

**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

**RESPONDING MOTION RECORD OF THE LIEN CLAIMANTS,
EDG COR INC., CORE CONSTRUCTORS LTD., STEPHENSON'S RENTAL
SERVICES INC., SANTIAGO ALFREDO MENDOZA o/a ROYAL WELDERS, and
WYECROFT TRIM & DOORS GROUP INC. aka WYECROFT TRIM and DOORS
GROUP INC.
(Lien Claims Process Order)**

Dated: October 30, 2024

SUTHERLAND LAW
3300 Highway 7, Suite 904
Vaughan, ON
L4K 4M3

Jonathan L. Frustaglio
jfrustaglio@sutherlaw.com

Tel: (905) 695-5500
Fax: (905) 695-5501

Lawyers for the Lien Claimants, EDG Cor
Inc., Core Constructions Ltd., Stephenson's

Rental Services Inc., Santiago Alfredo
Mendoza o/a Royal Welders, and Wyecroft
Trim & Doors Group Inc. aka Wyecroft
Trim and Doors Group Inc.

TO: SERVICE LIST

AND TO: PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646-4330

jeff.larry@paliareroland.com

Kartiga Thavaraj (LSO# 75291D)

Tel: 416.646.6317

kartiga.thavaraj@paliareroland.com

Ryan Shah (LSO# 88250C)

Tel: 416.646-6356

ryan.shah@paliareroland.com

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TAB 1

**ONTARIO
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B E T W E E N:

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Applicant

- and -

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and 1000199992 ONTARIO CORP.**

Respondents

AFFIDAVIT OF KARLA TOMA

I, Karla Toma, of the City of Vaughan, in the Regional Municipality of York, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Law Clerk with the law firm of Sutherland Law, lawyers for the Lien Claimants, EDG Cor Inc., Core Constructions Ltd., Stephenson's Rental Services Inc., Santiago Alfredo Mendoza o/a Royal Welders, and Wyecroft Trim & Doors Group Inc. aka Wyecroft Trim and Doors Group Inc. (the "**Sutherland Lien Claimants**"), and as such, I have knowledge of the matters contained in this affidavit.

2. Sutherland Law is counsel for the Sutherland Lien Claimants who have existing interests and aggregate Claims for Lien against the Respondents in the within receivership proceeding that amounts to a total sum of approximately **\$1,776,769.82**, for which a break down of said aggregate Claims for Lien are outlined below (the "**Aggregate Claim for Lien**"):

a. **EDG COR INC.:**

Court File No.: CV-24-00000413-0000

Construction Lien Instrument No.: YR3639060

Claim for Lien: \$49,654.02

b. **CORE CONSTRUCTORS LTD.:**

Court File No.: CV-24-00000463-0000

Construction Lien Instrument No.: YR3640988

Claim for Lien: \$735,918.20

c. **STEPHENSON'S RENTAL SERVICES INC.:**

Court File No.: CV-24-00000499-0000

Construction Lien Instrument No.: YR3641202

Claim for Lien: \$52,487.83

d. **SANTIAGO ALFREDO MENDOZA o/a ROYAL WELDERS (“Royal Welders”):**

Court File No.: CV-24-00000955-0000

Construction Lien Instrument No.: YR3648247

Claim for Lien: \$809,755.74

e. **WYECROFT TRIM & DOORS GROUP INC. aka WYECROFT TRIM and DOORS GROUP INC.:**

Court File No.: CV-24-00001166-0000

Construction Lien Instrument No.: YR3652169

Claim for Lien: \$128,954.03

3. This motion arises out of a dispute between the Sutherland Lien Claimants and the Receiver with respect to the form and content of the draft Lien Claims Process Order (the “**LCP Order**”), of which counsel for the parties have been engaging in meaningful discussions to reach an amicable resolution for several weeks.

4. Sutherland Lien Claimants’ counsel was called to and attended trial from on or about September 23 to October 4, 2024, and October 21 to October 24, 2024, notwithstanding pre-existing commitments counsel had with respect to trial preparation. Nonetheless, Sutherland Lien Claimants’ counsel continued to make efforts to engage in meaningful discussions with Receiver’s counsel in an attempt to reach an amicable resolution with respect to the draft LCP Order.

5. It is noted that the Receiver was appointed approximately ten (10) months ago but has only recently begun to aggressively pursue the issuance of the said draft LCP Order. This

persistence from the Receiver comes at a time when Sutherland Law Lien Claimants' counsel has been occupied with said trial and other pre-existing commitments. The timeline for advancing the draft LCP Order should not be determined solely by the availability or prerogative of Receiver's counsel.

THE HEARING – OCTOBER 4, 2024

6. On or about October 2, 2024, after discussions between counsel for the Receiver, Albert Gelman Inc. (the “**Receiver**”), and counsel for all individual lien claimants interested in the within receivership proceeding, Receiver's counsel provided Sutherland Lien Claimants' counsel with a revised and updated draft Lien Claims Process Order, in advance of the October 4, 2024, hearing scheduled before the Honourable Justice Cavanagh with respect to said Lien Claims Process Order (the “**First Draft LCP Order**”). Attached hereto and marked as **Exhibit “A”** is a copy of the First Draft LCP Order.

7. On or about October 3, 2024, Sutherland Lien Claimants' counsel responded to Receiver's counsel and raised the following concerns with respect to the First Draft LCP Order, which included but was not limited to (the “**October 3 Letter**”):

- a. *At paragraph 7, please confirm that the Lien Documentation is limited to the Proof of Lien Claim Form;*
- b. *At paragraph 15, the Receiver has failed to contemplate the undisputed holdback which shall be released to the Claimant as soon as practicable;*
- c. *At paragraph 16, the Lien Claimants do not approve to the form and content of same and maintain that said Appeal should be preliminary and interim in nature as it shall not affect the lien rights of the Lien Claimants;*
- d. *At paragraph 17, the Lien Claimants do not approve for the Adjudicator's decision to be final and binding with no right of appeal as said Appeal shall be regarded as preliminary and interim in nature and the Lien Claimants must not be barred from exercising their rights to further appeal at the appellate courts;*

- e. *At paragraph 19, the Lien Claimants dispute the sole authority of the Adjudicator to award costs against the Pre-Receivership Disputing Party and state that the Adjudicator's fees should be equally shared between the parties;*
- f. *At paragraph 20, the Lien Claimants dispute the form and content of same and state that the Receiver shall not be unilaterally empowered to exercise said rights with regards to requiring security for costs from a Pre-Receivership Disputing Party. The Lien Claimants do not approve this paragraph in its entirety;*
- g. *At paragraph 21, the Lien Claimants require further clarification as to the necessity of a different standard for hearing multiple Notices of Dispute in respect to Post-Receivership Claims by the Dispute Bar Date and state that the standard of review shall be an appeal, preliminary in nature, and consistent with the Pre-Receivership Claims; and*
- h. *At paragraph 24, the Lien Claimants dispute the authority being vested in the Adjudicator and the Post Appeal Adjudicator to be able to award costs against any Post-Receivership Disputing Party as the hearing before the Adjudicator and the Post Appeal Adjudicator is to be preliminary and interim in nature.*

8. Sutherland Lien Claimants' counsel also reiterated in the October 3 Letter that the Sutherland Lien Claimants objected to said First Draft LCP Order as it sought to unjustifiably remove their rights under applicable law and the *Construction Act*. Further, counsel stated that there was no justification provided by the Receiver for such removal, especially with regards to the Pre-Receivership Claims Appeal and Post-Receivership Claims Appeal process. Attached hereto and marked as **Exhibit "B"** is a copy of the letter from Sutherland Lien Claimants' counsel to Receiver's counsel dated October 3, 2024.

9. On or about October 3, 2024, Sutherland Lien Claimants' counsel advised Receiver's Counsel that he had very limited instructions to consent to said First Draft LCP Order without addressing the holdback issue, which remained outstanding, and further advised Receiver's counsel to defer the issue of appeal rights until after the Receiver or respective lenders provided further information to Sutherland Lien Claimants with respect to the minimum holdback amounts retained for both, Pre-Receivership Claims and Post-Receivership Claims. Only thereafter would

the Sutherland Lien Claimants be in a position to provide instructions to their counsel with respect to the appeal rights issue. Sutherland Lien Claimants' counsel further reminded Receiver's counsel that the minimum holdback liability, which remained undisclosed to the Sutherland Lien Claimants, was within the power, possession, and control of the Receiver and readily available and that to date, the Receiver also did not respond to the Sutherland Lien Claimants' Section 39 Demand Letters. Attached hereto and marked as **Exhibit "C"** is a copy of the email correspondence from Sutherland Lien Claimant's counsel to Receiver's counsel dated October 3, 2024.

10. On or about October 4, 2024, Mr. Jawad Janmohamed attended before the Honourable Justice Cavanagh acting as agent for Mr. Jonathan Frustaglio, counsel for the Sutherland Lien Claimants, to advise the Honourable Court that the Sutherland Lien Claimants did not agree to the form and content of the draft LCP Order, especially with respect to the appeal process for Pre-Receivership Claims and Post-Receivership Claims. I am advised by counsel and verily believe it to be true that the agent for Sutherland Lien Claimants' counsel argued, among other things, the following before the Honourable Justice Cavanagh:

- a. The issued of the First Draft LCP Order would be premature, given that the minimum holdback amounts were neither disclosed yet by Receiver's counsel, nor did the Receiver provide a response to any Section 39 Demand Letters of the Sutherland Lien Claimants;
- b. Sutherland Lien Claimants are unable to consent to said First Draft LCP Order which would effectively strip said lien claimants off their rights which they would not otherwise be required to relinquish, especially with respect to the Pre-Receivership Claims and Post-Receivership Claims appeal process;

- c. As a result, the Sutherland Lien Claimants were seeking an adjournment and required a proper record and factum to argue the form and content of the First Draft LCP Order, although, in the interim, counsel for Sutherland Lien Claimants were willing to cooperatively find an amicable solution to said issues with Receiver's counsel.

ISSUES IN DISPUTE – LCP ORDER AND THE MINIMUM HOLDBACK AMOUNTS

11. As a result of the foregoing, Justice Cavanagh decided to adjourn the hearing as there remained a possibility that the First Draft LCP Order could be appealed due to the Sutherland Lien Claimants' opposition with its form and content. Justice Cavanagh noted the following in the Endorsement dated October 4, 2024, "*In these circumstances, I adjourn the hearing of this motion to a date before me to be obtained through the Commercial List Office. ... Counsel will confer and try to reach agreement on language in the requested form of order that will make a further attendance unnecessary.*" Attached hereto and marked as **Exhibit "D"** is a copy of the Endorsement of the Honourable Justice Cavanagh dated October 4, 2024.

12. In efforts to reach an agreement on the language for the LCP Order, following the conclusion of the hearing on October 4, 2024, Sutherland Lien Claimants' counsel continued to engage in discussions with Receiver's counsel to reach an amicable resolution, which included but was not limited to:

- a. Sutherland Lien Claimants' Counsel advised Receiver's counsel that it was necessary for the Receiver to disclose the quantum of money that was advanced to the Jefferson Properties project (the "**Project**"), and further reminded counsel that the Receiver had still not responded to said Section 39 Demand Letters.

- b. Receiver's counsel claimed that the minimum holdback retained by the Receiver amounted to approximately \$1,116,679.00 as of the date of the Receivership on or about December 21, 2023.
- c. Sutherland Lien Claimants' counsel responded by highlighting that said amount claimed to be the minimum holdback was not accurate with respect to the total amount extended towards the Project.

Attached hereto and marked as **Exhibit "E"** is a copy of the email correspondence from Sutherland Lien Claimant's counsel to Receiver's counsel dated October 4, 2024.

13. On or about October 7, 2024, Sutherland Lien Claimants' counsel and Receiver's counsel continued to engage in discussions with respect to the draft LCP Order, which included but was not limited to:

- a. Receiver's counsel now advised Sutherland Lien Claimants' counsel that "*based on an earlier budget of \$95,850,000, the last report prior to the date of receivership stated that gross costs were \$74,487,444, \$2,782,500 in holdbacks had been collected and \$1,665,821 had been released (with the net amount being \$1,116,679).*"
- b. Sutherland Lien Claimants' counsel responded to Receiver's counsel seeking clarification on the total quantum of money extended by the lenders to the owner with respect to the Project. Sutherland Lien Claimants' counsel further highlighted discrepancies in the minimum holdback amounts claimed by the Receiver as retained, along with additional questions regarding the release of these holdbacks, specifically, who received the release of holdbacks, under whose instructions it was made, and the process followed in effecting such releases.

- c. Receiver's counsel responded by stating that "*we are prepared to revise the order to say that your client will have 30 days from the date that they are in receipt of all information to their satisfaction, to seek to vary the appeal process*", although, Sutherland Lien Claimants' counsel previously advised Receiver's counsel that said mechanism to allow the Sutherland Lien Claimants to appeal the LCP Order's appeal process would be redundant and unnecessarily increase costs for the Sutherland Lien Claimants.

Attached hereto and marked as **Exhibit "F"** is a copy of the email correspondence between Sutherland Lien Claimant's counsel and Receiver's counsel dated October 7, 2024.

14. On or about October 7, 2024, the Section 39 Demand Letters of the Sutherland Lien Claimants were delivered by their counsel to Receiver's counsel. Attached hereto and marked as **Exhibit "G"** is a copy of the email correspondence from Sutherland Lien Claimants' counsel to Receiver's counsel dated October 7, 2024, and the Section 39 Demand Letters of the Sutherland Lien Claimants dated January 30, February 23, and March 6, 2024.

15. On or about October 9, 2024, counsel for the Sutherland Lien Claimants and the Receiver continued with the following discussions, which included but was not limited to:

- a. Sutherland Lien Claimants' counsel proposed the following language to be used in the draft LCP Order:

RESOLUTION OF PRE-RECEIVERSHIP CLAIMS AND POST-RECEIVERSHIP CLAIMS

THIS COURT ORDERS that as soon as practicable following the delivery of a Claimant's Notice of Dispute to the Receiver, the Receiver may:

- a. *Attempt to resolve the validity, status, timeliness, and/or quantum of the Claimant's Pre- Receivership Claim and/or Post-Receivership Claim with the Claimant on a consensual basis; and/or*

b. *Schedule an appointment with the Court for the purpose of scheduling a motion to have the validity, status, timeliness, and/or quantum of the Claimant's Pre-Receivership Claim and/or Post-Receivership Claim determined by the Court.*

THIS COURT FURTHER ORDERS that, notwithstanding the other provisions of this Order, the Receiver and/or the Claimant may make a motion to the Court for a final determination of the validity, status, timeliness, and/or quantum of the Claimant's Pre-Receivership Claim and/or Post-Receivership Claim at any time, whether or not the Adjudicator has made a determination on the Claim that has not been resolved, on full notice to the Receiver and/or the Claimant respectively.

THIS COURT FURTHER ORDERS that the Receiver may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion of the Lien Documentation.

THIS COURT FURTHER ORDERS that the Court shall be the final decision maker on any Appeal and/or Post Appeal of the Claimant's Pre-Receivership Claim and/or Post-Receivership Claim and this Order shall not prejudice the appeal rights of any Claimant.

THIS COURT FURTHER ORDERS that each Claimant shall retain its rights to appeal the Adjudicator's decision and/or the Receiver's Notice of Evaluation for the Claimant's Pre-Receivership Claim and/or Post-Receivership Claim under the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 and the Bankruptcy and Insolvency Act, RSC 1985, c B-3.

Counsel for the Sutherland Lien Claimants aimed to incorporate language regarding the Pre-Receivership Claims appeal process wherein if there was a dispute following a Notice of Dispute by the Dispute Bar Date, the Sutherland Lien Claimants would be able to move before the Court for the Court to make a determination and should not be in a position where their appeal rights are waived. Receiver's counsel was also reminded that the Sutherland Lien Claimants still did not receive any response to their Section 39 Demand Letters.

- b. Receiver's counsel responded by attaching the second draft LCP Order (the "**Second Draft LCP Order**") stating, among other things, that the Receiver "*is not agreeable to a process for a pre-receivership claim where the claimant has a*

further right of appeal beyond the appeal to the “Adjudicator”” and that “*the likelihood that a further appeal would produce a different result is incredibly low*”, which the Sutherland Lien Claimants state is neither conclusive, nor substantiated.

Attached hereto and marked as **Exhibit “H”** is a copy of the email correspondence between Sutherland Lien Claimants’ counsel and Receiver’s counsel dated October 9, 2024. Attached as **Exhibit “I”** is a copy of the Second Draft LCP Order.

16. On or between October 18 and October 19, 2024, counsel for the Sutherland Lien Claimants and the Receiver continued to engage in discussions with regards to the minimum holdback amounts and the language of the LCP Order as it relates to the appeal process for Pre-Receiverhip Claims and Post-Receiverhip Claims:

- a. Sutherland Lien Claimants’ counsel advised Receiver’s counsel that he was occupied with preparing for trial, however, with respect to the language of the draft LCP Order, Sutherland Lien Claimants’ counsel raised the following issues:
 - i. To date, the Receiver had still not provided any clear answer on why the lender(s) and Receiver had not provided their position on the “*minimum statutory holdback for pre receivership amounts advanced and post receivership amounts advanced*”, given that the “*majority of funds advanced are in respect of the pre-receivership process*” and “*highly important information to my clients*”, without which, Sutherland Lien Claimants’ was unable to obtain instructions without establishing said minimum holdback retained and accordingly, the Sutherland Lien Claimants were not prepared to “give up appeal rights in the absence of this information”.

