

Court of Appeal File No. COA-24-CV-13328
Court File No. CV-23-00701672-00CL

COURT OF APPEAL FOR ONTARIO

In the Matter of Section 243(1) of the Bankruptcy and Insolvency Act, RSC 1985, c. B-3 as amended and Section 101 of the Courts of Justice Act R.S.O. 1990 c. 43 as amended

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/
Respondents in Appeal

COMPENDIUM OF THE RECEIVER

April 29, 2025

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TO: SERVICE LIST

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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

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 31st Endorsement**”) and granted the Kingston AVO. A copy of the October 31st 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-islington-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

APPENDIX A



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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
ONTARIO

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

B E T W E E N:

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.



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

Tel: 416-869-1234

Lawyers for the Applicants,

Cameron Stephens Mortgage Capital Ltd

File #6243-081.

APPENDIX B

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM)	FRIDAY, THE 1 ST
)	
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 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.

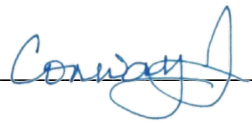
15. **THIS COURT ORDERS** that the requirement for a separate Notice of Motion and supporting Affidavit to be filed in the Court file of each of the Substituted Mandates be and is hereby waived.

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.



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

Name	Court / OSB Number
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

Name	Court Number
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

Name	Court Number
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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

O R D E R

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Barristers and Solicitors
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APPENDIX D



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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 9th and August 16th 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 27th Letter**"). A copy of the August 27th 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"**.

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

Date of Registration	Nature of Registration	Registrant	Amount
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 mortgagees, 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.

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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

APPENDIX E



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00701672-00CL **DATE:** OCTOBER 9, 2024

NO. ON LIST: 5

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:**

Name of Person Appearing	Name of Party	Contact Info
Wendy Greenspoon-Soer Counsel	Cameron Stephens Mortgage Capital Ltd.	wgreenspoon@garfinkle.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Paul H. Starkman Calvin Zhang Counsel	2478659 Ontario Ltd.	paul@starkmanlawyers.com calvin@starkmanlawyers.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Dan Murdoch Nick Avis Counsel	Ron Barbaro	dmurdoch@stikeman.com navis@stikeman.com
Samuel Mosonyi Counsel	Elena Terpselas, in her Capacity as Estate Trustee of the Estate of Nicholas Kyriacopoulos	smosonyi@robapp.com

Paul F. Rooney Dale Denis Counsel	AJGL Group Inc.	rooney@paulfrooneyprofcorp.com dale@dilitigation.com
Ryan Taylor Counsel	Issam A. Saad and 2858087 Ontario Inc.	rtaylor@cmbllaw.ca
Raffaele Sparano Counsel	2468659 Ontario Inc.	rsparano@himprolaw.com
Arif Dhanani Bryan Tannenbaum	TDB Restructuring Limited	adhanani@tdbadvisory.ca btannenbaum@tdbadvisory.ca
Douglas Montgomery Jeff Larry Counsel	TDB Restructuring Limited	douglas.montgomery@paliareroland.com jeff.larry@paliareroland.com

ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] This was a motion brought by TDB Restructuring Limited in its capacity as the court-appointed receiver (the “Receiver”) of the lands and premises known municipally as 311 Conacher Drive, Kingston, Ontario (the “Kingston Property”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “Islington Property”) and together with the Kingston Property, the “Properties”) for, among other things, the approval of the sale of the Kingston Property.
- [2] More particularly, the Receiver seeks orders:
- (a) Approving the sale transaction (the “Transaction”) for the Kingston Property contemplated by the asset purchase agreement between the Receiver and 2349891 Ontario Inc. (the “Kingston Purchaser”) dated August 13, 2024 (the “APS”).
 - (b) Following the Receiver’s delivery of the Receiver’s certificate (substantially in the form at Schedule A to the proposed Approval and Vesting Order (the “AVO”), transferring and vesting all of Conacher Kingston Holdings Inc. (the “Debtor”)’s right, title, and interest in and to the Kingston Property to Crestmount Developments (Kingston) Limited, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances.
 - (c) Approving the Proposed Interim Distribution (as defined in the materials).
 - (d) Approving the Second Report of the Receiver dated September 26, 2024, and the Receiver’s activities described therein, as well as the fees and disbursements of the Receiver and its counsel as detailed in the Second Report and in two affidavits filed herein.
 - (e) Sealing Confidential Appendices 1 and 2 to the Second Report; and
 - (f) Approving the Receiver’s Statement of Receipts and Disbursements described in the Second Report.
- [3] With the exception of certain concerns discussed below, which in my view do not constitute reasons to prevent or delay the Transaction, the Transaction is essentially unopposed. In my view the process and

efforts undertaken by the Receiver easily meet the well-established criteria under *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ONCA).

