

Court of Appeal File No.  
Superior Court File No. CV-23-00710795-00CL

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**

Applicant (Respondent)

-and-

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

Respondents (Appellant)

**FACTUM OF THE RECEIVER**

January 9, 2026

**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](mailto:jeff.larry@paliareroland.com)

**Kartiga Thavaraj** (LSO# 75291D)

Tel: 416.646.6317

[kartiga.thavaraj@paliareroland.com](mailto:kartiga.thavaraj@paliareroland.com)

**Ryan Shah** (LSO# 88250C)

Tel: 416.646-6356

[ryan.shah@paliareroland.com](mailto:ryan.shah@paliareroland.com)

**Lawyers for the Receiver, Albert Gelman Inc.**

**TO: Service List**

## PART I. OVERVIEW

1. In this motion, Albert Gelman Inc. (“**AGI**”), the receiver (the “**Receiver**”) of the Debtors (as defined below) seeks Orders in connection with an appeal (the “**Appeal**”) filed by Fanseay Wang (“**Fanseay**”), the principal of the Debtors, purportedly on the Debtors’ behalf.
2. In particular, the Receiver seeks, among other things:
  - (a) a declaration that leave to appeal is required for the Appeal; and
  - (b) a declaration that the order under appeal is not stayed.
3. On December 21, 2023, AGI was appointed Receiver of Jefferson Properties Limited Partnership (“**JPLP**”) and 2011836 Ontario Corp. (“**201Co**,” and together with JPLP, the “**Debtors**”) by Order of Justice Cavanagh. The Debtors primary asset is a 96-unit residential real estate development called Richmond Hill Grace (the “**Project**”).
4. On October 23, 2025, the Receiver sought and obtained an Order approving a sales process (the “**Sales Process**”) for the units in the Project which authorized the Receiver to market units in the Project (the “**Units**”) to prospective homebuyers. The Receiver’s motion was opposed by Fanseay who filed a cross-motion (the “**Cross-Motion**”) requesting a stay of the Receiver’s marketing efforts for the Units. Fanseay’s objections and Cross-Motion were dismissed.
5. The Receiver then proceeded to perform the Court-approved Sales Process and entered into a number of agreements of purchase and sale for Units.

6. On December 19, 2025, the Receiver sought and obtained another Order (the “**Approval and Vesting Order**”), among other things:

- (a) approving two agreements of purchase and sale which were obtained through the Sales Process; and
- (b) amending the Appointment Order (as defined below) to permit the Receiver to sell Units without specific Court approval so long as:
  - (i) the net consideration under the agreement of purchase and sale is not less than a Court approved minimum target price (being that Unit’s “**Target Price**”); and
  - (ii) the agreement is substantially in a Court-approved form.

7. Fanseday now purports to appeal the Approval and Vesting Order in the name of 201Co.

8. The Appeal is frivolous and doomed to fail. Nevertheless, Fanseday has requested that this Court grant a stay of the Approval and Vesting Order pending appeal (the “**Stay Motion**”). Fanseday has not taken steps to schedule his motion.

9. The Appellant does not have a right to appeal the Approval and Vesting Order under s. 193 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and has not sought leave. Accordingly, there can be no stay of the Approval and Vesting Order. The Court should make a declaration clarifying this point and dismissing Fanseday’s Stay Motion.

10. In the alternative, if the Appellant does have a right to appeal the Approval and Vesting Order, the Court should make an Order cancelling any stay of the Approval and Vesting Order under s. 195 of the *BIA*.

## **PART II. FACTS**

### ***A. Background***

11. The Project is located at real property municipally known as 39, 53 and 67 Jefferson Side Road, Richmond Hill, Ontario (the “**Real Property**”) and consists of 96 residential units, being 60 stacked condominium townhome units (the “**Stacked Units**”) and 36 freehold townhome units (the “**Freeholds**”).<sup>1</sup>

12. The Project is now substantially complete and the Receiver has commenced the marketing of the Units for sale pursuant to a Sales Process approved by the Court.<sup>2</sup>

### ***B. The Sales Process***

#### **1. The Sales Process Motion**

13. On September 11, 2025, the Receiver commenced a motion (the “**Sales Process Motion**”) which sought, among other things:<sup>3</sup>

- (a) an Order amending the Appointment Order to authorize the Receiver to sell the Units without approval of the Court where the sale price of the Unit under the agreement of purchase and sale is not less than that Unit’s Target Price,

---

<sup>1</sup> First Supplement to the Sixth Report of the Receiver dated December 9, 2025 (the “**First Supplement**”) at paras. 6-8, Receiver’s Motion Record (“**RMR**”), Tab 4, p. 230.

