

Court of Appeal File No. COA-24-CV-1328  
Court File No. CV-23-00701672-00CL

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**

**Applicant/  
Respondent in Appeal**

**and**

**CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC**

**Respondents/  
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TAB 1

16/Jan/2025

REGISTRAR / GREFFIER  
COUR D'APPEL DE L'ONTARIO

Court of Appeal File No. COA-24-CV-1328  
Court File No. CV-23-00701672-00CL

## NOTICE OF APPEAL TO THE COURT OF APPEAL

B E T W E E N:

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**

**Applicant**

**and**

**CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC**

**Respondent**

## NOTICE OF APPEAL

THE APPELLANT Arjun Anand in trust for a company to be incorporated (the “**Appellant**”) APPEALS to the Court of Appeal from the order and decision of the Honourable Justice Black (“**Motions Judge**”) dated December 10, 2024 (the “**Order**”), made at Toronto, Ontario, pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”).

THE APPELLANT ASKS that that the Order and Decision be set aside and a judgment be granted as follows:

- i. An Order setting aside the Order whereby the Motions Judge refused to approve a firm Agreement of Purchase and sale dated September 26, 2024 (“**APS**”) in respect of the real property municipally known as 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”).

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- ii. An Order granting an approval and vesting order (“AVO”) with respect to the APS between the Receiver and the Appellant, with any necessary extensions of time (the **"Toronto Sales Transaction"**);
- iii. An Order directing the Receiver to proceed with the Toronto Sales Transaction and vesting title to the Toronto Property to the Appellant on the closing of the Toronto Sales Transaction;
- iv. If necessary, an Order declaring that the Appellant has the right to appeal to this Court under section 193 (c) of the BIA, and that there is a stay of proceedings under section 195 of the BIA;
- v. In the alternative, an order granting the Appellant leave to appeal pursuant to section 193(e) of the BIA and an order granting a stay of the Order pending appeal;
- vi. If necessary, an Order for the abridgment of time to serve and file materials for the Notice of Appeal and dispensing with further service thereof;
- vii. An Order expediting the appeal;
- viii. An Order granting the Appellants their costs of this appeal and of the motion before the Motions Judge on a substantial indemnity scale;
- ix. Such further and other relief as the Appellant may request and this Honorable Court may deem just.

-3-

THE GROUNDS OF APPEAL are as follows:

## **BACKGROUND**

1. On December 6, 2023, the RSM Canada Limited was appointed Receiver without security of properties municipally known as 2849, 2851, 2853 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”) pursuant to an order of the Commercial Court (“**Appointment Order**”). On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited in place of RSM Canada Limited as Receiver (the “**Receiver**”).
2. The Appointment Order was sought by the secured lender being Cameron Stephen Mortgage Capital Inc. (the “**Lender**”) pursuant to a mortgage in the amount of \$15,600,000.00 registered on the Toronto Property. The Lender is the only creditor with a registered charge on title to the Toronto Property.

## **TERMINATED SALE OF THE TORONTO PROPERTY**

3. On or about June 12, 2024, the Receiver entered into an Agreement of Purchase and Sale for the Toronto Property (the “**Terminated APS**”) with a third party purchaser (“**Third Party Purchaser**”).
4. On July 24, 2024, the Receiver sought and obtained an order from the court approving the transaction.
5. The Third Party Purchaser sought multiple extensions. After multiple attempts to secure a commitment from the Third Party to close the transaction, the Receiver

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ultimately notified the Third Party on August 27, 2024, that it was terminating the APS due to its failure to close the transaction.

## **REMARKETING AND SALES PROCESS**

6. The Receiver remarketed the Toronto Property which included extensive marketing efforts, as set out in the Third Report prepared by the Receiver dated November 25, 2024 (the **Third Report of the Receiver**). The Receiver and the listing agent being Colliers Macaulay Nicolls Inc. ("**Colliers**") set out a detailed sales procedure which included:
- (i) Setting a bid deadline of September 26, 2024 at 3:00 p.m. ("**Bid Deadline**") to receive all bids;
  - (ii) Sending out email "*blast to approximately 3,000 prospective purchasers*";
  - (iii) Relisting the Toronto Property on the multiple listing service;
  - (iv) Contacting all previous bidders and those who had signed confidential agreements, to advise them that the Toronto Property was being remarketed;
  - (v) Maintaining an electronic data room to provide access to confidential information pertaining to the Toronto Property to parties who had executed a confidentiality agreement.

(Hereinafter referred to as the "**Sales Process**")

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7. After its extensive marketing efforts, the Receiver and Colliers received two offers and one letter of intent. A subsequent offer was received after the Bid Deadline on September 28, 2024, which was also considered by the Receiver and Colliers. The Receiver determined that the offer from the Appellant was the highest and best offer.
8. On October 7, 2024, the Receiver executed the APS with the Appellant subject to court approval. The APS was conditional, but the Appellant waived all conditions. Accordingly, the only outstanding matter required to close the transaction was Court approval and issuance of an approval and vesting order vesting the purchased assets in the Appellant.
9. The Appellant complied with the Sales Process and the Bid Deadline. In good faith, the Appellant completed its due diligence and waived all conditions.
10. The motion for the approval and vesting order for the APS was scheduled and was heard by Justice Black on December 10, 2024 (“**Motion**”).

#### **LATE BIDDER AND AVO MOTION**

11. On December 6, 2024, 4 days prior to the Motion, 1001079582 Ontario Inc. (“**Late Bidder**”) submitted an offer (“**Late Offer**”) to purchase the Toronto Property. This was over nine weeks after the Bid Deadline. This was after the Receiver had completed the Sales Process and had entered into the APS, and after the Appellant had waived all conditions.



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12. On December 6, 2024, the Late Bidder in essence, went “fishing”. They initially provided a bid which the Receiver said was not “substantially high”. Unfortunately, despite seeking a sealing order, the purchase price to be paid by the Appellants was indirectly disclosed to the Late Bidder (by the Receiver) (“**Confidential Information**”). This resulted in the Late Bidder making two additional bids each for slightly higher increments with the hope that the Receiver (and the court) would eventually “bite” and would consider the Late Bidder’s offer.
13. This use of the Confidential Information and the abuse of same brings into question the entire process.
14. Despite the Late Bidder not having any standing, the learned Motions Judge permitted the Late Bidder to make submissions and despite rejecting all the arguments of the Late Bidder, accepted the submissions of the Late Bidder to:
  - (i) Re-open the completed Sales Process; and
  - (ii) Convert the Sale Process to an auction.
15. The Motions Judge correctly made the following findings:
  - (i) Rejected the arguments of the Late Bidder that it had an indirect ownership interest, was a beneficial owner and therefore had a right to redeem;

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- (ii) That the integrity of the process must be maintained, and correctly quoted prior well-established jurisprudence as it relates to the integrity of the process;
- (iii) Rejected the Late Bidder's assertions that Colliers failed to provide proper advice and failed to ensure that the Toronto Property was exposed to the residential market;
- (iv) Rejected the Late Bidder's assertions that the Receiver and/or Colliers failed to properly market and sell the Toronto Property;
- (v) His Honour explicitly found that:

***“As noted, I do not find that there are any flaws with the sale undertaken here; to the contrary I find that the conduct of the Receiver, and those involved in the process, including Collier, was unassailable”*** (paragraph 33) [emphasis added].

- (vi) His Honour found that the Appellant acted in “good faith” (paragraph 31) (collectively, hereinafter referred to as “**Findings of Fact**”).

16. Despite making his Findings of Fact, His Honour went on to state:

*“Nonetheless, I find that the magnitude by which the Third Offer exceeds the subject price does in fact qualify as “substantially higher” and that it is not appropriate or in the interest of the majority of the stakeholders to leave that much money “on the table””*

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17. His Honour did not approve the firm APS which had come to fruition from a robust and “*unassailable*” Sale Process. Rather, the learned Motions Judge re-opened the Sale Process, and implemented an auction process and accepted the Late Bidder suggestion that if, ultimately, the Appellant does not obtain the lands, then the Appellant would be entitled to “*reasonable legal costs associated with the process to date.*”
18. His Honour, in setting aside the already completed Sale Process and re-opening the Sale Process, did so in contrary to well-established case law and, in particular, the principles as set out in *Royal Bank v. SoundAir Corp.*<sup>1</sup>
19. There were no “*exceptional circumstances*” which would warrant rejection of the Receiver’s recommendations or the principles in *Royal Bank v. SoundAir Corp.* Yet, the LMJ found “*unique circumstances*” when there were none. As the jurisprudence clearly established, it is not uncommon for the late bidders or owners attempting to redeem at the 11<sup>th</sup> hour. The courts have consistently maintained that the integrity of the process must be upheld and reject the requests of the late bidders.
20. His Honour categorized the facts as being unique in circumstances where they were not and attempted to circumvent the well-established jurisprudence based on such a finding.

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<sup>1</sup> [\*Royal Bank of Canada v. Soundair Corp.\*](#), 1991 CanLII 2727 (ON CA) [“*SoundAir*”].

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21. Permitting the Late Bidder to vary and set aside the already completed Sale Process, in essence, has created a situation where the Late Bidder has stepped into the shoes of the Receiver and is now dictating the process.
22. The Learned Motions Judge erred in law because he misapplied the test as set out in *SoundAir* as it relates to subsequent late bids. As set out in *SoundAir*, a substantially higher late bid can be considered by the Court but only if it meets the following conjunctive test:
- “...prices in other offers have relevance only if they show that the price contained in the offer accepted by the receiver was so unreasonably low as to demonstrate that the receiver was improvident in accepting it.” [emphasis added]*
23. In other words, there needs to be evidence **and a finding** that:
- (i) The price contained in the offer accepted by the Receiver was “unreasonably low”; **and**
  - (ii) The Receiver **was improvident** in accepting the earlier offer.
24. The Motions Judge found that the Third Offer was “*substantially higher*” and he also found that the Receiver’s conduct was “***unassailable.***”
25. Having made the explicit finding of “*unassailable*” conduct on the part of the Receiver, it follows that the Receiver could not have acted improvidently in accepting the APS and the Court could not set aside the already completed Sale Process.

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26. In effect, the Motions Judge permitted the Late Bidder to take advantage of Confidential Information (its knowledge of the sealed purchase price offered by the Appellant). The evidence before the Motions Judge was that:
- (i) Three offers were received on or about the Bid Deadline. The APS was the highest offer. A reasonable inference can be drawn that the true value of the Subject Property was in line with the three offers and the accepted highest offer being that of the Toronto Purchaser.
  - (ii) The Late Bidder using Confidential Information made three bids between December 6<sup>th</sup> and December 10<sup>th</sup>, each bid being higher than the previous bid by a few hundred thousand dollars. The Late Bidder kept “*letting out line*” until the Receiver “*bit*”.
27. The Late Bidder improperly used and took advantage of the Confidential Information which constitutes a serious breach of the integrity of the Sales Process.
28. The Court should not condone such wrongful conduct. It brings into question the integrity of the entire process. Permitting the Late Bidder to take advantage and use such Confidential Information leads to a “*mockery of the system*” and will have a chilling effect on future receiverships and more particularly parties’ willingness to participate in a sales process.

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**THE BASIS OF THE APPELLATE COURT'S JURISDICTION:**

29. The Appellants have an automatic right of appeal to the Ontario Court of Appeal pursuant to subsections 193(c) of the BIA, and there is an automatic stay pending appeal pursuant to section 195 of the BIA.
30. In addition, and/or in the alternative, the Appellant seeks leave to appeal pursuant to subsection 193(e) of the BIA. The appeal raises an issue of general importance to bankruptcy/insolvency practice and the administration of justice.
31. Despite holding that the Receiver's conduct was unassailable (which means he did not act improvidently), the learned motions judge set aside the APS and ordered the Proposed Auction Process. By doing so, he rejected the well-established *Soundair* principles. It is an error of law to ignore the Sale Process, misapply the *Soundair Principles*, and set aside the APS simply due to a later and higher bid. As prior Courts have said, "*to do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement.*"
32. The appeal is *prima facie* meritorious as the Order is contrary to the established law and amounts to an abuse of judicial power. Moreover, there is no evidence that the appeal would not unduly hinder the progress of the bankruptcy / insolvency proceedings or cause any prejudice to any of the majority stakeholders.

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33. To permit the decision to stand would create significant uncertainty in the commercial bar and in particular, as it relates to the conduct of the Receiver. Potential purchasers would be hesitant to negotiate and enter into an agreement of purchase and sale with a court appointed Receiver only to have the potential purchaser's genuine good faith efforts be ignored by a late bidder who took advantage of confidential information and circumvented the Sales Process.
34. The integrity of the court ordered Receiver and Sales Process must be protected. The court has previously consistently favoured an approach that preserves the integrity of the process.
35. Inconsistent interpretation and application of the relevant test will lead to lack of certainty. A dangerous precedent will be set if this decision is permitted to remain. Courts have consistently maintained that the integrity of the Sales Process must be maintained, and the Court will only consider a late bid if the steps taken by the Receiver were improvident. This has now been expanded to permit a late bidder to set aside an "unassailable" sales process merely by improperly making use of Confidential Information and thereby gaining a competitive advantage and making an 11<sup>th</sup> hour bid. The integrity of the entire court ordered receivership and Sales Process will be brought into disrepute and question.
36. The Appellants are committed to moving this appeal forward expeditiously. By contrast, there is self-evident extreme prejudice to the Appellant if the Proposed Auction Process goes ahead before the Appellant's appeal rights are concluded.

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37. There is an automatic stay pending appeal pursuant to section 195 of the BIA. However, if the Court determines that there is no automatic stay pending appeal despite the granting of leave, the Appellant/Moving Party requests that the Court grants a stay pending appeal pursuant to Rule 63.02(1)(b) of the *Rules of Civil Procedure*, as the appeal will be rendered moot if a stay is not granted.
38. Section 183(2) of the *Bankruptcy and Insolvency Act*.
39. Section 31 and 32 of the *Bankruptcy and Insolvency General Rules*
40. Such other grounds as counsel may submit and this Honorable Court may accept.

December 16, 2024

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CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and- CONACHER KINGSTON HOLDINGS INC. AND 5004591  
 ONTARIO INC  
 Respondent

Court of Appeal File No.

Court File No. CV-23-00701672-00CL

***COURT OF APPEAL FOR ONTARIO***

PROCEEDING COMMENCED AT  
 TORONTO

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TAB 2

Court of Appeal File No.  
Court File No. CV-23-00701672-00CL

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B E T W E E N:

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**and**

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**AMENDED NOTICE OF APPEAL**

THE APPELLANT Arjun Anand in trust for a company to be incorporated (the “**Appellant**”) APPEALS to the Court of Appeal from the order and decision of the Honourable Justice Black (“**Motions Judge**”) dated December 10, 2024 (the “**Order**”), made at Toronto, Ontario, pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”).

THE APPELLANT ASKS that that the Order and Decision be set aside and a judgment be granted as follows:

- i. An Order setting aside the Order whereby the Motions Judge refused to approve a firm Agreement of Purchase and sale dated September 26, 2024 (“**APS**”) in respect of the real property municipally known as 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”).

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THE GROUNDS OF APPEAL are as follows:

## **BACKGROUND**

1. On December 6, 2023, the RSM Canada Limited was appointed Receiver without security of properties municipally known as 2849, 2851, 2853 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”) pursuant to an order of the Commercial Court (“**Appointment Order**”). On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited in place of RSM Canada Limited as Receiver (the “**Receiver**”).
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4. On July 24, 2024, the Receiver sought and obtained an order from the court approving the transaction.
5. The Third Party Purchaser sought multiple extensions. After multiple attempts to secure a commitment from the Third Party to close the transaction, the Receiver

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ultimately notified the Third Party on August 27, 2024, that it was terminating the APS due to its failure to close the transaction.

## **REMARKETING AND SALES PROCESS**

6. The Receiver remarketed the Toronto Property which included extensive marketing efforts, as set out in the Third Report prepared by the Receiver dated November 25, 2024 (the **Third Report of the Receiver**). The Receiver and the listing agent being Colliers Macaulay Nicolls Inc. ("**Colliers**") set out a detailed sales procedure which included:
  - (i) Setting a bid deadline of September 26, 2024 at 3:00 p.m. ("**Bid Deadline**") to receive all bids;
  - (ii) Sending out email "*blast to approximately 3,000 prospective purchasers*";
  - (iii) Relisting the Toronto Property on the multiple listing service;
  - (iv) Contacting all previous bidders and those who had signed confidential agreements, to advise them that the Toronto Property was being remarketed;
  - (v) Maintaining an electronic data room to provide access to confidential information pertaining to the Toronto Property to parties who had executed a confidentiality agreement.

(Hereinafter referred to as the "**Sales Process**")

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7. After its extensive marketing efforts, the Receiver and Colliers received two offers and one letter of intent. A subsequent offer was received after the Bid Deadline on September 28, 2024, which was also considered by the Receiver and Colliers. The Receiver determined that the offer from the Appellant was the highest and best offer.
8. On October 7, 2024, the Receiver executed the APS with the Appellant subject to court approval. The APS was conditional, but the Appellant waived all conditions. Accordingly, the only outstanding matter required to close the transaction was Court approval and issuance of an approval and vesting order vesting the purchased assets in the Appellant.
9. The Appellant complied with the Sales Process and the Bid Deadline. In good faith, the Appellant completed its due diligence and waived all conditions.
10. The motion for the approval and vesting order for the APS was scheduled and was heard by Justice Black on December 10, 2024 (“**Motion**”).

#### **LATE BIDDER AND AVO MOTION**

11. On December 6, 2024, 4 days prior to the Motion, 1001079582 Ontario Inc. (“**Late Bidder**”) submitted an offer (“**Late Offer**”) to purchase the Toronto Property. This was over nine weeks after the Bid Deadline. This was after the Receiver had completed the Sales Process and had entered into the APS, and after the Appellant had waived all conditions.