- ii. Sutherland Lien Claimants' counsel also questioned why there were more “substantive appeal rights for post receivership claims vs. pre-receivership claims” which would have significant consequences as none of the lien claimants “know the receiver or lender(s) position on minimum holdback for pre-receivership and post receivership claims”. Counsel further advised that “if there is more than enough holdback to satisfy the lien claims, then potentially, appeal rights become less significant. However, if there is a great disparity over same, then that increases the necessity for maintaining and not giving up appeal rights that currently exist”.
- iii. Sutherland Lien Claimants' counsel reiterated that “to date, we have not received a response to my email seeking clarity on the money advanced, holdback retained and holdback paid out. We need to understand same in order to obtain instructions. If we do not understand, then we cannot explain to our clients and cannot obtain instructions” and that “we certainly want to work this out and avoid a motion however, we need this information in order for our client's to make an informed decision and provide instructions to us”.
- iv. Sutherland Lien Claimants' counsel further requested confirmation as to whether the Receiver and lenders agree “that minimum holdback on the \$75 million dollars advanced is \$7.5 million dollars in respect of pre receivership holdback”, to which no confirmation was received.
- v. Sutherland Lien Claimants' counsel reiterated that should any motion be required, he was unable to attend and argue said motion on short notice

given existing trial commitments at that time and that a full motion record and responding motion record would be required.

- vi. Throughout said discussions, Sutherland Lien Claimants' counsel repeatedly requested for information as it relates to the minimum holdback amounts, which was continuously ignored by Receiver's counsel, and re-emphasized that "the language you are proposing does not preserve my clients appeal rights. The language you propose gives up my clients rights, which currently exist, and then requires my client to justify why my client's existing rights need to be reinstated from what is listed in the draft order. This reserves the onus. Are you willing to the reverse occurring where my client's current appeal rights remain in place without prejudice to your client arguing at a later date that a different appeal regime should be put in place?".

Attached hereto and marked as **Exhibit "J"** is a copy of the email correspondence between Sutherland Lien Claimants' counsel and Receiver's counsel dated October 18 and 19, 2024.

17. On or about October 21, 2024, Sutherland Lien Claimants' counsel and Receiver's counsel engaged in the following discussions, wherein Sutherland Lien Claimants' counsel raised the following issues, which included but was not limited to:

- a. Sutherland Lien Claimants' counsel proposed that the LCP Order carves out an appeal clause that applies to all lien claimants, except for the Sutherland Lien Claimants, although, "in my view, [this] is shifting the burden onto a lien claimant to spend on an appeal when they [do not] need [to] do in the current lien regime,

is unfair. To me it seems that your client is attempting to make it more costly for a lien claimant to have recourse should they not be content with a decision your client makes unilaterally”.

- b. Sutherland Lien Claimants’ counsel reiterated that the Receiver continued to fail to respond to the Sutherland Lien Claimants’ Section 39 Demand Letters and to advise “*what was billed on the project, how much the last payment draw submitted (certificate), please produce it, show us the draw schedule on the project and how much was released no matter what your client wishes to categorize it as*” and that “*I’m also worried that if your client at this time, having had months to comply with a s.39, does not wish to do so, why would they in [the] future*”.
- c. Further, Sutherland Lien Claimants’ counsel proposed to “*remove that the adjudicator order is final and binding as it pertains to our client, and that accounting will be provided in the next two weeks. We have then a solution if you agree to this*”.
- d. Sutherland Lien Claimants’ counsel further stated that for the LCP Order to be issued on consent, then the adjudication and appeal process should not bind the Sutherland Lien Claimants and as such, there would not be any appeal burden placed on them, and that within thirty (30) days of the Receiver satisfying the disclosure of the financials of the Project to quantify the minimum holdback amounts, then the parties should return to the Court to address the position of the Sutherland Lien Claimants with respect said appeal and/or adjudication process;

- e. After much discussion between counsel, and Receiver's counsel delivered the third draft LCP Order to Sutherland Lien Claimants' counsel (the "**Third Draft LCP Order**").
- f. In response, Sutherland Lien Claimants' counsel proposed the following amendment to paragraph 16 of the Third Draft LCP Order with respect to the Pre- Receivership Claims Appeal process:
 - i. ***THIS COURT ORDERS*** that, in the event that the Receiver receives one or more Notices of Dispute in respect of Pre-Receivership Claims by the Dispute Bar Date, the Receiver shall, following the Dispute Bar Date, schedule an appeal (the "**Appeal**") *with such person as is agreeable to the Claimants and the Receiver or as may be appointed by the Court (the "Adjudicator") for the determination of each Claim that has not been resolved. ~~At the hearing of each Appeal, the Adjudicator's standard of review of the Receiver's Notice of Evaluation is that of an appellate court such that the Receiver's Notice of Evaluation are only reviewable on the basis of (a) correctness as to questions of law, and (b) palpable and overriding error as to questions of fact.~~*

Attached hereto and marked as **Exhibit "K"** is a copy of the email correspondence between Sutherland Lien Claimants' counsel and Receiver's counsel dated October 21, 2024.

Attached as **Exhibit "L"** is a copy of the Third Draft LCP Order.

18. On or about October 22, 2024, said discussions between Sutherland Lien Claimants' counsel and Receiver's counsel continued, which included but was not limited to:

- a. Sutherland Lien Claimants' counsel reminded Receiver's counsel that the Receiver was yet to provide the requested financial information with respect to the minimum holdback amounts and that the Sutherland Lien Claimants "*want to know the holdback quantum now. Deserving and rightfully so, they should have this. When I say the receiver does not have this and the records are a mess, it falls on deaf ears. It's the lenders records that can reveal what money was advanced. To say this is*

3. *All relevant information, documents, and records related to said total quantum of money advanced, holdback amounts retained pursuant to the Construction Act, and/or any holdback deficiencies.*

Attached hereto and marked as **Exhibit “N”** is a copy of the email correspondence between Sutherland Lien Claimants’ counsel and Receiver’s counsel dated October 23, 2024.

20. On or about October 26, 2024, Sutherland Lien Claimants’ counsel requested Receiver’s counsel to provide any case law which permits the Receiver to impose said appeal process being advanced with respect to Pre-Receivership Claims and Post-Receivership Claims and requires the Sutherland Lien Claimants to agree to waive their appeal rights. Counsel reiterated that the Receiver was requested, at numerous times, to produce financial information as it relates to construction financing that *“was advanced pre receivership and post receivership, as well as how much holdback was retained and any deficiency in same”* and that *“to date, we have not received said information which makes our clients very concerned as to why said information is not being voluntarily disclosed by the receiver and lender(s), while at the same time, the receiver is pushing for two different lien vetting processes/procedures with varying appeal rights. This concerns our clients”*, despite said information being readily available to the Receiver. Attached hereto and marked as **Exhibit “O”** is a copy of the email correspondence from Sutherland Lien Claimants’ counsel to Receiver’s counsel dated October 26, 2024.

21. On or about October 29, 2024, following Receiver’s counsel requisitioning the within motion, Sutherland Lien Claimants’ counsel provided Receiver’s counsel with the Section 39 Demand Letters again and advised Receiver’s counsel that the Sutherland Lien Claimants will seek costs against the Receiver for failing to act in the best interests of, *inter alia*, all stakeholders, creditors, and lien claimants, and is moving for this motion impartially as the Sutherland Lien Claimants’ were still not provided with said accounting and financial disclosure. Attached hereto

and marked as **Exhibit “P”** is a copy of the email correspondence between Sutherland Lien Claimants’ counsel and Receiver’s counsel dated October 29, 2024.

22. As a result of the foregoing, the Receiver and Sutherland Lien Claimants have not been able to reach a resolution with respect to the language of the draft LCP Order concerning the Pre- Receivership Claims Appeal and Post-Receivership Claims Appeal process, which is attributed to the Receiver’s failure to disclose the total amounts of construction financing that was extended to the Project and the total minimum holdback amounts retained as it relates to said construction financing, despite Sutherland Lien Claimants’ counsel extended requests for said disclosure to Receiver’s counsel repeatedly.

23. In addition, the Receiver has amended and/or removed significant provisions from the Third Draft LCP Order in the final draft Lien Claims Process Order which was delivered to our office on or about October 28, 2024, and which the Receiver relies on for the within motion (the **“Final Draft LCP Order”**).

24. The contents of the LCP Order was subject to extensive discussion and negotiation not only between Sutherland Lien Claimants’ counsel and Receiver’s counsel, but also among other counsel for the remaining lien claimants who are interested parties in this receivership proceeding.

25. Among various amendments, omissions, and/or alternations, many of which Sutherland Lien Claimants’ counsel was not apprised of, Receiver’s counsel has unilaterally implemented the following notable changes, without providing any justification, which includes but is not limited to:

- a. The Claims Bar Date now precedes the date of the within motion, contrary to the timeline previously stipulated in the Third Draft LCP Order.

- b. Section D - Initial Determination of Claims: paragraph 10 previously placed the onus on the Receiver to review the Lien Documentation received by the Claims Bar Date, assess the timeliness and quantum of each Claim, and, if applicable, revise allocations between Pre-Receivership Claims and Post-Receivership Claims within ninety (90) days following the Claims Bar Date (the Initial Review Date). This requirement has now been removed, leaving no prescribed timeline or obligation for the Receiver to complete such evaluations within said specific timeframe.
- c. Section D - Initial Determination of Claims: paragraph 11 required the Receiver to provide Claimants with written notice detailing the Receiver's determination on the timeliness and quantum of each Pre-Receivership or Post-Receivership Claim, including reasons for such determination, within fourteen (14) days after the Initial Review Date. This has now been removed entirely in the Final Draft LCP Order.
- d. Section D - Initial Determination of Claims: paragraph 12, which originally granted Claimants thirty (30) days to dispute any portion of the Receiver's determination as outlined in a Notice of Evaluation, has been unilaterally reduced by the Receiver to twenty (20) days in the Final Draft LCP Order.
- e. Section D - Initial Determination of Claims: paragraphs 14 and 15, which addressed Settlement between the Receiver and Lien Claimants and the authorization of the Receiver to pay Claimants as soon as reasonably practicable, but no later than twenty-eight (28) days after receipt of funds from the Receiver's borrowing, for amounts not disputed in a Notice of Evaluation, agreed upon in a settlement, or determined through the Lien Claims Process, have been omitted in their entirety in the Final Draft LCP Order.

- f. Sections E - Pre-Receivership Claims Appeal and Section F - Post-Receivership Claims Hearing have also been removed. The Final Draft LCP Order seeks to amalgamate the appeal processes for both, Pre-Receivership and Post-Receivership Claims, without regard as to how this consolidation affects the distinct rights of lien claimants with claims in each category.

Attached hereto and marked as **Exhibit “Q”** is a copy of the Final Draft Lien Claims Process Order from October 28, 2024.

26. The above-noted differences between the Third Draft LCP Order and the Final Draft LCP Order, which were made without notice or justification by Receiver’s counsel to Sutherland Lien Claimants’ counsel, seek to undermine the extensive discussions and efforts made by all counsel to reach an amicable resolution with respect to the overall language, form, and content of the LCP Order.

27. I make this affidavit for no improper use or purpose and in support of the within motion of the Employer Applicant.

SWORN BEFORE ME at the City of Vaughan, in the Province of Ontario, on this 30th day of October, 2024.

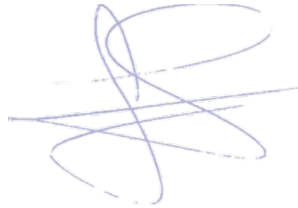


Commissioner for Taking Affidavits
(or as may be)
Jonathan L. Frustaglio



Karla Toma

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024

A handwritten signature in blue ink, consisting of several overlapping loops and a horizontal line, positioned centrally on the page.

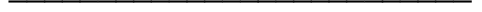
A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

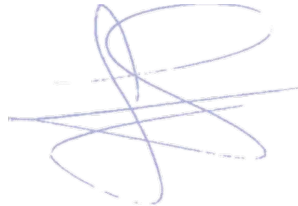
5. **THIS COURT ORDERS AND DIRECTS** that, subject to paragraph 6 of this Order, in order to file a Claim pursuant to the Lien Claims Process described herein, a Claimant shall complete the Proof of Lien Claim Form attached as Schedule "A" hereto and, where applicable, provide the information set out in Schedule "1" to the Proof of Lien Claim Form (with the Proof of Claim Form, the "**Lien Documentation**") to the Receiver after the date of this Order and before 5:00 p.m. Toronto time on November 4 , 2024 (the "**Claims Bar Date**").
6. **THIS COURT ORDERS** that, in connection with the Lien Claims Process, any Claimant that has delivered documentation to the Receiver in response to the Receiver's Notices to Trades shall have no obligation to submit the Lien Documentation that it has already submitted to the Receiver (but, for certainty, must submit a Proof of Lien Claim Form in accordance with paragraph 5) and that all documentation delivered in response to the Notices to Trades shall and are hereby deemed to be Lien Documentation within the meaning of this Order for the purpose of this Lien Claims Process, provided that to the extent that a Claimant intends to rely on any Lien Documentation submitted prior to the making of this Order, the Claimant must identify on its Proof of Lien Claim Form the date(s) and manner in which it submitted such Lien Documentation to the Receiver.
7. **THIS COURT ORDERS** that any Claimant who does not provide the necessary Lien Documentation to the Receiver by the Claims Bar Date shall be forever barred from asserting its Claim against the Respondents, the Receiver, the Property, and any "owner" (as defined in the *Construction Act*) of the Property, and such Claim shall be forever discharged and extinguished, and any such Claimant shall not be

F. POST-RECEIVERSHIP CLAIMS HEARING

21. **THIS COURT ORDERS** that, in the event that the Receiver receives one or more Notices of Dispute in respect of Post-Receivership Claims by the Dispute Bar Date, the Receiver shall, following the Dispute Bar Date, schedule a hearing (the “**Hearing**”) with the Adjudicator for the determination of each Post-Receivership Claim that has not been resolved. The Hearing shall not be an appeal and the Adjudicator shall instead review the Post-Receivership Claim on a *de novo* basis.
22. **THIS COURT ORDERS** that in respect of each Hearing, one half of the Adjudicator’s fees shall be paid by the Receiver and one half of the Adjudicator’s fees shall be paid by the Claimant that filed a Notice of Dispute (such a party being a “**Post Receivership Disputing Party**”) at least 14 days prior to the subject Hearing.
23. **THIS COURT ORDERS** that parties to a Hearing shall have a right to appeal (a “**Post Appeal**”) the decision of the Adjudicator to the Court (the “**Post Appeal Adjudicator**”). At the hearing of a Post Appeal, the Post Appeal Adjudicator’s standard of review of the Adjudicator’s decision of a Post-Receivership Claim shall be that of an appellate court such that the Adjudicator’s decision is only reviewable on the basis of (a) correctness as to questions of law, and (b) palpable and overriding error as to questions of fact.
24. **THIS COURT ORDERS** that both the Adjudicator and the Post Appeal Adjudicator shall have the jurisdiction to:



THIS IS **EXHIBIT “D”** REFFERED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024

A handwritten signature in blue ink, appearing to read 'Jonathan L. Frustaglio', with a stylized, overlapping loop structure.

A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

to modify that term. Justice Cavanagh also seemed to agree that your client would not be prejudiced in any way by such Order. That said, he did not want to Order that unless you were in agreement.

I proposed therefore that we add the following language to the end of paragraph 17 “provided that the making of this Order is without prejudice to [insert names of your clients’] right to seek to vary the appellate procedure in this paragraph within 30 days.”

If we cannot reach agreement on the language, Justice Cavanagh said that we can attend before him for 30 minutes next week to argue the point. Given that all lien claimants and counsel want to get this Order finalized and the process started, I will want to go to court next week to argue this point if for some reason we cannot agree on language.

I remain hopeful that we can reach this agreement now and send the Order to Justice Cavanagh for his signature.

Please let me know.

I confirm again that for a post-receivership claim, there is already an appeal right to the court (see para. 23)

- d) a copy of any labour and material bond or performance bond in respect of the contract posted by the contractor with the owner and/or posted by a subcontractor with the contractor or by a subcontractor with another subcontractor;
- e) a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis;
- f) a statement of whether the contract provides that payment under the contract shall be based on the completion of specified phases or the reaching of other milestones in its completion;
- g) a statement of whether there is a provision in a subcontract providing for certification of the subcontract;
- h) a statement of whether a subcontract has been certified as complete;
- i) what other trust claims or claims for lien have been preserved on behalf of subcontractors and suppliers to 2011836 Ontario Corp., Jefferson Properties Limited Partnership and 2011836 Ontario Corp. o/a Grand Grace Development to date.