<sup>2</sup> First Supplement at para. 9, RMR, Tab 4, p. 230.

<sup>3</sup> First Supplement at para. 13, RMR, Tab 4, pp. 231-232.

as set out in the Target Price List developed by the Receiver (each such Transaction being a “**Permitted Transaction**”); and

- (b) an Order approving the Sales Process described in the Sixth Report of the Receiver dated September 11, 2025 (the “**Sixth Report**”).

## **2. Fanseay’s Cross-Motion**

14. The Sales Process Motion was opposed by Fanseay, who also filed the Cross-Motion, which sought:<sup>4</sup>

- (a) a stay of retail and individual Unit sales pending completion of a Court-ordered bulk-sale market test conducted by an independent sales monitor;
- (b) an Order requiring the Receiver to disclose the Target Price List to stakeholders; and
- (c) an Order reserving and holding back 50% of the future fees of the Receiver and its counsel.

15. The Sales Process Motion was heard on October 23, 2025 by Justice Kimmel. On November 27, 2025, Justice Kimmel released her decision in connection with the Sales Process Motion and the Cross-Motion. Justice Kimmel:<sup>5</sup>

---

<sup>4</sup> First Supplement at para. 15, RMR, Tab 4, p. 232; See Notice of Cross-Motion, Appendix D to the First Supplement, RMR, Tab 4, p. 280.

<sup>5</sup> First Supplement at para. 17, RMR, Tab 4, p. 233.

- (a) dismissed the Cross-Motion (with the caveat that this dismissal only dismisses Fanseay's request for relief in opposition to the relief granted in connection with the Receiver's Sales Process Motion);<sup>6</sup>
- (b) ordered the relief sought in the Sales Process Motion, with the exception of the Receiver's request for an order amending the Appointment Order to enable the Receiver to complete Permitted Transactions without Court approval (the "**Adjourned Relief**"); and
- (c) adjourned the Receiver's motion for the Adjourned Relief *sine die* (such Order being the "**Sales Process Order**").<sup>7</sup>

16. Justice Kimmel determined that it was premature to grant the Adjourned Relief without the intended form of agreement of purchase and sale for use in connection with Permitted Transactions also being approved by the Court.

17. Fanseay did not appeal the Sales Process Order.

**C. The Approval and Vesting Order**

18. After Justice Kimmel made the Sales Process Order, the Receiver proceeded to perform the Sales Process and entered into a number of agreements of purchase and sale for Units in accordance therewith.

19. On December 19, 2025, the parties returned to Court for the hearing of the Adjourned Relief, among other things. In addition, the Receiver sought approval and

---

<sup>6</sup> Endorsement of Justice Kimmel at para. 61, Appendix E to the First Supplement, RMR, Tab 4, p. 302.

<sup>7</sup> Order of Justice Kimmel at para. 9, Appendix E to the First Supplement, RMR, Tab 4, p. 289.

vesting orders in respect of two agreements of purchase and sale for Units (the “**December AVO Agreements**”).

20. Fansey sought an adjournment of this hearing and also objected to the relief sought by the Receiver because, in his view, the Target Prices listed in the Target Price List were undervalued by comparison to the value of pre-receivership agreements to purchase Units.

21. Justice Dietrich (the “**Motion Judge**”) denied Fansey’s adjournment request, granted the Approval and Vesting Order sought by the Receiver and dismissed Fansey’s objections to the same.<sup>8</sup> In particular, the Motion Judge found that:

- (a) the December AVO Agreements were obtained in accordance with the Sales Process already approved by the Court;<sup>9</sup>
- (b) the requested amendments to the Appointment Order to facilitate the completion of Unit sales without specific Court approval are appropriate because:
  - (i) the Court has approved similar mechanisms in insolvency proceedings involving the sale of a large number of units in a real estate development;<sup>10</sup> and

---

<sup>8</sup> See Approval and Vesting Orders and Permitted Transaction Authorization Orders, Appendix A to the Third Supplement to the Third Report of the Receiver dated January 8, 2026 (the “**Third Supplement**”), RMR, Tab 2, p. 23.