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12. On December 6, 2024, the Late Bidder in essence, went “fishing”. They initially provided a bid which the Receiver said was not “substantially high”. Unfortunately, despite seeking a sealing order, the purchase price to be paid by the Appellants was indirectly disclosed to the Late Bidder (by the Receiver) (“**Confidential Information**”). This resulted in the Late Bidder making two additional bids each for slightly higher increments with the hope that the Receiver (and the court) would eventually “bite” and would consider the Late Bidder’s offer.
13. This use of the Confidential Information and the abuse of same brings into question the entire process.
14. Despite the Late Bidder not having any standing, the learned Motions Judge permitted the Late Bidder to make submissions and despite rejecting all the arguments of the Late Bidder, accepted the submissions of the Late Bidder to:
  - (i) Re-open the completed Sales Process; and
  - (ii) Convert the Sale Process to an auction.
15. The Motions Judge correctly made the following findings:
  - (i) Rejected the arguments of the Late Bidder that it had an indirect ownership interest, was a beneficial owner and therefore had a right to redeem;



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- (ii) That the integrity of the process must be maintained, and correctly quoted prior well-established jurisprudence as it relates to the integrity of the process;
- (iii) Rejected the Late Bidder's assertions that Colliers failed to provide proper advice and failed to ensure that the Toronto Property was exposed to the residential market;
- (iv) Rejected the Late Bidder's assertions that the Receiver and/or Colliers failed to properly market and sell the Toronto Property;
- (v) His Honour explicitly found that:

***“As noted, I do not find that there are any flaws with the sale undertaken here; to the contrary I find that the conduct of the Receiver, and those involved in the process, including Collier, was unassailable”*** (paragraph 33) [emphasis added].

- (vi) His Honour found that the Appellant acted in “good faith” (paragraph 31) (collectively, hereinafter referred to as “**Findings of Fact**”).

16. Despite making his Findings of Fact, His Honour went on to state:

*“Nonetheless, I find that the magnitude by which the Third Offer exceeds the subject price does in fact qualify as “substantially higher” and that it is not appropriate or in the interest of the majority of the stakeholders to leave that much money “on the table””*

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17. His Honour did not approve the firm APS which had come to fruition from a robust and “*unassailable*” Sale Process. Rather, the learned Motions Judge re-opened the Sale Process, and implemented an auction process and accepted the Late Bidder suggestion that if, ultimately, the Appellant does not obtain the lands, then the Appellant would be entitled to “*reasonable legal costs associated with the process to date.*”
18. His Honour, in setting aside the already completed Sale Process and re-opening the Sale Process, did so in contrary to well-established case law and, in particular, the principles as set out in *Royal Bank v. SoundAir Corp.*<sup>1</sup>
19. There were no “*exceptional circumstances*” which would warrant rejection of the Receiver’s recommendations or the principles in *Royal Bank v. SoundAir Corp.* Yet, the LMJ found “*unique circumstances*” when there were none. As the jurisprudence clearly established, it is not uncommon for the late bidders or owners attempting to redeem at the 11<sup>th</sup> hour. The courts have consistently maintained that the integrity of the process must be upheld and reject the requests of the late bidders.
20. His Honour categorized the facts as being unique in circumstances where they were not and attempted to circumvent the well-established jurisprudence based on such a finding.

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<sup>1</sup> [\*Royal Bank of Canada v. Soundair Corp.\*](#), 1991 CanLII 2727 (ON CA) [“*SoundAir*”].

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21. Permitting the Late Bidder to vary and set aside the already completed Sale Process, in essence, has created a situation where the Late Bidder has stepped into the shoes of the Receiver and is now dictating the process.
22. The Learned Motions Judge erred in law because he misapplied the test as set out in *SoundAir* as it relates to subsequent late bids. As set out in *SoundAir*, a substantially higher late bid can be considered by the Court but only if it meets the following conjunctive test:

*“...prices in other offers have relevance only if they show that the price contained in the offer accepted by the receiver was so unreasonably low as to demonstrate that the receiver was improvident in accepting it.” [emphasis added]*
23. In other words, there needs to be evidence **and a finding** that:
  - (i) The price contained in the offer accepted by the Receiver was “unreasonably low”; **and**
  - (ii) The Receiver **was improvident** in accepting the earlier offer.
24. The Motions Judge found that the Third Offer was “*substantially higher*” and he also found that the Receiver’s conduct was “***unassailable.***”
25. Having made the explicit finding of “*unassailable*” conduct on the part of the Receiver, it follows that the Receiver could not have acted improvidently in accepting the APS and the Court could not set aside the already completed Sale Process.

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26. In effect, the Motions Judge permitted the Late Bidder to take advantage of Confidential Information (its knowledge of the sealed purchase price offered by the Appellant). The evidence before the Motions Judge was that:
- (i) Three offers were received on or about the Bid Deadline. The APS was the highest offer. A reasonable inference can be drawn that the true value of the Subject Property was in line with the three offers and the accepted highest offer being that of the Toronto Purchaser.
  - (ii) The Late Bidder using Confidential Information made three bids between December 6<sup>th</sup> and December 10<sup>th</sup>, each bid being higher than the previous bid by a few hundred thousand dollars. The Late Bidder kept “*letting out line*” until the Receiver “*bit*”.
27. The Late Bidder improperly used and took advantage of the Confidential Information which constitutes a serious breach of the integrity of the Sales Process.
28. The Court should not condone such wrongful conduct. It brings into question the integrity of the entire process. Permitting the Late Bidder to take advantage and use such Confidential Information leads to a “*mockery of the system*” and will have a chilling effect on future receiverships and more particularly parties’ willingness to participate in a sales process.

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**THE BASIS OF THE APPELLATE COURT'S JURISDICTION:**

29. The Appellants have an automatic right of appeal to the Ontario Court of Appeal pursuant to subsections 193(c) of the BIA, and there is an automatic stay pending appeal pursuant to section 195 of the BIA.
30. In addition, and/or in the alternative, the Appellant seeks leave to appeal pursuant to subsection 193(e) of the BIA. The appeal raises an issue of general importance to bankruptcy/insolvency practice and the administration of justice.
31. Despite holding that the Receiver's conduct was unassailable (which means he did not act improvidently), the learned motions judge set aside the APS and ordered the Proposed Auction Process. By doing so, he rejected the well-established *Soundair* principles. It is an error of law to ignore the Sale Process, misapply the *Soundair Principles*, and set aside the APS simply due to a later and higher bid. As prior Courts have said, "*to do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement.*"
32. The appeal is *prima facie* meritorious as the Order is contrary to the established law and amounts to an abuse of judicial power. Moreover, there is no evidence that the appeal would not unduly hinder the progress of the bankruptcy / insolvency proceedings or cause any prejudice to any of the majority stakeholders.

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33. To permit the decision to stand would create significant uncertainty in the commercial bar and in particular, as it relates to the conduct of the Receiver. Potential purchasers would be hesitant to negotiate and enter into an agreement of purchase and sale with a court appointed Receiver only to have the potential purchaser's genuine good faith efforts be ignored by a late bidder who took advantage of confidential information and circumvented the Sales Process.
34. The integrity of the court ordered Receiver and Sales Process must be protected. The court has previously consistently favoured an approach that preserves the integrity of the process.
35. Inconsistent interpretation and application of the relevant test will lead to lack of certainty. A dangerous precedent will be set if this decision is permitted to remain. Courts have consistently maintained that the integrity of the Sales Process must be maintained, and the Court will only consider a late bid if the steps taken by the Receiver were improvident. This has now been expanded to permit a late bidder to set aside an "unassailable" sales process merely by improperly making use of Confidential Information and thereby gaining a competitive advantage and making an 11<sup>th</sup> hour bid. The integrity of the entire court ordered receivership and Sales Process will be brought into disrepute and question.
36. The Appellants are committed to moving this appeal forward expeditiously. By contrast, there is self-evident extreme prejudice to the Appellant if the Proposed Auction Process goes ahead before the Appellant's appeal rights are concluded.

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37. There is an automatic stay pending appeal pursuant to section 195 of the BIA. However, if the Court determines that there is no automatic stay pending appeal despite the granting of leave, the Appellant/Moving Party requests that the Court grants a stay pending appeal pursuant to Rule 63.02(1)(b) of the *Rules of Civil Procedure*, as the appeal will be rendered moot if a stay is not granted.
38. Section 183(2) of the *Bankruptcy and Insolvency Act*.
39. Section 31 and 32 of the *Bankruptcy and Insolvency General Rules*
40. Rules 61.04, 61.04 (3)(c), 61.03.1, 62.01, and 63.02 of the *Rules of Civil Procedure*
41. Such other grounds as counsel may submit and this Honorable Court may accept.

December 16, 2024

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Purchaser, Arjun Anand  
in Trust for a Company to be Incorporated

TO: SERVICE LIST

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. AND 5004591  
ONTARIO INC  
Respondent

Court of Appeal File No.

Court File No. CV-23-00701672-00CL

***COURT OF APPEAL FOR ONTARIO***

PROCEEDING COMMENCED AT  
TORONTO

**AMENDED NOTICE OF APPEAL**

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Parties served:  
Service list



TAB 3



## SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00701672-00CL DATE: DECEMBER 10, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. et al**

BEFORE: **JUSTICE W.D. BLACK**

**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

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Name of Person Appearing	Name of Party	Contact Info
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**For Other, Self-Represented:**

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Dale Denis	counsel for AJGL Group Inc. and 1001079582 Ontario Inc	dale@dilitigation.com
Samuel Mosonyi	Lawyers for Elena Terpselas, Estate Trustee of Nicholas Kyriacopoulos, deceased	smosonyi@robapp.com
Paul F. Rooney	Lawyers for AJGL Group Inc.	rooney@paulfrooneyprofcorp.com
Anisha Samat	Lawyers for 2083053 Ontario Inc.	asamat@blaney.com
Nicholas Avis	Lawyer for the Creditor, R. Barbaro	navis@stikeman.com

**ENDORSEMENT OF JUSTICE W.D. BLACK:**

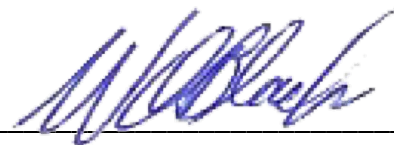
- [1] These parties were before me last week, on December 4, 2024. At that time, as my brief endorsement of that day reflects, there had been considerable activity in the hours leading up to the time appointed for the hearing, including new last-minute offers to purchase the “Toronto Property” that was the subject of the appointment.
- [2] In the circumstances, I directed that the parties should have an opportunity to exchange their materials and submissions in a slightly less compressed fashion, and that we would reconvene today (December 10, 2024).
- [3] Since the parties were before me last week, there has been one significant development. That is, 1001079582 Ontario Inc (“100”), a would-be purchaser of the Toronto Property delivered a further offer on Saturday December 6, 2024, (the “Third Offer”) at a higher price than its two previous offers.
- [4] On December 4, and until the arrival of this latest offer, the Receiver’s position had been, even-handedly but firmly, to the effect that the prior offers from 100, although higher than the offer/price (the “subject offer” or the “subject price”) in the transaction for which the Receiver was seeking approval (the “subject transaction”), was not “substantially higher” than that price so as to raise concerns about the providence of the proposed sale.
- [5] In its supplementary factum for purposes of the December 4 hearing, the Receiver had reviewed certain caselaw in which late offers ranging from 8% to 30% higher than the offers subject to approval in those cases had not led to a conclusion that the subject price was unreasonable, or that the process undertaken to obtain the subject price was unreasonable or flawed.
- [6] In the circumstances of last week, in reliance on those cases, the Receiver’s position was that it had run a comprehensive marketing effort, that the (existing) purchaser (the “subject purchaser”), had “acted in good faith” and was a “*bona fide* third party purchaser” and that the “existence of marginally higher bids, submitted on the eve of the hearing, are not sufficient to displace the Receiver’s recommendation set out in its Third Report.”
- [7] That recommendation, stressing the “overriding concern with integrity, fairness and predictability of the court-ordered sales process,” was that the court should approve the conforming, successful (subject) bid. The Receiver reminded the court of the words of Cumming J. in *1730960 Ontario Ltd. (Re)*, in which His Honour said “[i]t is unfair and objectionable for a party to wait until another bid is made and has been accepted by the Receiver and then to make a bid that is marginally higher and ask the Court to not approve the agreement of purchase and sale resulting from the accepted bid.”
- [8] The Third Offer, however, is 37% higher than the subject price.
- [9] While the Receiver, quite appropriately, stands by its submissions about the integrity of the process, and the worrisome precedent associated with giving effect to an offer received very late in the process (and in the face of the subject offer that the Receiver has accepted and recommended), the Receiver also clearly recognizes that at a certain level, a late-breaking offer can and perhaps must be considered simply by dint of its value.
- [10] It is apparent that the Receiver allows that the Third Offer may be in that category. Before me today Receiver’s counsel submitted that, albeit the Receiver’s first position remains that the proposed subject

transaction should be approved, it now says that, as a second possibility, if the court is persuaded that 37% is a sufficiently higher price to qualify as “substantially higher” such that that the subject price risks improvidence, then the Receiver suggests a further “auction” process whereby the bidders are asked to submit their best offers by a specified date in the near term.

- [11] In determining what to do in these circumstances, I first observe that I regard the circumstances as unique, likely singular, and unlikely to be replicated in future (or certainly not often).
- [12] In that regard, I heard submissions from counsel for the purchaser whose offer is the subject of the approval motion, pointing to the specter of the unpredictable free-for-all that will ensue if I fail to approve the subject transaction and countenance 11<sup>th</sup> hour offers like the Third Offer.
- [13] I do not regard that as a high risk, let alone an inevitable consequence. Again I find that the circumstances before me are unique and unlikely to be regularly repeated.
- [14] I should note that, on the other side of the fence, I also reject certain submissions on behalf of 100’s bid, offered to suggest that in fact the equities here favour my approval of – or at least a re-opening of the process to recognize and make room for consideration of – the Third Offer.
- [15] Those submissions include the assertion that 100 stands in the shoes of a beneficial owner of the Toronto Property, and that its offer is akin to a redemption.
- [16] The ownership argument is based on the fact that AJGL Group Inc. (“AJGL”) is the beneficial owner of the shares of 5004591 Ontario Inc. and beneficial owner of 2849, 2851, 2853, 2855, and 2857 Islington Avenue in Toronto, being the Toronto Property.
- [17] It is clear that AJGL assembled the five properties making up the Toronto Property and developed them over a number of years, ultimately obtaining planning approval for a 110-unit mid-rise condo building which Colliers (engaged by the Receiver) marketed for sale in the receivership.
- [18] It is as a result of that ownership and that “sweat equity” that AJGL, via 100 (hereafter AJGL and 100 will be referred to from time to time collectively as “AJGL”), seeks “to acquire ownership back from the Receiver by submitting the highest bid.” AJGL submits that, as such, its position is “analogous to that of a mortgagor seeking to redeem a mortgage.”
- [19] AJGL argues that this ownership interest puts it in a unique position, different than the competing bidder in all of the cases on which the Receiver relies in its argument. It says that whereas the cases in the Receiver’s factum involve “disinterested third-parties as bidders” AGJL is instead a “beneficial owner of the [Toronto] Property seeking to have its equitable right to redeem the [Toronto] Property recognized and protected by the Court.”
- [20] I do not accept that AJGL is akin to a beneficial owner seeking to redeem.
- [21] A redemption of the mortgage financing here would require payment of roughly four times the amount of the Third Offer. So, while the Third Offer is potentially propitious, and while the past ownership stake may mean that acquiring the Toronto Property has unique value for AJGL, the Third Offer is not fairly characterized as being in the nature of a redemption.

- [22] I am prepared to give modest credence to AJGL's related argument that, inasmuch as the subject purchaser would be aware of the former owner's interest, and aware that the former owner may seek to reclaim ownership, the subject purchaser's argument that a late-breaking offer from the former owner is not within the reasonable expectation of the subject purchaser may be somewhat attenuated.
- [23] In addition, recognizing that it could be criticized for "lying in the weeds," AJGL offers an explanation for not submitting a bid before the bid deadline. It says that it believed that the Kingston Property (also a part of the receivership, and for which a sale that was approved earlier this fall did not close) would be sold first, and that there would be sufficient proceeds from that sale that the Toronto Property would not ultimately be sold. AJGL says that this was its business judgment, which proved to be incorrect, but that its decision was taken in good faith, and not with a view to "waiting in the wings."
- [24] While I do not dismiss this explanation out of hand, for the most part, like AJGL's past ownership interest and its claim to an entitlement to an equitable claim, I view the purported excuse for the late offer as largely irrelevant.
- [25] I also reject AJGL's assertions that Colliers, in particular, on which the Receiver relied for advice and guidance with respect to the sale process, failed to provide proper advice, and failed in particular to ensure that the Toronto Property was exposed to the residential market in addition to that for developers, such that the sale and marketing effort was flawed.
- [26] I understand the impetus for AJGL making these arguments, but, as with the over-reaching claims about AJGL's purported rights to equitable redemption, I find these arguments insubstantial and unpersuasive, and again for the most part frankly irrelevant.
- [27] What is relevant, and the consideration that concerns and compels me, is the sheer size of the Third Offer.
- [28] Not surprisingly, in light of the 37% larger amount of the Third Offer, it has attracted the support of various parties with a potential stake in the proceeds. Ms. Greenspoon-Soer for the applicant Cameron Stephens Mortgage Capital Ltd., Mr. Taylor for 2858087 Ontario Inc. and Issam A. Saad, creditors of relevant entities, and Mr. Mosonyi on behalf of the estate trustee of the late Nicholas Kyriacopoulos each indicate, albeit for slightly different reasons, that their respective clients favour recognition of the Third Offer, and a process to include AJGL/100 with a view to maximizing the return for the Toronto Property, rather than approval of the subject transaction.
- [29] As noted, despite its appropriately stated concerns about the integrity of the process, the 37% delta between the Third Offer and the subject price caused the Receiver to suggest, as an alternative to approval of the subject offer, a further process to ensure that the value of the Third Offer is captured and maximized.
- [30] In the unique circumstances as described, I find that this is the preferable approach.
- [31] I do so without suggesting that the subject purchaser acted in anything other than good faith.
- [32] I do so, also, with an appreciation of the need to preserve the integrity and predictability of the marketing and sale process within receiverships, and the reasonable expectation in the vast majority of cases that the process will yield a value-maximizing result that should not be subverted by late-breaking offers.

