

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	TUESDAY, THE 5 th
)	
JUSTICE CAVANAGH)	DAY OF NOVEMBER, 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**"), the Supplement to the Third Report of the Receiver dated October 31, 2024 (the "**Supplemental 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 in respect of services or materials supplied to improvements to the Property before December 21, 2023;
- (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 and including, for greater certainty, a claim for Lien registered against the Property;

- (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 December 5, 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 HEARING

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 a hearing (the "**Pre- Receivership Claims Hearing**") with, in each case, such person as is agreeable to the given Claimant 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 Pre-Receivership Claims Hearing, the determination of the Pre-Receivership Claim shall proceed on a *de novo* basis provided that the Claimant shall not be permitted to produce any evidence other than the Lien Documentation previously provided to the Receiver without leave of the Adjudicator.

17. **THIS COURT ORDERS** that the decision of the Adjudicator in any Pre-
Receivership Claims Hearing shall be final and binding with no right of appeal
therefrom.
18. **THIS COURT ORDERS** that, in respect of each Pre-Receivership Claims 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 Pre-Receivership Claims Hearing.
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
negligently 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 a Pre-Receivership Claims Hearing, 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 “**Post- Receivership Claims Hearing**”) with the Adjudicator for the determination of each Post-Receivership Claim that has not been resolved. The Post-Receivership Claims 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 Post-Receivership Claims 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 Post-Receivership Claims Hearing.
23. **THIS COURT ORDERS** that parties to a Post-Receivership Claims 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

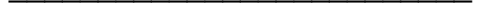
30. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period from December 21, 2023 to August 4, 2024 be and is hereby approved.

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, the Supplemental 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 November 5, 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 November 5, 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 December 5, 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.