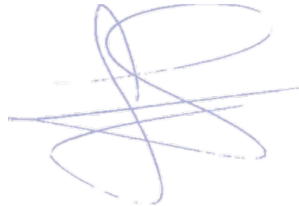
From mortgagee or unpaid vendor:

- a) sufficient details concerning any mortgage on the premises to determine whether the mortgage was taken by the mortgagee for the purposes of financing the making of the improvement;
- b) a statement showing the amount advanced under the mortgage, the dates of those advances, and any arrears in payment including any arrears in the payment of interest; and
- c) a statement showing the amount secured under the agreement of purchase and sale and any arrears in payment including any arrears in the payment of interest.

The purpose behind Section 39 of the *Construction Act* is to establish a value for the work in place for valuing statutory holdback and the value of any earned but unpaid contract funds available to unpaid contractors, subcontractors, and suppliers. The second part of the exercise is to determine the quantum of claims made against those funds.

Pursuant to the *Construction Act*, you are required to provide the foregoing information within **twenty-one (21) days** from the date hereof. We advise you that if you fail to

THIS IS **EXHIBIT "H"** REFERRED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024



A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

- (d) **“Initial Order”** means the Order of Justice Cavanagh appointing the Receiver dated December 21, 2023;
- (e) **“Newspaper Notice”** means a notice of this Order to be published in the National Post (National Edition) in accordance with paragraph 3 of this Order;
- (f) **“Post-Receivership Claims”** means Claims in respect of services or materials supplied to improvements to the Property on or after December 21, 2023 and before June 1, 2024; and
- (g) **“Pre-Receivership Claims”** means Claims in respect of services or materials supplied to improvements to the Property before December 21, 2023.

B. SERVICE AND NOTICE

2. **THIS COURT ORDERS** that the time for service of the Receiver’s Amended Notice of Motion is hereby abridged and validated so that this Motion is properly returnable today, and hereby dispenses with further service thereof.
3. **THIS COURT ORDERS** that the Receiver shall arrange for the Newspaper Notice to be published in the National Post (National Edition) as soon as reasonably practicable after the date of this Order.

C. FILING CLAIMS

4. **THIS COURT ORDERS** that the Lien Claims Process described in the Third Report, as modified herein, is hereby approved.

5. **THIS COURT ORDERS AND DIRECTS** that, subject to paragraph 6 of this Order, in order to file a Claim pursuant to the Lien Claims Process described herein, a Claimant shall complete the Proof of Lien Claim Form attached as Schedule “A” hereto and, where applicable, provide the information set out in Schedule “1” to the Proof of Lien Claim Form (with the Proof of Claim Form, the **“Lien Documentation”**) to the Receiver after the date of this Order and before 5:00 p.m. Toronto time on November 4 , 2024 (the **“Claims Bar Date”**).
6. **THIS COURT ORDERS** that, in connection with the Lien Claims Process, any Claimant that has delivered documentation to the Receiver in response to the Receiver’s Notices to Trades shall have no obligation to submit the Lien Documentation that it has already submitted to the Receiver (but, for certainty, must submit a Proof of Lien Claim Form in accordance with paragraph 5) and that all documentation delivered in response to the Notices to Trades shall and are hereby deemed to be Lien Documentation within the meaning of this Order for the purpose of this Lien Claims Process, provided that to the extent that a Claimant intends to rely on any Lien Documentation submitted prior to the making of this Order, the Claimant must identify on its Proof of Lien Claim Form the date(s) and manner in which it submitted such Lien Documentation to the Receiver.
7. **THIS COURT ORDERS** that any Claimant who does not provide the necessary Lien Documentation to the Receiver by the Claims Bar Date shall be forever barred from asserting its Claim against the Respondents, the Receiver, the Property, and any "owner" (as defined in the *Construction Act*) of the Property, and such Claim shall be forever discharged and extinguished, and any such Claimant shall not be

Order, as soon as is reasonably practicable but no later than 28 days following receipt of funds pursuant to the Receiver's borrowing in accordance with paragraph 20 of the Initial Order as amended, without any further order of the Court. Receipt of payment for part of a Claim does not release or waive the right of the Claimant to prove the unpaid/disputed portion of the Claim in this Lien Claims Process, unless the Claimant agrees otherwise.

E. PRE-RECEIVERSHIP CLAIMS APPEAL

16. **THIS COURT ORDERS** that, in the event that the Receiver receives one or more Notices of Dispute in respect of Pre-Receivership Claims by the Dispute Bar Date, the Receiver shall, following the Dispute Bar Date, schedule an appeal (the "**Appeal**") with Carol Albert (the "**Adjudicator**") for the determination of each Claim that has not been resolved. At the hearing of each Appeal, the Adjudicator's standard of review of the Receiver's Notice of Evaluation is that of an appellate court such that the Receiver's Notice of Evaluation are only reviewable on the basis of (a) correctness as to questions of law, and (b) palpable and overriding error as to questions of fact.
17. **THIS COURT ORDERS** that the decision of the Adjudicator shall be final and binding with no right of appeal therefrom.
18. **THIS COURT ORDERS** that, in respect of each Appeal hearing, one half of the Adjudicator's fees shall be paid by the Receiver and one half of the Adjudicator's fees shall be paid by the Claimant that filed a Notice of Dispute (such a party being

a “**Pre-Receivership Disputing Party**”) at least 14 days prior to the subject Appeal.

19. **THIS COURT ORDERS** that the Adjudicator shall have the jurisdiction to:
 - (a) award costs against the Pre-Receivership Disputing Party or against the Receiver if the Adjudicator determines that the Receiver acted grossly negligent or engaged in wilful misconduct; and
 - (b) direct that the Pre-Receivership Disputing Party shall be required to pay a greater proportion of the Adjudicator’s fees than the amount provided for in paragraph 18 of this Order;

20. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to:
 - (a) in its reasonable discretion, apply for an order from the Adjudicator requiring security for costs from a Pre-Receivership Disputing Party that wishes to have its Pre-Receivership Claim and/or Notice of Dispute reviewed by the Adjudicator; and
 - (b) deduct any costs or fees ordered by the Adjudicator to be payable by any Pre-Receivership Disputing Party in connection with an Appeal, pursuant to paragraphs 18 and 19 of this Order, from any amount due and owing to that party.

F. POST-RECEIVERSHIP CLAIMS HEARING

21. **THIS COURT ORDERS** that, in the event that the Receiver receives one or more Notices of Dispute in respect of Post-Receivership Claims by the Dispute Bar Date, the Receiver shall, following the Dispute Bar Date, schedule a hearing (the "**Hearing**") with the Adjudicator for the determination of each Post-Receivership Claim that has not been resolved. The Hearing shall not be an appeal and the Adjudicator shall instead review the Post-Receivership Claim on a *de novo* basis.
22. **THIS COURT ORDERS** that in respect of each Hearing, one half of the Adjudicator's fees shall be paid by the Receiver and one half of the Adjudicator's fees shall be paid by the Claimant that filed a Notice of Dispute (such a party being a "**Post Receivership Disputing Party**") at least 14 days prior to the subject Hearing.
23. **THIS COURT ORDERS** that parties to a Hearing shall have a right to appeal (a "**Post Appeal**") the decision of the Adjudicator to the Court (the "**Post Appeal Adjudicator**"). At the hearing of a Post Appeal, the Post Appeal Adjudicator's standard of review of the Adjudicator's decision of a Post-Receivership Claim shall be that of an appellate court such that the Adjudicator's decision is only reviewable on the basis of (a) correctness as to questions of law, and (b) palpable and overriding error as to questions of fact.
24. **THIS COURT ORDERS** that both the Adjudicator and the Post Appeal Adjudicator shall have the jurisdiction to:

- (a) award costs against any Post-Receivership Disputing Party or against the Receiver in respect of a Post-Receivership Claim, provided that nothing in this paragraph shall be taken to impose personal liability on Albert Gelman Inc. for any costs or proportion of the Adjudicator's fees;
- (b) direct that a Post-Receivership Disputing Party shall be required to pay a greater proportion of the Adjudicator's fees than the amount provided for in paragraph 22 of this Order; and
- (c) direct that the Receiver shall be required to pay a greater proportion of, as the case may be, the Adjudicator's fees than the amount provided for in paragraph 22 of this Order provided that nothing in this paragraph shall be taken to impose personal liability on Albert Gelman Inc. for any costs or proportion of fees;

25. **THIS COURT ORDERS** that if there is an outstanding cost award (or outstanding cost awards) against the Receiver made under this Order at any time that the Receiver receives funds borrowed or is already in receipt of funds borrowed under paragraph 20 of the Initial Order, as amended, then the Receiver shall first apply such borrowed and received funds to the payment of such cost award(s).

G. ADMINISTRATIVE ISSUES

26. **THIS COURT ORDERS** that all documents required to be served herein shall be served by electronic mail to the address for service set out in the service list or the Claimant's Lien Documentation.

27. **THIS COURT ORDERS** that the Receiver shall incur no personal liability or obligations as a result of the carrying out of the terms of this Order and the implementation and administration of the within Lien Claims Process, except as may be otherwise ordered or determined in accordance with the Lien Claims Process.

28. **THIS COURT ORDERS** that the Receiver may apply to the Court for directions regarding the carrying out of the within Lien Claims Process.

29. **THIS COURT ORDERS** that within the Lien Claims Process, and participation in it, is without prejudice to the right(s) of any Claimant to commence or continue any claim or proceeding against any person (save for the Receiver) with respect to the issues of the Claimants' priority over any secured creditor or mortgagees, breach of trust, negligence, breach of contract or quantum meruit ("**Proceedings**"), and does not affect, truncate or waive any substantive or procedural rights and/or remedies that a Claimant may have in any such Proceedings. Notwithstanding the above, the Lien Claims Process also does not affect any substantive or procedural rights that any defendant may have to defend Proceedings, save and except that the defendant may not assert in the Proceedings that the claim of any Claimant ought to be dismissed or stayed on grounds of res judicata (issue estoppel, and/or cause of action estoppel) and/or abuse of process, by virtue of the Claimant asserting a Claim in the Lien Claims Process.

H. FEES, RECEIPTS AND DISBURSEMENTS

30. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period from December 21, 2023 to August 4, 2024 be and is hereby approved.
31. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its legal counsel as described in the Third Report, the fee affidavit of Bryan Gelman, sworn August 6, 2024, and the Fee affidavit of Beatrice Loschiavo, sworn August 1, 2024, are hereby approved.

I. GENERAL

32. **THIS COURT ORDERS** that the Third Report and the conduct and activities of the Receiver set out therein be and is hereby approved, provided that such approval shall not prevent the Adjudicator or the Post Appeal Adjudicator from making determinations as to the conduct of the Receiver, in its capacity as receiver and manager, in the Lien Claims Process for purposes of a cost award as provided for and contemplated by paragraph 24.
33. **THIS COURT ORDERS** that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Third Report detailed in paragraph 32 above.
-

Schedule “A” – Proof of Lien Claim Form

PROOF OF CLAIM

Terms not otherwise defined herein shall have the meanings ascribed to them in the order of Justice Cavanagh dated October 4, 2024 (the “Lien Claims Process Order”).

A. PARTICULARS OF THE CLAIMANT:

(1) Full Legal Name of the Claimant (include trade name, if different):

.....
.....

(the “**Claimant**”). The full legal name should be the name of the Claimant notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred prior to or following the Lien Claims Process Order.

(2) Full Mailing Address of Claimant: (The mailing address should be the mailing address of the Claimant and not any assignee)

.....
.....

(3) Telephone Number of Claimant:

.....

(4) E-mail Address of Claimant:

.....

(5) Attention (Contact Person):

Has the Claim set out herein been sold, transferred or assigned by the Claimant to another party?

Yes: [] No: []

B. PARTICULARS OF THE ASSIGNEE(S) (IF APPLICABLE)

.....

If the Claim set out herein has been sold, transferred or assigned, complete the required information set out below. If there is more than one assignee, please attach a separate sheet which contains all of the required information set out below for each assignee.

(1) Full Legal Name of the Assignee:

.....

(2) Full Mailing Address of the Assignee:

.....

(3) Telephone Number of Assignee:

(4) E-mail Address of Assignee:

(5) Attention (Contact Person):

C. PROOF OF CLAIM

THE UNDERSIGNED HEREBY MAKES OATH AND SAYS AS FOLLOWS:

(1) That I:

am a Claimant with respect to real property municipally known as 39, 53 and 67 Jefferson Side Road, Richmond Hill, Ontario (the "Property") or (*if applicable*) am the:

.....
(state position or title)

of

.....
(Name of Claimant)

(2) That I have knowledge of all of the circumstances connected with the Claim described and set out below:

(3) The Claimant seeks payment of \$..... [*Insert \$ value of claim*] CAD on account of services and materials supplied to an improvement on the Property **on or after** December 21, 2023 (the Appointment Date) and before June 1, 2024; and

\$..... on account of interest and legal fees on the same [*Provide particulars of interest claim and calculation of same along with particulars of legal fee claim*]

Has the Claimant registered a lien against the Property on or before the date of the Lien Claims Process Order

Yes: [] No: []

(4) The Claimant seeks payment in respect of a lien of \$..... [*Insert \$ value of Claim*] CAD registered against the Property on account of services and materials supplied to an improvement on the Property **before** December 21, 2023 (the "Appointment Date") and

\$..... on account of interest on the same [*Provide particulars of interest claim and calculation of same*]

(5) The Claimant seeks payment in respect of a lien of \$..... [*Insert \$ value of claim*] CAD registered against the Property on account of services and materials supplied to an improvement on the Property **on or**

after December 21, 2023 (the Appointment Date) and

\$..... on account of interest and legal fees on the same [*Provide particulars of interest claim and calculation of same along with particulars of legal fee claim*]

NOTE: Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as of the date of the Lien Claims Process Order.

D. PARTICULARS OF CLAIM

Other than as already set out herein, the particulars of the undersigned's total Claim are attached in the form of the Documentation (as defined in the order of Justice Cavanagh, dated October 4, 2024)

SWORN BEFORE ME at the)
)
 _____ in the)
 Province of _____)
 this _____ day of _____)
)
 _____)
 A Commissioner, or Notary Public, etc.)

Name of Deponent

[or if sworn via video conferencing]

SWORN REMOTELY by)
)
 _____ at the)
)
 _____)
 in the _____)
 on _____, 2024)
 in accordance with O. Reg. 431/20,)
 Administering Oath or Declaration Remotely)

A Commissioner, or Notary Public, etc.

Name of Deponent

E. FILING OF CLAIM

This Proof of Claim form must be received by the Receiver, Albert Gelman Inc., by no later than 5:00 p.m. (Eastern Standard time) on November 4, 2024 (the “**Claims Bar Date**”) at the following physical address or email address:

Albert Gelman Inc., in its capacity as court-appointed receiver
of 2011836 Ontario Corp. and Jefferson Properties Limited Partnership
(the “**Debtors**”)

250 Ferrand Drive, Suite 403
Toronto, ON M3C 3G8
Attention: Terry Scott
tscott@albertgelman.com

Failure to file your Proof of Claim and any required documentation as directed in relation to any Claim by 5:00 p.m. (Eastern Standard Time) on the Claims Bar Date will result in your Claim being forever barred and extinguished, and you will be prohibited from making or enforcing that Claim against the Property, the Receiver or the Debtors and shall not be entitled to further notice or distribution, if any, in respect of that Claim, and shall not be entitled to participate as a Claimant in these proceedings in respect of that Claim.

Schedule "1" – Documentation

- (a) copy of the Claimant's registered construction lien and any written notice of lien;
- (b) copies of the Claimant's Statement of Claim and Certificate of Action;
- (c) documentation evidencing the last date on which the Claimant provided service, materials or labour to the applicable improvement in the case of a subcontractor or the date of completion, abandonment or termination of the contract in the case of a contractor;
- (d) a copy or particulars of any contract, subcontract, purchase order or agreement upon which the Claimant assert its materials, services and labour were provided under (the "**Contract**"), including the names of the parties to the Contract and the date it was entered into;
- (e) a statement of account under the Contract and particulars and documents substantiating the quantum of the Claim, including:
 - (i) the price of the Contract;
 - (ii) the total amount invoiced by the Claimant, including a copy of the invoices and dates the invoices were sent;
 - (iii) the total amount paid to the Claimant under the Contract, including the date and amount of payments received;
 - (iv) the amount of the Claim that comprises of holdback and amounts invoiced within the scope of the Contract; and
 - (v) the amount of the Claim that comprises of extra to the Contract, along with any relevant documentation substantiating the extra amount sought, such as notice of extras, request for extras, request for change orders, executed change orders, executed change directives, amendments or purchase orders and time and material sheets;
- (f) statutory declaration(s) that attest to the work is complete and performed is in accordance or in compliance with the Contract;
- (g) for Claimants who operated on a time and materials (T&M) basis, evidence of authorization to perform work;
- (h) for Claimants who provided materials, statutory declaration(s) that attest the materials were ordered/requested and delivered;
- (i) a copy of any labour and material payment bond posted by a subcontractor with a contractor or by a subcontractor with a subcontractor;

- (j) documentation evidencing service, materials and labour provided to the applicable improvement including, but not limited to, the following:
 - (i) completed and approved timesheets of employees and subcontractors;
 - (ii) subcontractor invoices;
 - (iii) payroll registers and records;
 - (iv) bank statements, electronic fund transfer receipts and cancelled cheques evidencing remittances by the Claimant to employees and subcontractors;

- (k) all documents related to the fulfillment of work agreements including, but not limited to, the following:
 - (i) WSIB clearance certificates for the dates the work was performed;
 - (ii) proof of insurance showing coverage for the dates the work was performed;
 - (iii) shop drawings;
 - (iv) as built(s);
 - (v) schematics;
 - (vi) warranties and guarantees; and,
 - (vii) third party verifications / certifications;

- (l) any other documents or information as the Receiver may reasonably request for the purpose of assessing and determining any Claims in accordance with the Lien Claim Process Order.