- [33] As noted, I do not find that there are any flaws with the sale and marketing process undertaken here; to the contrary I find that the conduct of the Receiver, and those involved in the process, including Collier, was unassailable.
- [34] Nonetheless I find that the magnitude by which the Third Offer exceeds the subject price does in fact qualify as “substantially higher,” and that it is not appropriate or in the interests of a majority of stakeholders to leave that much money “on the table.”
- [35] As such, and subject to input from the Receiver about any fine-tuning required, I am ordering the process (the “Proposed Auction Process”), set out in paragraph 79(b) of AJGL’s Aide Memoire, save and except that the deadline for further bids should be 5:00 p.m. on December 16 (rather than December 18 as suggested in that paragraph). To be clear, as will be evident, the subject purchaser is able to participate in this further process, and so is not precluded from making a further bid to purchase the Toronto Property.
- [36] In the course of its submissions, acknowledging the regrettable lateness of its bids (including the Third Offer) AJGL offered that, if the subject purchaser does not remain the successful bidder following the Proposed Auction Process, AJGL will reimburse the subject purchaser for its reasonable legal costs associated with the process to date. I find that to be a fair proposal, and direct AJGL to do so if we end up in that scenario.
- [37] AJGL requested the right, which I allowed, to file further written submissions after the time allotted for the hearing had elapsed. The further submissions, which I have reviewed, ask that the vesting order that will be required for the sale of the Toronto Property include a particular provision.
- [38] At the time that I granted AJGL the right to file the supplementary written submission, I also confirmed that the Receiver would have an opportunity to respond, also in writing. At the time of preparing this endorsement I have not yet received the Receiver’s position.
- [39] Inasmuch as the issue with respect to the insertion or not of that clause at issue relates to an approval of a transaction not yet in place, and inasmuch as there is some urgency to deal with the process for selling the Toronto Property, I will defer my consideration and determination of the issue regarding the proposed insertion of the clause until such time as I hear from the Receiver as to its position.



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W.D. BLACK J.

TAB 4



## SUPERIOR COURT OF JUSTICE

**COUNSEL SLIP/ ENDORSEMENT FORM**

COURT FILE NO.: CV-23-00701672-00CL DATE: DECEMBER 10, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. et al**

BEFORE: **JUSTICE W.D. BLACK**

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Wendy Greenspoon-Soer	Lawyers for the Applicants, Cameron Stephens Mortgage Capital Ltd.	wgreenspoon@garfinkle.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
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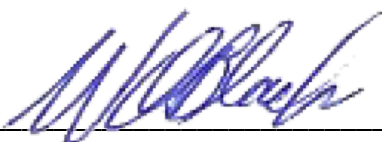
**For Other, Self-Represented:**

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Paul F. Rooney	Lawyers for AJGL Group Inc.	rooney@paulfrooneyprofcorp.com
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Nicholas Avis	Lawyer for the Creditor, R. Barbaro	navis@stikeman.com



**SUPPLEMENTARY ENDORSEMENT OF JUSTICE W.D. BLACK:**

- [1] Shortly after releasing my (main) endorsement relative to the parties' attendance before me on December 10, 2024, the Receiver's submissions relative to the issue discussed at paragraphs 37-39 of that endorsement were brought to my attention.
- [2] The Receiver's view is that paragraph 6, proposed by AJGL to be included in the vesting order once the Toronto Property is sold, is unnecessary. However, notwithstanding this view, the Receiver does not object to including the language in question.
- [3] For the reasons outlined in the Receiver's submissions on this point, I agree that the language is not required, and I understand that Cavanagh J., on whose order AJGL relies, expressed the same view.
- [4] However, like Cavanagh J., and noting the indifference of the Receiver, I am prepared to have the paragraph at issue included in the vesting order when the time comes.



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W.D. BLACK J.

**RELEASED: DECEMBER 13, 2024**

TAB 5

Court File No. CV-23-00701672-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

B E T W E E N:

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**

Applicant

-and-

**CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.**

Respondents

**NOTICE OF MOTION (RETURNABLE DECEMBER 4, 2024)**

TDB Restructuring Limited, in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”) and together with the Kingston Property, the “**Properties**”) will make a motion to a Judge presiding over the Commercial List on December 4, 2024 at 11:00 AM, or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference.

**THIS MOTION IS FOR:**

- (a) an approval and vesting order (“**AVO**”):

- (i) approving the sale transaction (the “**Transaction**”) in respect of the Toronto Property, as contemplated by an agreement of purchase and sale between the Receiver and Arjun Anand in trust for a company to be formed (the “**Toronto Purchaser**”), dated September 26, 2024 (the “**APS**”);
  - (ii) following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed AVO, transferring and vesting all of the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the APS) in the Toronto Purchaser, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
  - (iii) approving the Toronto Distribution (as defined below);
- (b) an ancillary relief order, among other things:
- (i) approving the Third Report of the Receiver dated November 25, 2024 (the “**Third Report**”) and the Receiver’s activities described therein;
  - (ii) approving the fees and disbursements of the Receiver and its counsel, as detailed in the Third Report and the Affidavit of Arif Dhanani sworn November 22, 2024, the Affidavit of Avrom Brown sworn November 22, 2024, and the Affidavit of Beatrice Loschiavo sworn November 22, 2024 (collectively, the “**Fee Affidavits**”);

- (iii) approving the Receiver's interim statement of receipts and disbursements for the Toronto Property, for the period from September 19, 2024 to November 20, 2024 (the "**Toronto SRD**"); and
  - (iv) approving the Receiver's interim statement of receipts and disbursements for the Kingston Property, for the period from September 19, 2024 to November 20, 2024 (the "**Kingston SRD**" and together with the Toronto SRD, the "**Interim SRD**"); and
  - (v) sealing Confidential Appendices 1 and 2 to the Third Report (together, the "**Confidential Appendices**") until the closing of the sale of the Purchased Assets (as defined in the APS)
- (c) Such further and other relief as counsel may advise and this Court deems just.

**THE GROUNDS OF THIS MOTION ARE:**

**A. *The Receivership***

- (d) On December 6, 2023, RSM Canada Limited ("**RSM**") was appointed receiver and manager of the Properties (effective December 22, 2023), by order of Justice Conway (the "**Receivership Order**");
- (e) The Toronto Property is owned by 5004591 Ontario Inc. ("**500**");
- (f) The Kingston Property is owned by Conacher Kingston Holdings Inc. ("**Conacher**" and, together with 500, the "**Debtors**");

- (g) On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited in place of RSM;

**B. *The Secured Creditor***

- (h) On December 18, 2019, pursuant to a loan agreement (the “**Loan**”) between Cameron Stephens Mortgage Capital Ltd. (the “**Lender**”) and Conacher, 500 granted the Lender a collateral mortgage in the amount of \$15,600,000 on the Toronto Property to secure the Loan;
- (i) The Lender is the only creditor with a registered charge on title to the Toronto Property;

**C. *The Sales Process***

- (j) The Receiver has engaged in a sales process for the Toronto Property (the “**Sales Process**”) as follows;
  - 1. The Receiver retained Colliers**
  - (k) The Receiver invited eight commercial real estate brokers to submit proposals for the marketing and sale of the Toronto Property, including Colliers Macaulay Nicolls Inc. (“**Colliers**”);
  - (l) The Receiver received listing proposals from six of the eight brokerages and ultimately selected Colliers;
  - (m) On March 22, 2024, the Receiver entered into an MLS listing agreement with Colliers;

- (n) After discussion with Colliers, the Receiver set an offer deadline date of June 3, 2024 as Colliers indicated that the period between March 22, 2024 and June 3, 2024 was more than sufficient time to appropriately market the Toronto Property;

## 2. Marketing Efforts

- (o) Colliers launched the listing on MLS on March 25, 2024 and commenced a marketing campaign for the Toronto Property on April 4, 2024;
- (p) The Receiver provided Colliers with a form of agreement of purchase and sale to be uploaded to an online data room maintained by Colliers, in order to facilitate purchaser due diligence. Colliers drafted a form of confidentiality agreement for interested parties to execute in order to be given access to the virtual data room and perform due diligence (the “**Confidentiality Agreement**”);
- (q) A summary of marketing activities undertaken by Colliers is set out below:
  - (i) e-mails were sent to Colliers’ distribution list of approximately 3,000 parties, which emails contained a marketing brochure, a website link to Colliers’ webpage for the Toronto Property and a link to the Confidentiality Agreement; and
  - (ii) an electronic data room was set up to provide access to confidential information pertaining to the Toronto Property to parties which had executed the Confidentiality Agreement;

### 3. The Terminated APS

- (r) Colliers received 18 signed Confidentiality Agreements by prospective purchasers or brokers, all of whom were given access to the electronic data room;
- (s) On June 3, 2024, Colliers received 3 offers and a letter of intent for the Toronto Property. The Receiver reviewed the offers with Colliers and the Lender. The Receiver requested of Colliers that it go back to the offerors that submitted bids on June 3, 2024 to ask them to resubmit their highest and best offers. Only Lakeshore Lux and Design Build Group Inc (“**Lakeshore Lux**”) made a revised offer;
- (t) Ultimately, the Receiver determined that the offer from Lakeshore Lux was the highest and best available offer and should be accepted;
- (u) On June 12, 2024, the Receiver and Lakeshore Lux entered into an agreement of purchase and sale for the Toronto Property on an “as is, where is” basis (the “**Terminated APS**”);
- (v) On July 24, 2024, the Court granted an AVO in respect of the Terminated APS, which was scheduled to close on July 30, 2024;
- (w) After a series of extensions, Lakeshore Lux was unable to close the transaction;
- (x) On August 27, 2024, the Receiver’s real estate counsel, Garfinkle Biderman LLP, wrote to counsel for Lakeshore Lux to advise that the transaction had



been terminated and the deposit paid by Lakeshore Lux, including various extension fees, had been forfeited;

#### **4. Colliers Remarkets the Toronto Property**

- (y) Following the termination of the Terminated APS, the Receiver requested that Colliers re-market the Toronto Property and details regarding same are described below;
- (z) On August 29, 2024, the MLS listing for the Toronto Property was changed from sold firm back to available and Colliers sent out an e-mail blast to its database of approximately 3,000 parties;
- (aa) Colliers also contacted all previous bidders and those that signed a confidentiality agreement and had access to Colliers' data room to advise that the Toronto Property was back on the market;
- (bb) With the concurrence of the Receiver, Colliers set a bid deadline date of September 26, 2024 at 3:00 pm;

#### **5. Offers Received**

- (cc) Colliers did not receive any additional signed Confidentiality Agreements from new parties with interest in the property for access to Colliers' data room;
- (dd) On September 26, 2024, Colliers received two offers and one letter of intent for the Toronto Property. A subsequent offer was received on September 28, 2024. The Receiver reviewed the offers from Colliers' re-marketing

process with the Lender, in its capacity as secured lender and mortgagee of the Toronto Property. Based on the offers submitted on September 26, 2024 and the offer submitted on September 28, 2024, the Receiver determined that the offer from the Toronto Purchaser, which was received on September 26, 2024, was the highest and best available offer given among other things current market conditions, and should be accepted;

- (ee) On October 7, 2024, the Receiver and the Toronto Purchaser entered into an APS, which was conditional on the Toronto Purchaser's due diligence, which condition had to be waived or satisfied by November 6, 2024;
- (ff) On October 27, 2027, the Toronto Purchaser indicated that it was waiving its due diligence condition. On October 29, 2024, both the Toronto Purchaser and the Receiver executed a waiver formalizing same;

## **6. The APS**

- (gg) Salient terms of the Toronto APS and matters relating thereto include:
  - (i) the purchased assets include the Toronto Property;
  - (ii) the deposit to be provided under the Toronto APS has been received from the Toronto Purchaser;
  - (iii) the offer is firm as the Toronto Purchaser has waived all conditions to closing except the issuance of the AVO;
  - (iv) the Toronto APS is conditional on Court approval and the issuance of an AVO vesting the Purchased Assets in the Toronto Purchaser

free and clear of claims and encumbrances, other than those specifically itemized in the APS;

- (v) the Toronto Purchaser is buying the Toronto Property on an “as is, where is” basis; and
- (vi) closing of the sale provided for in the APS is scheduled to occur within 10 business days immediately following the date on which the AVO is granted, or the next business day or such other date as the Receiver and the Toronto Purchaser may mutually agree upon;

***D. The Transaction should be approved***

- (hh) The requested AVO approves the APS and vests the Toronto Property in the Toronto Purchaser, free and clear of any claims and encumbrances (other than as set out in the APS) upon closing of the Transaction;
- (ii) The Transaction is the product of a robust sales process. Colliers conducted a broad canvass of the market and the Toronto Property was listed on MLS for a cumulative period of approximately 14 weeks;
- (jj) The Receiver believes that the re-marketing process undertaken by Colliers and the Receiver was appropriate. The Sale Process allowed for sufficient exposure to market for the Toronto Property, for the following reasons, among others:
  - (i) During the initial sales process for the Toronto Property:
    - 1) notice of the sale was sent to approximately 3,000 parties;

- 2) the Toronto Property was listed for sale on MLS for a period of approximately 10 weeks; and
  - 3) the Toronto Property was listed on Colliers' website;
- (ii) During the re-marketing of the Toronto Property:
- 1) Colliers sent an email blast to the same 3,000 parties;
  - 2) the Toronto Property was re-listed for sale on MLS for a 4-week period;
  - 3) the Toronto Property was re-listed on Colliers's website; and
  - 4) Colliers reached out to all parties that had executed a confidentiality agreement and to the parties that submitted offers during the initial listing;
- (kk) The APS represents the best offer received for the Toronto Property. Accordingly, the Transaction provides the greatest recovery available for the Toronto Property's stakeholders in the circumstances;

***E. Toronto Distribution***

- (ll) The Receiver intends to distribute the proceeds from the sale of the Toronto Property upon closing the transaction for the Toronto Property in the following order of priority (such scheme of distribution being the "**Toronto Distribution**"):

- (i) payment to the City of Toronto for the property taxes owing on the Toronto Property of approximately \$202,488.80, as set out in the First Report, plus any additional property taxes, further interest or fees owing at the time of closing;
- (ii) pay any remaining unpaid fees and disbursements of the Receiver and its counsel relating to the Toronto Property.
- (iii) retention of \$100,000 as a holdback amount for the further fees and disbursements of the Receiver and its counsel to close the sale of the Toronto Property and do all things necessary to wind up the receivership administration in respect of the Toronto Property;
- (iv) payment of the remaining funds from the sale of the Toronto Property to Cameron Stephens towards the indebtedness owed to it.

**F. Sealing Order**

- (mm) The Receiver requests that this Court grant a Sealing Order in respect of the Confidential Appendices. The Court has already granted a similar order in respect of the Terminated APS;
- (nn) The Confidential Appendices consist of a summary of the purchase offers received by the Receiver in respect of the Toronto Property and an unredacted copy of the APS, respectively;
- (oo) The Confidential Appendices contain sensitive information, including the identity of the bidders, the value of the APS, and the value of other bids

received for the Toronto Property, the disclosure of which could adversely impact the future marketability of the Toronto Property should the Transaction not close;

- (pp) Sealing this information is necessary to maximize recoveries in this proceeding and maintain the integrity and confidentiality of key information in the Sales Process;
- (qq) The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Receiver is not aware of any party that will be prejudiced if the information is sealed or any public interest that will be served if such details are disclosed in full;
- (rr) The requested sealing order is a minimally intrusive means of protecting the confidentiality of the Confidential Appendices as it will only be in force until the closing of the sale of the Purchased Assets (as defined in the APS);

**G. *The Interim SRD***

- (ss) The Receiver has received and paid monies on behalf of the Debtors for the benefit of all stakeholders, as set out in the Interim SRD;
- (tt) This Court should approve the Interim SRD;

**H. Professional Fees and Disbursements**

- (uu) In carrying out its duties pursuant to the Receivership Order, the Receiver and the Receiver's counsel have incurred professional fees and disbursements;
- (vv) Paragraph 18 of the Receivership Order authorizes the Receiver to periodically pay its fees and disbursements, and that of its counsel, subject to approval by the Court;
- (ww) This Court should approve the fees of the Receiver and its Counsel to fund the Receiver's continued activities for the benefit of all stakeholders;
- (xx) The provisions 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 and the inherent and equitable jurisdiction of this Court;
- (yy) Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (zz) Such further and other grounds as counsel may advise and this Honourable Court may deem just.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this Motion:

- (aaa) The Third Report and the appendices thereto; and
- (bbb) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 25, 2024

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**Lawyers for the Receiver, TDB Restructuring  
Limited**



Court File No. CV-23-00701672-00CL

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**  
Applicant

-and-

**CONACHER KINGSTON HOLDINGS INC. et al.**  
Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**NOTICE OF MOTION (RETURNABLE DECEMBER 4,  
2024)**

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Lawyers for the Receiver, TDB Restructuring Limited

TAB 6



Court File No. CV-23-00701672-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**ONTARIO**

THE HONOURABLE Madam )  
 ) WEDNESDAY, THE 6<sup>TH</sup>  
 )  
JUSTICE Conway )  
 ) DAY OF DECEMBER, 2023  
 )

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

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

**ORDER**  
**(appointing Receiver)**

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "*BIA*") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "*CJA*") appointing RSM Canada Limited as receiver and manager (in such capacities, the "Receiver") without security, over the lands and premises described as:

PIN Nos. 36061–0475 through 36061–0734 - 311 Conacher Drive, Kingston, Ontario, Lots 1-256 and Blocks 257 to 260, all-inclusive, Plan 13M135 (collectively the “Kingston Properties”);

and

PIN No. 10306-0064 - 2849 Islington Avenue, Toronto; Pt Lot 22, Con 6 WYS TWP of York as in NY735134; Toronto;

PIN No. 10306-0032 – 2851 Islington Avenue, Toronto; Part Lot 1, Plan 9059 North York as in TR92058, City of Toronto;

PIN No. 10306-0033 – 2853 Islington Avenue, Toronto; Part Lot 1, Plan 9059 North York as in TB221318, City of Toronto;

PIN No. 10306-0034 – 2855 Islington Avenue, Toronto; Part Lot 2, Plan 9059 North York as in TB379984; City of Toronto;

PIN No. 10306-0035 – 2857 Islington Avenue, Toronto; Part Lot 2, Plan 9059 North York as in TB379983, City of Toronto (collectively, the “Toronto Properties”),

(which Kingston Properties and Toronto Properties are hereinafter collectively referred to as, the “Properties”)

owned by Conacher Kingston Holdings Inc.(“Conacher”) and 5004591 Ontario Inc., (“500 Inc.”) (hereinafter the “Debtors”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Curtis Jackson sworn June 26, 2023, and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, and on reading the consent of RSM Canada Limited to act as the Receiver,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, RSM Canada Limited is hereby appointed Receiver, without security, of the

Properties and of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Properties, including all proceeds thereof.

### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Properties and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Properties and any and all proceeds, receipts and disbursements arising out of or from the Properties;
- (b) to receive, preserve, and protect the Properties, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Properties to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and/or complete construction of the Properties including the powers to enter into any agreements, incur any obligations in the ordinary course of business, or cease to perform any contracts of the Debtors in respect of the Properties;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets in respect of the Properties or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Properties and to exercise all remedies of the Debtors in respect of the Properties in collecting such monies, including, without limitation, to enforce any security held by the Debtors in respect of the Properties;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors in respect of the Properties;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Properties, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors in respect of the Properties or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Properties, including advertising and soliciting offers in respect of the Properties or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Properties or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00 provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Properties or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Properties;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Properties and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Properties against title to any of the Properties;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors in respect of the Properties;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Properties owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have in respect of the Properties; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any property in such Person's possession or control, shall grant immediate and continued access to the property to the Receiver, and shall deliver all such property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors relating to the Properties, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the



Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS IN RESPECT OF THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors in respect of the Properties shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors in respect of the Property are hereby stayed and suspended pending further Order of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Properties, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH THE RECEIVER**

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors in respect of the Property, without written consent of the Receiver or leave of this Court.

## **CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors in respect of the Properties or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors in respect of the Properties are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names in respect of the Properties, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with

normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Properties and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts"). For certainty, all receipts in respect of the Properties shall be deposited into the Post Receivership Accounts and all Permitted Disbursements (defined below) shall be drawn from the Post Receivership Accounts. "Permitted Disbursements" shall include realty taxes, utilities, insurance, construction and related costs, maintenance expenses, other reasonable Properties'-specific expenses, and business expenses associated with the Properties. The monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

13. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Properties

and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Properties (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Properties shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Properties that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Properties within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for

any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

## **RECEIVER'S ACCOUNTS**

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Properties in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## **FUNDING OF THE RECEIVERSHIP**

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not

exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Properties shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

24. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the

Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL– <http://www.rsmcanada.com/conacher-kingston-holdings>.

25. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

26. **THIS COURT ORDERS** that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. The Receiver is specifically authorized and permitted to use the solicitors for the Applicant herein as its own counsel in respect of any matter where there is no conflict of interest. In respect of any legal advice or issue where a conflict may exist or arise in respect of the Applicant and the Receiver or a third party, the Receiver shall utilize independent counsel.

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of each of the Debtors.

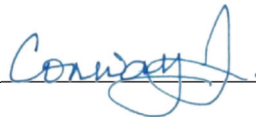
29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Property with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in blue ink, appearing to read 'Conway J.', is written over a horizontal line.



## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that RSM Canada Limited, the Receiver of the properties known municipally as 311 Conacher Drive, Kingston, Ontario and the Toronto Properties owned by the Debtors, as such terms are defined in the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 2023 appointing the Receiver (the "Order") made in an Application having Court file number CV-23- 00701672-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly] not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Properties, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Properties as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of June, 2023.

RSM Canada Limited, solely in its capacity  
as Receiver of the Properties, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

CAMERON STEPHENS MORTGAGE  
CAPITAL LTD.  
Applicant

and  
CONACHER KINGSTON  
HOLDINGS INC., et al.  
Respondents

Court File No. CV-23-00701672-00CL

**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

**ORDER**

**Garfinkle Biderman LLP**  
Barristers & Solicitors  
1 Adelaide Street East, Suite 801  
Toronto, Ontario M5C 2V9

**Wendy Greenspoon-Soer-LSO#:34698L**  
[wgreenspoon@garfinkle.com](mailto:wgreenspoon@garfinkle.com)  
Tel: 416-869-1234

Lawyers for the Applicants,  
Cameron Stephens Mortgage Capital Ltd

File #6243-081.

TAB 7

Court File No. CV-24-00715515-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MADAM	)	FRIDAY, THE 1 <sup>ST</sup>
	)	
JUSTICE CONWAY	)	DAY OF MARCH, 2024

B E T W E E N:

**TDB RESTRUCTURING LIMITED**

Applicant

and

**RSM CANADA OPERATIONS ULC**

Respondent

APPLICATION UNDER Rule 14.05(3)(h) of the *Rules of Civil Procedure***SUBSTITUTION ORDER**

**THIS APPLICATION** made by TDB Restructuring Limited (“**TDB**”) for an order, among other things, substituting the name of RSM Canada Limited with the name TDB Restructuring Limited on the Substituted Mandates (as defined below), was heard this day by way of judicial video conference in Toronto, Ontario by Zoom videoconference

**ON READING** the Application Record of TDB, including the Affidavit of Bryan A. Tannenbaum sworn February 27, 2024, together with the exhibits attached thereto (the “**Affidavit**”), and on hearing the submissions of counsel for TDB, no one else appearing, although served as evidenced by the Affidavit of Service of Lynda Christodoulou sworn February 28, 2024

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

## **BIA MANDATES**

2. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Trustee in Bankruptcy (the “**Bankruptcy Trustee**”) of the estate files listed as bankruptcies on Schedule “A” hereto (the “**BIA Estates**”) and as Proposal Trustee (the “**Proposal Trustee**”) of the estate files listed as proposals on Schedule “A” hereto (collectively with the BIA Estates, the “**BIA Mandates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such BIA Mandates or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

3. **THIS COURT ORDERS** that, for greater certainty all, real and personal property wherever situate of the BIA Estates shall be, remain and is hereby vested in TDB Restructuring Limited in its capacity as Bankruptcy Trustee, to be dealt with by TDB Restructuring Limited in accordance with the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), pursuant to its powers and obligations as Bankruptcy Trustee of the BIA Estates.

4. **THIS COURT ORDERS** that TDB Restructuring Limited is authorized and directed to continue and to complete the administration of the BIA Mandates, to deal with the property in the BIA Mandates in accordance with its duties and functions as Bankruptcy Trustee or Proposal Trustee, as the case may be, as set out in the BIA and to receive all remuneration of the Bankruptcy Trustee or Proposal Trustee in the BIA Mandates for services performed from the commencement of each of the BIA Mandates until the discharge of the Bankruptcy Trustee or Proposal Trustee, as applicable.

5. **THIS COURT ORDERS** that that the requirement and responsibility for taxation of the Bankruptcy Trustee’s or Proposal Trustee’s accounts in respect of the BIA Mandates with respect to all work performed in respect of such BIA Mandate from the initial appointment of RSM Canada Limited or any other party, through to the completion of the administration of such BIA Mandates and discharge of TDB Restructuring Limited as Bankruptcy Trustee or Proposal Trustee, as applicable, shall be completed using the name TDB Restructuring Limited.

6. **THIS COURT ORDERS AND DIRECTS** that to the extent that security has been given in the name of RSM Canada Limited in cash or by bond of a guarantee company pursuant to section 16(1) of the BIA (the “**Security**”), such Security shall be transferred from the name RSM Canada Limited to the name TDB Restructuring Limited and any party holding such Security be and is hereby directed to take all steps necessary to effect such transfer. TDB Restructuring Limited shall retain all obligations respecting the Security.

#### **RECEIVERSHIP PROCEEDINGS**

7. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as the Receiver, Receiver and Manager, or Interim Receiver (collectively, “**Receiver**”) in respect of the mandates listed in Schedule “B” hereto (the “**Receivership Proceedings**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such Receivership Proceedings or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

#### **CCAA PROCEEDINGS**

8. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Monitor of the estate files listed as CCAA restructuring proceedings on Schedule “C” hereto (the “**CCAA Estates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such mandates (the “**CCAA Mandates**”) or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

#### **ESTATE TRUSTEE DURING LITIGATION PROCEEDINGS**

9. **THIS COURT ORDERS** that: (i) the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” hereto; and (ii) the name Bryan A. Tannenbaum of TDB Restructuring Limited be and is hereby substituted in place of the name Bryan A. Tannenbaum of RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” (collectively, the “**Estate Mandates**”), and any reference to the name RSM Canada Limited in any Court Order in respect of such Estate Mandates or any

schedule to such Court Order shall be replaced by the name TDB Restructuring Limited. Collectively, the BIA Mandates, the Receivership Proceedings, the CCAA Mandates and the Estate Mandates are referred to herein as the “**Substituted Matters**”).

### **SUBSTITUTED MANDATES**

10. **THIS COURT ORDERS** that TDB Restructuring Limited (and its directors, officers, employees, agents, legal counsel and other representatives, as applicable) will continue to have all rights, benefits, protections and obligations granted to RSM Canada Limited (and its legal counsel and representatives, as applicable) under any order made in the Substituted Mandates or any statute applicable to the Substituted Mandates or any contract or agreement to which TDB Restructuring Limited is party under the name RSM Canada Limited in the Substituted Mandates. For greater certainty and without limitation, this includes the benefit of any indemnity, charge or priority granted in the Substituted Mandates and relief from the application of any statute including the Personal Information Protection and Electronic Documents Act (Canada) (“**PIPEDA**”).

11. **THIS COURT ORDERS** that to the extent required by the applicable Orders in the Substituted Mandates, the accounts of RSM Canada Limited and its legal counsel in respect of the Substituted Mandates shall be passed in accordance with the applicable Orders in the Substituted Mandates in the name and on the application of TDB Restructuring Limited.

### **ACCOUNTS**

12. **THIS COURT ORDERS** that TDB Restructuring Limited be and is hereby authorized to transfer any and all accounts from the name RSM Canada Limited to the name TDB Restructuring Limited and, if the name on such accounts cannot be changed, to transfer all funds that remain in its trust bank accounts that belong or relate to the Substituted Mandates, or otherwise, to accounts in the name TDB Restructuring Limited, and TDB Restructuring Limited be and is hereby authorized to take all steps and to execute any instrument required for such purpose. Any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of



this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

13. **THIS COURT ORDERS AND DIRECTS** that TDB Restructuring Limited be and is hereby authorized to endorse for deposit, deposit, transfer, sign, accept or otherwise deal with all cheques, bank drafts, money orders, cash or other remittances received in relation to any of the Substituted Mandates where such cheques, bank drafts, money orders, cash or other remittances are made payable or delivered to the name TDB Restructuring Limited, in relation to the same, and any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

#### **GENERAL**

14. **THIS COURT ORDERS** that this Order shall be effective in all judicial districts in Ontario which govern any of the Substituted Mandates.

15. **THIS COURT ORDERS** that the requirement for a separate Notice of Motion and supporting Affidavit to be filed in the Court file of each of the Substituted Mandates be and is hereby waived.

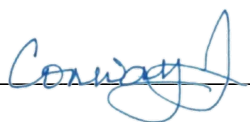
16. **THIS COURT ORDERS** that TDB Restructuring Limited shall notify the parties on the Service Lists of the Substituted Mandates (if applicable) of the new website established for such Substituted Mandate and shall post a copy of this Order to the website of each Substituted Mandate and that such notice shall satisfy all requirements for service or notification of this motion and this Order on any interested party in the Substituted Mandates including, without limitation, proven creditors within the BIA Mandates, parties on the Service Lists of the Substituted Mandates (if applicable), the applicable bankrupts or debtors within the Substituted Mandates, and any other person, and any other requirements of service or notification of this motion be and is hereby waived.

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give

effect to this Order and to assist TDB Restructuring Limited in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to TDB Restructuring Limited as may be necessary or desirable to give effect to this Order, or to assist TDB Restructuring Limited and its agents in carrying out the terms of this Order.

18. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry or filing.

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A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

### Schedule "A": BIA Mandates

#### Bankruptcies

	Name	Estate Number
1.	Carrington Homes Limited	31-457618
2.	Fernicola, George	31-457619
3.	D. Mady Investments Inc.	31-2281994
4.	Eco Energy Home Services Inc.	31-2502463
5.	Ontario HVAC & Water Inc.	31-2613545
6.	2305992 Ontario Inc.	31-2655918
7.	Fernwood Developments (Ontario) Corporation	31-2661061
8.	Legal Print and Copy Incorporated	31-2884436
9.	Commerce Copy Incorporated	31-2884438
10.	TDI-Dynamic Canada, ULC	31-2903815
11.	Limestone Labs Limited	31-2907613
12.	2465409 Ontario Inc.	31-2939766
13.	Creative Wealth Media Finance Corp.	31-3003083
14.	Knight-Pro Inc.	31-3013900
15.	Ulmer, Blair	32-159136

#### Division 1 Proposals

	Name	Estate Number
1.	Vaughn Mills Packaging Ltd.	31-2895096
2.	RLogistics Limited Partnership	31-3040679
3.	RLogistics Inc.	31-3042209
4.	1696308 Ontario Inc.	31-3042213

**Schedule "B": Receivership Proceedings**

<b>Name</b>	<b>Court / OSB Number</b>
1. Z. Desjardins Holdings Inc.	CV-23-00706607-00CL
2. 485, 501 and 511 Ontario Street South, Milton, ON	CV-23-00696349-00CL
3. Eco Energy Home Services Inc.	CV-19-614122-00CL
4. 3070 Ellesmere Developments Inc.	CV-19-00627187-00CL
5. Fernwood Developments Ontario Corporation	CV-20-00635523-00CL
6. Utilecredit Corp.	CV-20-00636417
7. 134, 148, 152, 184/188, 214, 224 and 226 Harwood Avenue, Ajax, ON	CV-20-00651299-00CL
8. Greenvilla (Sutton) Investment Limited (private receivership)	31-459273
9. 2088556 Ontario Inc. (private receivership)	31-459274
10. 935860 Ontario Limited (private receivership)	31-459275
11. Areacor Inc.	CV-22-00674747-00CL
12. Limestone Labs Limited and CleanSlate Technologies Incorporated (private receivership)	31-459498
13. 12252856 Canada Inc.	CV-22-00691528-00CL
14. Harry Sherman Crowe Housing Co-operative Inc.	CV-22-00688248-00CL
15. Richmond Hill Re-Dev Corporation	CV-23-00695238-00CL
16. Stateview Homes (Hampton Heights) Inc.	CV-23-00700356-00CL
17. 142 Queenston Street, St. Catharines, ON	CV-23-00705617-00CL
18. 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, ON	CV-23-00701672-00CL
19. 311 Conacher Drive, Kingston, ON	CV-23-00701672-00CL
20. Real Property owned by King David Inc.	CV-23-00710411-00CL
21. CBJ Developments Inc. et al.	CV-23-00707989-00CL
22. 25 Neighbourhood Lane, Etobicoke, ON M8Y 0C4	31-459784

**Schedule "C": CCAA Proceedings**

<b>Name</b>	<b>Court Number</b>
1. Quality Sterling Group, comprising Quality Rugs of Canada Ltd., Timeline Floors Inc., Ontario Flooring Ltd., Weston Hardwood Design Centre Inc., Malvern Contact Interiors Ltd., Timeline Floor Inc. Ontario Flooring Ltd. Weston Hardwood Design Centre Inc. Malvern Contract Interior Limited Quality Commercial Carpet Corporation Joseph Douglas Pacione Holding Ltd. John Anthony Pacione Holding Ltd. Jopac Enterprises Limited, and Patjo Holding Inc.	CV-23-00703933-00CL

**Schedule “D”: Estate Trustee During Litigation Proceedings**

<b>Name</b>	<b>Court Number</b>
1. The Estate of Sarah (Sue) Turk *	01-3188/14
2. The Estate of Sarah (Sue) Turk *	05-35/14
3. The Estate of Lev Alexandr Karp – <i>discharge</i> <i>pending</i>	05-100/17 05-265/17
4. The Estate of Peter Trezzi	01-4647/16
5. The Estate of Florence Maud Anderson *	05-159/19
6. Estate of Murray Burke	2988/19
7. Estate of Robert James Cornish	CV- 23-00693852-00ES
8. Estate of Anne Takaki *	CV-22-00011105-00ES
9. Estate of John Takaki *	CV-22-00011105-00ES
10. Estate of James Frederick Kay **	06-006/14
11. Klaczkowski Family Trust **	CV-21-00659498-00ES
12. Estate of Ethel Ailene Cork **	CV-23-00710309-00ES
13. Estate of Justin Milton Cork **	CV-23-00710291-00ES

\* In the name of Bryan A. Tannenbaum of RSM Canada Limited.

\*\* In the name of Bryan A. Tannenbaum only.

