

**DELOITTE RESTRUCTURING INC.** In its capacity as Court-Appointed Receiver (the “Receiver”) of GC King Bond Limited Partnership and GC King Bond GP Inc. (“**King Bond**”)

May 15, 2026

**TO: ALL UNIT PURCHASERS OF THE TWELVE OAKS PROJECT**

**RE: UPDATE ON THE STATUS OF THE FREEHOLD DEPOSITS**

The Receiver is providing this information bulletin / Q&A to update individuals who entered into agreements of purchase and sale (“UPAs”) with King Bond for the purchase of pre-construction condominium units (each a “**Condo Unit Purchaser(s)**”) and/or pre-construction parcel of tied land freehold units (each a “**Freehold Unit Purchaser(s)**”) and collectively with the Condo Unit Purchasers, each a “**Unit Purchaser(s)**”) at the Twelve Oaks Project.

### **Understanding Your Freehold Deposit in the Receivership Process**

The Receiver understands that this can be a difficult and frustrating experience. This Q&A is intended to address concerns and objections from certain Freehold Unit Purchasers about the treatment of their deposits, the disclaimer of their purchase agreements, and the priority of claims in the receivership of the Twelve Oaks Project.<sup>1</sup>

### **How Was My Freehold Deposit Handled?**

Your freehold deposits were paid to King Bond’s legal counsel, Robins Appleby LLP (the “**Escrow Agent**”) and deposited into a designated trust account pursuant to section 2.2(d) of your freehold UPA. However, Section 2.2(d) expressly permitted the Escrow Agent to release those funds to King Bond prior to closing, upon King Bond’s request. Your deposits were not locked away, and King Bond was contractually entitled to request their release, and the Receiver has confirmed that they did so prior to the Receivership Order.

Section 2.2(a) of your freehold UPA also states that deposits “are expressly deemed to be deposits only and not partial payments of the Purchase Price.” Under Section 18.4(t), you agreed that your UPA was “subordinated to and postponed to any mortgage(s) arranged by King Bond.” This means King Bond’s construction lender, Desjardins, was contractually given priority over your interest.

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<sup>1</sup> This Q&A represents the Receiver’s answers to common questions based on its experience and its review of the facts in this matter and applicable law as reviewed by its counsel. Much of this information is also presented in greater detail the Receiver’s court materials and its Factum which are available on the Receiver’s website. This Q&A does not represent legal advice to the unit purchasers by the Receiver. The court is being asked to decide these matters on May 22, 2026.

## **Why Aren't My Deposits Fully Protected?**

Ontario law treats deposits for freehold homes and condominium units very differently.

For **condominium purchases**, section 81(1) of the *Condominium Act, 1998* requires all deposits to be held in trust, they cannot be spent by the developer. If a condo project fails, deposits are preserved and must be returned.

For **freehold purchases**, including parcels of tied land such as the Twelve Oaks Project, there is no such statutory trust obligation. Freehold deposits are typically paid to the builder or an escrow agent with no trust obligations to purchasers. If the builder fails, those deposits may have already been spent.

Some developers voluntarily obtain “excess deposit insurance” to cover freehold deposits beyond Tarion’s limits. However, there is no legal requirement for developers to do so. King Bond did not obtain excess deposit insurance for your deposits.

## **What Protection Does Tarion Provide to Freehold Purchasers?**

Tarion administers Ontario’s new home warranty program and provides limited deposit protection for freehold purchasers. Because your purchase price exceeded \$600,000, your deposit is protected for up to 10% of the purchase price, to a maximum of \$100,000, subject to Tarion’s eligibility and coverage requirements. Tarion’s protection is not insurance that prevents King Bond from utilizing your freehold deposits, it is an after-the-fact compensation program that only applies if the builder fails and does not return your deposit.

