and draft order, I am advised by Mr Cho and do believe he sent the following email to the Receiver's lawyer, copying the service list:

We have had a chance to review the Receiver's Amended Motion Record in relation to the request for Lien Claims Process Order and have some questions and concerns with the relief sought. We understand that for lien claims in respect of pre-receivership services or materials supplied, a claims process may be appropriate. However, it seems premature to determine pre-receivership lien claims unless there is some intention to pay these claims at this time. Is this something the Receiver contemplates? It does not appear that this is the case based on the Receiver's Third Report. Please confirm.

With respect to lien claims in respect of services or materials supplied post-receivership, we have difficulty understanding the basis for a formal claims process. We ask this in the context of the following:

- The Receiver is personally liable for payment of these services or materials
 - Services or materials would have been supplied at the request, under the control, at the direction, with the acquiescence, or with the consent, of the Receiver, or its agent (i.e. Elevate)
 - A claims process is not required for the Receiver to approve payment of invoices in the ordinary course for which it is liable
- The Receiver already established a process for reviewing and making payments to trades
 - On January 31, February 1 and February 28, 2024, the Receiver sent Notices to Trades (the "**Notices**") outlining and detailing a process for the payment of outstanding services and continuation of work following the Receiver taking possession of the project
 - In fact, the third Notice expressly indicated that the process was to "facilitate the approval of invoices for payment" and that the "Receiver intends to pay trades and suppliers for duly performed work and the delivery of supplies from the date of its appointment on December 21, 2023 through to January 24, 2024, the date when the project site was temporarily shut down"
 - The third Notice also states that "claims for work performed prior to the date of the Receiver's appointment will be dealt with through a future claims process" – consistent with my first comment above
 - The third Notice sets out a comprehensive list of documents to provide to substantiate amounts owing to a trade – however, the proposed Lien Claims Process requires a trade to duplicate this effort and allows the Receiver to ignore this information provided in accordance with the Notices
- The proposed Lien Claims Process contemplates the Receiver adjudicating the validity and quantum of each claim – claims for which it is personally liable
 - The Receiver is not a neutral party in this process as it is personally liable for services and materials supplied following its appointment and entering into possession and management of the project
 - As mentioned above, if the Receiver has concerns or issues with the quantum or nature of any post-receivership invoice, then it could

address these concerns as any owner or party to a contract would in the ordinary course, failing which the Receiver should pay post-receivership invoices in the ordinary course since the services or materials were supplied while the Receiver was in control

- The Receiver should not be the adjudicator of its own liability – this is an inherent conflict
- The registration of some liens appear to be a direct result of the Receiver refusing or failing to pay trades on a timely basis despite the Notices, having the required funding approved and a new construction manager (Elevate) assisting it through the process
 - It appears that about half of the liens were registered more than 60 days after the Receivership Order indicating that they relate, at least in part, to post-receivership services or materials supplied
 - No explanation is provided as to why these trades were not paid and why these invoices were left unpaid for so long, leading to additional legal costs and delay

While we have not had the benefit of reviewing your Factum, the Receiver's Third Report does not provide sufficient detail as to the basis for the purported efficiency gained through this process. The Receiver also notes that this type of process is common in receivership proceedings. In most cases of which I am aware, the claims process deals primarily with pre-filing claims, or where the claims were incurred in a DIP process. In this case, to the extent claims were incurred under the control and management of the Receiver, it does not seem necessary or efficient to seek a claims process, except to the extent there may be disputed claims. Could you provide additional clarity as to the need for, and efficiency expected by, this process?

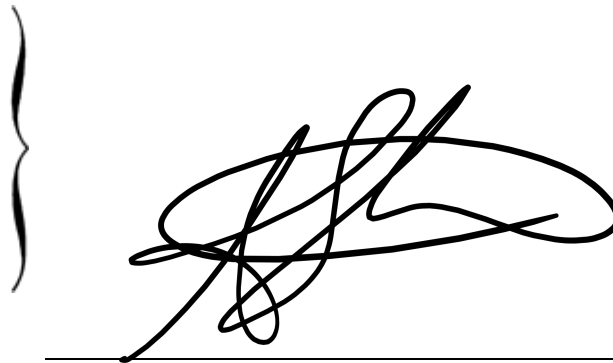
We have instructions to file responding materials on behalf of our client, Don Fry Scaffold Service, and anticipate that a number of trades may also be filing responding materials. As such, your timely response to the above questions and concerns will be welcome.