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and-

2011836 ONTARIO CORP. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Lien Claims Process)

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

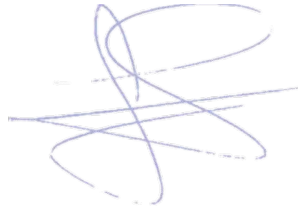
Jeffrey Larry (LSO# 44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Kartiga Thavaraj (LSO# 75291D)
Tel: 416.646.6317
kartiga.thavaraj@paliareroland.com

Ryan Shah (LSO# 88250C)
Tel: 416.646-6356
ryan.shah@paliareroland.com

Lawyers for the Receiver, Albert Gelman Inc.

THIS IS **EXHIBIT “J”** REFERRED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024



A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

From: Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>

Sent: Friday, October 18, 2024 1:38 PM

To: Jeff.Larry@paliareroland.com; Jawad Janmohamed <jjanmohamed@sutherlaw.com>

Cc: ryan.shah@paliareroland.com; Janae Pina Trasvina <jtrasvina@sutherlaw.com>; Karla Toma <ktoma@sutherlaw.com>; ryan.shah@paliareroland.com

Subject: Re: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

Good afternoon Jeff,

I am currently out of the office preparing for a trial with my client that continues next week.

Jeff,

Have you heard back from any other counsel regarding who they propose to act as the adjudicator?

My clients are maintaining the position that the appeal process should be the same for pre-receivership claims and post-receivership claims. There should not be a distinction.

To date, we still do not have any clear answer on why the lender(s) and receiver have not provided their position on minimum statutory holdback for pre receivership amounts advanced and post receiverships amounts advanced. Why is this information not forthcoming?

We require this information in order to obtain instructions from our clients who, in aggregate, have significant lien claims.

Further, given that it appears that the majority of funds advanced are in respect of the pre-receivership process, this is highly important information to my clients, who have pre-receivership and post receivership claims.

Why would my clients give up appeal rights in the absence of this information?

How can my clients make an informed decision in the absence of this information?

We understand that the receiver wants to move this matter forward, as we do to, however, we cannot move forward blindly for the sake of expediency at the expense of making an informed decision.

Also, why would there be more substantive appeal rights for post receivership claims vs. pre-receivership claims? This is a major distinction which will have significant consequences.

We wish to work with the receiver but it has been quite some time and to date, none of the lien claimants know the receiver or lender(s) position on minimum holdback for pre-receivership and post receivership claims

This directly impacts the significance of potential appeal rights in the pre receivership claims process.

Example, if there is more than enough holdback to satisfy the lien claims, then potentially appeal rights become less significant.

However, if there is a great disparity over same, then that increases the necessity for maintaining and not giving up appeal rights that currently exist.

Further, what is the purpose of next week's attendance? My understand is that His Honour would require a full record prior to making any decision.

Is next week's appearance simply to schedule a motion and timetable same? Or is it the receiver's position that it wishes to argue same.

This will impact my availability given my trial commitments next week.

Further, why can't we move forward with the claim process while deferring the issue of appeal rights?

Please clarify.

I also note that, to date, we have not received a response to my email seeking clarity on the money advanced, holdback retained and holdback paid out. We need to understand same in order to obtain instructions. If we do not understand, then we cannot explain to our clients and cannot obtain instructions.

We certainly want to work this out and avoid a motion however, we need this information in order for our client's to make an informed decision and provide instruction to us.

Thanks

Yours truly,



Jonathan L. Frustaglio

Partner

Phone: (905) 695-5500 Ext. 2760

Fax : (905) 695-5501

Email: jfrustaglio@sutherlandlaw.com

Law Clerk: Josie DiStefano at Ext. 2930
or jdistefano@sutherlandlaw.com

3300 Highway 7, Suite 904
Vaughan, Ontario L4K 4M3

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From: Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>

Sent: Friday, October 18, 2024 1:46 PM

To: Jeff.Larry@paliareroland.com

Cc: Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>; bgelman@albertgelman.com; tmcclroy@albertgelman.com; Rob Moubarak <rmoubarak@sutherlandlaw.com>; tscott@albertgelman.com
Subject: Re: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

Hi Jeff,

Following up on the below.

Please confirm if the receiver and lender(s) agree that minimum holdback on the \$75 million dollars advanced is \$7.5 million dollars in respect of pre receivership holdback?

Also, we need answers to the questions below because this is a simple mathematical exercise.

Thanks

Yours truly,



Jonathan L. Frustaglio

Partner

Phone: (905) 695-5500 Ext. 2760

Fax : (905) 695-5501

Email: jfrustaglio@sutherlandlaw.com

Law Clerk: Josie DiStefano at Ext. 2930

or jdistefano@sutherlandlaw.com

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Vaughan, Ontario L4K 4M3

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From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: Friday, October 18, 2024 1:49 PM

To: Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>

Cc: ryan.shah@paliareroland.com; Janae Pina Trasvina <jtrasvina@sutherlandlaw.com>; Karla Toma <ktoma@sutherlandlaw.com>; ryan.shah@paliareroland.com

Subject: RE: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

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Jonathan:

Next week's motion is to argue the issue itself. We will send the form in now to the court.

From the outset, we proposed language to the draft Order that fully preserved your client's right to address the pre-receivership appeal process later. I never understood (and do not understand now) how your client could possibly be prejudiced by the language proposed. I remain content to keep this same language in the Order for now and your clients will be fully protected to raise this appeal right issue within thirty days of getting the information they say they need.

I also explained to you why there is a different process for pre and post claim and thought you agreed that it made sense:

- for pre claims, the receiver makes the initial determination and that determination is subject to appeal to the Adjudicator.
- for post claims, the Adjudicator makes the initial determination and that initial determination is subject to appeal.

In both cases, there is an initial determination and then one right of appeal. The fact that we are wasting this much time and energy talking about a second right of appeal for a pre receivership claims does not make sense.

Regarding the identify of the adjudicator, I was willing to take your input but, again, you never got back to me. I proposed to simply say the adjudicator will be agreed upon by counsel to the lien claimants and the Receiver or appointed by the court. I can add this to the Order.

I encourage you again to agree to the language in the Order that fully protects and preserves your clients rights so we don't have to waste everyone's time, including the court's, dealing with this next week.

From: Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>

Sent: Friday, October 18, 2024 2:01 PM

To: Jeff.Larry@paliareroland.com; Jawad Janmohamed <jjanmohamed@sutherlaw.com>

Cc: ryan.shah@paliareroland.com; Janae Pina Trasvina <jtrasvina@sutherlaw.com>; Karla Toma <ktoma@sutherlaw.com>; ryan.shah@paliareroland.com

Subject: Re: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

Jeff,

I am not available to argue any motion on short notice next week given my trial commitments.

Also, a full motion record and responding motion record will be required.

Cross-examinations will need to be scheduled.

We will need to deliver factum's also on the issues.

It is not practically or reasonably possible to complete all of this in less than 7 days.

I prefer to not go this route as much of this can be avoided if the receiver and lender(s) provide information that we have been requesting for quite some time regarding pre and post receivership monney advances and holdback.

Why are we being ignored on this request?

Why is this process simply a take it or leave it approach?

This is simple information that should be provided.

Yours truly,



Jonathan L. Frustaglio

Partner

Phone: (905) 695-5500 Ext. 2760

Fax : (905) 695-5501

Email: jfrustaglio@sutherland.com

Law Clerk: Josie DiStefano at Ext. 2930
or jdistefano@sutherland.com

3300 Highway 7, Suite 904
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-----Original Message-----

From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: Friday, October 18, 2024 2:18 PM

To: Jonathan L. Frustaglio <jfrustaglio@sutherland.com>

Cc: Jawad Janmohamed <jjanmohamed@sutherland.com>; ryan.shah@paliareroland.com; Janae Pina Trasvina <jtrasvina@sutherland.com>; Karla Toma <ktoma@sutherland.com>

Subject: Re: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

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Why will you not agree to language preserving your clients' rights so we don't have to deal with this now. If you don't, we are pushing ahead for next week. We will send in the form to the court at 3 pm if we don't hear from you.

Sent from my iPhone

From: Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>

Sent: Friday, October 18, 2024 2:31 PM

To: Jeff.Larry@paliaroland.com

Cc: Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>; ryan.shah@paliaroland.com; Janae Pina Trasvina <jtrasvina@sutherlandlaw.com>; Karla Toma <ktoma@sutherlandlaw.com>

Subject: Re: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

The language you are proposing does not preserve my clients appeal rights.

The language you propose gives up my clients rights, which currently exist, and then requires my client to justify why my client's existing rights need to be reinstated from what is listed in the draft order.

This reserves the onus.

Are you willing to the reverse occurring where my client's current appeal rights remain in place without prejudice to your client arguing at a later date that a different appeal regime should be put in place?

How the order remain silent on appeal rights?

Yours truly,



Jonathan L. Frustaglio

Partner

Phone: (905) 695-5500 Ext. 2760

Fax : (905) 695-5501

Email: jfrustaglio@sutherlandlaw.com

Law Clerk: Josie DiStefano at Ext. 2930

or jdistefano@sutherlandlaw.com

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-----Original Message-----

From: Jeff.Larry@paliaroland.com <Jeff.Larry@paliaroland.com>

Sent: Friday, October 18, 2024 2:39 PM

To: Jonathan L. Frustaglio <jfrustaglio@sutherland.com>

Cc: Jawad Janmohamed <jjanmohamed@sutherland.com>; ryan.shah@paliaroland.com; Janae Pina Trasvina <jtrasvina@sutherland.com>; Karla Toma <ktoma@sutherland.com>

Subject: Re: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

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The language we are proposing fully preserves your clients' right to argue the issue at a later date. That was my point. I cannot understand the concern.

We will have months to deal with the appeal issue before it could become relevant v
Sent from my iPhone

-----Original Message-----

From: Jeff.Larry@paliaroland.com <Jeff.Larry@paliaroland.com>

Sent: Saturday, October 19, 2024 8:02 AM

To: Jonathan L. Frustaglio <jfrustaglio@sutherland.com>

Cc: Jawad Janmohamed <jjanmohamed@sutherland.com>; ryan.shah@paliaroland.com; Janae Pina Trasvina <jtrasvina@sutherland.com>; Karla Toma <ktoma@sutherland.com>;

bgelman@albertgelman.com; tmcely@albertgelman.com

Subject: Re: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

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You are not correct.

The language fully protects your clients' rights to argue that there should be a different appeal procedure. It also doesn't reverse any onus (that is precisely what the without prejudice language is meant to address). If you want me to consider different language to preserve your clients' rights, please propose it.

But you need to deal with it this weekend despite your continuing trial or we are tling the court Monday morning that we want to see His Honour any day next week to address this and you have refused to give us your availability for weeks.

Sent from my iPhone

-----Original Message-----

From: Jeff.Larry@paliaroland.com <Jeff.Larry@paliaroland.com>

Sent: Saturday, October 19, 2024 6:45 PM

To: Jonathan L. Frustaglio <jfrustaglio@sutherland.com>; Rob Moubarak <rmoubarak@sutherland.com>

Cc: Jawad Janmohamed <jjanmohamed@sutherland.com>; ryan.shah@paliaroland.com; Janae Pina

Trasvina <jtrasvina@sutherlandlaw.com>; Karla Toma <ktoma@sutherlandlaw.com>;
bgelman@albertgelman.com; tmcclroy@albertgelman.com
Subject: Re: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-
ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

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Hi Rob

Since Jonathan is preparing for trial and seemingly unable to respond, please let me know when we can speak tomorrow.

This has dragged out for far too long and needs to get dealt with asap. It is not fair to all of the other trades who are anxious to move this forward.

I have suggested language in the draft Order that fully preserves your clients' rights to address their one concern (the appeal rights) at a later date. For the life of me, I can't understand what the objection could possibly be to this language in the Order.

If we don't have approval for this language tomorrow, we need to attend before Justice Cavanagh immediately this week. This was supposed to be done last week per the discussion with Justice Cavanagh at the hearing on October 4. If Jonathan is in trial, someone else from your firm will need to attend.

Thank you and I look forward to hearing from you.

Sent from my iPhone

From: Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>
Sent: Saturday, October 19, 2024 7:14 PM
To: Jeff.Larry@paliaroland.com
Cc: Rob Moubarak <rmoubarak@sutherlandlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>; ryan.shah@paliaroland.com; Janae Pina Trasvina <jtrasvina@sutherlandlaw.com>; Karla Toma <ktoma@sutherlandlaw.com>; bgelman@albertgelman.com; tmcclroy@albertgelman.com
Subject: Re: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-
ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

Good evening Jeff,

To date, neither the receiver nor lender(s) have provided us with their confirmation of how much money was advanced pre receivership and post receivership, as well as the applicable holdbacks and/or deficiency in said holdbacks.

We have been repeatedly asking for this information.

We have also repeatedly advised that our clients do not agree with the wording you have proposed. It forces our clients to justify at a later date, why their original appeal rights need to be reinstated.

This reverses the onus.

We have also repeatedly advised that we cannot advise our clients or obtain instructions on limiting existing appeal rights in the absence of the lender(s) and receiver confirming amounts advanced and applicable holdbacks.

These requests continue to be ignored. The only reason why this is dragging out is due to the lack of transparency regarding said quantum's of money.

Our clients will not blindly give up rights they currently hold regarding appeals of any determinations made by others that are not judges in Ontario.

Our clients collectively have claims for lien in excess of \$1million dollars, close to \$2million.

These are significant sums of monies owed to our clients.

We have tried to work with you and wish to continue to try to work this out but why are our simple inquiries being ignored.

This information remains within the power, possession and/control of the receiver and lender(s) and should be readily made available.

Thanks

Jonathan

-----Original Message-----

From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: Saturday, October 19, 2024 7:39 PM

To: Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>

Cc: Rob Moubarak <rmoubarak@sutherlaw.com>; Jawad Janmohamed

<jjanmohamed@sutherlaw.com>; ryan.shah@paliareroland.com; Janae Pina Trasvina

<jtrasvina@sutherlaw.com>; Karla Toma <ktoma@sutherlaw.com>; bgelman@albertgelman.com;

tmcelroy@albertgelman.com

Subject: Re: Jefferson Properties - Revised Draft Order - Don Fry Scaffold Position [PVC-ACTIVE.FID687135] [DM-LSDOCS.FID1139650]

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You are simply wrong about reversing any onus or that your clients are giving up anything.

The proposed language states that the order is completely without prejudice to your clients' rights to argue for any appeal right they want after they get all the information they say they need and that the

Receiver is committed to providing). If you want to expressly say that the onus will not be reversed (or any additional language that you think is necessary), we can include that too. I just need to hear from you.

I am doing everything I can to preserve all of your clients rights while at the same time, get this order that every other lien holder wants and du that we can begin this process now. But since the second appeal (that your clients may want) wont become an issue for months,we have lots of time to deal with this.

I need to hear from you or Rob tomorrow as this makes no sense whatsoever that we can't agree on language that will completely protect your clients' rights.

Sent from my iPhone

THIS IS **EXHIBIT "K"** REFERRED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024

A handwritten signature in blue ink, appearing to read 'J. Frustaglio', written in a cursive style.

A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

From: Rob Moubarak <rmoubarak@sutherlaw.com>
Sent: Monday, October 21, 2024 7:39 AM
To: Jeff.Larry@paliareroland.com; Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlaw.com>
Cc: ryan.shah@paliareroland.com
Subject: Re: Follow up

Jeff,

I suggest you carve out an appeal clause that applies to all parties except us. If you really want such a clause which, in my view, is shifting the burden onto a lien claimant to spend on an appeal when they need do so in the current lien regime, is unfair.

To me it seems that your client is attempting to make it more costly for a lien claimant to have recourse should they not be content with a decision your client makes unilaterally.

What is also making things more suspicious is the failure to answer comprehensively a s.39 to date. We have asked many times please do so. All we get is figures that do not make sense via short blurbs of emails with no back up.

I would like to see it in a proper s.39 response or an affidavit that we can cross examine on.

This can easily have happened in the past two weeks or months even, whereas your client chose to ignore the s.39 and now is putting a gun to our client's head!

Just give us the info clearly requested and let the games stop.

