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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

and

2011836 ONTARIO CORP., JEFFERSON PROPERTIES LIMITED PARTNERSHIP, 1000162801 ONTARIO CORP., AMERCAN CORPORATION and 1000199992 ONTARIO CORP.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLJIENCY ACT,* R.S.C., 1985 C, B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT,* R.S.O. 1990, C.43, AS AMENDED

Sur-Reply Affidavit of Fanseay Wang

(*returnable May 02, 2025*)

May 1, 2025

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Self-Represented Respondent

TO: SERVICE LIST

I, Fanseay Wang Self-Represented Respondent, respectfully request that the Court take these clarifications into consideration in assessing the Receiver's motion:

PART I – INTRODUCTION:

1. The Receiver's Reply Factum (May 1, 2025) again asserts that Respondent Fanseay Wang mismanaged the Project and that prior court approvals preclude any contrary arguments. In truth, the court record shows the opposite. Before the Receiver's appointment, a detailed project budget had been prepared and reviewed by the chartered quantity surveyor (Glynn Group Inc.), with over 85% of all trade costs covered by fixed-price contracts and a finalized construction schedule, including the delivery of 19 units in March 2024, 16 months earlier than the Receiver planed.
2. These facts contradict the Receiver's narrative. Likewise, the Receiver's reliance on res judicata ignores that the Court's prior orders were obtained without full disclosure of material facts and should not be allowed to stand at the expense of justice. The Receiver offers no evidence of any "micromanagement" by Fanseay; to the contrary, Fanseay provided ongoing cooperation and proposals (affidavit evidence and communications show he supplied project information and even alternative plans), and the Receiver never cited any breach of duty before.
3. Finally, the Receiver's justifications for halting construction on safety grounds are flatly contradicted by a filed third-party safety consultant report, showing only sectional fixes were needed to allow continued work. For these reasons, and others below, the Receiver's arguments are self-serving and unsupported by the record. The Respondent seeks leave to file this sur-reply and urges the Court to consider it at the May 2, 2025 hearing.
4. It must also be emphasized that AGI—the current Receiver—had served as a consultant on the Project for approximately three months prior to the receivership. One day before the initial hearing, AGI submitted an urgent, unverified report supporting the Applicant's motion. In that report, AGI explicitly praised the existing construction team as competent, confident, and capable of delivering the Project on schedule. It characterized receivership as merely a "convenient" means to facilitate completion. Yet immediately upon its appointment as Receiver, AGI reversed course—terminating the entire team it had previously endorsed and replacing them without justification.

5. Further, although the Receiver initially committed to completing the Project as planned, within months it sought to cancel the Agreements of Purchase and Sale (APS), citing unsupported claims that doing so was the only path to sustain DIP financing.
6. I do not raise these facts to challenge or relitigate the Court's original order, but rather to demonstrate a troubling pattern in the Receiver's conduct: a pattern of advancing whatever narrative is most expedient to justify its position, without regard for the reputational harm to professionals or the severe damage to the Project's viability.

PART II – THE RECEIVER'S MISMANAGEMENT ALLEGATIONS IGNORE THE ESTABLISHED BUDGET PLAN:

7. The Receiver claims that Fanseay's alleged "mismanagement" caused project delays and cost overruns. This ignores the fact that, before Receivership, the Project's budget and schedule had been thoroughly prepared by an independent quantity surveyor. The January 2024 *Projected Budget & Progress Draw* report by Glynn Group (prepared for the Receiver and based on earlier data) shows a total budget of $108.5 M and identifies fixed-price contracts covering the vast majority of costs. For example, Division 1 costs of $6.36 M were 85% covered by fixed-price subcontracts (over $5.4 M).
8. That same report attaches a detailed construction schedule with firm completion milestones. In short, at the time of Receivership the Project enjoyed a high degree of contractual certainty and a definitive schedule – directly contradicting any suggestion that the budget was speculative or uncontrolled.
9. The Receiver's later budget increases (from $95.85 M to $108.5 M) were attributed to new time-and-material work and allowances, not any deficiency in Fanseay's management. In fact, correspondence on file shows that Fanseay and his team had reviewed Glynn's September 2023 draft budget line-by-line and even identified $2.1 M in overstated costsfile. The record therefore demonstrates that the budget was based on fixed-price contracts and professional surveys – not "mismanagement" by Fanseay. The Receiver's new allegation of prior mismanagement thus lacks any evidentiary foundation.

PART III – PREVIOUS ORDERS CANNOT BAR RE-EXAMINATION AFTER MATERIAL MISINFORMATION:

10. The Receiver points to previously approved orders and asserts res judicata or abuse-of-process to block further challenge. But it is well established that an order obtained by material misrepresentation or on incomplete evidence can be set aside or overridden. In Ontario, courts recognize that consent orders or earlier approvals may be overturned if a party presented false or incomplete information.
11. Here, the prior orders (e.g. initial Receivership relief and borrowing approvals) were granted on the Receiver's own representations – representations that the Receiver now contradicts. For example, the Receiver repeatedly asserted earlier that cost projections were based on signed fixed-price contracts; later it concedes having no such contracts on file.
12. Similarly, the Receiver claimed safety issues initially yet accepted a detailed budget and schedule. To the extent the Court relied on the Receiver's assurances, equity demands reconsideration. The Respondent could not have known at the time of earlier motions about the full extent of the Receiver's assumptions or omissions.
13. Accordingly, principles of finality cannot be used to reward the Receiver's failures. As the law provides, relief from an order is available where fraud or material misrepresentation is proven. The Respondent respectfully submits that the Receiver's later revelations (and omissions) constitute exactly that sort of material misdirection, and it would be inequitable to deny leave to respond on that basis.