<sup>9</sup> See Endorsement of Justice Dietrich at paras. 25-26, Appendix A to the Third Supplement, RMR, Tab 2, p. 82.

<sup>10</sup> See Endorsement of Justice Dietrich at para. 31, Appendix A to the Third Supplement, RMR, Tab 2, p. 83.

- (ii) This approach reflects typical market practices and takes into account the range of sale prices achieved for comparable units in the Project and similar properties.<sup>11</sup>

***D. The Appeal and the Stay Motion***

22. On December 30, 2025, Fansey commenced this Appeal, purportedly on behalf of 201Co as Appellant. The Appeal seeks to set aside the Approval and Vesting Order on the grounds that the Motion Judge erred by failing to consider the pre-receivership agreements to purchase the Units and by “approving a non-transparent, non-market-tested sale process that destroys rather than maximizes estate value.”<sup>12</sup>

23. On January 2, 2026, Fansey purported to commence the Stay Motion, which requests that this Court make an Order staying the Approval and Vesting Order pending the hearing of the Appeal.<sup>13</sup>

***E. Violation of NDA***

24. Fansey and the Receiver signed a non-disclosure agreement (the “**NDA**”) under which the Receiver provided Fansey the confidential Target Price List and Fansey agreed to keep this document confidential.<sup>14</sup>

25. Fansey has breached the NDA by including the contents of the Target Price List in his affidavit for his Stay Motion (the “**Fansey Affidavit**”).<sup>15</sup>

---

<sup>11</sup> See Endorsement of Justice Dietrich at para. 29, Appendix A to the Third Supplement, RMR, Tab 2, p. 83.

<sup>12</sup> See Notice of Appeal, Appendix B to the Third Supplement, RMR, Tab 2, p. 86.

<sup>13</sup> See Notice of Motion re. Stay Motion, Appendix C to the Third Supplement, RMR, Tab 2, p. 95.

<sup>14</sup> NDA, Appendix D to the Third Supplement, RMR, Tab 2, p. 99.

<sup>15</sup> See Email from Fansey Wang to Service List, Appendix F to the Third Supplement, RMR, Tab 2, p. 108; See Confidential Appendix 1 to the Third Supplement at p. 8.

### PART III. STATEMENT OF ISSUES

26. This Motion and Cross-Motion raises the following issues:
- (a) Does the Appellant have a right to appeal the Impugned Order?;
  - (b) Should the Impugned Order be stayed pending appeal?; and
  - (c) Should the Confidential Appendices to the Receiver's reports and Fanseay Affidavit be sealed?
27. These issues should be answered as follows:
- (a) The Appellant does not have a right to appeal the Impugned Order;
  - (b) The Approval and Vesting Order should not be stayed pending appeal; and
  - (c) This Court should make an Order sealing the Confidential Appendices to the Receiver's report and Fanseay Affidavit.

### PART IV. LAW

#### ***A. The Appellant does not have a right to appeal the Approval and Vesting Order***

28. Parties' appeal rights under the *BIA* are governed by section 193 of the *BIA*, which provides that:

Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

- (a) if the point at issue involves future rights;
- (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
- (c) if the property involved in the appeal exceeds in value ten thousand dollars;
- (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and

(e) in any other case by leave of a judge of the Court of Appeal.<sup>16</sup>

29. Fanseday asserts that he has a right of appeal under s. 193(c) of the *BIA* on the theory that the Approval and Vesting Order authorizes dispositions of property that exceeds \$10,000 in value.<sup>17</sup>

30. This interpretation of s. 193(c) is at odds with well-established case law governing rights of appeal under the *BIA*.

31. An appeal as of right under s. 193(c) of the *BIA* triggers an automatic stay. In light of the broad nature of this stay, the right to appeal under the 193(c) has been restrictively construed to accord to the "needs of modern, 'real-time' insolvency litigation."<sup>18</sup>

32. In particular, this Court has determined that, in order to qualify for a right of appeal under s. 193(c), the order under appeal must be:

- (a) more than procedural;
- (b) involve the value of the debtor's property; and
- (c) result in a loss to the appellant.<sup>19</sup>

33. In effect, the appellant must prove that the Order appealed from causes a direct loss to the appellant of \$10,000 or more by finally determining a claimant's economic interests, as opposed to producing mere economic risk. In the words of Justice Thorburn:

---

<sup>16</sup> *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3, s. 193\(1\)](#) [*"BIA"*].