## **Why Don't Freehold Purchasers Get the Same Protection as Condo Buyers?**

The law is quite clear on this point, as noted above. It is set out in the applicable statutes. It has also been relatively recently reviewed by the legislature. In 2017, pursuant to a government mandate, Justice Cunningham published a major review of the *Ontario New Home Warranties Plan Act* and recommended that the government consider extending the trust obligation to freehold homes.<sup>2</sup> While the deposit protection caps were increased in 2018, the recommendation to extend the statutory trust to freehold deposits was never enacted. To this day, Ontario law, including statute, does not require freehold home deposits to be held in trust.

## **Has This Issue Been Tested in Court?**

Yes. In *Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al.*, 2024 ONSC 3507, Justice Steele of the Ontario Superior Court addressed almost identical facts. That case involved a 96-unit development consisting of 60 stacked condominium townhomes and 36 freehold townhomes structured as parcels of tied land, just like the Twelve Oaks Project. A freehold purchaser argued that deposits should be treated as trust funds under section 81(1) of the *Condominium Act*.<sup>3</sup>

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<sup>2</sup> See: Deposit Protection in the “Other Matters” section of the “Final report: Review of the Ontario New Home Warranties Plan Act and the Tarion Warranty Corporation” found here: <https://www.ontario.ca/document/final-report-review-ontario-new-home-warranties-plan-act-and-tarion-warranty-corporation>

<sup>3</sup> *Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al.*, 2024 ONSC 3507 at paras 7, 23.

Justice Steele rejected that argument. Justice Steele noted that accepting this interpretation “would upset the legislative scheme of homebuyer protection”, higher Tarion coverage for freehold buyers exists precisely because condo buyers already have the statutory trust. The secured construction lender’s interest took priority over the freehold purchasers’ deposit claims.<sup>4</sup>

Justice Steele also found in that case that the freehold purchasers had contractually agreed to subordinate their interests to the construction lender’s mortgage, and that none of the purchasers had registered their agreements on title.<sup>5</sup> The court acknowledged that disclaimer would have negative impacts on purchasers, including that deposits in excess of Tarion’s \$100,000 coverage “will likely be lost”, but held that “this does not justify overriding [the secured lender’s] priority and giving the homebuyers a preference that they would not otherwise enjoy.”<sup>6</sup>

Justice Steele further held that the court cannot effectively direct a receiver to borrow millions of dollars to complete construction for the benefit of freehold purchasers: “the law is clear that the Receiver is not required to borrow the required funds to close the project nor is the first secured creditor required to advance funds for such borrowing.”

*Cameron Stephens* is not the only case where the court has come to this conclusion—others are cited in the Receiver’s Factum.

### **Why Does Desjardins Get Priority to the Sale Proceeds?**

Desjardins is the lender that loaned King Bond the money to develop the Twelve Oaks Project. Because that loan is secured by a mortgage over this project, Desjardins has a legal right to be repaid first, just as a homeowner’s mortgage lender gets paid first when a house is sold.

Desjardins holds a \$62,000,000 registered mortgage, a general security agreement, and a general assignment of all UPAs. As of April 24, 2026, approximately \$29,958,000 is owing. The Receiver’s counsel has confirmed this security is valid, enforceable, and ranks in first position.

Importantly, as the sale proceeds are not expected to be sufficient to repay even Desjardins in full, Desjardins will suffer a material shortfall. There are therefore no funds remaining in King Bond’s estate for unsecured creditors, including Unit Purchasers with freehold deposit claims or décor deposit claims.

Your UPA contemplated this priority. Section 18.4(t) provides that the Purchase Agreement (as defined in the UPA) is “subordinated” to and postponed to any mortgage(s) arranged by King Bond,” and Section 12.1 confirms the agreement “does not create an interest in the Real Property.” The court cannot reorder these legally established priorities.