PART IV – NO EVIDENCE SUPPPORTS THE RECEIVER'S "MICROMANAGEMENT" CLAIM:

14. The Receiver's assertion that Fanseay was "micromanaging" and therefore unfit is entirely unsupported. Nowhere in the evidentiary record is there an affidavit or document describing any specific act of "micromanagement". On the contrary, Fanseay's Affidavit recounts that he responded promptly and fully to the Receiver's concerns – for example, he supplied the Receiver with detailed construction data and even alternative financing and project-management.
15. At no time did any of the Receiver's own reports fault Fanseay for interfering with or obstructing the Receivership. Indeed, in earlier correspondence and reports, the Receiver acknowledged working with Fanseay (e.g. receiving project files and budget information)

without complaint. Now, after failing to make progress, the Receiver seeks to shift blame. This "micromanagement" accusation thus appears to be nothing more than a post hoc justification. T

16. he Receiver's own prior conduct – its silence about any supposed interference and its prior praise of Fanseay's construction team – contradicts this new allegation. In law, unsupported allegations of interference cannot justify drastic remedy; given the lack of any evidence, the Court should reject the Receiver's narrative that Fanseay somehow forfeited any oversight of his own development.

PART V – THE CONSTRUCTION STOPPAGE WAS UNNECESSARY IN LIGHT OF THE SAFETY REPORT:

17. The Receiver now argues it stopped work in January 2024 for "health and safety" reasons. But the record shows that a qualified third-party health-and-safety expert --the safety consultant who routinely examined the site weekly -- found that it met applicable standards, recommending only sectional corrective work. As Fanseay's affidavit details, he immediately provided these reports to the Receiver and proposed a plan to segregate affected areas while continuing work elsewhere.
18. The Receiver did not dispute the report's findings; instead it ordered a full shutdown. That decision, and the resulting delays, was not mandated by the expert findings. Thus the Receiver's safety justification is undermined by the uncontested third-party report. No contrary expert evidence was advanced by the Receiver.
19. On this record, the shutdown appears to have been a managerial choice, not a necessity. In short, the Respondent demonstrated that continued construction was feasible—a fact the Receiver ignores in its reply. And we must not forget that this shutdown was not for a week or a month but lasted for over ten months.
20. The Receiver has never provided a credible explanation for why such a prolonged stoppage was required. Nor has it addressed the resulting harm to stakeholders: while the first mortgagee—the Applicant—continued to accrue interest and absorb all remaining equity, other secured lenders and unsecured creditors were left with nothing. The extended interest period effectively depleted the Project's value, benefiting only the senior lender. Meanwhile, the Receiver's appointed builder stood to profit from the

inflated construction budget and extended timeline. This suggests that, rather than focusing on timely delivery to preserve value, the Receiver allowed the Project to slow dramatically, in a way that primarily served the interests of the Applicant and its own consultants.

PART VI – THE GLYNN REPORT DID NOT GUARANTEE THE COST INCREASES, NOR WERE 75% FIXED CONTRACTS ACHIEVED:

21. The Receiver touts the Glynn Report as a "fixed-price, detailed" budget and insinuates this validates all cost increases. This is misleading. The Glynn Report does set out a breakdown of costs, but it also shows that even under that plan the budget jumped from $95.85 M to $108.5 M due to "premium rates" and new allowances. Crucially, the projections in that report (and its updates) have already proven unreliable: Glynn's February 2025 estimate of $37.8 M to complete was swiftly replaced by the Receiver's now-asserted $40 M requirement. There is no satisfactory explanation for this discrepancy.
22. Moreover, no evidence has been filed that the requisite threshold of fixed-price trade contracts (commonly understood in construction financing to be at least 75% of cost) has in fact been locked in. On the contrary, the Respondent's materials note that *"there is no evidence that the [Receiver's] projections are based on signed fixed-price trade contracts"*. The Receiver has refused to disclose underlying contracts or financing statements; it simply asks to borrow more money "based on unverified figures".
23. The Court should not permit an open-ended borrowing order under these circumstances. At minimum, any increase should be contingent on transparent proof (e.g. signed fixed-price subcontracts) and commitment to use funds only for work governed by those contracts. The Receiver's narrative that "Glynn" provided a solid cost basis is self-serving: the evidence shows the opposite – shifting budgets, missing contracts, and unexplained cost gaps.

PART VII – CONCLUSION AND RELIEF SOUGHT:

24. In sum, the Receiver's reply fails to address the core evidence and raises only rhetoric. It ignores the documented budget review by Glynn, mischaracterizes the record, and hides behind prior orders obtained on the Receiver's own representations.
25. Instead of asking for micromanaging the Receiver's work, the Respondent has simply demonstrated substantial grounds for the Court to revisit these issues: the evidence of fixed-price contracts and approved schedule at Receivership; the material discrepancies in the Receiver's budgeting; the lack of any factual basis for "micromanagement"; and the contradicted safety concerns.
26. For the foregoing reasons, the Respondent respectfully requests that the Court grant leave to file this sur-reply, consider it at the May 2, 2025 hearing, and dismiss or limit the Receiver's motion in light of the above rebuttals.
27. I respectfully request that the Court allow notarization of this Affidavit after the hearing, due to the limit of time.

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

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Fanseay Wang
Self-Represented Respondent

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PROCEEDING COMMENCED AT TORONTO

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