<sup>17</sup> Notice of Appeal at para. 2, Appendix B to the Third Supplement, RMR, Tab 2, p. 89.

<sup>18</sup> *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, [2016 ONCA 225](#) at [para. 53](#) [*"Bending Lake"*].

<sup>19</sup> *Proex Logistics Inc. (Re)*, [2025 ONCA 832](#) at [para. 48](#), citing *Bending Lake* at [para. 53](#) [*"Proex"*].

“[t]he appeal must relate to a clear difference in value between the order under appeal and evidence in the record that a debtor could have obtained a higher value.”<sup>20</sup>

34. Generally, orders approving sale transactions and sales processes have been identified by this Court as failing to satisfy these requirements.<sup>21</sup> An approval and vesting order simply converts one asset (land) into another (money). In this way, an approval and vesting order “does not put the value of the Debtors' property into play or finally determine the economic interest of a claimant in the Debtors resulting in a gain or a loss.”<sup>22</sup>

35. In *Bending Lake*, this Court explicitly held that s. 193(c) of the *BIA* does not apply to “orders concerning the methods by which receivers or trustees realize an estate's assets.”<sup>23</sup> The Approval and Vesting Order is clearly such an Order.

36. More specifically, Fanshay has not provided any evidence to support a finding that the Approval and Vesting Order has finally crystallized any economic loss to him or anyone else.

37. Fanshay argues that the Approval and Vesting Order occasions a loss to the Appellant because the Target Price for a number of Units is below the price of previous agreements to purchase the same Units, locking in losses to the estate of the Debtors.

38. This assertion is flawed for several reasons:

---

<sup>20</sup> *Proex* at [paras. 50-52](#).

<sup>21</sup> See, for example, *Marshallzehr Group Inc. v. La Pue International Inc.*, [2025 ONCA 124](#), *Royal Bank of Canada v. 1434399 Ontario Inc.*, [2025 ONCA 878](#) and *AFC Mortgage Administration Inc. v. Sunrise Acquisitions (Elmvale) Inc.*, [2024 ONCA 764](#) [***AFC Mortgage***].

<sup>22</sup> *AFC Mortgage* at [para. 21](#).

<sup>23</sup> *Bending Lake* at [para. 54](#).

- (a) the Court's approval of the Units' Target Prices does not finally determine any parties interests in the Debtors' estate, or even the value of any particular transaction. It is a purely procedural determination that authorizes the Receiver to complete a transaction for the sale of the Unit so long as the consideration is *greater than* the Target Price. The Target Price is a minimum, not a maximum;<sup>24</sup>
- (b) it is irrelevant that there existed pre-receivership agreements to purchase Units which may exceed the value of current and future agreements to purchase Units. There is no evidence before the Court that these pre-receivership agreements are still available to the Receiver or that the purchasers are willing or able to complete the same;
- (c) in opposing the Sales Process as part of his Cross-Motion, Fanseday already sought an Order requiring that all Unit sales exceed the value of any pre-receivership agreements to purchase those Units. This Cross-Motion was dismissed by the Sale Process Order, which Order is not under appeal. Fanseday's current position is merely an attempt to re-argue this point of the Cross-Motion which has already been finally decided;<sup>25</sup> and
- (d) in any event, to the extent that purchasers under pre-receivership agreements to purchase Units are willing and able to complete their

---

<sup>24</sup> See Order of Justice Dietrich at para. 6, Appendix A to the Third Supplement, RMR, Tab 2, p. 25.