### **Why Was I Disclaimed? I Want to Stay in the Project.**

The successful Purchaser (Sunny Communities (King Bond) Inc.) reviewed all UPAs and selected 71 of 99 (approximately 72%) for potential assignment. The selection criteria were the Purchaser’s own commercial decision, as a private party, it was not required to disclose those criteria or to

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<sup>4</sup> *Cameron Stephens*, at paras 24-26, 28.

<sup>5</sup> *Cameron Stephens*, at paras 21-22.

<sup>6</sup> *Cameron Stephens*, at paras 37, 40.

select all UPAs. Reasons for not selecting a particular unit may include economics, below market price per square footage, location, or other business considerations.

Selected Unit Purchasers received offers that generally included full credit for deposits. The Purchaser met individually with each Unit Purchaser over approximately eight weeks. Ultimately, only 12 agreed to an assignment. Most declined, preferring their deposits returned (or in the case of Freehold Purchasers to pursue their rights with Tarion), due to the passage of time, changed circumstances, or a desire to take advantage of government programs such as the HST rebate for first-time buyers. No forced assignments were sought.

If your UPA was not selected, or you declined the assignment, the Receiver is seeking to disclaim it because the units will not be built for those Unit Purchasers and it must be clear the agreement no longer applies and you have no rights to the property once it is sold to the Purchaser. As Justice Steele held in *Cameron Stephens*, a receiver's decision to disclaim freehold UPAs is entitled to considerable deference where it falls "within the broad bounds of reasonableness" and where the receiver "has acted fairly and considered the interests of all stakeholders." That "does not mean that all stakeholders must be equally satisfied with the course of conduct chosen by the receiver."<sup>7</sup>

### **Why Hasn't the Receiver Done a Tracing Exercise?**

A tracing exercise, a forensic review of where each dollar went, is costly. As the Receiver's Second Report states, "the primary secured creditor, who would ultimately bear those costs, has not requested such an exercise." The Receiver's Factum notes that "it is not necessarily unusual in a condominium development for freehold deposits to have been consumed by the Debtors in operations. There are no statutory trust obligations in respect of such deposits."

Desjardins, as the party who would bear the cost, has not requested a tracing exercise. If at some future date, Desjardins does request a tracing exercise, any recoveries would first go to address Desjardins' own losses (together with addressing any costs incurred with such an exercise, which the Receiver and Desjardins expect to be significant) before flowing to other stakeholders (if applicable).

### **What Can You Do Once Your UPA is Disclaimed?**

You are entitled to submit a deposit protection claim to Tarion for up to \$100,000. The Deposit Return Protocol proposed to the Court is designed to make this process as efficient as possible. Protocols of this nature are commonly used in real estate insolvencies.

**A copy of the *Cameron Stephens*' decision referenced in this Q&A is enclosed**

### **Additional Information on Tarion Deposit Protection**

For more information about Tarion's deposit protection program and the deposit return process, please visit: <http://tarion.com/node/66167>. The website will be updated from time to time.

### **Contact Information**

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<sup>7</sup> *Cameron Stephens*, at para 42.

If you have questions about this process, please monitor the Receiver's case website for updates and further information.

**Receiver's Case Website:**

<https://www.insolvencies.deloitte.ca/en-ca/Pages/GCKingBondLimitedPartnershipandGCKingBondGPInc.aspx>

Yours truly,

**DELOITTE RESTRUCTURING INC.** Solely in its capacity as Court-Appointed Receiver of GC King Bond Limited Partnership and GC King Bond GP Inc., and not in its personal or corporate capacity

**CITATION:** Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al.,  
2024 ONSC 3507  
**COURT FILE NO.:** CV-23-00710795-00CL  
**DATE:** 2024-06-18

**ONTARIO**

**SUPERIOR COURT OF JUSTICE [Commercial List]**

**BETWEEN:**

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**

Applicant

– and –

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

Respondents

**DATE HEARD:** May 27, 2024

**BEFORE:** Justice Jana Steele

**COUNSEL:**

*Jeff Larry and Ryan Shah* for the Receiver, Albert Gelman Inc.

