

**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

REPLY FACTUM OF THE RECEIVER (MOTION RETURNABLE MAY 2, 2025)

May 1, 2025

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Lawyers for the Receiver, Albert Gelman Inc.

TO: Service List

PART I. OVERVIEW

1. The Receiver has prepared this reply factum to respond to materials filed by Fanseday, opposing the Receiver's motion for an increase to its Borrowing Limit from \$31,500,000 to \$40,000,000, among other things.¹
2. In an affidavit sworn April 30, 2025 (the "**Fanseday Affidavit**"), Fanseday objects to the Receiver's management of the Project and alleges that the Receiver has been responsible for needlessly driving up the costs of the Receivership, wiping out any potential recoveries for equity.
3. The costs of the Project are, in part, attributable to Fanseday's own mismanagement, and the Court should not countenance this attempt by an equity holder to intercede into the Receiver's management of the Debtors' affairs. This is particularly true because it does not appear that Fanseday has any economic interest in the Project.
4. The Receiver submits that the Court should approve the requested increase to the Receiver's Borrowing Limit, along with the other relief sought by the Receiver, so that the Receiver can complete the Project and realize upon the Project's Units for the benefit of all stakeholders.

¹ This reply factum adopts the definition of capitalized terms used in the Receiver's April 21, 2025 factum, unless otherwise defined.

PART II. FACTS

5. On April 30, 2025, less than two days before the hearing of the Receiver's within motion, Fansey served the Fansey Affidavit, opposing the relief sought by the Receiver and seeking a variety of relief against the Receiver including:²

- (a) An order that the Receiver be required to "justify" any proposed borrowing in advance by disclosing detailed, updated budgets in connection with the same;
- (b) An order requiring that the Receiver serve all stakeholders with updated, itemized budgets and detailed monthly progress reports through to the Project's completion;
- (c) The appointment of an "independent construction consultant" to review the Receiver's management of the Project; and
- (d) Leave for Fansey to cross-examine the Receiver's professionals.

6. The Fansey Affidavit alleges that the Receiver has irresponsibly managed the construction of the Project, including by unnecessarily pausing construction in January 2024, failing to control the Project budget and failing to make meaningful progress on construction of the Units.

7. The Fansey Affidavit, however, fails to address:

² See the Affidavit of Fansey Wang, sworn April 30, 2025 ("**Fansey Affidavit**") at paras. 24-26, p. 17-18 ([B-1-1728](#)).

- (a) The significant health and safety issues and construction deficiencies that the Receiver inherited from Fanshey's tenure managing the Project;³
- (b) The fact that the Receiver has at all times maintained a detailed Project budget prepared by Glynn, a chartered quantity surveyor;⁴ and
- (c) the fact that the Receiver has made significant progress on completing the Units. In particular, the Receiver has obtained occupancy certificates from the municipality of Richmond Hill in respect of 19 Units and anticipates that the entire Project will be substantially complete in or around June 2025, approximately 2 months from now.⁵

PART III. STATEMENT OF ISSUES

8. This Court should give no weight to Fanshey's evidence and submissions for the following three reasons:

- (a) Many of the issues raised by Fanshey are subject to *res judicata*;
- (b) Fanshey is attempting to micromanage the Receiver – contrary to established principles of receivership law; and
- (c) Fanshey's allegations ignore that the Receiver's requested Borrowing Limit increase is based on a detailed Project budget from Glynn.

³ Second Report of the Receiver, February 26, 2024 ("**Second Report**") at paras. 62-73, pp. 13-16 ([E4573](#)).

⁴ See, for example, Second Report at para. 85, p. 20 ([E4580](#)).

⁵ Fourth Report of the Receiver, April 11, 2025 ("**Fourth Report**") at paras. 33-34, RMR, Tab 2, p. 22 ([E4033](#)).

PART IV. LAW

A. *The majority of the issues raised by Fanshey are subject to res judicata*

9. In the Fanshey Affidavit, Fanshey objects to several decisions made by the Receiver, including:

- (a) the Receiver's decision to halt construction of the Project in January 2024;⁶
- (b) the Receiver's decision to retain a new construction manager for the Project;⁷ and
- (c) the Receiver obtaining an increase in its Borrowing Limit to \$31.5 million.⁸

10. Such conduct has already been approved and ratified by the Court in orders approving the Receiver's conduct and the Borrowing Limit.⁹ Accordingly, as a result of the doctrine of *res judicata*, it is too late for Fanshey to seek to litigate such issues.¹⁰

B. *Fanshey is attempting to micromanage the Receiver – contrary to established principles of receivership law*

11. In his affidavit, Fanshey objects to the Receiver's management of the Project and requests leave of the Court to "introduce an alternative financing and construction management plan for the Project."¹¹

12. This submission should be disregarded for the following reasons:

⁶ Fanshey Affidavit at para. 5, p. 9 ([B-1-1720](#)).

⁷ Fanshey Affidavit at para. 5, p. 9 ([B-1-1720](#)).

⁸ Fanshey Affidavit at para. 23.1, p. 15 ([B-1-1726](#)).

⁹ Order of Justice Steele, May 27, 2024 at paras. 2 and 7, Appendix B to the Fourth Report, RMR, Tab 2 p. 44 ([E4055](#)), p. 46 ([E4057](#)).