- [4] The evidence amply demonstrates that the Kingston Property was well-exposed to the market through, among other steps, distribution of promotional brochures to over 7000 potential purchasers and a public MLS listing for approximately seven weeks. An initial potential deal fell by the wayside, and the Receiver renewed its efforts and attracted (or confirmed) additional interest.
- [5] The Receiver received two offers for the Kingston Property by the Bid Deadline, in addition to the offer from the Kingston Purchaser giving rise to the Transaction.
- [6] The only condition for closing is the issuance of the AVO sought on this motion.
- [7] It is clear to me that the Receiver has made a robust effort to get the best price for the Kingston Property, and has not acted improvidently, and I see nothing to suggest that the process has been in any way unfair.
- [8] The only opposition to the Transaction came, first, from counsel to the putative second mortgagee on the Kingston Property, 2462686 Ontario Inc. ("286") who raised, reasonably, a question as to whether a particular party who had previously expressed an interest in purchasing the Kingston Property had been approached. The Receiver provided a supplement to its Second Report confirming that indeed there had been communications with the agent for that party, from which no bid had resulted.
- [9] Appropriately, in light of receiving that information, counsel for 286 expressly withdrew the concern.
- [10] A second set of alleged concerns were voiced by counsel for the putative third mortgagee on the Kingston Property, 2478659 Ontario Ltd. ("247"). (I use the word "putative" with respect to mortgages of 246 and 247 inasmuch as, despite numerous requests from the Receiver, neither has yet provided documentation proving the validity of their respective charges. Both say they expect to do so, but for the moment at least some question has been raised about their mortgage security which remains to be resolved).
- [11] I regard the concerns raised by 247 as insubstantial and bordering on inappropriate. The concerns were in the nature of suggesting that, for example, although the Receiver reported that it had sent brochures to 7000 potential purchasers it had not in its materials identified the 7000 recipients or provided relevant details about them. Other similarly unconvincing concerns were raised. 247 also suggested that there was no evidence that the broker had a "for sale" sign in place on the Kingston Property; in response the Broker quickly confirmed that it had and offered photographic evidence (which I did not need to see to accept the Broker's confirmation). In my view 247's arguments in this vein were in the nature of "throwing everything against the wall in the hope that something would stick." As a more troubling part of this offensive, counsel for 247 even went so far as to allege that the Receiver had engaged in "double counting" in respect of its fees.
- [12] Any party asserting such allegations against an officer of the court has, in my view, a duty to provide precise and compelling evidence to substantiate them. The processes involved in insolvency matters before this court are important, and often subject to time constraints and other pressures, and this court relies heavily on the professionalism and integrity of the court-appointed professionals who assist the court in these proceedings.

- [13] That is not to say that the Receiver (or any other court officer) is above scrutiny or reproach. However, such allegations must not be made lightly, and must be based in clear evidence.
- [14] In my view 247's allegations are not supported by the evidence in this record and were and are not reasonable allegations to make. I see nothing to suggest that the receiver has conducted itself with anything less than its usual level of diligence and professionalism.
- [15] I am satisfied that the Transaction is for the benefit of the relevant stakeholders and, as noted, in compliance with the Soundair principles, and I approve it. I also agree with the need for the Confidential Appendices to be sealed (in accordance with Sherman Estate and Sierra Club) and so order.
- [16] The other issues raised before me related to issues about the proposed distribution of funds.
- [17] Cameron Stephens Mortgage Capital Ltd. ("Cameron Stephens") is, undisputedly, the first mortgagee on both the Kingston Property – for which it provided first mortgage financing to Conacher Kingston Holdings Inc. ("Conacher Kingston") – and on the Islington Property – for which it provided first mortgage financing to 5004591 Ontario Inc. ("500", and together with Conacher Kingston, the "Debtors").
- [18] The Receiver proposes, after payments of property taxes to the City of Kingston, payment of its fees and those of its counsel, payment of the Receiver's borrowings relating to the Kingston Property, payment to the broker of its commissions and retaining a holdback for further fees and disbursements to pay to Cameron Stephens the remaining amount owed to it in respect of the indebtedness secured by its first mortgage on the Kingston Property (and the Receiver expects that Cameron Stephens indebtedness will be fully repaid from those net proceeds).
- [19] With respect to the second and third mortgagees, 246 and 247, as noted the Receiver remains to be satisfied that these parties have valid charges against the Kingston Property.
- [20] On the assumption that 246 and 247 will demonstrate that their respective security is valid and enforceable, the Receiver then proposed to make the following further distributions:
- (a) Payment to 246 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
 - (b) Payment to 247 of the lesser of:
 - i. The amount owed to it in respect of the mortgage; or
 - ii. The remaining proceeds from the sale of the Kingston Property.
- [21] In the ordinary course, this proposed approach to distribution appears unassailable.
- [22] However, 247 in particular, and 246, make arguments arising in relation to the Islington Property, and in particular the ownership of the Islington Property. That is, and the premise for the "marshalling" argument discussed below, Conacher Kingston and 500 were each owned by the late Nick Kyriacopoulos.