*Wendy Greenspoon-Soer* for the Applicant

*Khaled Gheddai* for the Respondents

**ENDORSEMENT**

**Overview**

[1] The Receiver, Albert Gelman Inc., seeks, among other things, Court approval to disclaim the 28 asset purchase agreements (“APSs”) under which buyers contracted pre-construction with the debtors to buy certain freehold properties. The Receiver also seeks an increase in the borrowing limit to fund the remaining work to complete the project.

[2] The Receiver’s motion is supported by the first secured lender, Cameron Stephens Mortgage Capital Ltd. (“CSMC”).

[3] The respondents oppose the Receiver's motion. The respondents are of the view that the Receiver has not taken appropriate steps to canvass all stakeholders and options before seeking to disclaim the APSs.

[4] One of the 28 purchasers, Hsin Yang Lee ("Lee"), filed evidence opposing the Receiver's motion but did not make oral submissions.

[5] None of the purchasers made oral submissions at the hearing.

[6] Affidavit evidence to oppose the Receiver's motion was also filed by a creditor of the debtors, Spectrum Realty Services Inc., Brokerage ("Spectrum"). Spectrum also did not make oral submissions.

[7] The debtors are real estate developers and the registered owners of the Jefferson Properties. The Jefferson Properties is the site of a 96-unit residential real estate development project known as Richmond Hill Grace (the "Project"), consisting of 60 stacked condominium townhome units and 36 freehold townhomes.

[8] The Project is only about 60-70% constructed.

[9] For the reasons set out below, the Receiver's motion is granted.

### **Background**

[10] The Receiver was appointed by Order of Cavanagh J., dated December 21, 2023.

[11] At the time of the Receiver's appointment, the debtors were in the middle of constructing the Project. Under the appointment order, the Receiver was empowered to borrow \$7,000,000. That borrowing limit was subsequently increased to \$9,500,000, and then to \$11,500,000.

[12] Following its appointment, the Receiver determined that stakeholder value would be maximized by completion of the Project. However, shortly after its appointment, the Receiver determined that there were construction, health and safety, and recordkeeping deficiencies with the Project.

[13] The Receiver shut down the Project on January 24, 2024, to assess the management of the Project. As part of this assessment, the Receiver obtained a report from a chartered quantity surveyor (the "Glynn Report") that assessed the cost to complete the Project at \$23,000,000.

[14] After its appointment, the Receiver retained an independent construction representative, Camcos Management Inc., because the Receiver was uncomfortable with certain construction practices and processes implemented by the Project's existing construction manager. The Receiver decided not to renew the contract with the existing construction manager and, in consultation with Camcos and CSMC, retained a new construction manager.

[15] Before the appointment of the Receiver, the debtors had entered into 51 agreements of purchase and sale with respect to condominium townhome units (the "Condos") and 28 APSs with respect to the Freehold townhome units (the "Freehold Towns").

[16] In late March 2024, CSMC advised the Receiver that it would only continue to fund the completion of the Project if the Receiver disclaimed the 28 APSs in respect of the Freehold Towns.

### **Analysis**

*Should the Court authorize the Receiver to terminate and disclaim the 28 APSs with respect to the Freehold Towns?*

[17] It is not disputed that the Court has the jurisdiction to authorize a receiver to disclaim agreements of purchase and sale in the context of real property developments: The Court has done so on numerous occasions, as set out in the Receiver's factum. For example: *Forjay Management Ltd. v. 0981478 BC Ltd.*, 2018 BCSC 527, 11 B.C.L.R. (6th) 395, at paras. 131-132; *Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd.*, 2012 ONSC 4816, 99 C.B.R. (5th) 120, at paras. 31-38; and *Peoples Trust Company v. Censorio Group (Hastings & Carleton Holdings Ltd.*, 2020 BCSC 1013, 80 C.B.R. (6th) 118, at para. 57.