**TDB RESTRUCTURING LIMITED**

**and**

**RSM CANADA OPERATIONS ULC**

Court File No. CV-24-00715515-00CL

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceedings commenced at TORONTO

---

**O R D E R**

---

**CHAITONS LLP**  
Barristers and Solicitors  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Maya Poliak (LSUC #54100A)**  
Tel: 416-218-1161  
Email: maya @chaitons.com


**Lawyers for the Applicant**




TAB 8





**TDB Restructuring Limited**  
Licensed Insolvency Trustee

11 King St. W, Suite 700   
Toronto, ON M5H 4C7

info@tdbadvisory.ca   
416-575-4440   
416-915-6228 

[tdbadvisory.ca](http://tdbadvisory.ca)

**IN THE MATTER OF THE RECEIVERSHIP OF**

**311 CONACHER DRIVE, KINGSTON, ONTARIO AND**

**2849, 2851, 2853, 2855 AND 2857 ISLINGTON AVENUE, TORONTO, ONTARIO**

**THIRD REPORT OF THE RECEIVER**

**NOVEMBER 25, 2024**

**Court File No. CV-23-00701672-00CL**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**BETWEEN:**

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**

**Applicant**

**-and-**

**CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC.**

**Respondents**

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## 1.0 INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on December 6, 2023, which order was effective December 22, 2023 (the “**Appointment Order**”), RSM Canada Limited was appointed receiver (the “**Receiver**”), without security, of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”) and together with the Kingston Property, the “**Properties**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited in place of RSM Canada Limited as Receiver (the “**Omnibus Order**”). A copy of the Omnibus Order is attached hereto as **Appendix “B”**.
3. On June 12, 2024, the Receiver entered into an agreement of purchase and sale for the Toronto Property (the “**Terminated APS**”) with Lakeshore Lux and Design Build Group Inc. (“**Lakeshore Lux**”), in trust for 1000944028 Ontario Inc. and sought an Order of the Court approving the transaction and vesting title to the Toronto Property in the purchaser (the “**Lakeshore Lux AVO**”). The Receiver set out in its report dated July 16, 2024 (the “**First Report**”) the Receiver’s marketing efforts and other details in connection with the sale process for the Toronto Property. On July 24, 2024, the Court granted, among other things, the Lakeshore Lux AVO. A copy of the First Report, without appendices, is attached hereto as **Appendix “C”**.
4. The transaction with Lakeshore Lux was scheduled to close on July 30, 2024. As set out in greater detail in the Receiver’s second report dated September 26, 2024 (the “**Second Report**”), after a series of extensions, Lakeshore Lux was unable to close the transaction. On August 27, 2024, the Receiver’s real estate counsel, Garfinkle Biderman LLP, wrote to counsel for Lakeshore Lux to advise that the transaction had been terminated and the deposit paid by Lakeshore Lux, including various extension fees, had been forfeited. The Receiver had its real estate Broker, Colliers Macaulay Nicholls Inc., Brokerage (“**Colliers**”) re-market the Toronto Property for sale. A copy of the Second Report, without appendices, is attached hereto as **Appendix “D”**.

5. On August 13, 2024, the Receiver entered into an agreement of purchase and sale with respect to the Kingston Property (the “**Kingston APS**”). The Receiver sought, among other things, an approval and vesting order in respect of the sale of the Kingston Property (the “**Kingston AVO**”) and the matter was heard on October 9, 2024. On October 31, 2024, the Court released its endorsement (the “**October 31<sup>st</sup> Endorsement**”) and granted the Kingston AVO. A copy of the October 31<sup>st</sup> Endorsement and the Kingston AVO are attached hereto, together, as **Appendix “E”**.
6. The Receiver retained the firm of Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”) as the Receiver’s independent legal counsel. The Receiver retained the firm of Garfinkle Biderman LLP (“**Garfinkle Biderman**”) as the Receiver’s real estate counsel.
7. Terms not defined herein are defined in the First Report and the Second Report.
8. The Appointment Order, together with Court documents related to the receivership proceeding, has been posted on the Receiver’s website, which can be found at <https://tdbadvisory.ca/insolvency-case/311-conacher-drive-kingston-ontario2849-2851-2853-2855-and-2857-islinton-avenue-toronto-ontario/>.

### **1.1 Purpose of Report**

9. The purpose of this third report to Court (the “**Third Report**”) is to:
  - (a) provide the Court with an update on the sale of the Kingston Property;
  - (b) specifically with respect to the Toronto Property:
    - i. report to the Court on the results of the re-marketing of the Toronto Property and subsequent offers received for same;
    - ii. provide to the Court support for the relief sought by the Receiver, namely the request for an approval and vesting order in respect of the Toronto Property, and the sealing of certain confidential information pending completion of the sale transaction for the Toronto Property. In addition to the information contained herein for the benefit of the

creditors of the Respondents and other stakeholders, the Third Report is also intended to provide the Court with the following confidential information, for which a sealing Order is sought:

1. a summary of the terms of all offers received for the Toronto Property based on the re-marketing of same;
  2. an unredacted copy of the executed Agreement of Purchase and Sale for the Toronto Property dated September 26, 2024 (the “**Toronto APS**”) between the Receiver and the purchaser of the Toronto Property, or its permitted assignee or as it may direct, as purchaser (the “**Toronto Purchaser**”);
- iii. provide the Court with information relating to the Receiver’s Borrowings Charge;
  - iv. provide the Court with information relating to the secured creditors in respect of the Toronto Property;
- (f) provide the Court with a summary of the Receiver’s cash receipts and disbursements in respect of the Toronto Property for the period December 22, 2023 to November 20, 2024 (the “**Toronto Property Interim R&D**”);
- (g) provide the Court with a summary of the Receiver’s cash receipts and disbursements in respect of the Kingston Property for the period December 22, 2023 to November 20, 2024 (the “**Kingston Property Interim R&D**”);
- (h) request that the Court grant orders:
- iii. approving the Third Report and the activities of the Receiver set out herein;
  - iv. authorizing and directing the Receiver to enter into and carry out the terms of the Toronto APS, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Toronto Property in the Toronto Purchaser upon the

closing of the purchase and sale transaction contemplated in the Toronto APS;

- v. approving the Proposed Interim Distribution of Proceeds from the sale of the Toronto Property;
- vi. sealing Confidential Appendices 1 and 2; and
- vii. approving the fees and disbursements of the Receiver and of the Receiver's independent and real estate counsel.

## **1.2 Terms of Reference**

10. In preparing the Third Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the Third Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
11. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.

## **2.0 KINGSTON PROPERTY UPDATE**

12. As set out in the Second Report, the Receiver entered into a purchase and sale agreement with 2349891 Ontario Inc. (the "**Kingston Purchaser**") and the Court issued the Kingston AVO.



13. Pursuant to the terms of the Kingston APS, closing of the transaction was to occur on the later of: (i) three (3) days immediately following the issuance of the Kingston AVO, or the next business day, as applicable; or (ii) October 2, 2024, or such other date as the parties may mutually agree upon. The Receiver agreed with the Kingston Purchaser to closing the transaction for the Kingston Property on November 20, 2024.
14. On November 20, 2024, the Kingston Purchaser advised that it required a 45-day extension to close the transaction. After some negotiation with the Kingston Purchaser, the Receiver agreed to an extension to January 6, 2025 on the basis that an additional deposit of \$500,000 towards the purchase price would be paid by the Kingston Purchaser by noon on November 27, 2024.
15. The second mortgagee, 2462686 Ontario Inc. (“**246**”) has not yet provided the Receiver with its security documentation as at the date of this report and as a result, counsel for the Receiver has been unable to complete its opinions on the validity, enforceability and priority of 246’s charge against the Kingston Property.
16. The third mortgagee, 2478659 Ontario Ltd. (“**247**”), has recently provided the Receiver with its security documentation. The Receiver’s counsel is currently reviewing the documentation provided by 247.

### **3.0 RE-MARKETING AND SALE OF THE TORONTO PROPERTY**

17. After the Receiver terminated the Terminated APS, the Receiver requested that Colliers re-market the Toronto Property. The details of the remarketing and sale of the Toronto Property are described below.

#### **3.1 Toronto Property**

##### **3.1.1 Re-marketing process**

18. On August 29, 2024, the MLS listing for the Toronto Property was changed from sold firm back to available and Colliers sent out an e-mail blast to its database of approximately 3,000 parties.

19. Colliers also contacted all previous bidders and those that signed a confidentiality agreement and had access to Colliers' data room to advise that the Toronto Property was back on the market.
20. With the concurrence of the Receiver, Colliers set a bid deadline date of September 26, 2024 at 3:00 pm.

### **3.1.2 Offers received**

21. Colliers did not receive any additional signed confidentiality agreements from new parties with interest in the property for access to Colliers' data room.
22. On September 26, 2024, Colliers received two (2) offers and one (1) letter of intent for the Toronto Property. A subsequent offer was received on September 28, 2024. The Receiver reviewed the offers from Colliers' re-marketing process with Cameron Stephens, in its capacity as secured lender and mortgagee of the Toronto Property. Based on the offers submitted on September 26, 2024 and the offer submitted on September 28, 2024, the Receiver determined that the offer from the Toronto Purchaser, which was received on September 26, 2024, was the highest and best available offer given, among other things, current market conditions, and should be accepted. A summary of the offers received for the Toronto Property will be filed with the Court as **Confidential Appendix "1"**, under seal.
23. On October 7, 2024, the Receiver and the Toronto Purchaser entered into the Toronto APS. The Toronto APS was conditional on the Toronto Purchaser's due diligence, which condition was to be waived or satisfied by November 6, 2024.
24. On October 27, 2027, the Toronto Purchaser indicated that it was waiving its due diligence condition. On October 29, 2024, both the Toronto Purchaser and the Receiver executed a waiver formalizing same.

### **3.1.3 The agreement of purchase and sale**

25. Salient terms of the Toronto APS and matters relating thereto include:
  - (a) the purchased assets include the Toronto Property;

- (b) the deposit to be provided under the Toronto APS has been received from the Toronto Purchaser;
  - (c) the offer is firm as the Toronto Purchaser has waived all conditions to closing except the issuance of the AVO (as defined below);
  - (d) the Toronto APS is conditional on Court approval and the issuance of an order vesting the Purchased Assets in the Toronto Purchaser free and clear of claims and encumbrances, other than those specifically itemized in the APS (the “**AVO**”);
  - (e) the Toronto Purchaser is buying the Toronto Property on an “as is, where is” basis; and
  - (f) closing of the sale provided for in the APS is scheduled to occur within 10 business days immediately following the date on which the AVO is granted, or the next business day or such other date as the Receiver and the Toronto Purchaser may mutually agree upon.
26. A copy of the Toronto APS, with the purchase price and deposit amount redacted, is attached hereto as **Appendix “F.”** An unredacted copy will be filed as **Confidential Appendix “2”** with the Court, under seal.

### **3.1.4 Toronto Property sale approval**

27. The Receiver believes that the re-marketing process undertaken by Colliers and the Receiver was appropriate. The Sale Process allowed for sufficient exposure to market for the Toronto Property for the following reasons, among others:
- (a) during the initial sales process for the Toronto Property:
    - i. notice of the sale was sent to approximately 3,000 parties;
    - ii. the Toronto Property was listed for sale on MLS for a period of approximately 10 weeks; and
    - iii. the Toronto Property was listed on Colliers’ website.

- (b) during the re-marketing of the Toronto Property:
  - i. Colliers sent an email blast to the same 3,000 parties;
  - ii. the Toronto Property was re-listed for sale on MLS for a 4-week period;
  - iii. the Toronto Property was re-listed on Colliers's website; and
  - iv. Colliers reached out to all parties that had executed a confidentiality agreement and to the parties that submitted offers during the initial listing.
- 28. Accordingly, based on the above, the Receiver is of the view that the market was widely canvassed and given the length of time on the market, it is unlikely that exposing the Toronto Property to the market for additional time will result in a superior transaction than the one contemplated by the Toronto APS.
- 29. The Receiver recommends the approval of the Toronto APS by the Court. The transaction contemplated by the Toronto APS provides for the greatest recovery available for the benefit of the secured creditors in the circumstances, including Cameron Stephens as first mortgagee on the Kingston Property and Toronto Property. The Receiver understands that Cameron Stephens supports the AVO and the completion of the transaction contemplated in the Toronto APS.

#### **4.0 RECEIVER'S BORROWINGS**

- 30. Pursuant to paragraph 20 of the Appointment Order, the Receiver was empowered to borrow up to \$500,000 at any time for the purpose of funding the exercise of the Receiver's powers and duties. The Appointment Order charged the Properties with a priority charge (the "**Receiver's Borrowings Charge**") subject only to the Receiver's Charge (defined below) and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- 31. The Receiver borrowed from and issued a Receiver's certificate totaling \$100,000 (the "**Toronto Receiver's Certificate**") against the Toronto Property in favour of

Cameron Stephens. On November 20, 2024, the Receiver repaid the principal of \$100,000 and paid accrued interest thereon of \$6,747.17 to Cameron Stephens.

32. To date, the Receiver has borrowed and has issued a Receiver's Certificate totaling \$150,000 against the Kingston Property (the "**Kingston Receiver's Certificate**"). The Receiver intends to repay the principal and accrued interest thereon in respect of the Kingston Receiver's Certificate from the closing proceeds of the sale of the Kingston Property.

## **5.0 SECURED CREDITORS**

### **5.1 Toronto Property Secured Creditors**

33. As set out in the First Report, copies of the parcel register searches for the Toronto Property were obtained from the Ontario Land Registry Office (collectively, the "**Toronto PIN Reports**"). Copies of the Toronto PIN Reports, dated June 3, 2024, are attached hereto as **Appendix "G"**.
34. The only creditor with a registered charge against the Toronto Property is Cameron Stephens, whose charge is for the registered amount of \$15,600,000.
35. The Receiver has obtained a legal opinion from its independent legal counsel opining that, subject to usual assumptions and qualifications, Cameron Stephens' charge is a valid and enforceable first charge against the Toronto Property.

## **6.0 PROPOSED INTERIM DISTRIBUTION**

### **6.1 Distribution of Toronto Property Proceeds**

36. The Receiver intends to distribute the proceeds from the sale of the Toronto Property upon closing the transaction for the Toronto Property in the following order of priority (such scheme of distribution being the "**Toronto Distribution**"):
  - (a) payment to the City of Toronto for the property taxes owing on the Toronto Property of approximately \$202,488.80, as set out in the First Report, plus

any additional property taxes, further interest or fees owing at the time of closing;

- (b) pay any remaining unpaid fees and disbursements of the Receiver and its counsel relating to the Toronto Property.
- (c) retention of \$100,000 as a holdback amount for the further fees and disbursements of the Receiver and its counsel to close the sale of the Toronto Property and do all things necessary to wind up the receivership administration in respect of the Toronto Property;
- (d) payment of the remaining funds from the sale of the Toronto Property to Cameron Stephens towards the indebtedness owed to it. Cameron Stephens provided a statement setting out the amount of the indebtedness owed to it as at November 25, 2024 (the “**Payout Statement**”), which totals \$16,041,883.30 including fees and interest. A copy of the Payout Statement is attached hereto as **Appendix “H”**.

## **7.0 RECEIPTS AND DISBURSEMENTS**

### **7.1 Toronto Property Interim R&D**

37. The Toronto Property Interim R&D for the period from December 22, 2023 to November 20, 2024 sets out cash receipts of \$979,924, including advances made by the Cameron Stephens totaling \$100,000 pursuant to the Toronto Receiver’s Certificate against the Toronto Property, and cash disbursements of \$585,684, resulting in an excess of receipts over disbursements of \$394,240. A copy of the Toronto Property Interim R&D is attached hereto as **Appendix “I”**.

### **7.2 Kingston Property Interim R&D**

38. The Kingston Property Interim R&D for the period from December 22, 2023 to November 20, 2024 sets out cash receipts of \$395,061, including advances made by the Cameron Stephens totaling \$150,000 pursuant to the Kingston Receiver’s Certificate against the Kingston Property, and cash disbursements of \$372,523,

resulting in an excess of receipts over disbursements of \$22,538. A copy of the Kingston Property Interim R&D is attached hereto as **Appendix “J”**.

## **8.0 SEALING**

39. The Receiver respectfully requests that the Court seal Confidential Appendices 1 and 2 to this report, being the offer summary relating to the Toronto Property and an unredacted copy of the Toronto APS. The Receiver believes that the offer received and purchase price and deposit amounts contained in the Toronto APS for the Toronto Property should be kept confidential until the completion of sale efforts with respect to the Toronto Property.
40. The inclusion in the public record of the offer summary and an unredacted copy of the Toronto APS (which discloses the purchase price and deposit amount) would be prejudicial to, among other things, the integrity of sales process and any additional marketing efforts that may be needed for the Toronto Property if sale transaction for the Toronto Property fails to close for any reason.
41. The sealing order sought is limited in time and will automatically expire upon the closing of the transaction contemplated in the Toronto APS or further order of the Court. This will ensure that the offers and purchase price provided in the Toronto APS remains confidential until all sale efforts are completed. This is necessary and sufficient to reasonably protect the legitimate stakeholder interests in the circumstances.
42. A full copy of the Toronto APS is being publicly filed as Appendix “F” to this report, with the purchase price and deposit amounts redacted. As a result, the sealing order’s effect on the completeness of the public record, if any, will be minimal.

## **9.0 PROFESSIONAL FEES**

43. The Appointment Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver were granted a charge (the

“**Receiver's Charge**”) on the Property, as security for such fees and disbursements. The Receiver's Charge is a first charge on the Properties in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

44. The fees and disbursements of the Receiver in relation to the Toronto Property for the period from January 1, 2024 to June 30, 2024 were previously approved by the Court pursuant to an order of the Court dated July 24, 2024.
45. The Receiver's accounts for the period from July 1, 2024 to October 31, 2024 total \$44,179.00 in fees and disbursements, plus HST of \$5,743.27, for a total amount of \$49,922.27. A copy of the Receiver's interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Arif Dhanani sworn on November 22, 2024 and is attached hereto as **Appendix “K”**.
46. The fees and disbursements of the Receiver's independent legal counsel, Paliare Roland, in relation to the Toronto Property for the period from January 25, 2024 to June 28, 2024 were previously approved by the Court pursuant to an order of the Court dated July 24, 2024.
47. The accounts of the Receiver's independent legal counsel, Paliare Roland, for the period from February 24, 2024 to October 31, 2024 total \$34,795.53 inclusive of fees, disbursements and HST. A copy of Paliare Roland's interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Beatrice Loschiavo sworn on November 22, 2024 and is attached hereto as **Appendix “L”**.
48. The accounts of the Receiver's real estate counsel, Garfinkle Biderman, for the period to August 27, 2024 total \$58,587.69 inclusive of fees, disbursements and HST. A copy of Garfinkle Biderman's interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Avrom Brown sworn on November 22, 2024 and is attached hereto as **Appendix “M”**.