Tell us what was billed on the project, how much was the last payment draw submitted (certificate), please produce it, show us the draw schedule on the project and how much was released no matter what your client wishes to categorize it as. We will do our own analysis or have a call once your client comes clean.

So, show us the accounting please and maybe it will bridge the gap and make the air less suspicious for our clients.

What you keep asking Jonathan to do, is be negligent in his job and simply rubber stamp a nonsensical obligation to appeal, prematurely to our clients.

I'm also worried that if your client at this time, having had months to comply with a s.39, does not wish to do so, why would they in future. They will simply say you have our info taken it or go appeal!

Sincerely,



Rob Moubarak

Partner

Phone: (905) 695-5500 ext. 2800

Fax : (905) 695-5501

Email: rmoubarak@sutherlandlaw.com

3300 Highway 7, Suite 904
Vaughan, Ontario L4K 4M3

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From: Rob Moubarak <rmoubarak@sutherlandlaw.com>

Sent: Monday, October 21, 2024 8:21 AM

To: Jeff.Larry@paliarerland.com; Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>

Subject: Re: Follow up

Pls remove that the adjudicator order is final and binding as it pertains our client, and that accounting will be provided in the next two weeks.

We have then a solution if you agree to this.

Sincerely,



Rob Moubarak

Partner

Phone: (905) 695-5500 ext. 2800

Fax : (905) 695-5501

Email: rmoubarak@sutherlandlaw.com

3300 Highway 7, Suite 904
Vaughan, Ontario L4K 4M3

www.sutherlandlaw.com

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email and any attachments cannot be guaranteed. Sutherland Law and its staff accept no liability whatsoever in connection therewith. You are strongly advised to carry out all necessary virus checks and that you open this email and any attachments at your own risk.

From: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>

Sent: Monday, October 21, 2024 8:16:00 AM

To: Rob Moubarak <rmoubarak@sutherland.com>

Subject: Re: Follow up

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My client is the Receiver. They do not have easy access to this information as the debtor's records are poorly kept.

That said, I said to Jonathan and I will say to you - I will ensure that your clients get any information they say they need and that the receiver can get. We have provided some information to date and will continue to do so.

Still, this is not relevant this minute to the language in the Order that fully protects your clients' right to raise the appeal procedure down the line once they get the information.

Can we please just agree to this language that preserves your clients arguments so that no one has a gun to their head any longer and we can fight about this down the road if it becomes necessary?
Sent from my iPhone

On Oct 21, 2024, at 8:02 AM, Rob Moubarak <rmoubarak@sutherland.com> wrote:

Why todote your client has been evasive with providing the information readily available to it and frankly only it, is the problem. Since the last appearance they've had weeks and still will not produce why? That is the crux of the issue and Why todote your client has been evasive with providing the information readily available to it and frankly only it, is the problem. Since the last appearance they've had weeks and still will not produce why? That is the crux of the issue and has been for months.

Sincerely,

Rob Moubarak
Partner

Phone: (905) 695-5500 ext. 2800

Fax : (905) 695-5501

Email: rmoubarak@sutherland.com

3300 Highway 7, Suite 904
Vaughan, Ontario L4K 4M3

www.sutherlaw.com<https://urldefense.proofpoint.com/v2/url?u=http-3A_www.sutherlaw.com_&d=DwMGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpqgvfiiMM&r=ChKH0LJom404KGM5XvhyNs2mpaZfRzLTeW1E0RTZ7jg&m=nz8yS6wprK6717Gz-Ev-DDHq28IDy8eq5YJYPEGhXGnXRngdYaevwq3AuS9IJLHo&s=0w7kIMhj3Fb2rOfwO9vE6IVh14O8QysFg7Kv6yOL6Fg&e=>

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-----Original Message-----

From: Rob Moubarak <rmoubarak@sutherlaw.com>
Sent: Monday, October 21, 2024 9:54 AM
To: Jeff.Larry@paliaroland.com
Cc: Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlaw.com>
Subject: RE: Follow up

Jeff,

If you agree that the adjudicator's findings do not bind our clients but only other parties. Thus, the appeal right too do not bind us.

We want precisely that. I do not want our clients to have to rush to court in 30 days etc to deal with an appeal. There is nothing to appeal if the adjudicator's finding is none - binding on us.

This then will give us time to see if we can reach an agreement, once your client has come forward with all financial information.

Please jeff reflect this in the order.

Sincerely,

Rob Moubarak
Partner

Phone: (905) 695-5500 ext. 2800
Fax : (905) 695-5501
Email: rmoubarak@sutherlaw.com

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-----Original Message-----

From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: Monday, October 21, 2024 8:27 AM

To: Rob Moubarak <rmoubarak@sutherlaw.com>

Subject: Re: Follow up

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it already does say that the language is without prejudice to your clients alone (and I will specifically name your clients in that section the order).

The receiver is and officer of the court that has and will continue to provide your clients with the information they need. However, because the information is not directly in their possession, they can't agree to a specific date. That said, what I proposed was that the parties would have 30 days after your clients have the necessary information, to go back to court and argue about the appeal rights if that's what your clients wanted to do. Please understand that the issue of an appeal beyond the appeal to the adjudicator, as a practical matter, will not come up for around six months so we have tons of time to get this done.

That is part of the insanity and frustration of not being able to agree to this order now so that the process can start moving forward and Lien claimants can get paid to the extent that there isn't any dispute about their claim. and if your clients want to revisit this appeal wright's issue once they have all the information, they will be 100% free to do so without giving up anything at all.

Sent from my iPhone

From: Rob Moubarak <rmoubarak@sutherlaw.com>

Sent: Monday, October 21, 2024 9:54 AM

To: Jeff Larry <Jeff.Larry@paliareroland.com>

Cc: Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlaw.com>

Subject: RE: Follow up

Jeff,

If you agree that the adjudicator's findings do not bind our clients but only other parties. Thus, the appeal right too do not bind us. We want precisely that. I do not want our clients to have to rush to court in 30 days etc to deal with an appeal. There is nothing to appeal if the adjudicator's finding is none - binding on us. This then will give us time to see if we can reach an agreement, once your client has come forward with all financial information.

Please jeff reflect this in the order.

Sincerely,

Rob Moubarak
Partner

Phone: (905) 695-5500 ext. 2800
Fax : (905) 695-5501
Email: rmoubarak@sutherlaw.com

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From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>
Sent: Monday, October 21, 2024 10:57 AM
To: Rob Moubarak <rmoubarak@sutherlaw.com>
Cc: Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlaw.com>; ryan.shah@paliareroland.com
Subject: RE: Follow up

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You are asking for the appeal right issue to be conclusively decided in your client's favour and I cannot agree to that.

Instead, as I have proposed many times, I will agree that your clients (and just your clients) will have the right to revisit this issue later once they get the information they say they need.

I am also not forcing anyone to run to court and have the matter heard within 30 days. Rather, I am saying that within 30 days of getting the necessary information, your clients will simply need to decide *if* they wish to pursue their rights to a second appeal to the court.

If we proceed to court at Justice Cavanagh's next available date, we will be asking for the appeal right issue to be resolved as per the draft Order (without preserving your client's rights). If we are successful (and I believe we will be), this will be a worse result for your client. I am bending over backwards to try to assist your clients but remain unable to understand why my proposed language (which fully preserves their right to make argument down the road at their sole option) is not acceptable to them.

From: Rob Moubarak <rmoubarak@sutherlaw.com>

Sent: Monday, October 21, 2024 11:15 AM

To: Jeff.Larry@paliareroland.com

Cc: Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlaw.com>; ryan.shah@paliareroland.com

Subject: RE: Follow up

Looks like we are back to square one. Everything needs to be brought to the Court's attention and argued if this is your last position.

Jeff, you want cooperation, then you had it. It can't be your client's determination and if we are not happy with it, we can appeal it within 30 days of disclosure! Give the disclosure now! It has been weeks, and you have not given it since last attendance before J. Cavanaugh. In fact, it has been months and your client has failed to give it.

Until our client's issue is resolved and there is an agreement with our client on an accounting and holdback exposure, your client can't start dispersing.

Your client has held the process up by not providing accounting and an answer to a s.39 demand.

Once again to if you want the Order to proceed on consent then it must exclude our client completely. Meaning: the adjudication does not bind our client at all and as such there is no appeal burden placed on our clients as a result.

If you wish to expedite resolution with our client, and wish to have finality in the Order, then add a clause whereby within 30 days of satisfying us with disclosure of financials to quantify holdback, we are to return to court to address the parties' position with respect to our client.

That is fair and the best we can give you.

Sincerely,



Rob Moubarak

Partner

Phone: (905) 695-5500 ext. 2800

Fax : (905) 695-5501

Email: rmoubarak@sutherland.com

3300 Highway 7, Suite 904

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From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: Monday, October 21, 2024 11:24 AM

To: Rob Moubarak <rmoubarak@sutherland.com>

Cc: Jonathan L. Frustaglio <jfrustaglio@sutherland.com>; Jawad Janmohamed <jjanmohamed@sutherland.com>; ryan.shah@paliareroland.com

Subject: RE: Follow up

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Rob:

The resolution I have been proposing for 3 weeks is exactly what you are now saying!. Your clients will have the right – but not the obligation – to seek to return to court after they get all of the information they want. And the making of the order is completely without prejudice to any position they may wish to take about any appeal right (if they decide to take this issue up after getting disclosure).

I will circulate a draft Order shortly.

From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: Monday, October 21, 2024 11:50 AM

To: Rob Moubarak <rmoubarak@sutherland.com>

Cc: Jonathan L. Frustaglio <jfrustaglio@sutherland.com>; Jawad Janmohamed <jjanmohamed@sutherland.com>; ryan.shah@paliareroland.com

Subject: RE: Follow up

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Rob:

See attached redline Order.

I believe this captures it. Let me know your comments.

Thanks,

From: Rob Moubarak <rmoubarak@sutherlandlaw.com>
Sent: Monday, October 21, 2024 1:27 PM
To: Jeff.Larry@paliarerland.com
Cc: Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>; ryan.shah@paliarerland.com
Subject: RE: Follow up

Jeff, I will or someone from our office get back to you shortly.
We are close.

Sincerely,



Rob Moubarak

Partner

Phone: (905) 695-5500 ext. 2800

Fax : (905) 695-5501

Email: rmoubarak@sutherlandlaw.com

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From: Rob Moubarak <rmoubarak@sutherlandlaw.com>
Sent: Monday, October 21, 2024 1:48 PM
To: Jeff.Larry@paliarerland.com
Cc: Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>; ryan.shah@paliarerland.com
Subject: RE: Follow up

I am concerned about the standard of review you are adding. Will strike that out. Rest I'm ok with.

Sincerely,

**Rob Moubarak**

Partner

Phone: (905) 695-5500 ext. 2800**Fax :** (905) 695-5501**Email:** rmoubarak@sutherland.com3300 Highway 7, Suite 904
Vaughan, Ontario L4K 4M3www.sutherland.com

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From: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>
Sent: Monday, October 21, 2024 2:03 PM
To: Rob Moubarak <rmoubarak@sutherland.com>
Cc: Jonathan L. Frustaglio <jfrustaglio@sutherland.com>; Jawad Janmohamed <jjanmohamed@sutherland.com>; ryan.shah@paliarerland.com
Subject: RE: Follow up

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What standard of review?

Again – we are not dealing with the substance of the appeal rights now. We are just ensuring that your clients’ rights to address the appeal later are fully preserved.

I will ask again – can we please get on a call for 5 minutes and I am confident we can work this through?

From: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>
Sent: Monday, October 21, 2024 5:08 PM
To: Rob Moubarak <rmoubarak@sutherland.com>
Cc: Jonathan L. Frustaglio <jfrustaglio@sutherland.com>; Jawad Janmohamed <jjanmohamed@sutherland.com>; ryan.shah@paliarerland.com
Subject: RE: Follow up

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See below further highlighted language to para. 17 that addresses your comment:

"...provided that any one or more of EDG Cor Inc., Core Constructions Ltd., Stephenson's Rental Services Inc., Santiago Alfredo Mendoza o/a Royal Welders, and Wyecroft Trim & Doors Group Inc. aka Wyecroft Trim and Doors Group Inc. (the "Sutherland Law Clients") may advise the Receiver, within 30 days from the date that they are in receipt of all information requested reasonably from the Receiver, that they wish to seek a further right of appeal to the Court and, if they so elect, then the making of this Order shall be completely without prejudice to any position that they or the Receiver may wish to take at any hearing to address the appeal rights under this process including, for certainty, the applicable standard of review for any such appeal"

Please confirm.

From: Jawad Janmohamed

Sent: Monday, October 21, 2024 10:28 PM

To: Jeff.Larry@paliareroland.com; Rob Moubarak <rmoubarak@sutherlandlaw.com>

Cc: Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>; ryan.shah@paliareroland.com

Subject: RE: Follow up

Hi Jeff,

To clarify with respect to para 16, Rob was proposing the following:

16. **THIS COURT ORDERS** that, in the event that the Receiver receives one or more Notices of Dispute in respect of Pre-Receivership Claims by the Dispute Bar Date, the Receiver shall, following the Dispute Bar Date, schedule an appeal (the "**Appeal**") with such person as is agreeable to the Claimants and the Receiver or as may be appointed by the Court (the "**Adjudicator**") for the determination of each Claim that has not been resolved. ~~At the hearing of each Appeal, the Adjudicator's standard of review of the Receiver's Notice of Evaluation is that of an appellate court such that the Receiver's Notice of Evaluation are only reviewable on the basis of (a) correctness as to questions of law, and (b) palpable and overriding error as to questions of fact.~~

Kind regards,



Jawad Janmohamed

Associate Lawyer

Phone: (905) 695-5500 Ext. 2601

Fax : (905) 695-5501

Email: jjanmohamed@sutherlandlaw.com

3300 Highway 7, Suite 904

Vaughan, Ontario L4K 4M3

www.sutherlandlaw.com

Review us on Google <http://www.sutherlandlaw.com/review.html>

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-----Original Message-----

From: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>

Sent: Monday, October 21, 2024 10:43 PM

To: Jawad Janmohamed <jjanmohamed@sutherlaw.com>

Cc: Rob Moubarak <rmoubarak@sutherlaw.com>; Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>; ryan.shah@paliarerland.com

Subject: Re: Follow up

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Once again, you are all failing to address the issue.

I have proposed for 3 weeks language that fully preserves everyone's rights to deal with the appeal process (and any applicable standard of review) at a later date if necessary.

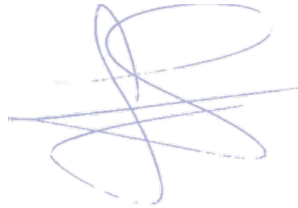
All we are doing now is agreeing to language to preserve those rights and arguments.

We can then address these substantive issues at a later date if your clients want to after they get the information they want

How is this possibly nor acceptable.?

Sent from my iPhone

THIS IS **EXHIBIT "L"** REFERRED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024

A handwritten signature in blue ink, consisting of several overlapping loops and a horizontal line, positioned centrally on the page.

A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	DAY, THE <u>21ST</u> 4TH
)	
JUSTICE CAVANAGH)	DAY OF OCTOBER, 2024

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

**ORDER
(LIEN CLAIMS PROCESS)**

THIS MOTION by Albert Gelman Inc., in its capacity as court-appointed receiver and manager of all present and future property, assets and undertakings of 2011836 Ontario Corp. and Jefferson Properties Limited Partnership (in such capacities, the "**Receiver**"), for an Order, among other things, establishing a claims process (the "**Lien Claims Process**") for determining the timeliness and quantum of the construction liens registered against title to the real property listed in Schedule "A" to the order of Justice Cavanagh

dated December 21, 2023 (the "**Property**"), was heard this day at the courthouse at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Receiver dated August 6, 2024 (the "**Third Report**") and on hearing the submissions of counsel for the Receiver and the other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the Affidavit of Service of Candace Baumtrog, dated August 7, 2024.

A. DEFINITIONS

1. **THIS COURT ORDERS** that, for the purposes of this Order,

(a) "**Claim**" means:

(i) A claim for lien registered against the Property on or before the date of this Order; or

(ii) A claim against Jefferson Properties Limited Partnership, 2011836 Ontario Corp. and/or the Receiver in respect of services or materials supplied to improvements to the Property on or after December 21, 2023 and before June 1, 2024, including any legal costs incurred in respect thereof;

(b) "**Claimant**" means a person or entity that possesses a Claim;

(c) "**Court**" means the Ontario Superior Court of Justice;

- (d) “**Initial Order**” means the Order of Justice Cavanagh appointing the Receiver dated December 21, 2023;
- (e) “**Newspaper Notice**” means a notice of this Order to be published in the National Post (National Edition) in accordance with paragraph 3 of this Order;
- (f) “**Post-Receivership Claims**” means Claims in respect of services or materials supplied to improvements to the Property on or after December 21, 2023 and before June 1, 2024; and
- (g) “**Pre-Receivership Claims**” means Claims in respect of services or materials supplied to improvements to the Property before December 21, 2023.