<sup>25</sup> Endorsement of Justice Kimmel at paras. 3, 61, Appendix E to the First Supplement, RMR, Tab 4, pp. 293, 303.

agreements (there are eight such agreements), the Receiver is actively seeking to perform those agreements.<sup>26</sup>

39. In *First National*, this Court rejected a similar argument made by an appellant that claimed a right to appeal an approval and vesting order under s. 193(c) of the *BIA* because there existed a difference of more than \$10,000 between the approved transaction and other proposed “benchmark” agreements to purchase the same asset. The fact that there existed offers that, on their face, numerically exceeded the value of the approved transaction was irrelevant because there was no evidence that these were credible offers that would or could actually be performed by the counterparty.<sup>27</sup>

40. The situation here is similar insofar as there is no evidence that there are parties that are presently willing to purchase the subject Units for the amounts referenced by Fanshey. The value of previously existing agreements to purchase Units is essentially irrelevant to the present value of the Units and certainly falls short of evidence that the Impugned Order occasions a “direct loss” required to trigger s. 193(c) of the *BIA*.<sup>28</sup>

41. As a result, this Court should make a declaration that the Appellant does not have a right to appeal the Impugned Order under s. 193 of the *BIA*.

---

<sup>26</sup> See First Supplement at paras. 26-27, RMR, Tab 4, pp. 235-236.

<sup>27</sup> *First National Financial GP Corporation v. Golden Dragon HO 10 Inc.*, [2019 ONCA 873](#) at [paras. 18-26](#).

<sup>28</sup> *Proex* at [para. 51](#).

***B. The Approval and Vesting Order should not be stayed pending appeal***

1. **Orders under the *BIA* are only stayed where the appellant has a right of appeal or has been granted leave to appeal – the Appellant has neither**

42. The Appellant's motion for a stay pending appeal seeks to sidestep the *BIA* appeal framework and instead purports to move for a stay pending appeal under the *Rules*.

43. The Appellant's factum references the three-part test for a stay pending appeal established in *RJR-MacDonald Inc. v. Canada (Attorney General)*, under which Courts will consider whether:

- (a) there is a serious issue to be tried;
- (b) failure to grant the stay will cause irreparable harm; and
- (c) the balance of convenience favours granting the stay.<sup>29</sup>

44. Under the *BIA*, and unlike under the *Rules of Civil Procedure* (the "***Rules***"), an Order is automatically stayed where it is appealed as of right or where leave to appeal is granted. Where an appellant lacks a right of appeal, there is no stay and no opportunity for an appellant to obtain one on a motion.<sup>30</sup>

45. Accordingly, this Court has no authority to grant a stay of the Impugned Order without either:

- (a) finding that the Appellant has a right of appeal (which it does not); or

---

<sup>29</sup> *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#) at [332-333](#) [***RJR-MacDonald***].

<sup>30</sup> *BIA*, [s. 195](#). See *Royal Bank of Canada v. Ten 4 System Ltd.*, [2023 ONCA 839](#) at [paras. 21-22](#) and *Cosa Nova Fashions Ltd. v. The Midas Investment Corporation*, [2021 ONCA 581](#) at [paras. 16-19, 35](#).

- (b) granting the Appellant leave to appeal (which has not been sought by the Appellant and to which the Appellant would not be entitled).

46. As a result, there is no basis for this Court to grant a stay of the Approval and Vesting Order.

**2. If the Appellant does have a right to bring the Appeal, any stay should be cancelled**

47. In the alternative, in the event that this Court finds that the Appellant does have an appeal as of right, this Court should make an Order cancelling the stay of the Approval and Vesting Order pursuant to s. 195 of the *BIA*.

48. Section 195 of the *BIA* provides this Court with the jurisdiction to cancel the automatic stay that is otherwise provided for in the *BIA* where an appeal is commenced as of right. In considering whether this automatic stay should be cancelled, the Court will principally consider two factors: (1) the merits of the appeal and (2) the relative prejudice to the parties.<sup>31</sup> In carrying out this analysis, Courts will take into account:<sup>32</sup>

- (a) the appellant's litigation conduct, including whether the appellant is diligently prosecuting the appeal; and
- (b) the tripartite test for a stay pending appeal established in *RJR-MacDonald* (though the case law notes that the discretion granted by s. 195 of the *BIA* is broader than the tripartite *RJR-MacDonald* test and that courts must consider the interests of justice, generally).

---

<sup>31</sup> *Chun (Re)*, [2021 CanLII 53800 \(ON CA\)](#) at [para. 12](#).

<sup>32</sup> *Grillone (Re)*, [2023 ONCA 844](#) at [para. 35](#).