## 10.0 RECEIVER'S REQUEST OF THE COURT

49. Based on the foregoing, the Receiver respectfully requests that the Court grant the orders described in paragraph 9(h) above.

All of which is respectfully submitted to this Court as of this November 25, 2024.


**TDB RESTRUCTURING LIMITED**, solely in its capacity as Receiver of 311 Conacher Drive and 2849, 2851, 2853, 2855 and 2857 Islington Avenue and not in its personal or corporate capacity




Per:   
Arif Dhanani, CPA, CA, CIRP, LIT  
Managing Director

## TAB 9



**TDB Restructuring Limited**  
Licensed Insolvency Trustee

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**IN THE MATTER OF THE RECEIVERSHIP OF**

**311 CONACHER DRIVE, KINGSTON, ONTARIO AND**

**2849, 2851, 2853, 2855 AND 2857 ISLINGTON AVENUE, TORONTO, ONTARIO**

**FIRST REPORT OF THE RECEIVER**

**JULY 16, 2024**

**Court File No. CV-23-00701672-00CL**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**BETWEEN:**

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**

**Applicant**

**-and-**

**CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC.**

**Respondents**

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## 1.0 INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on December 6, 2023, which order was effective December 22, 2023 (the “**Appointment Order**”), RSM Canada Limited was appointed receiver (the “**Receiver**”), without security, of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**” and together with the Kingston Property, the “**Properties**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. On March 1, 2024, the Court granted an omnibus order substituting the name TDB Restructuring Limited in place of RSM Canada Limited (the “**Omnibus Order**”). A copy of the Omnibus Order is attached hereto as **Appendix “B”**.
3. The Receiver retained the firm of Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”) as the Receiver’s independent legal counsel.
4. The Appointment Order, together with Court documents related to the receivership proceeding, has been posted on the Receiver’s website, which can be found at <https://tdbadvisory.ca/insolvency-case/311-conacher-drive-kingston-ontario2849-2851-2853-2855-and-2857-islington-avenue-toronto-ontario/>.

### 1.1 Purpose of Report

5. The purpose of this first report to Court (the “**First Report**”) is to:
  - (a) provide background information about the Properties and the circumstances leading up to the appointment of the Receiver;
  - (b) specifically with respect to the Toronto Property:
    - i. report to the Court on the condition and status of the Toronto Property and the activities of the Receiver in connection therewith;
    - ii. report to the Court on the results of the sales process and activities leading to offers for the Toronto Property;

- iii. providing to the Court support for the relief sought by the Receiver, namely the request for an approval and vesting order in respect of the Toronto Property, and the sealing of certain confidential information pending completion of the sale transaction for the Toronto Property. In addition to the information contained herein for the benefit of the creditors of the Respondents and other stakeholders, the First Report is also intended to provide the Court with the following confidential information, for which a sealing Order is sought:
  - 1. a summary of the terms of all offers received for the Toronto Property; and
  - 2. an unredacted copy of the executed Agreement of Purchase and Sale for the Toronto Property dated June 3, 2024 (the “**Toronto APS**”) between the Receiver and the purchaser of the Toronto Property, or its permitted assignee or as it may direct, as purchaser (the “**Toronto Purchaser**”);
- (e) provide the Court with information relating to the Receiver’s Borrowings Charge (as defined below);
- (f) provide the Court with information relating to the secured creditor in respect of the Toronto Property;
- (g) provide the Court with a summary of the Receiver’s cash receipts and disbursements in respect of the Toronto Property for the period December 22, 2023 to June 15, 2024 (the “**Interim R&D**”);
- (h) request that the Court grant orders:
  - i. approving the First Report and the activities of the Receiver set out herein;
  - ii. authorizing and directing the Receiver to enter into and carry out the terms of the Toronto APS, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Toronto Property in the Toronto Purchaser upon the



closing of the purchase and sale transaction contemplated in the Toronto APS;

- iii. approving the proposed Interim Distribution of proceeds (as defined below) from the sale of the Toronto Property;
- iv. sealing Confidential Appendices 1 and 2; and
- v. approving the fees and disbursements of the Receiver and of the Receiver's independent counsel.

## 1.2 Terms of Reference

- 6. In preparing this First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the First Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
- 7. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

## 2.0 BACKGROUND

- 9. The Respondents, Conacher Kingston Holdings Inc. ("**Conacher Inc.**") and 5004591 Ontario Inc. ("**500 Inc.**") and together with Conacher Inc., the "**Debtors**", are companies incorporated pursuant to laws of the Province of Ontario.
- 10. Conacher Inc. is the registered owner of the Kingston Property and 500 Inc. is the registered owner of the Toronto Property. The Kingston Property is located on the

north side of Conacher Drive, east of Division Street in Kingston Ontario. The property is a re-development site of approximately 18.96 acres for the construction of the “Kingston Townhomes Project” consisting of 257 townhouse lots. The Toronto Property consists of a land assembly with a total acreage of 0.844 acres that is site plan approved for the development of a 111-unit, 75,000 square foot, 6-storey condominium tower known as the “Step Condos”.

11. The Debtors are indebted to Cameron Stephens Mortgage Capital Ltd. (“**Cameron Stephens**”) in the amount of approximately \$13 million with respect to a credit facility made available by Cameron Stephens to Conacher Inc., pursuant to and under the terms of a Letter of Commitment dated November 22, 2019 (the “**Commitment**”).
12. The security pledged by the Debtors for their obligations to Cameron Stephens includes various General Security Agreements, a first ranking charge against the Kingston Property, a collateral charge against the Toronto Property, assignments of rents and leases and guarantees from 500 Inc. and Nicholas Kyriacopoulos (“**Mr. Kyriacopoulos**”), all as more particularly described in the affidavit of Curtis Jackson sworn June 26, 2023 (the “**Jackson Affidavit**”). A copy of the Jackson Affidavit, without exhibits, is attached hereto as **Appendix “C”**.
13. Conacher Inc. fell into default on August 1, 2022, when it failed to pay the monthly interest payment of \$106,061.40 then due and an extension fee for the period of July 1, 2022, to January 1, 2023. As a result of the default of Conacher Inc., on August 19th, 2022, Cameron Stephens issued demands for payment and Notices of Intention to Enforce Security pursuant to Section 244(1) of the Bankruptcy and Insolvency Act (“**NITES**”) to the Debtors and upon Mr. Kyriacopoulos with respect to their Guarantees.
14. Conacher Inc. subsequently made payment on account but fell into default on multiple occasions thereafter. Accordingly, Cameron Stephens issued a further Notice of Intention to Enforce Security and served further demand letters upon Conacher Inc., 500 Inc. and Mr. Kyriacopoulos dated April 26th, 2023. Despite the demand, the amount owing under the Commitment was not repaid.

15. As a result of the foregoing, Cameron Stephens made an application for the appointment of the Receiver.

### **3.0 RECEIVER'S ACTIVITIES**

#### **3.1 Contacting the Debtors**

16. Upon its appointment the Receiver did not have contact information for Mr. Kyriacopoulos. As such, the Receiver emailed counsel to the Debtors, Blaney McMurtry LLP ("**Blaneys**"), in an effort to obtain contact information for Mr. Kyriacopoulos with a view to obtaining the books and records relating to the Kingston Property and the Toronto Property. Notwithstanding multiple emails to Blaneys, the Receiver's emails went unanswered.
17. The Receiver then contacted Cameron Stephens to ascertain whether it had current contact information for Mr. Kyriacopoulos. The Receiver came to learn from Cameron Stephens that Mr. Kyriacopoulos passed away on December 23, 2023, the day after the Receiver's appointment, and that Cameron Stephens did not have contact information for anyone else connected to the Debtors.

#### **3.2 Possession, Security, and Protective Measures**

18. Subsequent to its appointment, the Receiver attended at the Toronto Property.
19. The Toronto Property was appropriately fenced in and the entrances and windows to each of the homes within the fenced area were secured with boards. As such, the Receiver did nothing further with respect to the Toronto property other than contact the City of Toronto to ensure that the water to the Toronto Property had been shut off. Subsequently, the City of Toronto contacted the Receiver to advise that it required the Receiver to, among other things, cut the grass at the Toronto Property or that the City of Toronto would do so and add the cost to the property taxes of the Toronto Property. The Receiver engaged a contractor to complete the required work, which was completed about the end of June 2024.

### 3.3 Insurance

20. Since the Receiver had no contact information for the Debtors, it contacted Cameron Stephens to ascertain whether it had knowledge of the insurer or broker used by the Debtors. Cameron Stephens advised that since the Debtors had stopped communicating with it, Cameron Stephens had included the Properties under its general blanket insurance policy.
21. Mr. Kyriacopoulos' widow ("**Elena**") subsequently contacted the Receiver to inquire what it was doing with respect to the Properties and the Receiver provided Elena with general description of its activities related to the Properties. At that time, the Receiver asked Elena whether she had any information in respect of the insurance coverage over the Properties. Elena sent to the Receiver copies of the insurance policies. The Receiver noted that the insurance policy over the Toronto Property, which policy was for commercial general liability only, expires on January 11, 2025.
22. The Receiver immediately contacted the insurance broker utilized by the Debtors to: (i) confirm that insurance coverage was still in place and that all premiums had been paid up to date, which the insurance broker confirmed; (ii) advise of the receivership proceedings; (iii) request that the named insured and loss payee be changed to the Receiver; and (iv) provide confirmation that Cameron Stephens was an additional insured and loss payee. At the request of Cameron Stephens, the Receiver increased the commercial general liability coverage on the Toronto Property from \$2 million to \$5 million. The increased policy expires on November 7, 2024.

### 3.4 Statutory Notices

23. On June 22, 2023, the Receiver prepared the Notice and Statement of Receiver pursuant to section 245(1) of the Bankruptcy and Insolvency Act (the "**245 Notice**") to the known creditors of the Toronto property based on the materials filed by Cameron Stephens for the appointment of a Receiver. As stated above, the principal of the Debtors had passed away and neither Cameron Stephens nor the Receiver had contact information for anyone else employed by the Debtors.

### 3.5 Property Taxes

24. The Receiver contacted City of Toronto to ascertain the outstanding property taxes for the Toronto Property.
25. A summary of the outstanding property taxes in respect of the Toronto Property to the end of August 2024, which the Receiver intends to pay from the proceeds of sale of the Toronto Property, are set out below:

Description	Islington Avenue					Total
	2849	2851	2853	2855	2757	
Baliff Arrears	\$ 62,154.84	\$ -	\$ 3,814.18	\$ 4,815.88	\$ 3,313.86	\$ 74,098.76
City	23,465.39	37,088.13	21,786.14	23,024.99	23,024.99	128,389.64
<b>Total</b>	<b>\$ 85,620.23</b>	<b>\$ 37,088.13</b>	<b>\$ 25,600.32</b>	<b>\$ 27,840.87</b>	<b>\$ 26,338.85</b>	<b>\$ 202,488.40</b>

## 4.0 MARKETING AND SALES PROCESS

26. The Receiver engaged in a sales process for the Toronto Property, as described below.

### 4.1 Toronto Property

#### 4.1.1 Sales process

27. The Receiver invited eight commercial real estate brokers to submit proposals for the marketing and sale of the Toronto Property, including Colliers Macaulay Nicolls Inc., Brokerage (“**Colliers**”).
28. The Receiver received listing proposals from six of the eight brokerages and ultimately selected Colliers based on its significant experience in marketing undeveloped residential property.
29. On March 22, 2024, the Receiver entered into an MLS listing agreement with Colliers.
30. After discussion with Colliers, the Receiver set an offer deadline date of June 3, 2024 as Colliers indicated that the period between March 22, 2024 and June 3, 2024 was more than sufficient time to appropriately market the Toronto Property.

#### **4.1.2 Marketing efforts**

31. Colliers launched the listing on MLS on March 25, 2024 and a marketing campaign for the Toronto Property on April 4, 2024.
32. Colliers created and maintained an online data room in order to facilitate due diligence for prospective purchasers. Colliers drafted a form of confidentiality agreement for interested parties to execute in order to be given access to a virtual data room and perform due diligence (the “**Confidentiality Agreement**”).
33. In addition to listing the Toronto Property on MLS on March 25, 2024, Colliers undertook the following marketing activities for the Toronto Property:
  - (a) e-mails were sent to Colliers’ distribution list of approximately 3,000 parties, which emails contained a marketing brochure, a website link to Colliers’ webpage for the Toronto Property and a link to the Confidentiality Agreement; and
  - (b) an electronic data room was set up to provide access to confidential information pertaining to the Toronto Property to parties who executed the Confidentiality Agreement.

#### **4.1.3 Offers received**

34. Colliers received eighteen (18) signed Confidentiality Agreements from prospective purchasers or brokers, all of whom were given access to the electronic data room.
35. On June 3 2024, Colliers received 3 offers and a letter of intent for the Toronto Property. The Receiver reviewed the offers with Colliers and Cameron Stephens, in its capacity as secured lender and sole mortgagee of the Toronto Property. The Receiver requested of Colliers that it go back to the offerors that submitted bids on June 3, 2024 to ask them to resubmit their highest and best offers. Only one party submitted an amended offer.
36. After the second round of bidding, the Receiver determined that the offer from the Toronto Purchaser was the highest and best available offer and should be accepted. A summary of the offers received for the Toronto Property will be filed with the Court as **Confidential Appendix “1”**, under seal.

37. On June 12, 2024, the Receiver and the Toronto Purchaser entered into the Toronto APS which is now subject to the approval of the Court.

#### **4.1.4 The agreement of purchase and sale**

38. Salient terms of the Toronto APS and matters relating thereto include:
- (a) the purchased assets include the Toronto Property;
  - (b) the deposit to be provided under the APS has been received from the Toronto Purchaser;
  - (c) the offer is firm as the Toronto Purchaser did not have any conditions to closing except the issuance of the AVO (as defined below);
  - (d) the APS is conditional on Court approval and the issuance of an order vesting title to the Toronto Property in the Toronto Purchaser free and clear of claims and encumbrances, other than those specifically itemized in the APS (the “AVO”);
  - (e) the Toronto Purchaser is buying the Toronto Property on an “as is, where is” basis; and
  - (f) closing of the sale provided for in the APS is scheduled to occur within three days following the date on which the AVO is granted, or such other date as agreed between the Toronto Purchaser and the Receiver.
39. A copy of the Toronto APS, with the purchase price and deposit amount redacted, is attached hereto as **Appendix “D”**. An unredacted copy will be filed as **Confidential Appendix “2”** with the Court, under seal.

#### **4.1.5 Toronto Property sale approval**

40. The Receiver believes that the marketing process undertaken by Colliers and the Receiver was appropriate considering the nature of the Toronto Property. The Sale Process allowed for sufficient exposure to market for the Toronto Property for the following reasons, among others:
- (a) notice of the sale was sent to approximately 3,000 parties;

- (b) the Toronto Property was listed for sale on MLS for a period of approximately 10 weeks; and
  - (c) the Toronto Property was listed on Colliers' website.
41. Accordingly, based on the above, the Receiver is of the view that the market was widely canvassed and given the length of time on the market, it is unlikely that exposing the Toronto Property to the market for additional time will result in a superior transaction than the one contemplated by the Toronto APS.
42. The Receiver recommends the approval of the Toronto APS by the Court. The transaction contemplated by the Toronto APS provides for the greatest recovery available for the benefit of secured creditors in the circumstances, including Cameron Stephens as first mortgagee on the Toronto Property, as further discussed below. The Receiver understands that Cameron Stephens supports the completion of the transaction contemplated in the Toronto APS.

## 5.0 RECEIVER'S BORROWINGS

43. Pursuant to paragraph 20 of the Appointment Order, the Receiver was empowered to borrow up to \$500,000 at any time for the purpose of funding the exercise of the Receiver's powers and duties. The Appointment Order charged the Properties with a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but subordinate in priority to the Receiver's Charge (defined below) and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
44. To date, the Receiver has borrowed \$150,000 against the Kingston Property and \$100,000 against the Toronto Property. The Receiver issued Receiver's certificates (the "**Receiver's Certificates**") in respect of these borrowings.



## 6.0 SECURED CREDITORS

### 6.1 Toronto Property Secured Creditors

45. A copy of the parcel register searches for the Toronto Property was obtained from the Ontario Land Registry Office (collectively, the “**Toronto PIN Reports**”). Copies of the Toronto PIN Reports, dated June 3, 2024, are attached hereto as **Appendix “E”**.
46. The only creditor with a registered charge against the Toronto Property is Cameron Stephens, whose charge is for the registered amount of \$15,600,000.
47. The Receiver has obtained a legal opinion from its independent legal counsel opining that, subject to usual assumptions and qualifications, Cameron Stephens’ charge is a valid and enforceable first charge against the Toronto Property.