35. I make this affidavit in response to the Receiver's motion for a claims process and for no other improper purpose.

SWORN by Sandra D. Astolfo at the City of Toronto, in the Province of Ontario, before me on August 16th, 2024 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.



Commissioner for Taking Affidavits
(or as may be)



Andrew Smith

This is Exhibit "A" to the Affidavit of Andrew Smith sworn before me on August 16, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration remotely.



A Commissioner for Taking Affidavits, etc.

Sandra Astolfo (LSO# 36986R)

IN THE MATTER OF THE RECEIVERSHIP OF JEFFERSON PROPERTIES LIMITED PARTHERSNIP AND
2011836 ONTARIO CORP (AS ITS GENERAL PARTNER)
NOTICE TO TRADES AND SUPPLIERS

As you are aware, on Wednesday January 24, 2024, Albert Gelman Inc. in its capacity as the Court Appointed Receiver (the “**Receiver**”) for Jefferson Properties Limited Partnership and 2011836 Ontario Corp. (as its general partner) temporarily halted construction to the site municipally located at 39, 53 and 67 Jefferson Sideroad in Richmond Hill, ON (hereinafter referred to as the “**Project**”). This decision was made after extensive discussions with the Receiver’s Director of Construction and with the first mortgagee that is funding the construction.

The site shut down coincided with the replacement of the incumbent Project Construction Manager with the team at Elevate Construction Management (“**Elevate**”). Elevate is currently working with Project’s Consultants to conduct an “as-is” Project deficiency audit to identify work in place and document all remaining Project deficiencies.

In addition to the forgoing, this Notice is prepared to advise of the process moving forward in respect of payment of outstanding invoices and the continuation of services once the Project resumes.

Process Regarding Payment of Outstanding Invoices

The Receiver has implemented a strict process for review and approval for payment of invoices submitted by suppliers and trades. All proper documentation and authorizations must be in place before any invoice will be considered for payment. At this time a review of all outstanding accounts is being completed and the Receiver will notify parties of accounts that will be paid.

The Receiver will not tolerate any form of intimidation related to verbal/physical abuse or any implied threats. The Receiver will report any such incidents to the local Police authority.

Continuation of Services

The Receiver is working with Elevate and the Director of Construction regarding this matter. The Elevate team will be reaching out to hold meetings with each individual sub-trade to review the scope of work remaining and to gauge their interest and ability to complete their portion of outstanding work. Thereafter, the Receiver, in consultation with Elevate and such other consultants and professionals as may be appropriate, will determine which trades and services the Receiver intends to continue using on a go forward basis.

**Albert Gelman Inc.,
solely in its capacity as Court appointed Receiver of
Jefferson Properties Limited Partnership and 2011836 Ontario Corp. (as general
partner) and not in its personal or corporate capacity.**

Per: Dan Woo, CIRP, LIT

IN THE MATTER OF THE RECEIVERSHIP OF JEFFERSON PROPERTIES LIMITED PARTHERSNIP AND
2011836 ONTARIO CORP (AS ITS GENERAL PARTNER)
NOTICE TO TRADES AND SUPPLIERS

Dear Trades and Suppliers,

On January 31, 2024, the Receiver's first notification was sent to all trades and suppliers. For your convenience, a copy of the notice is attached herewith.

In alignment with the Receiver's directive dated January 31, 2024, a stringent process has been implemented for the assessment and approval of invoices from both suppliers and trades.

To enhance the efficiency of this process, the Receiver has categorized the invoice submission into two streams based on the completion date of the work:

1. **Work Completed and Invoiced Before January 24, 2024:**

For any work completed before January 24, 2024, please submit any outstanding invoices, along with a duly signed purchase order and other relevant documents (referred to as the "Documents") to the Receiver by email at **Jeffersontradessuppliers@albertgelman.com**. Ensure all submissions reach the Receiver by February 8, 2024.

2. **Work Completed and Invoiced On or After January 24, 2024:**

For work completed after January 24, 2024, coinciding with the appointment of the new Construction Manager, Elevate Construction Management Inc. ("Elevate"), submit all pertinent Documents to Elevate for the initial review and approval process. No changes have been made to the invoice cycle, and no exceptions will be made.