- [23] I should note in passing that, in July of 2024 the Receiver brought a motion to approve the sale of the Islington Property. The motion was granted, but the purchaser ultimately failed to close the purchase, as a result of which the Islington Property was re-listed.
- [24] 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 Islington Property. So, any excess proceeds from the sale of the Kingston Property will be held in trust by the Receiver until the Islington 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 Islington Property.
- [25] Notwithstanding this proposed approach, 247 has now brought a motion for a declaration that the “doctrine of marshalling be applied to require Cameron Stephens to realize on its security against the [Islington Property].” 247 also seeks an order requiring the Receiver to maintain the sale proceeds from the Kingston Property and the Islington Property in separate accounts, and that Cameron Stephens’ mortgage on the Islington Property not be discharged.
- [26] The Receiver opposes the relief sought by 247, noting that both Conacher Kingston and 500 have covenanted to Cameron Stephens to repay the full amount of their debt, as secured by the first mortgage, in each case that Cameron Stephens holds, on the respective properties.
- [27] The Receiver cites at least four reasons why the proceeds of sale of the Kingston Property ought not to be held back.
- [28] First, as noted, there is no dispute about the validity of Cameron Stephens’ charges over the properties, nor that Cameron Stephens is the first mortgagee in each case. The Receiver points to authority for the proposition that, even if the doctrine of marshalling is applicable, a fundamental principle of the doctrine is that “nothing will be done to interfere with the paramount right of the first mortgagee to pursue his remedy against either of the two estates.” (807933 Ontario Inc. v. Allison (Trustee of) (1995) 22 O.R. (3d) 102 (Gen. Div.), appeal dismissed (1998) 38 O.R. (3d) 337 (C.A.).
- [29] As such, the Receiver persuasively argues, the right of a junior creditor to invoke the marshalling doctrine is subject to the important qualification that nothing will be done to interfere with the ability of the first mortgagee to pursue its remedy against either of the two estates. The first mortgagee does not become a trustee for the junior mortgagees (*First Investors Corp. v. Veeradon Developments Ltd.* (1988), ABCA 38 (CanLII)). In this case, the Receiver asserts, requiring Cameron Stephens to postpone realization on its security would in fact prejudice its “paramount” right to pursue its remedy against either of the two estates.
- [30] Second, the Receiver takes issue with 247’s reliance on *Re Allison* (on which the Receiver also relies). The Receiver points out that the motions judge in that case concluded that “the applicants are not entitled to invoke the doctrine of marshalling” on the basis that the applicant was not a secured creditor.” Moreover, as was pointed out by counsel for the owner of the Islington Property, who was present in court, the specific aspect of the motions judge’s decision in *Re Allison* on which 247 specifically relied in argument was expressly overturned by the Court of Appeal for Ontario.
- [31] The Receiver notes that, even if the doctrine of marshalling applies – in respect of which it takes no position – the result would still be to pay down Cameron Stephens’ debt in full from the Kingston

Property sale, and subsequently allow 246 and/or 247 to argue that they have the right to marshal into the Islington Property, which is precisely what the Receiver's proposed approach will allow to happen.

- [32] The Receiver's third point is that the indebtedness owed to Cameron Stephens and the other creditors continues to grow as a result of the accrual of interest, such that the sooner its debt is satisfied the more money will be available for the satisfaction of other debts. On the other hand, reducing the amount of proceeds available to satisfy the claims of multiple creditors is in none of the stakeholders' interest.
- [33] Finally, the Receiver notes that creditors who assert claims, albeit unsecured, against proceeds from the Islington Property may similarly argue that Cameron Stephens' indebtedness ought to be repaid out of the Kingston Property first. In fact, those very arguments were raised in July 2024 when the Receiver sought approval of the sale of the Toronto Property.
- [34] I am persuaded by these submissions. In my view the doctrine of marshalling, even if it applies, does not assist the second and third mortgagees (246 and 247) here.
- [35] The Receiver's proposed approach to distribution in fact preserves whatever rights these parties (and others) may have to share in the proceeds of sale (of the two properties).
- [36] Moreover, it remains the case that 246 and 247 have yet to prove the validity of their respective charges (and counsel for the owner of the Islington Property maintains that they will be unable to do so). While I would not uphold the argument of 246 and 247 in the circumstances at hand in any event, I would be all the more loath to do so when the validity of their respective charges remains unproved.
- [37] As noted, and for these additional reasons, I am granting the orders sought by the Receiver, signed copies of which are attached, and dismissing the motions of 246 and 247.