B. SERVICE AND NOTICE

- 2. **THIS COURT ORDERS** that the time for service of the Receiver’s Amended Notice of Motion is hereby abridged and validated so that this Motion is properly returnable today, and hereby dispenses with further service thereof.
- 3. **THIS COURT ORDERS** that the Receiver shall arrange for the Newspaper Notice to be published in the National Post (National Edition) as soon as reasonably practicable after the date of this Order.

C. FILING CLAIMS

- 4. **THIS COURT ORDERS** that the Lien Claims Process described in the Third Report, as modified herein, is hereby approved.

5. **THIS COURT ORDERS AND DIRECTS** that, subject to paragraph 6 of this Order, in order to file a Claim pursuant to the Lien Claims Process described herein, a Claimant shall complete the Proof of Lien Claim Form attached as Schedule “A” hereto and, where applicable, provide the information set out in Schedule “1” to the Proof of Lien Claim Form (with the Proof of Claim Form, the “**Lien Documentation**”) to the Receiver after the date of this Order and before 5:00 p.m. Toronto time on November [224](#) , 2024 (the “**Claims Bar Date**”).
6. **THIS COURT ORDERS** that, in connection with the Lien Claims Process, any Claimant that has delivered documentation to the Receiver in response to the Receiver’s Notices to Trades shall have no obligation to submit the Lien Documentation that it has already submitted to the Receiver (but, for certainty, must submit a Proof of Lien Claim Form in accordance with paragraph 5) and that all documentation delivered in response to the Notices to Trades shall and are hereby deemed to be Lien Documentation within the meaning of this Order for the purpose of this Lien Claims Process, provided that to the extent that a Claimant intends to rely on any Lien Documentation submitted prior to the making of this Order, the Claimant must identify on its Proof of Lien Claim Form the date(s) and manner in which it submitted such Lien Documentation to the Receiver.
7. **THIS COURT ORDERS** that any Claimant who does not provide the necessary Lien Documentation to the Receiver by the Claims Bar Date shall be forever barred from asserting its Claim against the Respondents, the Receiver, the Property, and any "owner" (as defined in the *Construction Act*) of the Property, and such Claim shall be forever discharged and extinguished, and any such Claimant shall not be

entitled to receive, in respect of its Claim, any distribution from the Receiver, if any, in respect of the proceeds of sale of the Property and shall be deemed to not be a participant in this Lien Claims Process.

8. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to use its reasonable discretion as to the adequacy of compliance with the manner in which the Lien Documentation is provided.
9. **THIS COURT ORDERS** that the Receiver is authorized and empowered to, in its reasonable discretion, direct any Claimant to provide any additional documents or information with respect to matters which are relevant to the quantum and timeliness of that Claimant's Claim and respond to any written questions that the Receiver may have or submit to an examination under oath. A Claimant shall not have the right to examine the Receiver under oath except with leave of the Court.

D. INITIAL DETERMINATION OF CLAIMS

10. **THIS COURT ORDERS** that in respect of each Claim, the Receiver shall, as soon as reasonably practicable but no later than 90 days after the Claims Bar Date unless otherwise ordered by this Court or otherwise agreed to by the Receiver and the applicable Claimant (the "**Initial Review Date**"), review the Lien Documentation received by the Claims Bar Date and evaluate the timeliness and quantum of each Claim and, if applicable for a given Claim, revise the allocation between Pre-Receivership Claims and Post-Receivership Claims.
11. **THIS COURT ORDERS** that no later than 14 days after the Initial Review Date, the Receiver shall provide the Claimant with a written notice setting out the

Receiver's determination as to the timeliness and quantum of, as applicable, the Claimant's Pre-Receivership Claim and/or Post-Receivership Claim (a "**Notice of Evaluation**"), including the reasons for the determination.

12. **THIS COURT ORDERS** that within 30 days following the delivery to the Claimant of a Notice of Evaluation (a "**Dispute Bar Date**"), or such date as the Receiver may agree in writing, the Claimant may dispute any part the Receiver's determination of the Claim evaluated in the Notice of Evaluation by providing the Receiver with a written notice setting out full particulars of the dispute (the "**Notice of Dispute**").
13. **THIS COURT ORDERS** that in the event that a Claimant does not deliver a Notice of Dispute by the Dispute Bar Date, then the Claimant shall be barred from disputing the determination in the Notice of Evaluation.
14. **THIS COURT ORDERS** that, notwithstanding anything in this Order, at anytime whatsoever, the Receiver may attempt to consensually resolve any Claim or part thereof (a "**Settlement**"), regardless of whether it is a Pre-Receivership Claim or Post-Receivership Claim, with a Claimant, and may, but is not obligated to, rely on supporting documentation provided to the Receiver by the Claimant before the date of this Order.
15. **THIS COURT ORDERS** that, in respect of Post-Receivership Claims only, the Receiver is authorized to pay to a Claimant the amount determined in a Notice of Evaluation that is not disputed, the amount agreed to in a Settlement, or the amount determined in accordance with the Lien Claims Process set out in this

Order, as soon as is reasonably practicable but no later than 28 days following receipt of funds pursuant to the Receiver's borrowing in accordance with paragraph 20 of the Initial Order as amended, without any further order of the Court. Receipt of payment for part of a Claim does not release or waive the right of the Claimant to prove the unpaid/disputed portion of the Claim in this Lien Claims Process, unless the Claimant agrees otherwise.

E. PRE-RECEIVERSHIP CLAIMS APPEAL

16. **THIS COURT ORDERS** that, in the event that the Receiver receives one or more Notices of Dispute in respect of Pre-Receivership Claims by the Dispute Bar Date, the Receiver shall, following the Dispute Bar Date, schedule an appeal (the "Appeal") with [such person as is agreeable to the Claimants and the Receiver or as may be appointed by the Court](#) ~~Carol Albert~~ (the "Adjudicator") for the determination of each Claim that has not been resolved. At the hearing of each Appeal, the Adjudicator's standard of review of the Receiver's Notice of Evaluation is that of an appellate court such that the Receiver's Notice of Evaluation are only reviewable on the basis of (a) correctness as to questions of law, and (b) palpable and overriding error as to questions of fact.

17. **THIS COURT ORDERS** that the decision of the Adjudicator shall be final and binding with no right of appeal therefrom [provided that any one or more of EDG Cor Inc., Core Constructions Ltd., Stephenson's Rental Services Inc., Santiago Alfredo Mendoza o/a Royal Welders, and Wycroft Trim & Doors Group Inc. aka Wycroft Trim and Doors Group Inc. \(the "Sutherland Law Clients"\) may advise the Receiver, within 30 days from the date that they are in receipt of all information](#)

requested reasonably from the Receiver, that they wish to seek a further right of appeal to the Court and, if they so elect, then the making of this Order shall be completely without prejudice to any position that they or the Receiver may wish to take at any hearing to address the appeal rights under this process.

17.18. **THIS COURT ORDERS** that, in respect of each Appeal hearing, one half of the Adjudicator's fees shall be paid by the Receiver and one half of the Adjudicator's fees shall be paid by the Claimant that filed a Notice of Dispute (such a party being a "Pre-Receivership Disputing Party") at least 14 days prior to the subject Appeal.

18.19. **THIS COURT ORDERS** that the Adjudicator shall have the jurisdiction to:

- (a) award costs against the Pre-Receivership Disputing Party or against the Receiver if the Adjudicator determines that the Receiver acted grossly negligent or engaged in wilful misconduct; and
- (b) direct that the Pre-Receivership Disputing Party shall be required to pay a greater proportion of the Adjudicator's fees than the amount provided for in paragraph 18 of this Order;

19.20. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to:

- (a) in its reasonable discretion, apply for an order from the Adjudicator requiring security for costs from a Pre-Receivership Disputing Party that wishes to

have its Pre-Receivership Claim and/or Notice of Dispute reviewed by the Adjudicator; and

- (b) deduct any costs or fees ordered by the Adjudicator to be payable by any Pre-Receivership Disputing Party in connection with an Appeal, pursuant to paragraphs 18 and 19 of this Order, from any amount due and owing to that party.

F. POST-RECEIVERSHIP CLAIMS HEARING

20-21. THIS COURT ORDERS that, in the event that the Receiver receives one or more Notices of Dispute in respect of Post-Receivership Claims by the Dispute Bar Date, the Receiver shall, following the Dispute Bar Date, schedule a hearing (the “**Hearing**”) with the Adjudicator for the determination of each Post-Receivership Claim that has not been resolved. The Hearing shall not be an appeal and the Adjudicator shall instead review the Post-Receivership Claim on a *de novo* basis.

21-22. THIS COURT ORDERS that in respect of each Hearing, one half of the Adjudicator’s fees shall be paid by the Receiver and one half of the Adjudicator’s fees shall be paid by the Claimant that filed a Notice of Dispute (such a party being a “**Post Receivership Disputing Party**”) at least 14 days prior to the subject Hearing.

22-23. THIS COURT ORDERS that parties to a Hearing shall have a right to appeal (a “**Post Appeal**”) the decision of the Adjudicator to the Court (the “**Post Appeal Adjudicator**”). At the hearing of a Post Appeal, the Post Appeal Adjudicator’s standard of review of the Adjudicator’s decision of a Post-Receivership Claim shall

be that of an appellate court such that the Adjudicator's decision is only reviewable on the basis of (a) correctness as to questions of law, and (b) palpable and overriding error as to questions of fact.

23-24. **THIS COURT ORDERS** that both the Adjudicator and the Post Appeal Adjudicator shall have the jurisdiction to:

- (a) award costs against any Post-Receivership Disputing Party or against the Receiver in respect of a Post-Receivership Claim, provided that nothing in this paragraph shall be taken to impose personal liability on Albert Gelman Inc. for any costs or proportion of the Adjudicator's fees;
- (b) direct that a Post-Receivership Disputing Party shall be required to pay a greater proportion of the Adjudicator's fees than the amount provided for in paragraph 22 of this Order; and
- (c) direct that the Receiver shall be required to pay a greater proportion of, as the case may be, the Adjudicator's fees than the amount provided for in paragraph 22 of this Order provided that nothing in this paragraph shall be taken to impose personal liability on Albert Gelman Inc. for any costs or proportion of fees;

24-25. **THIS COURT ORDERS** that if there is an outstanding cost award (or outstanding cost awards) against the Receiver made under this Order at any time that the Receiver receives funds borrowed or is already in receipt of funds borrowed under

paragraph 20 of the Initial Order, as amended, then the Receiver shall first apply such borrowed and received funds to the payment of such cost award(s).

G. ADMINISTRATIVE ISSUES

25-26. THIS COURT ORDERS that all documents required to be served herein shall be served by electronic mail to the address for service set out in the service list or the Claimant's Lien Documentation.

26-27. THIS COURT ORDERS that the Receiver shall incur no personal liability or obligations as a result of the carrying out of the terms of this Order and the implementation and administration of the within Lien Claims Process, except as may be otherwise ordered or determined in accordance with the Lien Claims Process.

27-28. THIS COURT ORDERS that the Receiver may apply to the Court for directions regarding the carrying out of the within Lien Claims Process.

28-29. THIS COURT ORDERS that within the Lien Claims Process, and participation in it, is without prejudice to the right(s) of any Claimant to commence or continue any claim or proceeding against any person (save for the Receiver) with respect to the issues of the Claimants' priority over any secured creditor or mortgagees, breach of trust, negligence, breach of contract or quantum meruit ("**Proceedings**"), and does not affect, truncate or waive any substantive or procedural rights and/or remedies that a Claimant may have in any such Proceedings. Notwithstanding the above, the Lien Claims Process also does not affect any substantive or procedural rights that any defendant may have to defend Proceedings, save and except that

the defendant may not assert in the Proceedings that the claim of any Claimant ought to be dismissed or stayed on grounds of res judicata (issue estoppel, and/or cause of action estoppel) and/or abuse of process, by virtue of the Claimant asserting a Claim in the Lien Claims Process.

H. FEES, RECEIPTS AND DISBURSEMENTS

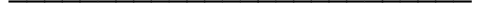
29-30. THIS COURT ORDERS that the Receiver's Interim Statement of Receipts and Disbursements for the period from December 21, 2023 to August 4, 2024 be and is hereby approved.

30-31. THIS COURT ORDERS that the fees and disbursements of the Receiver and its legal counsel as described in the Third Report, the fee affidavit of Bryan Gelman, sworn August 6, 2024, and the Fee affidavit of Beatrice Loschiavo, sworn August 1, 2024, are hereby approved.

I. GENERAL

31-32. THIS COURT ORDERS that the Third Report and the conduct and activities of the Receiver set out therein be and is hereby approved, provided that such approval shall not prevent the Adjudicator or the Post Appeal Adjudicator from making determinations as to the conduct of the Receiver, in its capacity as receiver and manager, in the Lien Claims Process for purposes of a cost award as provided for and contemplated by paragraph 24.

32-33. THIS COURT ORDERS that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Third Report detailed in paragraph 32 above.



Schedule “A” – Proof of Lien Claim Form

PROOF OF CLAIM

Terms not otherwise defined herein shall have the meanings ascribed to them in the order of Justice Cavanagh dated October 4, 2024 (the “Lien Claims Process Order”).

A. PARTICULARS OF THE CLAIMANT:

(1) Full Legal Name of the Claimant (include trade name, if different):

.....
.....

(the “**Claimant**”). The full legal name should be the name of the Claimant notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred prior to or following the Lien Claims Process Order.

(2) Full Mailing Address of Claimant: (The mailing address should be the mailing address of the Claimant and not any assignee)

.....
.....

(3) Telephone Number of Claimant:

.....

(4) E-mail Address of Claimant:

.....

(5) Attention (Contact Person):

Has the Claim set out herein been sold, transferred or assigned by the Claimant to another party?

Yes: [] No: []

B. PARTICULARS OF THE ASSIGNEE(S) (IF APPLICABLE)

.....

If the Claim set out herein has been sold, transferred or assigned, complete the required information set out below. If there is more than one assignee, please attach a separate sheet which contains all of the required information set out below for each assignee.

(1) Full Legal Name of the Assignee:

.....

(2) Full Mailing Address of the Assignee:

.....

(3) Telephone Number of Assignee:

(4) E-mail Address of Assignee:

(5) Attention (Contact Person):

C. PROOF OF CLAIM

THE UNDERSIGNED HEREBY MAKES OATH AND SAYS AS FOLLOWS:

(1) That I:

am a Claimant with respect to real property municipally known as 39, 53 and 67 Jefferson Side Road, Richmond Hill, Ontario (the "**Property**") or (*if applicable*) am the:

.....
(state position or title)

of

.....
(Name of Claimant)

(2) That I have knowledge of all of the circumstances connected with the Claim described and set out below:

(3) The Claimant seeks payment of \$..... [*Insert \$ value of claim*] CAD on account of services and materials supplied to an improvement on the Property **on or after** December 21, 2023 (the Appointment Date) and before June 1, 2024; and

\$..... on account of interest and legal fees on the same [*Provide particulars of interest claim and calculation of same along with particulars of legal fee claim*]

Has the Claimant registered a lien against the Property on or before the date of the Lien Claims Process Order

Yes: [] No: []

(4) The Claimant seeks payment in respect of a lien of \$..... [*Insert \$ value of Claim*] CAD registered against the Property on account of services and materials supplied to an improvement on the Property **before** December 21, 2023 (the "**Appointment Date**") and

\$..... on account of interest on the same [*Provide particulars of interest claim and calculation of same*]

(5) The Claimant seeks payment in respect of a lien of \$..... [*Insert \$ value of claim*] CAD registered against the Property on account of services and materials supplied to an improvement on the Property **on or**

after December 21, 2023 (the Appointment Date) and

\$..... on account of interest and legal fees on the same [*Provide particulars of interest claim and calculation of same along with particulars of legal fee claim*]

NOTE: Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as of the date of the Lien Claims Process Order.

D. PARTICULARS OF CLAIM

Other than as already set out herein, the particulars of the undersigned's total Claim are attached in the form of the Documentation (as defined in the order of Justice Cavanagh, dated October 4, 2024)

SWORN BEFORE ME at the)
)
 _____ in the)
 Province of _____)
 this _____ day of _____)
)
 _____)
 A Commissioner, or Notary Public, etc.)

Name of Deponent

[or if sworn via video conferencing]

SWORN REMOTELY by)
)
 _____ at the)
)
 _____)
 in the _____)
 on _____, 2024)
 in accordance with O. Reg. 431/20,)
 Administering Oath or Declaration Remotely)

A Commissioner, or Notary Public, etc.

Name of Deponent

E. FILING OF CLAIM

This Proof of Claim form must be received by the Receiver, Albert Gelman Inc., by no later than 5:00 p.m. (Eastern Standard time) on November 4, 2024 (the “**Claims Bar Date**”) at the following physical address or email address:

Albert Gelman Inc., in its capacity as court-appointed receiver
of 2011836 Ontario Corp. and Jefferson Properties Limited Partnership
(the “**Debtors**”)

250 Ferrand Drive, Suite 403
Toronto, ON M3C 3G8
Attention: Terry Scott
tscott@albertgelman.com

Field Co

Failure to file your Proof of Claim and any required documentation as directed in relation to any Claim by 5:00 p.m. (Eastern Standard Time) on the Claims Bar Date will result in your Claim being forever barred and extinguished, and you will be prohibited from making or enforcing that Claim against the Property, the Receiver or the Debtors and shall not be entitled to further notice or distribution, if any, in respect of that Claim, and shall not be entitled to participate as a Claimant in these proceedings in respect of that Claim.