Your prompt attention to these submission guidelines ensures an efficient review process. We appreciate your cooperation in adhering to these procedures.

ALBERT GELMAN INC.,
solely in its capacity as Court appointed Receiver of
Jefferson Properties Limited Partnership and 2011836 Ontario Corp. (as general partner) and not in its
personal or corporate capacity

Per: Dan Woo, *CIRP, LIT*

**IN THE MATTER OF THE RECEIVERSHIP OF JEFFERSON PROPERTIES LIMITED PARTHERSNIP AND
2011836 ONTARIO CORP (AS ITS GENERAL PARTNER)**

NOTICE #3 TO TRADES AND SUPPLIERS

To Trades and Suppliers,

On January 29, 2024 and February 1, 2024 the Receiver issued important notices ("Notices") concerning the payment process to all trades and suppliers. Enclosed, please find copies of these Notices for your reference.

To facilitate the approval of invoices for payment, the Receiver requires the submission of specific documents (referred to as the "Documents"). These include:

- Detailed invoice outlining the completed work or items supplied.
- Schedule of Values for trades involved in contract work.
- Signed Purchase Orders (POs) for Time & Material and Extra to Contract Work.
- Timesheets signed by an authorized representative for time-related invoices.
- Signed delivery or freight tickets for all supplied materials.
- Statutory declaration.
- Proof of WSIB.
- Proof of Certificate of Insurance.

The Documents received for numerous invoices are incomplete, lack proper authorization, or pertain to incomplete work or work that has not been performed. Incomplete Document packages prevent the Receiver from authorizing/processing payment. A representative from the office of the Receiver will contact trades and suppliers falling into this category to request any outstanding information in due course.

The Receiver intends to pay trades and suppliers for duly performed work and the delivery of supplies from the date of its appointment on December 21, 2023 through January 24, 2024, the date when the project site was temporarily shut down. Payment for the work and delivery of supplies is dependent upon the verification and approval of the invoices through receipt of the required Documents.

The Receiver continues to review the debtors' contracts and agreements that were in force at the time of its appointment. Unless advised otherwise by the Receiver, any claims for work performed prior to the date of the Receiver's appointment will be dealt with through a future claims process.

**ALBERT GELMAN INC.,
solely in its capacity as Court appointed Receiver of
Jefferson Properties Limited Partnership and
2011836 Ontario Corp. (as general partner)
and not in its personal or corporate capacity**

Per: Dan Woo, *CIRP, LIT*

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and- **2011836 ONTARIO CORP. et al.**
Respondents

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

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

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.43, AS AMENDED

**PROCEEDING COMMENCED AT
TORONTO**

AFFIDAVIT OF ANDREW SMITH

WEIRFOULDS LLP

66 Wellington Street West, Suite 4100
P.O. Box 35, Toronto-Dominion Centre
Toronto, ON M5K 1B7

Sandra D. Astolfo (36986R)
sastolfo@weirfoulds.com
Tel: 416-947-5045

**Lawyers for the Lien Claimant,
Don Fry Scaffold Service Inc.**

Email for parties served:
Wendy Greenspoon-Soer: wgreenspoon@garfinkle.com
Khaled Gheddai: kg@friedmans.ca
Jeffrey Larry: Jeff.Larry@paliareroland.com

RCP-F 4C (September 1, 2020)

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and- **2011836 ONTARIO CORP. et al.**
Respondents

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

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

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.43, AS AMENDED

**PROCEEDING COMMENCED AT
TORONTO**

RESPONDING MOTION RECORD

WEIRFOULDS LLP

66 Wellington Street West, Suite 4100
P.O. Box 35, Toronto-Dominion Centre
Toronto, ON M5K 1B7

Sandra D. Astolfo (36986R)

sastolfo@weirfoulds.com

Tel: 416-947-5045

**Lawyers for the Lien Claimant,
Don Fry Scaffold Service Inc.**

Email for parties served:

Wendy Greenspoon-Soer: wgreenspoon@garfinkle.com

Khaled Gheddai: kg@friedmans.ca

Jeffrey Larry: Jeff.Larry@paliareroland.com

RCP-F 4C (September 1, 2020)