[18] In *Forjay Management*, at paras. 41-44, Fitzpatrick J. of the British Columbia Supreme Court set out the considerations for the Court in determining whether to authorize a receiver to disclaim pre-sale purchase agreements:

- a. The respective legal priority positions as between the competing interests;
- b. Whether a disclaimer would enhance the value of the assets, and, if so, whether a failure to disclaim would amount to a preference in favour of one party; and
- c. If a preference would arise, whether the party seeking to avoid a disclaimer has established that the equities support that result.

[19] The Receiver submits that in this case, the above factors strongly support the Receiver's position. I consider each of the above factors in turn.

(i) *Respective Legal Priority Positions*

[20] CMSC is the debtors' senior secured creditor. As at January 8, 2024, the debtors' total indebtedness to CMSC was approximately \$50.8 million. The debtors granted as security for CMSC's loan a charge/mortgage against the Jefferson Properties.

[21] The agreements of purchase and sale that were entered into by the Freehold buyers and the debtors contained the following language, pursuant to which the buyers subordinate their interest to any mortgages or construction financing of the debtors:

The Purchaser hereby acknowledges the full priority of any construction financing or other mortgages arranged by the Vendor and secured by the Property over his interest as Purchaser for the full amount of the said mortgage or construction financing, notwithstanding any law or statute to the contrary and agrees to

execute all acknowledgments or postponements required to give full effect thereto.

[22] In addition, the Freehold buyers agreed to not register their agreements of purchase and sale on title to the property, and none of such agreements have been registered against title to the property.

[23] The purchaser that filed evidence, Hsin Yang Lee, argued that the deposits made pursuant to the Freehold APSs were trust funds under s. 81(1) of the *Condominium Act, 1998*, S.O. 1998, c. 19, and, therefore, such deposits should have priority over the secured creditors. Lee notes that the property was described in the agreement as a parcel of tied land consisting of a freehold unit and an interest in a common elements condominium corporation.

[24] The deposits made were in respect of the Freehold properties. The Freehold APSs are clear that the deposits made were not attributable to the common elements:

That portion of the Purchase Price applicable to the common interest in the Condominium shall be Two (\$2.00) Dollars which shall be payable as part of the monies due on the Unit Transfer Date from the Purchaser to the Vendor. **There is no deposit payable by the Purchaser for the purchase of the common interest in the Condominium.** [Emphasis added.]

[25] Because none of the Freehold deposits were attributable to the common elements, section 81 of the *Condominium Act*, which requires certain payments made to be held in trust, does not apply.

[26] As noted by the Receiver, the interpretation of the *Condominium Act* asserted by Mr. Lee would upset the legislative scheme of homebuyer protection. Under the regulations to the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 (“ONHWPA”), the limits on compensation for lost deposits differ between freehold and condominium homes:

- a. For freehold homes, the greater of (1) \$60,000, and (2) the lesser of 10% of the sale price of the home and \$100,000; and
- b. For condominiums, \$20,000 plus interest.

[27] Lee seeks the higher protection under the ONHWPA for freehold buyers and seeks the protection owing to condominium buyers under the *Condominium Act* (i.e., the requirement to hold certain funds in trust). As noted by the Receiver, the regulations under the ONHWPA provide for greater protection for freehold purchasers because entities selling new condominiums are required under the *Condominium Act* to hold purchaser deposits in trust. Likewise, the regulations under the ONHWPA provide lesser protection to condominium purchasers because of the requirement to hold the deposits in trust under the *Condominium Act*.

[28] I am satisfied that CSMC’s position, as the party that provided mortgage and construction financing and the first secured creditor, takes legal priority over the Freehold purchasers’ interests.

- (ii) *Whether a disclaimer would enhance the value of the assets, and, if so, whether a failure to disclaim would amount to a preference in favour of one party.*

[29] The Receiver submits that the disclaimers would enhance the value of the assets.

