

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

**RESPONDING SUBMISSIONS TO AJGL INC.'S AIDE MEMOIRE ON FORM OF
ORDER**

December 10, 2024

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Limited**

TO: Service List

A. Overview

1. The Receiver prepares these written submissions to respond to the aide memoire of AJGL Group Inc. and 1001079582 Ontario Inc. (together, “**AJGL**”), dated December 10, 2024.¹

2. For the reasons set out below, the Receiver takes no position on the inclusion of the draft language in the AVO proposed by AJGL (this language being “**Paragraph 6**”), but wishes to advise the court that:

- (a) In the Receiver’s view, this language is unnecessary. There is nothing in the AVO sought by the Receiver that decides any rights to the proceeds of the Toronto Property or the Kingston Property (beyond the contemplated distribution to Cameron Stephens);
- (b) While, at the urging of AJGL, Justice Cavanagh did include Paragraph 6 in his Order of July 24, 2024 (the “**July AVO**”), approving an earlier sale agreement in respect of the Toronto Property, Justice Cavanagh advised the parties in Court that he viewed Paragraph 6 as being unnecessary; and
- (c) Justice Black’s October 9, 2024 endorsement in connection with his approval of the sale of the Kingston Property explicitly recognized that the approval of that transaction was without prejudice to the right of parties to make submissions on the appropriate distribution of the proceeds of the

¹ This aide memoire adopts the definition of capitalized terms contained in the Receiver’s factum, unless defined otherwise.

Kingston Property and the Toronto Property following the completion of both of these sales. However, Paragraph 6 was not included in his Order of October 9, 2024 (the “**October AVO**”) approving the sale of the Kingston Property (suggesting that Paragraph 6 is unnecessary).

B. Background

1. July AVO

3. On July 24, 2024, the Receiver sought and obtained the July AVO in respect of the Toronto Property.² The transaction approved by the July AVO ultimately failed to close.

4. AJGL requested that Justice Cavanagh include Paragraph 6 in the July AVO to preserve 5004591 Ontario Inc.’s (“**500**”) rights to claim against Conacher Kingston Holdings Inc., the principal debtor whose debt 500 has guaranteed, and others through a variety of legal theories.³

5. At the July AVO hearing, Justice Cavanagh noted that he saw the language contained in Paragraph 6 as unnecessary but included it in the Order on the basis of agreement by the Receiver (which agreement was provided by the Receiver to facilitate the efficient resolution of the matter).

2. October AVO

6. On October 9, 2024, the Receiver sought and obtained the October AVO in connection with the sale of the Kingston Property.⁴ The October AVO did not include

² Cameron Stephens Mortgage Capital Ltd. v. Conacher Kingston Holdings Inc., CV-23-00701672-00CL ([Order of Justice Cavanagh, July 24, 2024](#)).

³ Cameron Stephens Mortgage Capital Ltd. v. Conacher Kingston Holdings Inc., CV-23-00701672-00CL ([Endorsement of Justice Cavanagh, July 24, 2024](#) at paras. 8-10).

⁴ Cameron Stephens Mortgage Capital Ltd. v. Conacher Kingston Holdings Inc., CV-23-00701672-00CL ([Order of Justice Black, October 9, 2024](#)).

Paragraph 6. As Justice Black noted in his endorsement in connection with the October AVO:

The order sought by the Receiver contemplates, after the distributions described above, the postponement of any further distributions to creditors pending the sale of the [Toronto Property]. So, **any excess proceeds from the sale of the Kingston Property will be held in trust by the Receiver until the [Toronto Property] is sold and stakeholders have an opportunity to make submissions about the appropriate distribution of both any surplus funds from the Kingston Property and the net proceeds of sale of the [Toronto Property]** [emphasis added].⁵

7. As this holding by Justice Black makes clear, the October AVO, and the AVO now being sought, do not determine any parties' entitlement to the proceeds of either the Kingston Property or the Toronto Property (beyond distribution of the proceeds of the same to Cameron Stephens). The AVO does not in any way restrict any party's entitlement to raise an issue with respect to the appropriate distribution of these proceeds (regardless of whether the AVO includes Paragraph 6).

C. Receiver's Position

8. As a result of the foregoing, the Receiver is of the view that Paragraph 6 is unnecessary but does not object to its inclusion in the AVO it now seeks. Paragraph 4 of the AVO now sought by the Receiver makes it clear that the net proceeds of the Toronto Property stand in the place of the Toronto Property, for the purposes of determining the nature and priority of claims against the Toronto Property.⁶

9. No other language is required to preserve the rights of AJGL, or any other party, to, at a later date, argue about the appropriate distribution of the proceeds of the Toronto Property and the Kingston Property following distribution to Cameron Stephens.

⁵ Cameron Stephens Mortgage Capital Ltd. v. Conacher Kingston Holdings Inc., CV-23-00701672-00CL ([Endorsement of Justice Black, October 9, 2024](#) at para. 24).

⁶ Draft Order of the Receiver, para 4 ([Master E395](#)).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of December, 2024

A handwritten signature in blue ink, appearing to be 'JL' or 'RS', written in a cursive style.

Jeffrey Larry / Ryan Shah

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