49. These factors support the complete cancellation of any stay of the Approval and Vesting Order pending appeal.

**3. The Appeal has no merit**

50. The Appeal fails to identify a single legal error underlying the Motion Judge's decision, which was a fact-sensitive and discretionary decision subject to significant deference on appeal.<sup>33</sup>

51. As a result, the Appeal is doomed to fail.

52. Fanseday's arguments on the Appeal are as follows:

- (a) the Motion Judge erred in law and fact by authorizing sales that "impair or extinguish" binding pre-receivership agreements to purchase Units that were never disclaimed and by treating those agreements as irrelevant;<sup>34</sup>
- (b) the Motion Judge erred in law by failing to distinguish between Freeholds and Stacked Units;<sup>35</sup>
- (c) the Motion Judge misapplied the law concerning court-supervised asset sales in insolvency proceedings;<sup>36</sup> and
- (d) the Motion Judge placed improper reliance on the continued interest accrual against the Debtors as a basis for urgency.<sup>37</sup>

---

<sup>33</sup> See *Reciprocal Opportunities Incorporated v. Sikh Lehar International Organization*, [2018 ONCA 713](#) at [para. 54](#).

<sup>34</sup> Notice of Appeal at para. 4(a), Appendix B to the Third Supplement, RMR, Tab 2, p. 89.

<sup>35</sup> Notice of Appeal at para. 4(b), Appendix B to the Third Supplement, RMR, Tab 2, p. 89.

<sup>36</sup> Notice of Appeal at para. 4(d), Appendix B to the Third Supplement, RMR, Tab 2, p. 90.

<sup>37</sup> Notice of Appeal at para. 4(e), Appendix B to the Third Supplement, RMR, Tab 2, p. 90.

53. These arguments can be dismissed as follows:

- (a) There was no evidence before the Motion Judge that there exist binding pre-receivership agreements to purchase Units which were extinguished by the Approval and Vesting Order. Fanseday did not provide any evidence from any purchasers to indicate that they would be willing to purchase Units at the value of these pre-receivership agreements or, indeed, any value. In any event, as noted above, to the extent that purchasers under pre-receivership agreements are willing and able to complete their agreements (there are eight such agreements), the Receiver *is seeking to perform* those agreements;<sup>38</sup>
- (b) It is unclear why Fanseday claims that the Motion Judge failed to distinguish between Freehold Units and the Stacked Units or how this relates to an error of fact or law. The Motion Judge's decision clearly recognized that there exist these two distinct types of Units in the Project;<sup>39</sup>
- (c) The Motion Judge correctly cited the key principles governing Court-supervised asset sales from *Royal Bank of Canada v. Soundair Corp.*<sup>40</sup> Although Fanseday characterized the Motion Judge's decision as "approving a non-transparent, non-market-tested sale process," this is contradicted by the fact that the underlying Sales Process through which the Receiver has

---

<sup>38</sup> See First Supplement at paras. 26-27, RMR, Tab 4, pp. 235-236.

<sup>39</sup> See Endorsement of Justice Dietrich at para. 15, Appendix A to the Third Supplement, RMR, Tab 2, p. 81.

<sup>40</sup> See Endorsement of Justice Dietrich at para. 23, Appendix A to the Third Supplement, RMR, Tab 2, p. 82 and *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727](#) (ONCA).

been authorized to market Units for sale has already been approved by this Court (and which Sales Process Order is not under appeal);<sup>41</sup> and

- (d) Fansey himself raised the issue of the high amount of continued interest accrual under the Debtors' secured indebtedness. In any event, the Motion Judge only relied on the fact of this high interest burn rate to deny Fansey's adjournment request.<sup>42</sup> The Motion Judge was entitled to rely on this fact in making this discretionary decision, which is owed substantial deference.

#### **4. The balance of prejudice favours cancelling any stay**

54. Cancellation of the stay would not cause any meaningful prejudice to any interested parties. On the other hand, staying the Impugned Order would cause significant and continued prejudice to the Debtors' stakeholders.

##### ***(a) No meaningful prejudice arising from cancellation of stay***

55. If the stay is cancelled, two things will happen:

- (a) The two December AVO Agreements (and others) will close;<sup>43</sup> and
- (b) The Receiver will be permitted to close other existing agreements to purchase Units, and any new ones that the Receiver agrees.

---

<sup>41</sup> See Order of Justice Kimmel at para. 6, Appendix E to the First Supplement, RMR, Tab 4, p. 289.