## 7.0 PROPOSED INTERIM DISTRIBUTION

### 7.1 Distribution of Toronto Property Proceeds

48. The Receiver intends to distribute the proceeds of sale (the “**Interim Distribution**”) upon closing the transaction for the Toronto Property as follows:
  - (a) payment to the City of Toronto for the property taxes owing on the Toronto Property of \$202,488.40, plus any further interest or fees at the time of closing;
  - (b) pay the remaining unpaid fees and disbursements of the Receiver (\$18,102.60) and Paliare Roland relating (\$4,316.60) to the Toronto Property, which fees and disbursements total \$22,419.20.
  - (c) repayment to Cameron Stephens of the Receiver’s borrowings of \$100,000 plus interest thereon to the date of payment in respect of the Receiver’s Borrowing Charge against the Toronto Property;
  - (d) payment to Colliers of the commissions owed to it upon the successful sale and closing of the Toronto Property;

- (e) retention of \$100,000 as a holdback for the further fees and disbursements of the Receiver and its counsel to close the sale of the Toronto Property and do all things necessary to wind up the receivership administration in respect of the Toronto Property; and
- (f) after obtaining a current payout statement from Cameron Stephens, payment to Cameron Stephens of the balance owed to it or, if the indebtedness to Cameron Stephens exceeds the remaining net proceeds, payment to it of the funds remaining from the proceeds of sale of the Toronto Property.

## **8.0 RECEIPTS AND DISBURSEMENTS**

- 49. The Interim R&D for the Toronto Property for the period from December 22, 2023 to July 15, 2024 sets out cash receipts of \$101,014, including advances made by Cameron Stephens against the Toronto Property totaling \$100,000 pursuant to the Receiver's Certificate against the Toronto Property, and cash disbursements of \$31,732, resulting in an excess of receipts over disbursements of \$69,282. A copy of the Interim R&D is attached as **Appendix "F"** to this report.

## **9.0 SEALING**

- 50. The Receiver respectfully requests that the Court seal Confidential Appendices 1 and 2 to this report, being the offer summary relating to the Toronto Property and an unredacted copy of the Toronto APS. The Receiver believes that the offer received and purchase price and deposit amounts contained in the APS for the Toronto Property should be kept confidential until the completion of sale efforts with respect to the Toronto Property.
- 51. The inclusion in the public record of the offer summary and an unredacted copy of the Toronto APS (which discloses the purchase price and deposit amounts) would be prejudicial to, among other things, the integrity of the sales process and any additional marketing efforts that may be needed for the Toronto Property if the sale transaction for the Toronto Property fails to close for any reason.
- 52. The sealing order sought is limited in time and will automatically expire upon the closing of the transaction contemplated in the Toronto APS or further order of the

Court. This will ensure that the offer and purchase price provided in the APS remains confidential until all sale efforts are completed. This is necessary and sufficient to reasonably protect the legitimate stakeholder interests in the circumstances.

53. A full copy of the Toronto APS is being publicly filed as Appendix “D” to this report, with the purchase price and deposit amounts redacted. As a result, the sealing order’s effect on the completeness of the public record, if any, will be minimal.

## **10.0 PROFESSIONAL FEES**


54. The Appointment Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver were granted a charge (the “**Receiver's Charge**”) on the Property, as security for such fees and disbursements. The Receiver's Charge is a first charge on the Properties in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
55. The Receiver’s accounts for the period from January 1, 2024 to June 30, 2024 total \$41,529.20 in fees and disbursements, plus HST of \$5,398.81, for a total amount of 46,928.01. A copy of the Receiver’s interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Arif Dhanani sworn on July 16, 2024 and attached as **Appendix “G”** to this report.
56. The accounts of the Receiver’s counsel, Paliare Roland, for the period from January 25, 2024 to June 28, 2024 total \$3,820.00 in fees and disbursements, plus HST of \$496.60 for a total amount of \$4,316.60. A copy of Paliare Roland’s interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Beatrice Loschiavo sworn on July 16, 2024 and attached as **Appendix “H”** to this report.

## **11.0 RECEIVER'S REQUEST OF THE COURT**

57. Based on the foregoing, the Receiver respectfully requests that the Court grant the orders described in paragraph 5 (h) above.

All of which is respectfully submitted to this Court as of this 16<sup>th</sup> day of July 2024.


**TDB RESTRUCTURING LIMITED**, solely in its capacity as Receiver of 311 Conacher Drive and 2849, 2851, 2853, 2855 and 2857 Islington Avenue and not in its personal or corporate capacity




Per:   
Arif Dhanani, CPA, CA, CIRP, LIT  
Managing Director

TAB 10



**TDB Restructuring Limited**  
Licensed Insolvency Trustee

11 King St. W, Suite 700   
Toronto, ON M5H 4C7

info@tdbadvisory.ca   
416-575-4440   
416-915-6228 

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**IN THE MATTER OF THE RECEIVERSHIP OF**  
**311 CONACHER DRIVE, KINGSTON, ONTARIO AND**  
**2849, 2851, 2853, 2855 AND 2857 ISLINGTON AVENUE, TORONTO, ONTARIO**

**SECOND REPORT OF THE RECEIVER**

**SEPTEMBER 26, 2024**

**Court File No. CV-23-00701672-00CL**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**BETWEEN:**

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**

**Applicant**

**-and-**

**CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC.**

**Respondents**

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## 1.0 INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on December 6, 2023, which order was effective December 22, 2023 (the “**Appointment Order**”), RSM Canada Limited was appointed receiver (the “**Receiver**”), without security, of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**” and together with the Kingston Property, the “**Properties**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. On March 1, 2024, the Court granted an order substituting TDB Restructuring Limited in place of RSM Canada Limited as Receiver (the “**Omnibus Order**”). A copy of the Omnibus Order is attached hereto as **Appendix “B”**.
3. On August 13, 2024, the Receiver entered into an agreement of purchase and sale with respect to the Kingston Property. As set out in greater detail below, the primary purpose of this report is to describe this proposed transaction and to request that this Court grant an order approving the same.
4. The Receiver retained the firm of Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”) as the Receiver’s independent legal counsel.
5. Terms not defined herein are defined in the Receiver’s report dated July 16, 2024 (the “**First Report**”). A copy of the First Report, without appendices, is attached hereto as **Appendix “C”**.
6. The Appointment Order, together with Court documents related to the receivership proceeding, has been posted on the Receiver’s website, which can be found at <https://tdbadvisory.ca/insolvency-case/311-conacher-drive-kingston-ontario2849-2851-2853-2855-and-2857-islington-avenue-toronto-ontario/>.

### 1.1 Purpose of Report

7. The purpose of this second report to Court (the “**Second Report**”) is to:

- (a) provide the Court with an update on the sale of the Toronto Property, which was approved by order of Justice Cavanagh on July 24, 2024;
- (b) specifically with respect to the Kingston Property:
  - i. report to the Court on the condition and status of the Kingston Property and the activities of the Receiver in connection therewith;
  - ii. report to the Court on the results of the sales process and activities leading to offers for the Kingston Property;
  - iii. providing to the Court support for the relief sought by the Receiver, namely the request for an approval and vesting order in respect of the Kingston Property, and the sealing of certain confidential information pending completion of the sale transaction for the Kingston Property. In addition to the information contained herein for the benefit of the creditors of the Respondents and other stakeholders, the Second Report is also intended to provide the Court with the following confidential information, for which a sealing Order is sought:
    - 1. a summary of the terms of all offers received for the Kingston Property;
    - 2. an unredacted copy of the executed Agreement of Purchase and Sale for the Kingston Property dated August 13, 2024 (the “**Kingston APS**”) between the Receiver and the purchaser of the Kingston Property, or its permitted assignee or as it may direct, as purchaser (the “**Kingston Purchaser**”);
- (e) provide the Court with information relating to the Receiver’s Borrowings Charge;
- (f) provide the Court with information relating to the secured creditors in respect of each of the Kingston Property;

- (g) provide the Court with a summary of the Receiver’s cash receipts and disbursements in respect of the Kingston Property for the period December 22, 2023 to September 18, 2024 (the “**Interim R&D**”);
- (h) request that the Court grant orders:
  - i. approving the Second Report and the activities of the Receiver set out herein;
  - ii. authorizing and directing the Receiver to enter into and carry out the terms of the Kingston APS, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Kingston Property in the Kingston Purchaser upon the closing of the purchase and sale transaction contemplated in the Kingston APS;
  - iii. approving the Proposed Interim Distribution of Proceeds (as defined below) from the sale of the Kingston Property;
  - iv. sealing Confidential Appendices 1 and 2; and
  - v. approving the fees and disbursements of the Receiver and of the Receiver’s independent counsel.

## **1.2 Terms of Reference**

8. In preparing the Second Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in the Second Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the

Receiver expresses no opinion or other form of assurance in respect of the Information.

9. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.

## **2.0 TORONTO PROPERTY UPDATE**

9. As set out in the First Report, the Receiver entered into a purchase and sale agreement with Lakeshore Luxe Design and Build Group Inc. in trust for 1000944028 Ontario Inc. (the “**Toronto Purchaser**”). Closing of the transaction with the Toronto Purchaser was scheduled for July 30, 2024.
10. On July 30, 2024, counsel to the Toronto Purchaser advised that a one-day extension was required to close the transaction. The Receiver agreed to same at no cost as a courtesy; however, it was agreed that any closing adjustments were to remain as at July 30, 2024.
11. On July 31, 2024, counsel to the Toronto Purchaser advised that an extension to August 9, 2024 was required in order to close the transaction with the Toronto Purchaser. The Receiver agreed to the request provided that closing adjustments remain as at July 30, 2024 and the Toronto Purchaser pay \$75,000 to offset additional interest on the indebtedness owed to Cameron Stephens as a result of the delay. The Toronto Purchaser agreed to these terms and paid the requested \$75,000, at which time the Toronto APS was revived and closing was extended to August 9, 2024.
12. On August 9, 2024, counsel to the Toronto Purchaser advised that an extension to August 16, 2024 was required in order to close the transaction. The Receiver agreed to the further extension request provided that closing adjustments remain as at July 30, 2024 and the Toronto Purchaser pay \$150,000 to offset the additional professional costs associated with the extensions to August 9<sup>th</sup> and August 16<sup>th</sup> and interest on the indebtedness owed to Cameron Stephens. The Toronto Purchaser agreed to the terms set out by the Receiver and paid the requested \$150,000, at

which time the Toronto APS was revived and closing was extended to August 16, 2024.

13. On August 16, 2024, counsel to the Toronto Purchaser advised that the Toronto Purchaser required an extension to August 21, 2024, however, the Toronto Purchaser intended to close the transaction sooner, if possible. The Receiver proposed the following extensions to which the Toronto Purchaser agreed: (i) to 2:00 pm on August 19, 2024 with no further payment; (ii) to 2:00 pm on August 20, 2024 for a further payment of \$75,000; and (iii) to 2:00 pm on August 21, 2024 for a further payment of \$100,000. Notwithstanding that the Toronto Purchaser agreed to the terms of the Receiver's extensions, it did not pay the funds required to extend the closing date to August 21, 2024.
14. Subsequently, the Receiver and its real estate counsel, Garfinkle Biderman LLP ("**Garfinkle Biderman**"), engaged in several discussions and exchanged correspondence with the Toronto Purchaser's litigation counsel, Tyr LLP, in an effort to obtain some comfort that the transaction for the Toronto Property would close imminently; however, nothing substantive was provided by either the Toronto Purchaser or its counsel regarding any time frame for receipt of funds from the Toronto Purchaser's lender or closing of the transaction.
15. On August 26, 2024, the Receiver and Garfinkle Biderman had a call with Cameron Stephens to discuss the status of the transaction and to recommend that the Toronto Purchaser be advised that the transaction had been terminated and to have Colliers remarket the property for sale. Upon Cameron Stephens' agreement, on August 27, 2024, Garfinkle Biderman sent a letter to Tyr LLP confirming same (the "**August 27<sup>th</sup> Letter**"). A copy of the August 27<sup>th</sup> Letter is attached hereto as **Appendix "D"**.
16. Colliers is currently re-marketing the Toronto Property for sale and Garfinkle Biderman has released the Purchaser's deposit and funds paid by the Toronto Purchaser for the extensions to August 9, 2024 and August 16, 2024 to the Receiver (the "**Forfeited Funds**").
17. The Receiver intends to use the Forfeited Funds to: (i) pay the professional fees of Paliare Roland, Garfinkle Biderman and the Receiver relating to the Toronto Property; (ii) repay the Receiver's Certificate in the amount of \$100,000 relating to

the Toronto Property; (iii) pay to Colliers its commission relating to the contemplated sale of the Toronto Property in accordance with the listing agreement executed by the Receiver; (iv) retain a holdback of \$100,000 for the additional professional fees costs of the Receiver and its counsel to do all things necessary to effect the sale of the Toronto Property; and (v) pay the balance to Cameron Stephens in respect of the amount owed to it.

### **3.0 RECEIVER'S ACTIVITIES**

#### **3.1 Contacting the Debtors**

18. The Receiver's efforts relating to its attempts to contact the Debtors are set out in the First Report.

#### **3.2 Possession, Security, Conservative and Protective Measures**

19. Subsequent to its appointment, the Receiver attended at the Kingston Property.
20. As a result of the size of the property, the Kingston Property did not have fencing around it. The Receiver observed, among other things, that:
- (a) 3 blocks, each consisting of 5 units, footings and foundation walls (poured concrete) were exposed to the elements;
  - (a) 2 blocks, each consisting of 5 houses with 95% of their exterior complete, interior walls and studding complete, plumbing partially complete and all electrical wiring, which appeared to have been completed and was then cut and removed from the site;
  - (b) 2 blocks, each consisting of 5 houses with exterior 95% complete, interior 80% complete, HVAC, electrical, plumbing, studding and drywall complete, partial kitchen and bathrooms installed and some flooring installed;
  - (c) certain of the built houses on the property had been broken into. Although no one was present at the time of the Receiver's attendance, it appeared that certain houses were being lived in by homeless individuals.

21. The Receiver implemented the following protective and conservatory measures in respect of the Kingston Property:
  - (a) closed all of the doors and windows that it was able to;
  - (b) boarded up all broken doors and windows;
  - (c) foundations were backfilled around the outside perimeter and bales of straw were placed around the inside perimeter of the foundation basements and tarped in order to try to preserve foundations and footings from the elements; and
  - (d) the Receiver has periodically attended at the Kingston Property to ensure that everything continues to be in order.

### **3.3 Insurance**

22. The Receiver's efforts with respect to ensuring the Kingston Property was insured, include: (i) contacting Cameron Stephens; (ii) its discussions with Mr. Kyriacopolous' widow; and (iii) subsequently contacting the insurance broker utilized by the Debtors are set out in the First Report. The Receiver notes that the insurance policy over the Kingston Property, which policy was for commercial general liability only, expired on August 12, 2024.
23. Based on its discussions with the Debtors' insurance broker, the Receiver came to learn that the structures on the Kingston Property were not insured. The Receiver informed Cameron Stephens of this and subsequently worked with the Debtors' insurance broker to obtain coverage over the various structures.
24. On the basis that the Kingston Property's commercial general liability insurance coverage expired on August 12, 2024, the Receiver sought and obtained an extension of same. In addition, the Receiver has insured the structures on the Kingston Property, which include the partially built townhouses as well as the exposed foundations. The commercial general liability policy and insurance coverage over the structures on the Kingston Property is in place up to July 12, 2025 at a cost of \$20,708 per month. While there may be a minimum retained premium for the



commercial liability policy, the cost of coverage over the structures on the Kingston Property is only for time on risk.

### **3.4 Statutory Notices**

25. On June 22, 2023, the Receiver prepared the Notice and Statement of Receiver pursuant to section 245(1) of the Bankruptcy and Insolvency Act (the “**245 Notice**”) to the known creditors of the Kingston Property based on the materials filed by Cameron Stephens for the appointment of a Receiver. As previously stated herein, the principal of the Debtors had passed away and neither Cameron Stephens or the Receiver had contact information for anyone else employed by the Debtors.

### **3.5 Property Taxes**

26. The Receiver contacted the City of Kingston to ascertain the outstanding property taxes for the Kingston Property.
27. On the basis that there are 260 roll numbers associated with the Kingston Property, the Receiver has not set out herein the property taxes payable on a roll-by-roll basis. The taxes payable to the City of Kingston total approximately \$1,350,000, which the Receiver intends to pay from the proceeds of sale of the Kingston Property.

### **3.6 City of Kingston Securities**

28. In or about May 2024, the Receiver was contacted by the City of Kingston, who advised that it held certain securities in relation to the Kingston Property as they relate to various agreements between the City of Kingston and Conacher Kingston Holdings Inc., as follows:
  - (a) \$1,333,782 – in respect of the subdivision agreement (no instrument registration number provided);
  - (b) \$100,000 – in respect of the model home agreement (registered as instrument no. FC299585); and
  - (c) \$141,390 – in respect of the pre-servicing agreement (registered as instrument no. FR267976).

29. The City of Kingston advised that the terms and conditions relating to the model home agreement and pre-servicing agreements had been fulfilled and that it would be amenable to releasing same to the Receiver upon receipt of a direction to do so from the Receiver. The City of Kingston further advised that the terms and conditions relating to the subdivision agreement had not been met and that it required the assumption of same by any purchaser of the Kingston Property as a condition of the Kingston APS. The Receiver has incorporated this condition into the Kingston APS.
30. On June 6, 2024, the Receiver, through its real estate counsel, issued a direction to the City of Kingston requesting release of the securities for the model home agreement and pre-servicing agreements. On or about July 4, 2024, the Receiver received and deposited to its trust account two cheques from the City of Kingston totaling together \$241,390.

## **4.0 MARKETING AND SALES PROCESS**

31. The Receiver engaged in a sales process for the Kingston Property as described below.

### **4.1 Kingston Property**

#### **4.1.1 Sales process**

32. The Receiver invited eight commercial real estate brokers to submit proposals for the marketing and sale of the Kingston Property, including Rogers & Trainor Commercial Realty Inc. (“**RTCR**”).
33. The Receiver received listing proposals from five of the eight brokerages and ultimately selected RTCR, with the concurrence of Cameron Stephens.
34. On March 25, 2024, the Receiver entered into an exclusive listing agreement with RTCR on a short-term basis to market the Kingston Property. The purpose of entering into a short-term exclusive listing agreement was to: (i) allow time for RTCR to contact the City of Kingston to obtain as much publicly available information as possible for its data room, prior to listing the property for sale on the multiple listing

service (“**MLS**”); and (ii) so that RTCR could deal with enquiries from interested parties on the Receiver’s behalf. On April 15, 2024, the Receiver entered into an MLS listing agreement with RTCR.