Schedule "1" – Documentation

- (a) copy of the Claimant's registered construction lien and any written notice of lien;
- (b) copies of the Claimant's Statement of Claim and Certificate of Action;
- (c) documentation evidencing the last date on which the Claimant provided service, materials or labour to the applicable improvement in the case of a subcontractor or the date of completion, abandonment or termination of the contract in the case of a contractor;
- (d) a copy or particulars of any contract, subcontract, purchase order or agreement upon which the Claimant assert its materials, services and labour were provided under (the "**Contract**"), including the names of the parties to the Contract and the date it was entered into;
- (e) a statement of account under the Contract and particulars and documents substantiating the quantum of the Claim, including:
 - (i) the price of the Contract;
 - (ii) the total amount invoiced by the Claimant, including a copy of the invoices and dates the invoices were sent;
 - (iii) the total amount paid to the Claimant under the Contract, including the date and amount of payments received;
 - (iv) the amount of the Claim that comprises of holdback and amounts invoiced within the scope of the Contract; and
 - (v) the amount of the Claim that comprises of extra to the Contract, along with any relevant documentation substantiating the extra amount sought, such as notice of extras, request for extras, request for change orders, executed change orders, executed change directives, amendments or purchase orders and time and material sheets;
- (f) statutory declaration(s) that attest to the work is complete and performed is in accordance or in compliance with the Contract;
- (g) for Claimants who operated on a time and materials (T&M) basis, evidence of authorization to perform work;
- (h) for Claimants who provided materials, statutory declaration(s) that attest the materials were ordered/requested and delivered;
- (i) a copy of any labour and material payment bond posted by a subcontractor with a contractor or by a subcontractor with a subcontractor;

- (j) documentation evidencing service, materials and labour provided to the applicable improvement including, but not limited to, the following:
 - (i) completed and approved timesheets of employees and subcontractors;
 - (ii) subcontractor invoices;
 - (iii) payroll registers and records;
 - (iv) bank statements, electronic fund transfer receipts and cancelled cheques evidencing remittances by the Claimant to employees and subcontractors;

- (k) all documents related to the fulfillment of work agreements including, but not limited to, the following:
 - (i) WSIB clearance certificates for the dates the work was performed;
 - (ii) proof of insurance showing coverage for the dates the work was performed;
 - (iii) shop drawings;
 - (iv) as built(s);
 - (v) schematics;
 - (vi) warranties and guarantees; and,
 - (vii) third party verifications / certifications;

- (l) any other documents or information as the Receiver may reasonably request for the purpose of assessing and determining any Claims in accordance with the Lien Claim Process Order.

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and-

2011836 ONTARIO CORP. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Lien Claims Process)

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330
jeff.larry@paliareroland.com

Field C

Kartiga Thavaraj (LSO# 75291D)

Tel: 416.646.6317
kartiga.thavaraj@paliareroland.com

Field C

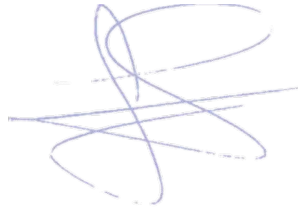
Ryan Shah (LSO# 88250C)

Tel: 416.646-6356
ryan.shah@paliareroland.com

Field C

Lawyers for the Receiver, Albert Gelman Inc.

THIS IS **EXHIBIT “M”** REFERRED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024

A handwritten signature in blue ink, appearing to read 'J. Frustaglio', with several overlapping loops and a horizontal line crossing through the middle.

A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

From: Rob Moubarak <rmoubarak@sutherlandlaw.com>

Sent: Tuesday, October 22, 2024 8:12 AM

To: Jeff.Larry@paliareroland.com; Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>

Cc: ryan.shah@paliareroland.com; Candace.Baumtrog@Paliareroland.com;
beatrice.loschiavo@paliareroland.com; Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>

Subject: Re: Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al. - CV-23-00710795-00CL [IMAN-PRIMANAGE.FID404153]

Jonathan/Jawad will deal with Jeff, sorry this is not my file, I'm trying and the clients wish to deal with counsel either carriage.

Yesterday, to be frank, I got an earful from two of them, saying why on earth instead of all the emails and calls, the receiver does not give us a s.39 outlined breakdown so we can review it now. They are not content.

They want to know the holdback quantum now.

Deserving and rightfully so, they should have had this. When I say the receiver does not have this and the records are a mess, it falls on deaf ears.

It's the lenders records that can reveal what money was advanced. To say this is not readily available to the receiver, is not flying with these sophisticated lien claimants with experienced credit managers.

Larry, I'm not jeopardizing Jonathan client relations and potential negligence.

Please have the information provided.

Sincerely,



Rob Moubarak

Partner

Phone: (905) 695-5500 ext. 2800

Fax : (905) 695-5501

Email: rmoubarak@sutherlandlaw.com

3300 Highway 7, Suite 904
Vaughan, Ontario L4K 4M3

www.sutherlandlaw.com

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connection therewith. You are strongly advised to carry out all necessary virus checks and that you open this email and any attachments at your own risk.

From: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>

Sent: Tuesday, October 22, 2024 8:21 AM

To: Rob Moubarak <rmoubarak@sutherlaw.com>; Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>

Cc: ryan.shah@paliarerland.com; Candace.Baumtrog@Paliarerland.com;

beatrice.loschiavo@paliarerland.com; Jawad Janmohamed <jjanmohamed@sutherlaw.com>

Subject: RE: Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al. - CV-23-00710795-00CL [IMAN-PRIMANAGE.FID404153]

EXTERNAL: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I have assured you that I am and will get your clients the information. I hear their concern and built this into the exception that we are making just for them in this process.

Why can't anyone tell me for the past 3 weeks what is wrong with the language that preserves 100% of your clients' rights and arguments about the appropriate appeal process until after they get this information. That is what you wanted, I thought?

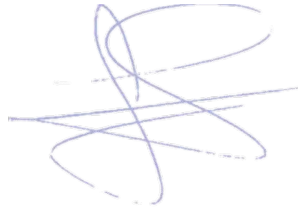
I am bending over backwards to be accommodating (and will continue to do so by getting you the information even if it is not at my client's fingertips) yet I getting no assistance in return. This is beyond frustrating.

At the same time, I am getting an earful from every other stakeholder who is upset that the lien claim process cannot proceed so claimants can get paid.

Again – if there is something wrong with the language I have proposed, please have the courtesy to return my calls and let's address this and finalize this on the call.

Jonathan/Jawad – we must speak today to finalize this language. Please confirm when you can be available.

THIS IS **EXHIBIT "N"** REFERRED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024

A handwritten signature in blue ink, consisting of several overlapping loops and a horizontal line, positioned centrally on the page.

A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

From: Jawad Janmohamed <jjanmohamed@sutherlaw.com>
Sent: Wednesday, October 23, 2024 11:02 AM
To: Jeff Larry <Jeff.Larry@paliareroland.com>
Cc: Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>; Rob Moubarak <rmoubarak@sutherlaw.com>; Ryan Shah <ryan.shah@paliareroland.com>; Candace Baumtrog <Candace.Baumtrog@Paliareroland.com>; Beatrice Loschiavo <beatrice.loschiavo@paliareroland.com>
Subject: RE: Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al. - CV-23-00710795-00CL [IMAN-PRIMANAGE.FID404153]

Hi Jeff,

Our position remains the same. The standard of review for any appeal should not also be subject to argumentation at a later date – this will simply drive up costs for the Lien Claimants. As such, para 16 should read as follows:

16. **THIS COURT ORDERS** that, in the event that the Receiver receives one or more Notices of Dispute in respect of Pre-Receivership Claims by the Dispute Bar Date, the Receiver shall, following the Dispute Bar Date, schedule an appeal hearing (the “**Appeal Hearing**”) with such person as is agreeable to the Claimants and the Receiver or as may be appointed by the Court (the “**Adjudicator**”) for the determination of each Claim that has not been resolved. ~~At the hearing of each Appeal, the Adjudicator’s standard of review of the Receiver’s Notice of Evaluation is that of an appellate court such that the Receiver’s Notice of Evaluation are only reviewable on the basis of (a) correctness as to questions of law, and (b) palpable and overriding error as to questions of fact.~~

Further, there is no mention of disclosure of the construction financing money that was advanced to the project pre and post receivership. Accordingly, please see below our proposal:

THIS COURT ORDERS that, within 30 days from the date of this Order, the Receiver shall provide the Lien Claimants with the following information:

1. The total quantum of construction financing money advanced with respect to the Property, both Pre- and Post-Receivership Appointment, including but not limited to:
 1. All funds advanced on or before December 20, 2023; and
 2. All funds advanced on or after December 21, 2023.
2. The holdback amounts retained pursuant to the *Construction Act* in relation to both periods mentioned above, being Pre- and Post-Receivership Appointment, as well as any deficiencies in the holdback amounts.
3. All relevant information, documents, and records related to said total quantum of money advanced, holdback amounts retained pursuant to the *Construction Act*, and/or any holdback deficiencies.

Kind regards,



SUTHERLAND LAW

Jawad Janmohamed
Associate Lawyer

Phone: (905) 695-5500 Ext. 2601
Fax : (905) 695-5501
Email: jjanmohamed@sutherlaw.com

3300 Highway 7, Suite 904
Vaughan, Ontario L4K 4M3

www.sutherlaw.com

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From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>
Sent: Wednesday, October 23, 2024 11:12 AM
To: Jawad Janmohamed <jjanmohamed@sutherlaw.com>
Cc: Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>; ryan.shah@paliareroland.com;
Candace.Baumtrog@Paliareroland.com; beatrice.loschiavo@paliareroland.com;
bgelman@albertgelman.com; tmcelroy@albertgelman.com
Subject: RE: Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al. - CV-23-00710795-00CL [IMAN-PRIMANAGE.FID404153]

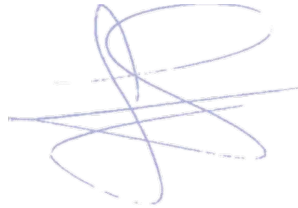
EXTERNAL: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am not continuing to do this by email as we are, unfortunately, simply re-hasing the same ground and the same misunderstandings persist.

I have asked repeatedly for you, Rob or Jonathan to speak so that we can make our respective positions clear and see if we can finalize the form of Order. I have also left messages for each of you but no one has returned my call.

If you refuse to speak, we will simply argue the matter before Justice Cavanagh on November 5.

THIS IS **EXHIBIT “O”** REFFERED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024

A handwritten signature in blue ink, consisting of several overlapping loops and a horizontal line, positioned centrally on the page.

A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

From: Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>
Sent: Saturday, October 26, 2024 9:06 AM
To: Jeff.Larry@paliarerland.com; Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>
Cc: ryan.shah@paliarerland.com; bgelman@albertgelman.com; tmcelroy@albertgelman.com; Karla Toma <ktoma@sutherlandlaw.com>; Rob Moubarak <rmoubarak@sutherlandlaw.com>
Subject: Re: Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al. - CV-23-00710795-00CL [IMAN-PRIMANAGE.FID404153]

Good morning Jeff, Thanks

We have been trying to resolve this amicably and will continue to work towards said resolution. I see that you have now copied the receiver on our emails.

Do you have any case law which permits the receiver to impose this type of process and requires my clients to agree to limiting its appeal rights?

If you do, I would invite you to send same to us to review prior to making such claim about seeking costs against our clients.

As you know, we have been requesting information (in numerous emails) regarding how much construction financing was advanced pre receivership and post receivership, as well as how much holdback was retained and any deficiency in same.

To date, we have not received said information which makes our clients very concerned as to why said information is not being voluntarily disclosed by the receiver and lender(s), while at the same time, the receiver is pushing for two different lien vetting processes/procedures with varying appeal rights. This concerns our clients.

We will continue to try to work this out in good faith with you and ask that as a sign of good faith, the information we have been requesting be provided by the receiver and lenders.

The information we are requesting regarding money advanced and held back is readily available but is not being readily disclosed, which is concerning to our clients.

Thanks

Yours truly,



Jonathan L. Frustaglio

Partner

Phone: (905) 695-5500 Ext. 2760

Fax : (905) 695-5501

Email: jfrustaglio@sutherlandlaw.com

Law Clerk: Josie DiStefano at Ext. 2930
or jdistefano@sutherlandlaw.com

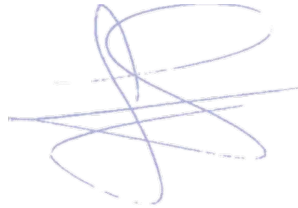
3300 Highway 7, Suite 904
Vaughan, Ontario L4K 4M3

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THIS IS **EXHIBIT "P"** REFERRED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024

A handwritten signature in blue ink, appearing to be 'J. Frustaglio', with several overlapping loops and a horizontal line crossing through the middle.

A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

From: Rob Moubarak <rmoubarak@sutherlandlaw.com>
Sent: Tuesday, October 29, 2024 9:52 AM
To: Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>; Jeff.Larry@paliareroland.com; Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>
Cc: ryan.shah@paliareroland.com; bgelman@albertgelman.com; tmcelroy@albertgelman.com; Karla Toma <ktoma@sutherlandlaw.com>
Subject: Re: Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al. - CV-23-00710795-00CL [IMAN-PRIMANAGE.FID404153]

We will seek costs against the receiver for all this evasion and games. The receiver is not acting in the best interest of all stakeholders/creditors/lien claimants and moving impartially as our clients' concerns will show the Court.

This is bizarre. Please reconsider and ask your client to come clean with the accounting as has been requested.

Sincerely,



Rob Moubarak

Partner

Phone: (905) 695-5500 ext. 2800

Fax : (905) 695-5501

Email: rmoubarak@sutherlandlaw.com

3300 Highway 7, Suite 904
Vaughan, Ontario L4K 4M3

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From: Jonathan L. Frustaglio <jfrustaglio@sutherlandlaw.com>
Sent: Tuesday, October 29, 2024 9:47:20 AM
To: Rob Moubarak <rmoubarak@sutherlandlaw.com>; Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>; Jawad Janmohamed <jjanmohamed@sutherlandlaw.com>
Cc: ryan.shah@paliareroland.com <ryan.shah@paliareroland.com>; bgelman@albertgelman.com <bgelman@albertgelman.com>; tmcelroy@albertgelman.com <tmcelroy@albertgelman.com>; Karla Toma <ktoma@sutherlandlaw.com>
Subject: Re: Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al. - CV-23-00710795-00CL [IMAN-PRIMANAGE.FID404153]

I have re attached the section 39 Demand Letters, which to date have not been answered by the receiver or lender(s).

Yours truly,



Jonathan L. Frustaglio

Partner

Phone: (905) 695-5500 Ext. 2760

Fax : (905) 695-5501

Email: jfrustaglio@sutherland.com

Law Clerk: Josie DiStefano at Ext. 2930

or jdistefano@sutherland.com

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From: Rob Moubarak <rmoubarak@sutherland.com>

Sent: Tuesday, October 29, 2024 9:39 AM

To: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>; Jonathan L. Frustaglio <jfrustaglio@sutherland.com>; Jawad Janmohamed <jjanmohamed@sutherland.com>

Cc: ryan.shah@paliareroland.com <ryan.shah@paliareroland.com>; bgelman@albertgelman.com <bgelman@albertgelman.com>; tmcelroy@albertgelman.com <tmcelroy@albertgelman.com>; Karla Toma <ktoma@sutherland.com>

Subject: Re: Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al. - CV-23-00710795-00CL [IMAN-PRIMANAGE.FID404153]

Where is the sender.39 demand answers!

Jonathan the receiver is playing a game of hide and seek.

Jeff why is your client not using this time to resolve the issue. Answer the s.39 demand. How much was invited to the owner, how much the owner paid and his much was advanced on the loan and when.

Simple straight forward questions that will allow quantification of Holdback.

Give us the answers! Please! Instead of factums answer or straight forward questions. It's been months!

Please so we can move on and our clients' suspicions alleviated.

Sincerely,

Rob Moubarak

Partner

Phone: (905) 695-5500 ext. 2800

Fax : (905) 695-5501

Email: rmoubarak@sutherlaw.com

3300 Highway 7, Suite 904
Vaughan, Ontario L4K 4M3

www.sutherlaw.com

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From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: Tuesday, October 29, 2024 9:34:06 AM

To: Jonathan L. Frustaglio <jfrustaglio@sutherlaw.com>; Jawad Janmohamed <jjanmohamed@sutherlaw.com>

Cc: ryan.shah@paliareroland.com <ryan.shah@paliareroland.com>; bgelman@albertgelman.com <bgelman@albertgelman.com>; tmcelroy@albertgelman.com <tmcelroy@albertgelman.com>; Karla Toma <ktoma@sutherlaw.com>; Rob Moubarak <rmoubarak@sutherlaw.com>

Subject: RE: Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al. - CV-23-00710795-00CL [IMAN-PRIMANAGE.FID404153]

EXTERNAL: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jonathan:

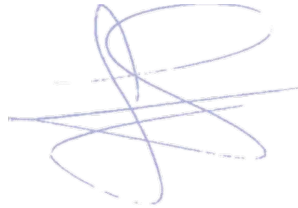
For the past 4 weeks, we have proposed a form of Order that fully preserves all of your clients' rights (and your clients' rights alone) to argue for a different appeal process at a later date (should it become necessary after your clients get the information they claim they require). Your clients have rejected this offer but cannot articulate how the form of offer could possibly prejudice them in any way (which, of course, it does not). It is for this reason that the Receiver does not believe your clients' are acting reasonably and will be seeking costs against them.