[30] The Receiver obtained two appraisals, conducted by professional appraisers CBRE Valuation & Advisory Services and Cushman & Wakefield. The appraisal reports were provided on a confidential basis to the Court. Both appraisal reports support the Receiver's conclusion that the existing Freehold APSs are below the current market value for the properties. The appraisals indicate that the current market value of the Freehold Towns is higher than the prices at which the properties were sold.

[31] The valuation reports also support the Receiver's conclusion that if the properties were sold on an "as-is, where-is" basis, the senior secured lender, CSMC, would suffer a material loss on its indebtedness.

[32] CSMC has indicated that it will only continue to fund the Project if the Freehold APSs are disclaimed. As no other party has been identified who would be willing to fund the completion of the Project, if CSMC refused to continue to fund, this would likely result in a situation where the Receiver would be unable to complete the Project. In such a scenario, the Project would be sold on an "as-is, where-is" basis, resulting in a significant loss to the debtors' estate.

[33] As noted by the Receiver, the Receiver's business judgment that the disclaimers will enhance the value of the estate is entitled to considerable deference: *Peoples Trust*, at para. 47.

- (iii) *If a preference would arise, whether the party seeking to avoid a disclaimer has established that the equities support that result.*

[34] It is my view that the equities do not support refusal of the Receiver's request to disclaim the Freehold APSs.

[35] The Receiver is required to take into account and balance the interests of all the debtor's stakeholders. In *Ravelston Corp. (Re)* (2005), 24 C.B.R. (5th) 256 (Ont. C.A.), at para. 40, Doherty J.A. stated:

Receivers will often have to make difficult business choices that require a careful cost/benefit analysis and the weighing of competing, if not irreconcilable, interests. Those decisions will often involve choosing from among several possible courses of action, none of which may be clearly preferable to the others. Usually, there will be many factors to be identified and weighed by the receiver. Viable arguments will be available in support of different options. The receiver must consider all of the available information, the interests of all legitimate stakeholders, and proceed in an evenhanded manner. That, of course, does not mean that all stakeholders must be equally satisfied with the course of conduct chosen by the receiver. If the receiver's decision is within

the broad bounds of reasonableness, and if it proceeds fairly, having considered the interests of all stakeholders, the court will support the receiver's decision.

[36] As noted above, the Receiver has determined that if it does not disclaim the Freehold APSs, the overall recovery in the receivership would be impaired, which would be to the detriment of the entire estate.

[37] However, certain stakeholders will suffer negative impacts if the 28 Freehold APSs are disclaimed. First, the parties that had contracted to buy properties will lose their ability to purchase the Freehold Towns pursuant to the terms of their agreements. In addition, these purchasers paid deposits to the debtors, which have been invested in the Project or otherwise spent. Although Tarion insures deposit monies on freehold purchases up to \$100,000, deposit amounts paid by the purchasers in excess of \$100,000 will likely be lost. The Receiver has calculated that the Freehold buyers will lose, on average, deposits of approximately \$45,000 under the Freehold APSs.

[38] Second, Spectrum will suffer a loss of approximately \$1.4 million, which are the commissions that were to be payable upon closing that are attributable to the Freehold Towns. Further, as noted in the affidavit evidence filed by Spectrum, co-operating brokers, who have assisted with the sale of the Freehold units, will also be deprived of their commission.

[39] The Receiver submits that the negative impact that will be suffered by the Freehold buyers if the agreements are disclaimed does not justify overriding the secured lender's legal priority and giving the Freehold purchasers a preference they would not otherwise have. In this regard, the Receiver notes, among other things, that the Freehold buyers agreed that their interests in the real property would be subordinate to the secured lenders', and Tarion's warranty program will cover a significant portion of the Freehold buyers' deposits.