W.D. BLACK J.

DATE: OCTOBER 9, 2024

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	WEDNESDAY, THE 9 TH DAY
)	
JUSTICE W.D. BLACK)	OF OCTOBER, 2024

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by TDB Restructuring Limited in its capacity as the Court-appointed receiver (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") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and 2349891 Ontario Inc. (the "Purchaser") dated August 13, 2024 and appended to the Report of the Receiver dated September 26, 2024 (the "Second Report"), and vesting in the Purchaser or as it directs, Conacher Kingston

Holdings Inc. (the "**Debtor**")'s right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver and the other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the Lawyer's Certificate of Service of Douglas Montgomery, dated October 2, 2024, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to Crestmount Developments (Kingston) Limited.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in Crestmount Developments (Kingston) Limited, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the

foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Conway dated December 6, 2023 (and effective December 22, 2023); (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office No. 13 of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to enter Crestmount Developments (Kingston) Limited as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been

sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS that, upon closing of the Transaction, the Receiver is authorized and directed to distribute the net proceeds from the sale of the Purchased Assets in the following order of priority (such scheme of distribution being the “Interim Distribution”):

- (a) Payment to the City of Kingston, in respect of property taxes owing by the Debtor in connection with the Kingston Property;
- (b) Payment to the Receiver and its counsel, in respect of remaining unpaid fees and disbursements in connection with the Kingston Property;
- (c) Payment to Cameron Stephens Mortgage Capital Ltd. (“CS”), in respect of amounts loaned to the Receiver pursuant to the Receiver’s Borrowing Charge in connection with Kingston Property;
- (d) Payment to Rogers & Trainor Commercial Realty Inc., in respect of commissions owed to it upon the successful closing of the Transaction;
- (e) Retention of \$150,000 by the Receiver as a holdback amount for the further fees and disbursements of the Receiver and its counsel to do close the sale of the Kingston Property and to do all things necessary to wind up the administration of the receivership of the Kingston Property; and

- (f) Payment to CS, in respect of the remaining amount owed to it in connection with its mortgage registered on title to the Kingston Property.

6. THIS COURT ORDERS that, to the extent that there remain net proceeds from the sale of the Purchased Assets following the Interim Distribution (these funds being the “Surplus Funds”), the Receiver shall hold the Surplus Funds pending further order of the Court.

7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in Crestmount Developments (Kingston) Limited pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor

shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. 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.

A handwritten signature in blue ink, appearing to read "M. D. B.", is written over a horizontal line.

Schedule A – Form of Receiver’s Certificate

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

RECEIVER’S CERTIFICATE

RECITALS

- (a) Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the "Court") dated December 6, 2023 (and effective December 22, 2023), TDB Restructuring Limited was appointed as the receiver (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").

- (b) Pursuant to an Order of the Court dated October 9, 2024, the Court approved the agreement of purchase and sale made as of August 13, 2024 (the "Sale Agreement") between the Receiver and the Purchaser and provided for the vesting in Crestmount Developments (Kingston) Limited of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
- (c) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in section 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**TDB Restructuring Limited, in its
capacity as Receiver of the Properties,
and not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

PIN Range Nos. 36061-0475 to 36061-0730

Lots 1 to 256, all inclusive, Plan 13M135

PIN Range Nos. 36061-0731 to 36061-0734

Blocks 257 to 260, all inclusive, Plan 13M135

Schedule C – Claims to be deleted and expunged from title to Real Property

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
FC294966	2019/12/18	CHARGE	\$15,600,000	CONACHER KINGSTON HOLDINGS INC.	CAMERON STEPHENS MORTGAGE CAPITAL LTD.
FC312121	2020/10/23	CHARGE	\$5,000,000	CONACHER KINGSTON HOLDINGS INC.	2462686 ONTARIO INC.
FC312122	2020/10/23	NO ASSGN RENT GEN		CONACHER KINGSTON HOLDINGS INC.	2462686 ONTARIO INC.
FC319869	2021/02/25	POSTPONEMENT		2462686 ONTARIO INC.	CAMERON STEPHENS MORTGAGE CAPITAL LTD.
FC362038	2022/11/03	CHARGE	\$8,500,000	CONACHER KINGSTON HOLDINGS INC.	2478659 ONTARIO LTD.
FC384851	2024/03/22	NOTICE		STERLING CAPITAL CORP.	
FC388266	2024/06/11	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	RSM CANADA LIMITED
FC388269	2024/06/11	APL AMEND ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	RSM CANADA LIMITED

Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property
(unaffected by the Vesting Order)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
FR143249	1964/01/23	BYLAW			
FR210365	1971/05/27	BYLAW			
FR656866	1996/10/31	AGREEMENT	\$1		THE CITY OF KINGSTON
FR673613	1997/10/01	BYLAW			
FC267976	2018/09/18	NOTICE		THE CORPORATION OF THE CITY OF KINGSTON	CONACHER KINGSTON HOLDINGS INC.
FC271067	2018/11/05	BYLAW		THE CORPORATION OF THE CITY OF KINGSTON	
FC299585	2020/03/19	NOTICE		THE CORPORATION OF THE CITY OF KINGSTON	CONACHER KINGSTON HOLDINGS INC.
13M135	2021/06/15	PLAN SUBDIVISION			
13R22461	2021/06/18	PLAN REFERENCE			
FC328512	2021/06/28	NO SUB AGREEMENT		THE CORPORATION OF THE CITY OF KINGSTON	CONACHER KINGSTON HOLDINGS INC.
FC328513	2021/06/28	TRANSFER EASEMENT	\$1	CONACHER KINGSTON HOLDINGS INC.	THE CORPORATION OF THE CITY OF KINGSTON

FC329305	2021/07/07	TRANSFER EASEMENT	\$1	CONACHER KINGSTON HOLDINGS INC.	KINGSTON HYDRO CORPORATION
FC356034	2022/07/28	PLAN CORRECTION		ASSISTANT EXAMINER OF SURVEYS	

TAB 2



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

IN THE MATTER OF THE RECEIVERSHIP OF

311 CONACHER DRIVE, KINGSTON, ONTARIO AND

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

THIRD SUPPLEMENT TO THE THIRD REPORT OF THE RECEIVER

DECEMBER 7, 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. TDB Restructuring Limited (the “**Receiver**”), in its capacity as receiver over the real property known municipally as 311 Conacher Drive, Kingston Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”), filed its Third Report to the Court dated November 25, 2024 (the “**Third Report**”) in connection with a motion by the Receiver seeking, inter alia, an order approving the sale of the Toronto Property.
2. The Receiver filed its supplement to the Third Report to the Court dated November 28, 2024 (the “**Supplement to the Third Report**”).
3. The Receiver filed its confidential second supplement to the Third Report to the Court dated December 3, 2024 (the “**Confidential Second Supplement to the Third Report**”).

1.1 Purpose of Report

4. The purpose of this third supplement to the Third Report (the “**Third Supplement to the Third Report**”), is to:
 - (a) provide the Court with the Receiver’s comments and observations and information in relation to:
 - i. materials filed with the Court from various parties and specifically:
 1. the affidavit of Jamie Erlick sworn December 3, 2024 (the “**Erlick Affidavit**”);
 2. the affidavit of Simion Kronenfeld sworn December 3, 2024 (the “**Kronenfeld Affidavit**”; and
 3. an email from Mr. Dale Denis dated December 5, 2024 in which he indicates that the Kronenfeld Affidavit will be revised to reflect the additional costs to renovate the houses based on an individual’s attendance at the Toronto Property (the “**Kronenfeld Email**”).

4. an email exchange between counsel for the Receiver and Mr. Dale Dennis regarding the attendance at the Toronto Property by an individual on December 5, 2024, who conducted an inspection as referenced in Mr. Dale Denis' email of December 5, 2024 (the "**Inspection Email Exchange**");
 - ii. a further offer received by the Receiver on December 6, 2024.
- (b) seek an Order of the Court approving the Third Supplement to the Third Report and the Receiver's conduct and activities described therein.
5. The Third Supplement to the Third Report should be read in conjunction with the Third Report and the Supplement to the Third Report, including the Terms of Reference set out therein.
6. Unless otherwise defined, the defined terms in the Third Supplement to the Third Report have the same definitions as set out in the Third Report and the Supplement to the Third Report.

2.0 THE PROPERTY WAS MARKETED APPROPRIATELY

7. Mr. Erlick appears to suggest that the Toronto Property ought to have been marketed as five separate lots rather than as a whole.
8. At the outset of the sales process, the Receiver, in consultation with its agent Colliers, considered the highest and best use for the Toronto Property and in reliance on Colliers' expertise, determined that an 'en bloc' sale was most appropriate. The Receiver (and Colliers) maintain that this was the best way to market the Toronto Property.
9. In support of Mr. Erlick's bald contention otherwise, at paragraphs 10 – 17 of the Erlick Affidavit, a copy of which is attached hereto as **Appendix "A"**, Mr. Erlick states, among other things, that:
 - (a) a minimal amount of work would be needed to make each of the 5 houses comprising the Toronto Property liveable;