<sup>42</sup> Endorsement of Justice Dietrich at para. 10, Appendix A to the Third Supplement, RMR, Tab 2, p. 80.

<sup>43</sup> Third Supplement at para. 18, RMR, Tab 2, p. 18.

56. Fanseday's argument that this would cause prejudice to him or the Debtors essentially boils down to the argument that these agreements would result in a net loss to the estates of the Debtors compared some alternative method of realization.

57. Even if this were true (which it is not), this position is flawed because:

- (a) Fanseday has not actually identified any alternative buyers for the Units – the suggestion that there is some other means of realizing on the Units that would yield a higher return is mere speculation; and
- (b) Fanseday and the Debtors have essentially no economic interest in the Units (it appears highly likely that the first secured lender, will suffer a shortfall after the sale of all of the Units).<sup>44</sup>

***(b) Significant prejudice arising from operation of stay***

58. The stay of the Approval and Vesting Order would cause two kinds of prejudice:

- (a) it would result in the continued accrual of interest for the first secured lender (and the Debtors' other secured creditors). Given that it appears that first secured lender will suffer a shortfall, this interest burn represents permanent, likely irrecoverable, losses; and
- (b) it would prevent the Receiver from closing the December AVO Agreements and other agreements to purchase Units in accordance with the closing dates under these agreements. This will require the Receiver to adjust the closing date and expose the Debtors' estates to potential delayed

---

<sup>44</sup> Third Supplement at para. 26, RMR, Tab 2, p. 21.

occupancy liability, generate wasted professional fees and cause inconvenience to homebuyers who had been provided a date for title transfer and move in.<sup>45</sup>

**5. Fanseay does not have clean hands**

59. Fanseay has violated the NDA he signed with the Receiver by publicly circulating the information contained in the Target Price List. In so doing, has seriously undermined the integrity of the Sales Process.<sup>46</sup>

60. The case law explicitly recognizes that the conduct of the Appellant is a relevant consideration. Such misconduct should weigh strongly in favour of cancelling the stay and preventing Fanseay from causing further harm to the Court-approved Sales Process through the continued delay of this proceeding.

61. For these reasons, this Court ought to make an Order cancelling the automatic stay of the Impugned Order pursuant to s. 195 of the *BIA* (in the event that the Court has found that the Appellant has a right to appeal the Impugned Order).

***C. This Court should seal the Confidential Appendices to the reports and the Fanseay Affidavit***

62. The Receiver requests that this Court grant a sealing order in respect of the Confidential Appendices to the Receiver's reports and the Fanseay Affidavit.

63. These documents contain the financial terms of agreements of purchase and sale in respect of Units in the Project and pricing information from the Target Price List.

---

<sup>45</sup> Third Supplement at para. 20, RMR, Tab 2, p. 18.

<sup>46</sup> See Email from Fanseay Wang, Appendix F to the Third Supplement, RMR, Tab 2, p. 108.

64. Sealing these documents is necessary to ensure that the Receiver can maximize the value of the Units for the benefit of all stakeholders.<sup>47</sup>

65. In *Sierra Club*, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where (i) the order is necessary to prevent a serious risk to an important interest, including a commercial interest; and (ii) the salutary effects of the order outweigh its deleterious effects.<sup>48</sup>

66. In *Sherman Estate v. Donovan*, the Supreme Court of Canada held that a party requesting that a court exercise its discretion in a way that limits the 'open court' presumption must establish that: (i) the openness poses a risk to an important interest to the public; (ii) the request sought is necessary to prevent the risk to the identified interest as reasonable alternative measures will not prevent said risk; and (iii) the benefits of the request outweigh the negatives as a matter of proportionality.<sup>49</sup>

67. In the insolvency context, when assets are contemplated to be sold pursuant to a court process, it is common to seal bids and other commercially sensitive material, such as sale price and details of competing offers, in the event that a further listing is required should the contemplated transaction(s) not close.<sup>50</sup>

68. In this case, the Confidential Appendices contains information relevant to the Receiver's estimation of the fair market value and pricing strategy of the Units. If any of this pricing information was made public, it would compromise the Receiver's ability to

---

<sup>47</sup> *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, [2014 ONSC 1173](#) at [paras 32-34](#).