¹⁰ *Toronto (City) v. CUPE Local 79*, [2003 SCC 63](#) at [para. 23](#).

¹¹ Fanshey Affidavit at para. 25, p. 17 ([B-1-1728](#)).

- (a) Fanseay severely mismanaged the Project prior to the appointment of the Receiver; and
- (b) More fundamentally, the principles of receivership law establish that the Court ought to defer to the reasonable business judgment of the Receiver. Fanseay's attempt at micromanaging the Project offends this principle.

1. Fanseay severely mismanaged the Project prior to the appointment of the Receiver

13. While Fanseay objects to steps taken by the Receiver in managing the Project, including halting construction in January 2024 to address certain health and safety concerns and terminating pre-receivership trade contracts, it must be remembered that these steps were required because of Fanseay's disastrous mismanagement of the Project.

14. In particular, the Receiver notes that:

- (a) the Receiver's "delay" in completing the Project is a result of the need to address the Project's extensive and well-documented health, safety, record-keeping, cost control and construction deficiency issues that existed on site at the time of the Receiver's appointment;¹² and
- (b) Under Fanseay's management, many trade contract prices were based on time and materials rather than a defined scope of work with a fixed or unit price. This hampered the ability of Fanseay and the Project's former

¹² Second Report at paras. 62-73, pp. 13-16 ([E4573](#)); Health and Safety Audit, Appendix C to the First Supplement to the Second Report of the Receiver, May 1, 2024 ("**First Supplement to Second Report**"), p. 52 ([E4922](#)); Appendix E, First Supplement to Second Report, p. 58 ([E4928](#)).

construction manager to forecast or manage costs effectively. This, in part, necessitated the Receiver obtaining new budgeting and cost estimates and pausing construction to obtain new trade contracts.¹³

2. The principles of receivership law establish that the Court ought to defer to the reasonable business judgment of the Receiver

15. The case law recognizes that all stakeholders need not be equally satisfied with a receiver's decision making in managing the affairs of a debtor. Instead, the Court must only be satisfied that the Receiver's decision be "within the broad bounds of reasonableness" and that the Receiver proceed "fairly, having considered the interests of all stakeholders."¹⁴

16. While Fanshay may not be happy with the Receiver's decision to pause the Project for health and safety concerns and to replace Fanshay's trade contracts with trade contracts of the Receiver's own choosing, this is, respectfully, irrelevant.

17. The Court must only be satisfied that the Receiver's decision was reasonable and fairly considered all stakeholders. In this case, there can be no question that the Receiver's decision was reasonable and considerate of all stakeholders in the Project.

18. As noted above, the Receiver paused construction of the Project in January 2024 to remedy health and safety concerns and other serious deficiencies with the Project and terminated existing trades contracts because they were not fixed price contracts and thus,

¹³ First Supplement to Second Report, para. 43(c), p. 15 ([E4885](#)).

¹⁴ *Ravelston Corp. (Re)*, [2005 CanLII 63802](#) at [para. 40](#) (ON CA) [*"Ravelston"*].

in the Receiver's view, unfavourable to the value of the Project and the stakeholders of the Debtors' estate.

19. It would completely undermine Ontario's insolvency regime if Fansey were able to second guess such exercise of business judgment and micromanage the Receiver simply because he takes an opposing view.

20. In short, the suggestion that the judgment of the Receiver, a Court-appointed officer, should be replaced by that of Fansey, the principal of the Debtors who presided over the insolvency of the Project, strains credulity.

C. *Fansey's allegations ignore that the Receiver's requested Borrowing Limit increase is based on a detailed Project budget from Glynn*

21. Fansey alleges that the Receiver's budget is based on "speculative assumptions" and takes the position that inconsistencies in the budget raise "serious concerns about the integrity of the budgeting process."¹⁵

22. These allegations should be disregarded in their entirety for the following reasons:

- (a) Fansey has not viewed the Glynn Report (and has not requested to view the Glynn Report), and therefore has no basis to object to its underlying assumptions and calculations;
- (b) Fansey has not been involved with the management of the Project for almost a one and a half years; and

¹⁵ Fansey Affidavit at paras. 22, 23.3, pp. 14 ([B-1-1725](#)), 16 ([B-1-1727](#)).

- (c) Glynn is a chartered quantity surveyor, and the Glynn Report is a highly detailed budget based on fixed price trade contracts¹⁶ and a detailed construction schedule.¹⁷

23. Accordingly, Fanshew's allegations concerning the impropriety of the Glynn Report and the Receiver's budgeting are baseless and should be ignored by the Court in their entirety.

PART IV – ORDER REQUESTED

24. The Receiver requests that this Court make an order in the form of the draft order included in the Receiver's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of May, 2025.



Jeff Larry / Ryan Shah

¹⁶ See, for example, the Construction Cost Summary at Project Capital Cost Summary, Appendix A to the Glynn Report, Confidential Appendix 1 to the Fourth Report, p. 30

¹⁷ Construction Schedule, Appendix H to the Glynn Report, Confidential Appendix 1 to the Fourth Report, p. 269.

SCHEDULE "A"

1. *Ravelston Corp. (Re)*, [2005 CanLII 63802 \(ON CA\)](#).
2. *Toronto (City) v. CUPE Local 79*, [2003 SCC 63](#).

SCHEDULE "B"

None.

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Applicant

and **2011836 ONTARIO CORP., et al.**

Respondents

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

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