- (b) the Properties were marketed exclusively as a bulk sale, despite their apparent suitability for individual sale in the strong Toronto residential market and that the Properties might have been sold for undervalue;
 - (c) by grouping the Properties into a single sale, the Receiver limited the pool of prospective buyers to investors and developers;
 - (d) in Mr. Erlick's opinion, individually, he believes the floor price for each individual unit to be at least \$800,000, or a total of \$4,000,000;
 - (e) based on Mr. Erlick's analysis of market conditions, the Properties' characteristics, and recent comparable sales data, selling the units individually would have: (1) maximized exposure to the more competitive individual market, (2) attracted end-user buyers willing to pay premiums for ready-to-occupy homes (with minimal work required to make the Properties liveable), and (3) would demonstrate the aggregate minimum sale price of all the properties combined; and
 - (f) with respect to efforts to target developers, in Mr. Erlick's view an exposure time of four weeks to relist the Properties for sale is not sufficient.
10. Mr. Erlick's statement that a minimal amount of work would be required to make each of the 5 houses liveable is completely erroneous given that the dwellings are dilapidated and totally uninhabitable. Attached hereto as **Appendix "B"** are photographs of the condition of the interior of the 5 houses which make clear that a significant amount of work will be required simply to make the houses habitable (let alone desirable for a sale). The condition of the dwellings, and the cost to make them habitable, is discussed in greater detail below.
11. Upon reviewing the Erlick Affidavit, the Receiver contacted Colliers with a request for it to comment on the market conditions, target market and other comments made by Mr. Erlick to which a real estate expert's views would be most valuable. Colliers provided the Receiver with a report (the "**Colliers Report**"), a copy of which is attached hereto as **Appendix "C"**, which sets out, among other things, that:

- (a) Colliers confirmed its initial recommendation to the Receiver (as set out in its listing proposal) that the Property be sold 'en bloc' as, in Colliers' view, the highest and best use for the Property was as a combined development site. Colliers also has serious doubts that the individual lots would sell for \$800,000 per lot;
- (b) Colliers determined at the time of the initial listing that fully-renovated semi-detached homes in the immediate area had sold recently between approximately \$980,000 and \$1,050,000. That said, the transactions Colliers identified were not on Islington Avenue which is a busy street; accordingly, the comparable properties were superior to the Toronto Property. Colliers also reviewed older detached houses, as well as partially-renovated and renovated detached houses that sold in the immediate area (off Islington Avenue) and they all sold between \$950,000 and \$1,325,000. Finally, new and '0-5' year old custom built semi-detached and detached homes in the area sold for between \$1,545,000 and \$1,840,000;
- (c) given the end sale prices of renovated homes in the area (i.e. between \$950,000 - \$1,325,000 for more desirable locations off Islington Avenue, with the high end being achievable for detached homes), it is unlikely that a builder would incur the risk of acquiring the individual lots for \$800,000 per lot when considering all of the hard and soft costs and other contingencies and risks inherent in undertaking a substantial renovation; and
- (d) in Colliers' view, a total demolition of the homes, as an alternative to renovation, would be even more costly and less attractive to a potential buyer. A builder would need to build large homes (of between 2,500 and 3,500 square feet), with finished basements, in order to sell for between \$1,545,000 and \$1,840,000. The cost of this construction alone would be approximately \$600,000 - \$750,000 (based on the lowest end of the cost range per square foot provided by Altus' 2024 Canadian Cost Guide) plus soft costs. Accounting for an appropriate risk-adjusted profit margin, a builder would have to purchase each lot for significantly less than \$800,000 per lot and would likely be a riskier, less profitable venture than fully renovating the existing homes.

12. Finally, as the Court is aware, the duration of the Receiver's initial sale period was 10-weeks and its subsequent re-marketing of the Toronto Property was 4-weeks for a total of 14 weeks. Further details of the Receiver and Colliers' efforts in respect of the sale of the Toronto Property can be found in the First Report and the Third Report and are not repeated herein. Mr. Erlick's comment regarding the insufficiency of a 4-week sale period to market the Toronto Property is inaccurate.

3.0 KRONENFELD AFFIDAVIT AND KRONENFELD EMAIL

13. A copy of the Kronenfeld Affidavit and Kronenfeld Email are attached hereto as **Appendix "D"** and **Appendix "E"**, respectively. The Receiver's comments and observations in respect of same is set out below.
14. At paragraph 5, Kronenfeld asserts that the Receiver's motion record and supplementary was short served. This is not accurate. The Receiver's motion record, as confirmed in the Kronenfeld Affidavit, was served on November 25, 2024, which is 10 days prior to the date of the December 4, 2024 hearing.
15. Kronenfeld also complains that he was only advised on November 29, 2024 that the Kingston Property did not close. First, this is not relevant to the sale approval motion for the Toronto Property. Second, and in any event, the Receiver only found out that the purchaser of the Kingston Property could not close on November 27, 2024. Immediately after finding this out, the Receiver and its counsel prepared and served the Receiver's Supplement to the Third Report and supplementary motion record on November 29, 2024.
16. Kronenfeld also suggests at paragraph 8 of his affidavit that the marketing of the Toronto Property should be paused until the Kingston Property sale closed or was otherwise terminated. This matter was already addressed in the Court's Endorsement dated October 9, 2024 (the "**October 9th Endorsement**") at paragraph 28, where the Court states "First, as noted, there is no dispute about the validity of Cameron Stephens' charges over the properties, nor that Cameron Stephens is the first mortgagee in each case. The Receiver points to authority for the proposition that, even if the doctrine of marshalling is applicable, a fundamental principle of the doctrine is that "nothing will be done to interfere with the paramount