In terms of the information requests, we responded to your inquiries immediately following the last court attendance. The fact that your clients simply assert they don't accept the figures is not a valid

response on their part. That said, the Receiver will continue to respond to any information about the holdbacks that your clients say they require.

In terms of our legal position, we anticipate delivering our factum by tomorrow.

THIS IS **EXHIBIT “Q”** REFFERED TO IN THE
AFFIDAVIT OF KARLA TOMA SWORN October 30, 2024

A handwritten signature in blue ink, appearing to read 'J. Frustaglio', with several overlapping loops and a horizontal line crossing through the middle.

A Commissioner for Taking Affidavits, Etc.

JONATHAN L. FRUSTAGLIO
LSO NO: 68417K

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) DAY, THE 19TH
JUSTICE STEELE) DAY OF AUGUST, 2024

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

**ORDER
(LIEN CLAIMS PROCESS)**

THIS MOTION by the Receiver, Albert Gelman Inc. (the "**Receiver**"), for an Order, among other things, establishing a claims process (the "**Lien Claims Process**") for determining the validity and quantum of the construction liens registered against title to the real property listed in Schedule "A" to the order of Justice Cavanagh dated December 21, 2023 (the "**Property**"), was heard this day at the courthouse at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Receiver dated August 6, 2024 (the "**Third Report**") and on hearing the submissions of counsel for the Receiver and the other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the Affidavit of Service of Candace Baumtrog, dated August 6, 2024.

A. SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion is hereby abridged and validated so that this Motion is properly returnable today, and hereby dispenses with further service thereof.

B. FILING CLAIMS

2. **THIS COURT ORDERS** that the Lien Claims Process described in the Third Report and herein is hereby approved.

3. **THIS COURT ORDERS AND DIRECTS** that in order to file a claim pursuant to the Lien Claims Process described herein (a "**Claim**"), an entity with a lien claim (a "**Lien Claimant**") shall complete the Proof of Lien Claim Form attached as Schedule "A" hereto and provide the information set out in Schedule "1" to the Proof of Lien Claim Form (with the Proof of Claim Form, the "**Lien Documentation**") to the Receiver after the date of this Order and before 5:00 p.m. Toronto time on September 20, 2024 (the "**Claims Bar Date**").

4. **THIS COURT ORDERS** that, in connection with the Lien Claims Process, the Receiver shall have no obligation to review any Lien Documentation that may have been

sent to the Receiver prior to the date of this Order and that, for certainty, a Lien Claimant's provision of Lien Documentation to the Receiver before the date of this Order shall not satisfy the Lien Claimant's obligation pursuant to this Order to provide Lien Documentation to the Receiver before the Claims Bar Date.

5. **THIS COURT ORDERS** that any Lien Claimant who does not provide the necessary Lien Documentation to the Receiver by the Claims Bar Date shall be forever barred from asserting its Claim against the Respondents, the Receiver, the Property, and any "owner" (as defined in the *Construction Act*) of the Property, and such Claim for Lien shall be forever discharged and extinguished, and any such Lien Claimant shall not be entitled to receive any distribution from the Receiver, if any, in respect of the proceeds of sale of the Property.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to use its discretion as to the adequacy of compliance with the manner in which the Lien Documentation is provided.

C. DETERMINATION OF CLAIMS

7. **THIS COURT ORDERS** that the Receiver is authorized and empowered to, in its reasonable discretion, direct any Lien Claimant to provide:

- (a) any documents or information; and
- (b) written or oral deposition, under oath

with respect to matters which are relevant to that Lien Claimant's Claim.

8. **THIS COURT ORDERS** that in respect of each Claim, the Receiver shall review the Lien Documentation received by the Claims Bar Date and evaluate the validity and quantum of each Claim.

9. **THIS COURT ORDERS** that, after reviewing the Claim including the Lien Documentation in support of a Claim, the Receiver shall provide the Lien Claimant with a notice setting out the Receiver's determination as to the validity and quantum of the Claim (a "**Notice of Evaluation**").

10. **THIS COURT ORDERS** that within 20 days following the delivery to the Lien Claimant of a Notice of Evaluation (a "**Dispute Bar Date**"), the Lien Claimant may dispute any part the Receiver's evaluation of the Claim evaluated in the Notice of Evaluation by providing the Receiver with a notice setting out full particulars of the dispute (the "**Notice of Dispute**").

11. **THIS COURT ORDERS** that in the event that a Lien Claimant does not provide the Receiver with a Notice of Dispute by the Dispute Bar Date, then the Lien Claimant shall be barred from disputing the determination of the Receiver in the Notice of Evaluation.

12. **THIS COURT ORDERS** that the Receiver is empowered and authorized, but not obligated, to retain the assistance of counsel with expertise in construction liens, to assist the Receiver with its review of the Lien Documentation and any Notice of Dispute.

13. **THIS COURT ORDERS** the Receiver may attempt to consensually resolve any Claim with a Lien Claimant who has filed a Notice of Dispute (such a party being a “Disputing Party”) prior to a hearing before the Adjudicator (as defined below).

D. A CLAIMS APPEAL

14. **THIS COURT ORDERS** that, in the event that the Receiver receives one or more Notices of Dispute by the Dispute Bar Date, the Receiver shall, following the Dispute Bar Date, schedule an appeal (the “Appeal”) with an adjudicator with expertise with lien claims (the “Adjudicator”) (to be appointed by the Receiver in its sole discretion) for the determination of any Claim that has not been resolved. At the hearing of the Appeal, the Adjudicator’s standard of review of the Receiver’s evaluations and recommendations in its Notices of Evaluation is that of an appellate court such that the Receiver’s evaluations and recommendations are only reviewable on the basis of (a) correctness as to questions of law, and (b) palpable and overriding error as to questions of fact.

15. **THIS COURT ORDERS** that the decision of the Adjudicator shall be final and binding with no right of appeal therefrom.

16. **THIS COURT ORDERS** one half of the Adjudicator’s fees shall be paid by the Receiver and one half of the Adjudicator’s fees shall be paid by the Disputing Party at least 14 days prior to the subject Appeal.

17. **THIS COURT ORDERS** that the Adjudicator shall have the jurisdiction to:

- (a) award costs against any Disputing Party; and

- (b) direct that a Disputing Party shall be required to pay a greater proportion of the Adjudicator's fees than the amount provided for in paragraph 16 of this Order.

18. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to:

- (a) in its reasonable discretion, require security for costs from a Disputing Party that wishes to have its Claim and/or Notice of Dispute reviewed by the Adjudicator; and
- (b) deduct any costs or fees payable by any Disputing Party in connection with an Appeal, pursuant to paragraphs 16 and 17 of this Order, from any amount due and owing to that party.

E. ADMINISTRATIVE ISSUES

19. **THIS COURT ORDERS** that all documents required to be served herein shall be served by electronic mail to the address for service set out in the service list or the Lien Claimant's Lien Documentation.

20. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligations as a result of the carrying out of the terms of this Order and the implementation and administration of the within Lien Claims Process.

21. **THIS COURT ORDERS** that the Receiver may apply to the Court for directions regarding the carrying out of the within Lien Claims Process.

F. Fees, Receipts and Disbursements

22. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period from December 21, 2023 to August 4, 2024 be and is hereby approved.

23. **THIS Court Orders** that the fees and disbursements of the Receiver and its legal counsel as described in the Third Report, the fee affidavit of Bryan Gelman, sworn August 6, 2024, and the Fee affidavit of Beatrice Loschiavo, sworn August 1, 2024, are hereby approved.

G. General

24. **THIS COURT ORDERS** that the Third Report and the conduct and activities of the Receiver set out therein be and is hereby approved.

25. **THIS COURT ORDERS** that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Third Report detailed in paragraph 24 above.

SCHEDULE "A" – PROOF OF LIEN CLAIM FORM

PROOF OF LIEN CLAIM

A. PARTICULARS OF THE LIEN CLAIMANT:

(1) Full Legal Name of the Lien Claimant (include trade name, if different):

.....

.....

(the "**Lien Claimant**"). The full legal name should be the name of the Lien Claimant notwithstanding whether an assignment of a Lien Claim, or a portion thereof, has occurred prior to or following the Lien Claims Process Order.

(2) Full Mailing Address of Lien Claimant: (The mailing address should be the mailing address of the Lien Claimant and not any assignee)

.....

.....

(3) Telephone Number of Lien Claimant:

.....

(4) E-mail Address of Lien Claimant:

.....

(5) Attention (Contact Person):

Has the Lien Claim set out herein been sold, transferred or assigned by the Lien Claimant to another party?

Yes: [] No: []

B. PARTICULARS OF THE ASSIGNEE(S) (IF APPLICABLE)

.....

If the Lien Claim set out herein has been sold, transferred or assigned, complete the required information set out below. If there is more than one assignee, please attach a separate sheet which contains all of the required information set out below for each assignee.

(1) Full Legal Name of the Assignee:

.....

.....

(2) Full Mailing Address of the Assignee:

.....

.....

(3) Telephone Number of Assignee:

(4) E-mail Address of Assignee:

(5) Attention (Contact Person):

C. PROOF OF LIEN CLAIM

THE UNDERSIGNED HEREBY MAKES OATH AND SAYS AS FOLLOWS:

(1) That I:

am a Lien Claimant with respect to real property municipally known as 39,

53 and 67 Jefferson Side Road, Richmond Hill, Ontario (the “**Real Property**”) or (if applicable) am the:

.....

(state position or title)

of

.....

(Name of Lien Claimant)

- (2) That I have knowledge of all of the circumstances connected with the Lien Claim described and set out below:
- (3) The Lien Claim seeks payment of \$..... [*Insert \$ value of claim*]

CAD on account of services and materials supplied to an improvement on the Real Property **before** December 21, 2023 (the “**Appointment Date**”) and
 on account of interest on the
 same [*Provide particulars of interest claim and calculation of same*]

- (4) The Lien Claim seeks payment of \$..... [*Insert \$ value of claim*]

CAD on account of services and materials supplied to an improvement on the Real Property **on or after** December 21, 2023 (the Appointment Date)
 and..... on account of interest on
 the same. [*Provide particulars of interest claim and calculation of same*]

NOTE: Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as of the date of the Claims Process Order.

D. PARTICULARS OF CLAIM

Other than as already set out herein, the particulars of the undersigned's total Lien Claim are attached in the form of the Lien Documentation (as defined in the order of Justice Steele, dated August 19, 2024)

SWORN BEFORE ME at the _____)
_____ in the _____)
Province of _____)
this _____ day of _____)
_____)
_____)

A Commissioner, or Notary Public, etc.

Name of Deponent

[or if sworn via video conferencing]

SWORN REMOTELY by _____)
_____ at the _____)
_____)
_____)
in the _____)
on _____, 2024)

in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

A Commissioner, or Notary Public, etc.

Name of Deponent

E. FILING OF LIEN CLAIM

This Proof of Lien Claim form must be received by the Receiver, Albert Gelman Inc., by no later than 5:00 p.m. (Eastern Standard time) on September 20, 2024 (the “**Claims Bar Date**”) at the following physical address or email address:

Albert Gelman Inc., in its capacity as court-appointed receiver
of 2011836 Ontario Corp. and Jefferson Properties Limited
Partnership (the “**Debtors**”)

250 Ferrand Drive, Suite 403
Toronto, ON M3C 3G8
Attention: Terry Scott
tscott@albertgelman.com

Failure to file your Proof of Lien Claim and any required documentation as directed in relation to any Lien Claim by 5:00 p.m. (Eastern Standard Time) on the Claims Bar Date will result in your Lien Claim being forever barred and extinguished, and you will be prohibited from making or enforcing that Lien Claim against the Real Property or the Debtors and shall not be entitled to further notice or distribution, if any, in respect of that Lien Claim, and shall not be entitled to participate as a Lien Claimant in these proceedings in respect of that Lien Claim.

Schedule “1” – Lien Documentation

- (a) copy of the lien claimant's registered construction lien and any written notice of lien (collectively, the “**Claim for Lien**”);
- (b) copies of the lien claimant's Statement of Claim and Certificate of Action;
- (c) documentation evidencing the last date on which the lien claimant provided service, materials or labour to the applicable improvement in the case of a subcontractor or the date of completion, abandonment or termination of the contract in the case of a contractor;
- (d) a copy or particulars of any contract, subcontract, purchase order or agreement upon which the lien claimants assert its materials, services and labour were provided under (the “**Contract**”), including the names of the parties to the Contract and the date it was entered into;
- (e) a statement of account under the Contract and particulars and documents substantiating the quantum of the Claim for Lien, including:
 - (i) the price of the Contract;
 - (ii) the total amount invoiced by the lien claimant, including a copy of the invoices and dates the invoices were sent;
 - (iii) the total amount paid to the lien claimant under the Contract, including the date and amount of payments received;
 - (iv) the amount of the Claim for Lien that comprises of holdback and amounts invoiced within the scope of the Contract; and
 - (v) the amount of the Claim for Lien that comprises of extra to the Contract, along with any relevant documentation substantiating the extra amount sought, such as notice of extras, request for extras, request for change orders, executed change orders, executed change directives, amendments or purchase orders and time and material sheets;
- (f) statutory declaration(s) that attest that the work is complete and performed is in accordance or in compliance with the Contract;
- (g) for Lien Claimants who operated on a time and materials (T&M) basis, evidence of authorization to perform work;
- (h) for Lien Claimants who provided materials, statutory declaration(s) that attest that the materials were ordered/requested and delivered;

- (i) a copy of any labour and material payment bond posted by a subcontractor with a contractor or by a subcontractor with a subcontractor;
- (j) documentation evidencing service, materials and labour provided to the applicable improvement including, but not limited to, the following:
 - i. completed and approved timesheets of employees and subcontractors;
 - ii. subcontractor invoices;
 - iii. payroll registers and records;
 - iv. bank statements, electronic fund transfer receipts and cancelled cheques evidencing remittances by the Lien Claimant to employees and subcontractors;
- (k) all documents related to the fulfillment of work agreements including, but not limited to, the following:
 - i. WSIB clearance certificates for the dates the work was performed;
 - ii. proof of insurance showing coverage for the dates the work was performed;
 - iii. shop drawings;
 - iv. as built(s);
 - v. schematics;
 - vi. warranties and guarantees; and,
 - vii. third party verifications / certifications;
- (l) any other documents or information as the Receiver may reasonably request for the purpose of assessing and determining any Claims in accordance with this Order.

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

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and-

2011836 ONTARIO CORP. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Lien Claims Process)

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330

jeff.larry@paliareroland.com

Kartiga Thavaraj (LSO# 75291D)

Tel: 416.646.6317

kartiga.thavaraj@paliareroland.com

Ryan Shah (LSO# 88250C)

Tel: 416.646-6356

ryan.shah@paliareroland.com

Lawyers for the Receiver, Albert Gelman Inc.

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)
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**

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF KARLA TOMA
(SWORN OCTOBER 30, 2024)

SUTHERLAND LAW
3300 Highway 7, Suite 904
Vaughan, ON L4K 4M3

Jonathan L. Frustaglio
jfrustaglio@sutherlaw.com

Tel: (905) 695-5500
Fax: (905) 695-5501

Lawyers for the Lien Claimants, EDG Cor Inc., Core Constructions Ltd., Stephenson's Rental Services Inc., Santiago Alfredo Mendoza o/a Royal Welders, and Wycroft Trim & Doors Group Inc. aka Wycroft Trim and Doors Group Inc.

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)
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**

PROCEEDING COMMENCED AT
TORONTO

RESPONDING MOTION RECORD OF THE LIEN CLAIMANTS,
EDG COR INC., CORE CONSTRUCTORS LTD., STEPHENSON'S RENTAL
SERVICES INC., SANTIAGO ALFREDO MENDOZA o/a ROYAL WELDERS, and
WYECROFT TRIM & DOORS GROUP INC. aka WYECROFT TRIM and DOORS
GROUP INC.
(Lien Claims Process Order)

SUTHERLAND LAW
3300 Highway 7, Suite 904
Vaughan, ON L4K 4M3

Jonathan L. Frustaglio
jfrustaglio@sutherlandlaw.com

Tel: (905) 695-5500
Fax: (905) 695-5501

Lawyers for the Lien Claimants, EDG Cor Inc., Core Constructors Ltd., Stephenson's Rental Services Inc., Santiago Alfredo Mendoza o/a Royal Welders, and Wycroft Trim & Doors Group Inc. aka Wycroft Trim and Doors Group Inc.