[40] While the proposed disclaimer will certainly have some negative impact on the homebuyers and real estate agents, I agree with the Receiver that this does not justify overriding CSMC's priority and giving the homebuyers a preference that they would not otherwise enjoy.

[41] I am also persuaded by the Receiver's submission that where, as here, the properties are not complete, the Court cannot effectively direct the Receiver to borrow millions of dollars from CSMC to fund the completion of the construction of the Freehold Towns. The Receiver referred the Court to *Firm Capital Mortgage Fund*, where Morawetz J. (as he then was) stated, at paras. 28 and 29:

[28] Counsel to the Receiver submits that the position taken by the Unitholders is essentially that they wish specific performance of their purchase agreements. Counsel to the Receiver submits that this court has previously held that specific performance (specifically in the context of an unregistered condominium project) should not be ordered where it would amount to "a mandatory order that requires the incurring of borrowing obligations against the subject property and completion of

construction ordered to bring the property into existence”. (See: *Re 1565397 Ontario Inc.* (2009), 54 C.B.R. (5<sup>th</sup>) 262.) I accept this submission.

[29] In my view, the law is clear that the Receiver is not required to borrow the required funds to close the project nor is the first secured creditor required to advance funds for such borrowing.

[42] The Receiver’s decision to disclaim the 28 Freehold APSs is “within the broad bounds of reasonableness.” I am satisfied that the Receiver has acted fairly and considered the interests of all stakeholders. As noted above, this “does not mean that all stakeholders must be equally satisfied with the course of conduct chosen by the receiver.”

*Should the Court approve the Requested Increase to the Borrowing Limit?*

[43] As noted above, the Receiver seeks to increase the borrowing limit by \$20,000,00, from \$11,500,000 to \$31,500,000.

[44] Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, permits the court to appoint a receiver to, among other things, “take any other action that the court considers advisable.” The Court has interpreted this provision broadly, including authorizing borrowing by receivers: *DGDP-BC Holdings Ltd. v. Third Eye Capital Corporation*, 2021 ABCA 226, 25 Alta. L.R. (7th) 211, at para. 20; and *KEB Hana Bank Trustee et al. v. Mizrahi Commercial (The One) LP et al.*, 2023 ONSC 5881, at paras. 54-55.

[45] The order appointing the Receiver also provides that the borrowing limit may be increased by further Court order.

[46] The Receiver submits that approving the requested increase to the borrowing limit is the only way to complete the Project and thereby maximize stakeholder benefit. There is approximately \$2.7 million currently held by the Receiver, which is not sufficient to complete the Project. The estimated cost to complete the Project, based on the Glynn Report, is at least \$23 million.

[47] I am satisfied that it is appropriate in the circumstances to authorize the increase to the borrowing limit.

*Should the Court approve the activities, fees and interim SRD of the Receiver and the fees of the Receiver’s legal counsel?*

[48] The Receiver seeks Court approval of its Second Report, the First Supplemental Report to the Second Report, the Second Supplemental Report to the Second Report and the activities set out in the reports. The principles set out by the Court regarding the approval of the activities of a receiver or monitor, and their reports, are well established: *Target Canada Co. Re*, 2015 ONSC 7574, 31 C.B.R. (6th) 311, at paras. 2 and 12; and *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400, at para. 66.

[49] The activities of the Receiver are set out in the reports and include:

- a. Responding to correspondence and requests for information from the debtors and their principal, among others;
- b. Working with the construction consultant to carry out an assessment of the Project, including identifying health and safety issues on the site;
- c. Managing the review and remediations of health and safety issues;
- d. Commissioning appraisals of the Project, and the 2 Glynn reports; and
- e. Engaging in tendering processes for prospective trades and suppliers.

[50] As noted above, the senior lender, CSMC, supports the Receiver's activities.

[51] Jefferson Properties Limited Partnership and 2011836 Ontario Corp. oppose the conduct of the receivership. Among other things, the debtors suggest that the Receiver has not taken appropriate steps to canvass stakeholders and other options. The debtors also point to the lack of development on the Project since the Receiver's appointment.