35. After discussion with RTCR, the Receiver set an offer deadline date of June 3, 2024 as RTCR indicated that the period between April 15, 2024 and June 3, 2024 was sufficient time to appropriately market the Kingston Property.

#### **4.1.2 Marketing efforts**

36. RTCR launched a marketing campaign for the Kingston Property on April 10, 2024.
37. The Receiver provided RTCR with a form of agreement of purchase and sale to be uploaded to the online data room maintained by RTCR, in order to facilitate purchaser due diligence. RTCR drafted a form of confidentiality agreement for interested parties to execute in order to be given access to a virtual data room and perform due diligence (the “**Confidentiality Agreement**”). The form of Confidentiality Agreement was reviewed and approved by Paliare Roland.
38. A summary of marketing activities undertaken by RTCR is set out below:
  - (a) brochures were mailed out along with the Confidentiality Agreement on a targeted basis;
  - (b) e-mails were sent to RTCR’s distribution list of approximately 7,000 parties;
  - (c) the Kingston Property was also listed on RTCR’s website and MLS; and
  - (d) an electronic data room was set up to provide access to confidential information pertaining to the Kingston Property to parties which had executed a confidentiality agreement.

#### **4.1.3 Offers received**

39. RTCR received twenty-eight (28) signed Confidentiality Agreements by prospective purchasers or brokers, all of whom were given access to the electronic data room.

40. On June 3, 2024, RTCR received two (2) offers for the Kingston Property. The Receiver reviewed the offers with RTCR and Cameron Stephens, in its capacity as secured lender and mortgagee of the Kingston Property. RTCR was subsequently contacted by the Kingston Purchaser, who advised that it was interested in submitting an offer, but did not do so on the basis that the principal of the Kingston Purchaser had only recently returned from being out of the country. The Receiver requested of RTCR that it go back to the offerors that submitted bids on June 3, 2024 to ask them to resubmit their highest and best offers and to request that the Kingston Purchaser submit its highest and best offer. Based on the offers submitted subsequent to June 3, 2024, the Receiver determined that the offer from the Kingston Purchaser is the highest and best available offer, given among other things current market conditions, and should be accepted. A summary of the offers received for the Kingston Property will be filed with the Court as **Confidential Appendix “1”**, under seal.
41. On June 19, 2024, the Receiver and the Kingston Purchaser entered into an APS, which was conditional on the Kingston Purchaser’s due diligence, which condition was to be waived or satisfied by July 9, 2024.
42. On July 9, 2024, the Kingston Purchaser, through its agent, advised that its due diligence condition had not been satisfied and that it would not be proceeding with the transaction. Garfinkle Biderman subsequently refunded the Kingston Purchaser’s deposit.
43. On July 16, 2024, the Receiver entered into a purchase and sale agreement (the “**Second APS**”) with an alternate purchaser (the “**Second Kingston Purchaser**”) for the Kingston Property, which agreement was also conditional on: (i) approval of the Receiver’s terms and conditions by the Second Kingston Purchaser’s counsel, which condition was to be waived or satisfied on or before July 30, 2024 (the “**Solicitor’s Condition**”); and (ii) financing, which condition was to be waived or satisfied on or before August 30, 2024 (the “**Financing Condition**”).
44. On July 30, 2024, the Second Kingston Purchaser’s agent advised that the Second Kingston Purchaser had not satisfied or waived the Solicitor’s Condition in relation

to the Second APS with the Receiver and that it was requesting an extension to same August 2, 2024.

45. On or about August 1, 2024, the Receiver, Garfinkle Biderman and counsel to the Second Kingston Purchaser had a discussion with regard to the various comments on the Second APS that were made by counsel to the Second Kingston Purchaser, which included a further extension to both the Solicitor's Condition and the Financing Condition.
46. Prior to finalization or agreement with the Second Kingston Purchaser on any amended terms and conditions to the Second APS, the Kingston Purchaser contacted RTCR to advise that it was willing to submit another offer for the Kingston Property. The Receiver indicated to RTCR that it was willing to entertain such offer.
47. Upon receipt and review of the revised unconditional signed offer from the Kingston Purchaser on August 14, 2024, the Receiver executed the Kingston APS. The Kingston APS is for a price that is higher than the Second APS.

#### **4.1.4 The agreement of purchase and sale**

48. Salient terms of the Kingston APS and matters relating thereto include:
  - (a) the purchased assets include the Kingston Property;
  - (b) the deposit to be provided under the APS has been received from the Kingston Purchaser;
  - (c) the offer is firm as the Purchaser has waived all conditions to closing except the issuance of the AVO (as defined below);
  - (d) the APS is conditional on Court approval and the issuance of an order vesting the Purchased Assets in the Purchaser free and clear of claims and encumbrances, other than those specifically itemized in the APS (the "AVO");
  - (e) the Purchaser is buying the Kingston Property on an "as is, where is" basis; and

- (f) closing of the sale provided for in the APS is scheduled to occur within the later of: (i) three days immediately following the date on which the AVO is granted, or the next business day; or (ii) October 2, 2024, or such other date as the Receiver and the Kingston Purchaser may mutually agree upon.
49. A copy of the Kingston APS, with the purchase price and deposit amount redacted, is attached hereto as **Appendix “E.”** An unredacted copy will be filed as **Confidential Appendix “2”** with the Court, under seal.

#### **4.1.5 Kingston Property sale approval**

50. The Receiver believes that the marketing process undertaken by RTCR and the Receiver was appropriate considering the nature of the Kingston Property. The Sale Process allowed for sufficient exposure to market for the Kingston Property, for the following reasons, among others:
- (a) notice of the sale was sent to more than 7,000 parties;
  - (b) the Kingston Property was listed for sale on MLS;
  - (c) the Kingston Property was listed on RTCR’s website;
  - (d) the property was listed exclusively for a period of 3 weeks and then exposed to the market on MLS thereafter for a period of approximately 7 weeks; and
  - (e) subsequent to the date upon which offers were due, the Kingston Property remained unsold and no other potential purchasers, other than the Kingston Purchaser, the Second Kingston Purchaser and one other party, approached the Receiver to advise of their interest in purchasing the Kingston Property.
51. Accordingly, based on the above, the Receiver is of the view that the market was widely canvassed and given the length of time on the market, it is unlikely that exposing the Kingston Property to the market for additional time will result in a superior transaction than the one contemplated by the Kingston APS.
52. The Receiver recommends the approval of the Kingston APS by the Court. The transaction contemplated by the Kingston APS provides for the greatest recovery

available for the benefit of the secured creditors in the circumstances, including Cameron Stephens as first mortgagee on the Kingston Property as further discussed below. The Receiver understands that Cameron Stephens supports the AVO and the completion of the transaction contemplated in the Kingston APS.

## 5.0 RECEIVER'S BORROWINGS

53. Pursuant to paragraph 20 of the Appointment Order, the Receiver was empowered to borrow up to \$500,000 at any time for the purpose of funding the exercise of the Receiver's powers and duties. The Appointment Order charged the Properties with a priority charge (the "**Receiver's Borrowings Charge**") subject only to the Receiver's Charge (defined below) and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
54. To date, the Receiver has borrowed and has issued Receiver's Certificates totaling \$150,000 against the Kingston Property. The Receiver issued Receiver's certificates (the "**Receiver's Certificates**") in respect of these borrowings.

## 6.0 SECURED CREDITORS

### 6.1 Kingston Property Secured Creditors

55. A copy of the parcel register searches for the Kingston Property was obtained from the Ontario Land Registry Office (collectively, the "**Kingston PIN Reports**"). There are over 200 PIN Reports relating to the Kingston Property. Sample copies of the PIN Reports for five (5) lots, dated June 3, 2024, are attached hereto as **Appendix "F"**.

*[remainder of page left blank intentionally]*

56. A summary of the creditor charges registered against the Kingston Property as set out in the Kingston PIN Reports is as follows:

<b>Date of Registration</b>	<b>Nature of Registration</b>	<b>Registrant</b>	<b>Amount</b>
2019/12/18	Charge	Cameron Stephens Mortgage Capital Ltd.	\$15,600,000
2020/10/23	Charge	2462686 Ontario Inc.	\$5,000,000
2022/11/03	Charge	2478659 Ontario Ltd.	\$8,500,000

57. The Receiver has obtained a legal opinion from its independent legal counsel opining that, subject to usual assumptions and qualifications, the mortgage held and registered by Cameron Stephens is a valid and enforceable first charge against the Kingston Property. The second and third mortgages, 2462686 Ontario Inc. and 2478659 Ontario Ltd., have not yet provided the Receiver with their security documentation as at the date of this report and as a result, counsel for the Receiver has been unable to complete its opinions on the validity, enforceability and priority of those charges against the Kingston Property.

## **7.0 PROPOSED INTERIM DISTRIBUTION**

### **7.1 Distribution of Kingston Property Proceeds**

58. Assuming that 2462686 Ontario Inc. and 2478659 Ontario Ltd. provide their security documentation to the Receiver and counsel to the Receiver opines that their security is valid and enforceable against the Kingston Property with priority in the order of registration, the Receiver intends to distribute the proceeds of sale upon closing the transaction for the Kingston Property in the following order of priority (such scheme of distribution being the “**Interim Distribution**”):

- (a) payment to the City of Kingston for the property taxes owing on the Kingston Property of approximately \$1,350,000, plus any further interest or fees at the time of closing;



- (b) pay any remaining unpaid fees and disbursements of the Receiver and its counsel relating to the Kingston Property.
  - (c) repayment to Cameron Stephens of the Receiver's borrowings of \$150,000 plus interest thereon to the date of payment in respect of the Receiver's Borrowing Charge in respect of the Kingston Property;
  - (d) payment to RTCR of the commissions owed to it upon the successful sale and closing of the Kingston Property;
  - (e) retention of \$150,000 as a holdback amount for the further fees and disbursements of the Receiver and its counsel to close the sale of the Kingston Property and do all things necessary to wind up the receivership administration in respect of the Kingston Property;
  - (f) payment to Cameron Stephens of the remaining amount owed to it in respect of its mortgage;
  - (g) payment to 2462686 Ontario Inc. of the lesser of: (i) the amount owed to it in respect of its mortgage; or (ii) the remaining proceeds from the sale of the Kingston Property; and
  - (h) payment to 2478659 Ontario Ltd. of the lesser of: (i) the amount owed to it in respect of its mortgage; or (ii) the remaining proceeds from the sale of the Kingston Property.
59. In the event that 2462686 Ontario Inc. and 2478659 Ontario Ltd. do not provide their security documentation to the Receiver or there is a defect with respect to their security and/or there are surplus funds remaining from the sale of the Kingston Property after making the entire Interim Distribution, the Receiver intends to attend in Court to obtain the advice and directions of the Court on the manner in which to distribute the remaining proceeds.

## **8.0 RECEIPTS AND DISBURSEMENTS**

60. The Interim R&D for the period from December 22, 2023 to September 18, 2024 sets out cash receipts of \$393,642, including advances made by the Cameron Stephens totaling \$150,000 pursuant to the Receiver's Certificates against the Kingston Property, and cash disbursements of \$206,243, resulting in an excess of receipts over disbursements of \$187,399. A copy of the Interim R&D is attached hereto as Appendix "G".

## **9.0 SEALING**

61. The Receiver respectfully requests that the Court seal Confidential Appendices 1 and 2 to this report, being the offer summary relating to the Kingston Property and an unredacted copy of the Kingston APS. The Receiver believes that the offer received and purchase price and deposit amounts contained in the APS for the Kingston Property should be kept confidential until the completion of sale efforts with respect to the Kingston Property.
62. The inclusion in the public record of the offer summary and an unredacted copy of the Kingston APS (which discloses the purchase price and deposit amount) would be prejudicial to, among other things, the integrity of sales process and any additional marketing efforts that may be needed for the Kingston Property if sale transaction for the Kingston Property fails to close for any reason.
63. The sealing order sought is limited in time and will automatically expire upon the closing of the transaction contemplated in the Kingston APS or further order of the Court. This will ensure that the offers and purchase price provided in the Kingston APS remains confidential until all sale efforts are completed. This is necessary and sufficient to reasonably protect the legitimate stakeholder interests in the circumstances.
64. A full copy of the Kingston APS is being publicly filed as Appendix "D" to this report, with the purchase price and deposit amounts redacted. As a result, the sealing order's effect on the completeness of the public record, if any, will be minimal.

## 10.0 PROFESSIONAL FEES

65. The Appointment Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver were granted a charge (the “**Receiver's Charge**”) on the Property, as security for such fees and disbursements. The Receiver's Charge is a first charge on the Properties in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
66. The Receiver’s accounts for the period from January 1, 2024 to August 31, 2024 total \$77,259.13 in fees and disbursements, plus HST of \$10,043.70, for a total amount of \$87,302.83. A copy of the Receiver’s interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Arif Dhanani sworn on September 19, 2024 and attached as **Appendix “H”** to this report.
67. The accounts of the Receiver’s counsel, Paliare Roland, for the period from January 25, 2024 to August 29, 2024 total \$16,584.38 inclusive of fees, disbursements and HST. A copy of Paliare Roland’s interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Beatrice Loschiavo sworn on September 17, 2024 and attached as **Appendix “I”** to this report.

*[remainder of page left blank intentionally]*

## 11.0 RECEIVER'S REQUEST OF THE COURT

68. Based on the foregoing, the Receiver respectfully requests that the Court grant the orders described in paragraph 7(h) above.

All of which is respectfully submitted to this Court as of this September 26, 2024.

**TDB RESTRUCTURING LIMITED**, solely in its capacity as Receiver of 311 Conacher Drive and 2849, 2851, 2853, 2855 and 2857 Islington Avenue and not in its personal or corporate capacity

Per:



Arif Dhanani, CPA, CA, CIRP, LIT  
Managing Director

## TAB 11

Court of Appeal File No. COA-24-CV-1328  
Court File No. CV-23-00701672-00CL

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**

**Applicant**

**and**

**CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC**

**Respondent**

**APPELLANT'S CERTIFICATE**

The Appellant, Arjun Anand in trust for a company to be incorporated, certifies that the following evidence is required for the Appeal, in the Appellant's opinion:

1. Motion Record of the Receiver dated November 25, 2024 containing *inter alia*, the Third Report of the Receiver dated November 25, 2024.
2. The Supplementary Motion Record of the Receiver dated November 29, 2024 containing the Supplement to the Third Report dated November 28, 2024.
3. The Third Supplement to the Third Report of the Receiver dated December 7, 2024.
4. The Third Affidavit of Simon Kronenfeld sworn December 3, 2024.

-2-

5. Affidavit of Simon Kronenfeld sworn December 3, 2024.
6. Affidavit of Simon Kronenfeld sworn December 8, 2024.
7. Affidavit of Karly Vande Weghe sworn December 3, 2024.
8. Affidavit of Jamie Erlick sworn December 3, 2024.
9. Third Affidavit of Jamie Erlick sworn December 8, 2024.
10. Affidavit of Vincent Zhang sworn December 2, 2024.

December 16, 2024

**TEPLITSKY LLP**

Barristers  
70 Bond Street  
Suite 200  
Toronto ON M5B 1X3

Jonathan Kulathungam (42049N)  
jkulathungam@teplitskyllp.com

Tel : (416) 365-9320  
Fax: (416) 365-0695

Lawyers for the Appellant, Arjun Anand  
in Trust for a Company to be Incorporated

TO: **SERVICE LIST**

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and- CONACHER KINGSTON HOLDINGS INC. AND 5004591  
 ONTARIO INC  
 Respondent

Court of Appeal File No. COA-24-CV-1328

Court File No. CV-23-00701672-00CL

***COURT OF APPEAL FOR ONTARIO***

PROCEEDING COMMENCED AT  
 TORONTO

**APPELLANT'S CERTIFICATE RESPECTING  
 EVIDENCE**

**TEPLITSKY LLP**

Barristers

70 Bond Street

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Lawyers for the Appellant, Arjun Anand  
 in Trust for a Company to be Incorporated

Parties served:

Service List



TAB 12

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**CAMERON STEPHENS MORTGAGE CAPITAL LTD.**

**Applicant/  
Respondent in Appeal**

and

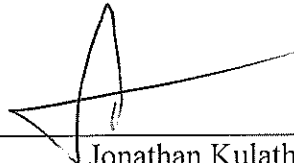
**CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC**

**Respondents/  
Respondents in Appeal**

**CERTIFICATE OF COMPLETENESS**

I, Jonathan Kulathungam, lawyer for the Appellant, Arjun Anand in Trust for a Company to be Incorporated, certify that the appeal book and compendium in this appeal is complete and legible.

January 23, 2025

  
\_\_\_\_\_  
Jonathan Kulathungam

-2-

**TEPLITSKY LLP**

Barristers

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Lawyers for the Toronto Purchaser/  
Appellant in Appeal

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

-and-

CONACHER KINGSTON HOLDINGS INC. AND 5004591

ONTARIO INC

Applicant

Respondent

Court of Appeal File No. COA-24-CV-

1328

Court File No. CV-23-00701672-00CL

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

**CERTIFICATE OF COMPLETENESS**

**TEPLITSKY LLP**

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Tel: (416) 365-9320

Appellant, Arjun Anand in Trust for a Company to be  
Incorporated

Parties served:

Service List

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant/Respondent in Appeal

-and- CONACHER KINGSTON HOLDINGS INC. AND 5004591  
ONTARIO INC

Respondent/Respondent in Appeal

Court of Appeal File No. COA-24-CV-1328

Court File No. CV-23-00701672-00CL

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

**APPEAL BOOK AND COMPENDIUM**

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Appellant, Arjun Anand in Trust for a Company to be  
Incorporated

Parties served:

Service List