<sup>48</sup> *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 53](#).

<sup>49</sup> *Sherman Estate v Donovan*, [2021 SCC 25](#) at [para 38](#).

<sup>50</sup> *Romspen Investment Corporation v Hargate Properties Inc.*, [2012 ABQB 412](#) at [paras 2, 11](#) and [13](#).

obtain the best price for the Units because it would, in effect, permit a potential purchaser to know the “minimum price” for which the Receiver would be able to efficiently sell a given Unit.

69. As a result, the Receiver is of the view that an order sealing these documents will permit the Receiver to maximize the sale proceeds of the Units and is in the best interests of the Debtors’ stakeholders.

70. The Receiver submits that there is no other reasonable way to preserve and ensure the viability and integrity of the Sales Process and that the benefits of the protective order outweigh any deleterious impact on the “open court” principle.

71. The proposed sealing order embodies the principle of proportionality. The Receiver is only seeking a sealing order for a limited time: until the Project is complete and all of the Units are sold. After that time, these documents will become part of the public Court record.

72. Additionally, with the exception of the Fanshay Affidavit, all of these documents have already been sealed by Order of the Ontario Superior Court of Justice.<sup>51</sup>

#### **PART IV – ORDER REQUESTED**

73. The Receiver requests that this Court make an order:

- (a) Declaring that the Appellant does not have an appeal as of right under the *Bankruptcy and Insolvency Act*;

---

<sup>51</sup> Order of Justice Kimmel at para. 7, Appendix E to the First Supplement, RMR, Tab 4, p. 289; Order of Justice Dietrich at para. 12, Appendix A to the Third Supplement, RMR, Tab 2, p. 27.

- (b) Declaring that the Order under appeal is not stayed; and
- (c) Sealing the Confidential Appendices to the Receiver's reports and the Fanseay Affidavit.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 9th day of January, 2026.



---

Ryan Shah

## SCHEDULE "A" – AUTHORITIES CITED

1. *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, [2016 ONCA 225](#).
2. *AFC Mortgage Administration Inc. v. Sunrise Acquisitions (Elmvale) Inc.*, [2024 ONCA 764](#).
3. *Chun (Re)*, [2021 CanLII 53800 \(ON CA\)](#).
4. *Cosa Nova Fashions Ltd. v. The Midas Investment Corporation*, [2021 ONCA 581](#).
5. *First National Financial GP Corporation v. Golden Dragon HO 10 Inc.*, [2019 ONCA 873](#).
6. *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, [2014 ONSC 1173](#).
7. *Grillone (Re)*, [2023 ONCA 844](#).
8. *Marshallzehr Group Inc. v. La Pue International Inc.*, [2025 ONCA 124](#).
9. *Proex Logistics Inc. (Re)*, [2025 ONCA 832](#).
10. *Reciprocal Opportunities Incorporated v. Sikh Lehar International Organization*, [2018 ONCA 713](#).
11. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#).
12. *Romspen Investment Corporation v Hargate Properties Inc.*, [2012 ABQB 412](#).
13. *Royal Bank of Canada v. 1434399 Ontario Inc.*, [2025 ONCA 878](#).
14. *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727 \(ONCA\)](#).
15. *Royal Bank of Canada v. Ten 4 System Ltd.*, [2023 ONCA 839](#).
16. *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#)

I, Ryan Shah, counsel to the Receiver, hereby certify that I am satisfied as to the authenticity of the authorities cited above, on this 9<sup>th</sup> day of January, 2026:

  
\_\_\_\_\_

## **SCHEDULE “B” – STATUTORY REFERENCES**

*Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3*

### **Appeals**

#### **Court of Appeal**

**193** Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

- (a) if the point at issue involves future rights;
- (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
- (c) if the property involved in the appeal exceeds in value ten thousand dollars;
- (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
- (e) in any other case by leave of a judge of the Court of Appeal.

#### **Stay of proceedings on filing of appeal**

**195** Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper.

**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

---

**FACTUM OF THE RECEIVER**

---

**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](mailto:jeff.larry@paliareroland.com)

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

**Ryan Shah** (LSO# 88250C)  
Tel: 416.646-6356  
[ryan.shah@paliareroland.com](mailto:ryan.shah@paliareroland.com)  
**Lawyers for the Receiver, Albert Gelman  
Inc.**