right of the first mortgagee to pursue his remedy against either of the two estates.” (807933 Ontario Inc. v. Allison (Trustee of) (1995) 22 O.R. (3d) 102 (Gen. Div.), appeal dismissed (1998) 38 O.R. (3d) 337 (C.A.).” A copy of the October 9th Endorsement is attached hereto as **Appendix “F”**.

17. Paragraph 9 of the Kronenfeld Affidavit sets out that Mr. Kronenfeld was not provided with any notice that the Receiver was evaluating and entertaining offers and evaluating same for acceptance.
18. AJGL could have participated in the Receiver’s sales process at any time by contacting the Receiver or Colliers, but chose not to do so until the eve of the December 4, 2024 hearing, which is approximately 10-weeks past the Receiver’s offer deadline of September 26, 2024 for submission of offers in connection with the remarketing of the Toronto Property.
19. At paragraph 15 of the Kronenfeld Affidavit, Mr. Kronenfeld states his concern that the Receiver’s sale to the Toronto Purchaser may very well be improvident. In the Kronenfeld Email, Mr. Denis states that his client estimates the costs to renovate the Toronto Property will be \$500,000 in aggregate.
20. To evaluate the state of the buildings at the Toronto Property, the Receiver retained Pronto General Contracting (“**Pronto**”), a general contractor that has been in business for over 30 years. After its detailed inspections of the Toronto Property over the course of the time the Toronto Property has been in the Receiver’s possession, Pronto has advised the Receiver that in order for the 5 houses comprising the Toronto Property to be lived in, they will require:
 - (a) new kitchens;
 - (b) new bathrooms;
 - (c) new plumbing;
 - (d) new furnaces;
 - (e) new electrical wiring (or possibly try to use/fix the existing wiring);

(f) landscaping; and

(g) certain homes require mould remediation/removal.

21. In addition, Pronto advised that although it did not test the structural integrity of the houses, there may well be structural issues that require attention, which would add to the costs. Pronto's estimate of the average cost per house to rectify the deficiencies, replace equipment and remediate the houses is \$250,000 - \$275,000 (excluding softs costs). Although Colliers, in the Colliers Report, states that it has serious doubts that the individual lots would sell for \$800,000 per lot for the reasons set out therein, even if the "floor price" of the houses was \$4,000,000 (\$800,000 x 5), the aggregate costs to renovate the houses, before soft costs and profit, would range between \$1,250,000 to \$1,375,000 with the net proceeds for the entire Property ranging between \$2,625,000 and \$2,750,000 or between \$525,000 to \$550,000 per house.

4.0 ATTENDANCE TO INSPECT THE TORONTO PROPERTY

22. The Inspection Email Exchange, a copy of which is attached hereto as **Appendix "G"**, sets out, among other things, that an individual ("**Sal**") attended at the Toronto Property to conduct an inspection of the 5 houses comprising the Toronto Property and followed the direction of an individual who was on site who Sal assumed was a representative of the Receiver.
23. Pronto attended at the Toronto Property on December 5, 2024 at the Receiver's direction to obtain fresh photographs of the interior of the 5 houses comprising the Toronto Property. At the conclusion of Pronto's attendance, Pronto noticed that a truck was parked on the curb on the east side of Islington Avenue just south of Milady Rd., adjacent to the Toronto Property.
24. Pronto re-entered the Toronto Property and saw an individual with a screw gun walking around. Pronto advised the Receiver of the following interaction between Pronto and Sal:
 - (a) Pronto questioned the individual, who identified himself as Sal, about his authorization to be on the Toronto Property. Sal indicated that he had the

Receiver's authorization to be on the property and when Pronto asked him who from the Receiver gave him authorization, Sal indicated that it was Simion;

- (b) Pronto attempted to call the Receiver, but could not get a hold of same at the time;
 - (c) Pronto advised Sal that it did not know who Simion was and that Sal should leave on the basis that he did not have the Receiver's authorization to be on the Toronto Property; and
 - (d) Sal refused to leave the Toronto Property claiming that he had the Receiver's authorization to be there and continued with his inspection.
25. Notwithstanding counsel to the Receiver's email to Mr. Denis asking who is Sal and what is his relationship to Mr. Kronenfeld, no response has been received to this enquiry.
26. The Receiver was not advised in advance and had no knowledge of Sal's attendance at the Toronto Property and did not authorize same. On the basis that the Toronto Property is in the possession and control of the Receiver, attending at the Toronto Property without the Receiver's express authorization constitutes trespass.
27. More significantly, it appears that Mr. Erlick has never even visited the Toronto Property notwithstanding his evidence about its condition and cost to repair.