[52] As noted by the Receiver, courts should defer to the reasonable exercise of business judgment by court appointed receivers: *Ravelston Corp. (Re)*, at para. 40.

[53] The Receiver states that it has been willing to try to accommodate the debtors, including providing certain requested information to the debtors and facilitating at least 4 site visits with potential financiers. This is supported by CSMC's evidence that "Wang and numerous financiers, developers and construction professionals have been given access to the site on multiple occasions."

[54] The Receiver is of the view that the course of action it is pursuing is the only alternative in the circumstances. Among other things, CSMC has indicated that it will only agree to increase funding to complete the Project if the proposal to terminate the 28 APSs is approved as requested by the Receiver.

[55] With regard to the lack of development on the Project, the Receiver identified serious concerns, as set out in its Report, including unpaid liens, lack of communications, health and safety issues, among other things, which caused the Receiver to halt work on the Project and assess.

[56] I am satisfied that the Receiver considered a range of options and was unable to find a viable alternative, which is why the Receiver has proceeded to ask the Court for the relief on this motion.

[57] I am satisfied that the Receiver's activities were necessary, appropriate and consistent with the Receiver's mandate. It is unfortunate that there was a stoppage of work on the Project further delaying its completion. However, I am satisfied that the Receiver, using its business judgment, determined that it was necessary and appropriate in the circumstances so that the issues with the Project could be remedied.

[58] I am also satisfied that the fees and disbursements of the Receiver and its counsel are fair, reasonable and justified in the circumstances. I note that fee affidavits have been filed. This has been a complicated matter given, among other things, the issues with the management of the construction up to the date of the Receiver's appointment.

*Should the Court authorize the proposed sealing Order?*

[59] The Receiver seeks an order sealing the confidential appendices pending the completion of the Project and the sale of all of the units. The confidential appendices contain the appraisals, the Second Glynn Report and a summary of budgetary information related to the Project.

[60] Subsection 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. In addition to the jurisdiction under the *Courts of Justice Act*, the Court has the inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789, 100 O.R. (3d) 510, at para. 34.

[61] As noted by the Receiver, it is common to temporarily seal bids and other commercially sensitive material in an insolvency context when assets are to be sold under a court process.

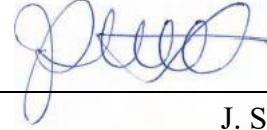
[62] The respondents oppose the requested sealing order taking the position that the Project's budget ought to be disclosed to the stakeholders so that they may assess the rationale for the increase to the borrowing limit. As was done with the Glynn Report, the Receiver is prepared to share the confidential appendices with stakeholders who sign a non-disclosure agreement. This is proportionate.

[63] The requested sealing order is limited in scope and in time. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative impact on the "open court" principle. If this information were released, it may impact the Receiver's ability to maximize value and maintain integrity of any future marketing and sale process. No stakeholder will be materially prejudiced by the time limited sealing order, which applies to only a limited amount of information.

[64] I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, at para. 53, requirements, as modified in *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 S.C.R. 75, at para. 38.

[65] The Receiver is directed to provide the sealed confidential appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential appendices can be physically sealed.

[66] The Receiver's motion is granted. I have attached the signed order, which is effective immediately and without the necessity of issuing and entering.

A handwritten signature in blue ink, appearing to read "J. Steele J.", positioned above a horizontal line.

J. Steele J.

**Released:** June 18, 2024.

**CITATION:** Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al.,  
2024 ONSC 3507  
**COURT FILE NO.:** CV-23-00710795-00CL  
**DATE:** 2024-06-18

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

CAMERON STEPHENS MORTGAGE CAPITAL  
LTD.

Applicant

– and –

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

Respondents

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**REASONS FOR JUDGMENT**

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Steele, J.

**Released:** June 18, 2024