5.0 FURTHER OFFER RECEIVED

28. On December 6, 2024, the Receiver received a further offer (the "**Further Offer**") from a potential purchaser. A copy of the Further Offer with correspondence from counsel to the potential purchaser will be filed with the Court as **Confidential Appendix 1** to the Third Report.
29. The salient terms of the Further Offer are set out below, without details of the purchase price or deposit paid.

- (a) the only condition to the offer is that the Receiver obtain an approval and vesting order (“**AVO**”) in favour of the purchaser;
- (b) the purchaser does not require any due diligence or access to any of the documentation relating to the Toronto Property;
- (c) closing is to occur 6 business days after obtaining an AVO.

6.0 CONCLUSION AND RECOMMENDATION

6.1 Conclusion

- 30. While the Receiver recognizes that it is required to attempt to maximize realizations for the benefit of creditors, the Receiver continues to have concerns about the integrity of the sales process if it were to allow bids made on the eve of the sale approval motion (10 weeks after the bid deadline), and thereafter, to be considered and/or accepted.
- 31. This is particularly true given that in the Receiver’s view, the latest bid (which is now the bidder’s third bid since the eve of the sale approval motion) still does not suggest to the Receiver that the offer that is before the court for approval is unreasonable or improvident.

6.2 Recommendation

- 32. The Receiver’s recommendation remains that the Court should approve and authorize the sale of the Toronto Property to the Toronto Purchaser and issue the AVO requested by the Receiver in favour of the Toronto Purchaser.

All of which is respectfully submitted to this Court as of this 7th day of December, 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 3

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

AFFIDAVIT OF CARLY VANDE WEGHE
(SWORN DECEMBER 3, 2024)

I, Carly Vande Weghe, of the City of Halifax, in the Province of Nova Scotia, MAKE
OATH AND SAY:

1. I am a law clerk with the law firm of Crawley MacKewn Brush LLP, lawyers for the interest parties Issam A. Saad (“**Saad**”) and 2858078 Ontario Inc. (“**285 Corp.**”), and, as such, have knowledge of the matters contained in this Affidavit.
2. I have attached to this affidavit and marked as **Exhibit “A”** a copy of 285 Corp.’s corporate profile report listing Saad as the sole director of 285 Corp.

3. I have attached to this affidavit and marked as **Exhibit “B”** a copy of a Promissory Note executed June 1, 2021 and similarly, attached as **Exhibit “C”** is a Promissory Note executed December 11, 2023.

SWORN by Carly Vande Weghe of the City of Halifax, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on December 3, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

RYAN TAYLOR



CARLY VANDE WEGHE

CAMERON STEPHENS MORTGAGE CAPITAL LTD
Applicant

RC 112

-and-

CONACHER KINGSTON HOLDINGS INC. et al.
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF CARLY VANDE WEGHE
(SWORN DECEMBER 3, 2024)**

CRAWLEY MACKEWN BRUSH LLP

Barristers & Solicitors
Suite 800, 179 John Street
Toronto, ON M5T 1X4

Michael L. Byers (LSO#: 61796U)

mbyers@cmlaw.ca

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Ryan Taylor (LSO#: 80317P)

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Tel: 416.217.0885

Tel: 416.217.0110

Lawyers for the interest parties,
Issam A. Saad and 2858078 Ontario Inc.

Email for parties served:

Jeffrey Larry: jeff.larry@paliarerland.com

Ryan Shah: ryan.shah@paliarerland.com

This is Exhibit "B" referred to in the Affidavit of Carly Vande Weghe sworn by Carly Vande Weghe of the City of Halifax, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on December 3, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'RT', is positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

RYAN TAYLOR

PROMISSORY NOTE

PRINCIPAL: \$4,500,000
INTEREST: 25% PER ANNUM
DATE: JUNE 01, 2021
To: ISSAM A SAAD (the "Holder")
FROM: ANEA GROUP INC. (collectively, the "Borrower")
DUE: MAY 31, 2022

1. FOR VALUE RECEIVED, the undersigned Borrower promises to pay to the order of the Holder, the principal sum of **FOUR MILLION FIVE HUNDRED THOUSAND (\$4,500,000)** in lawful money of Canada as hereinafter set forth.
2. This note shall be repayable on or before May 31, 2022 or shall be extended to another year with the same term.
3. This note shall bear set interest of 25% per annum.
4. The principal amount of this note and interest accrued thereon shall be repaid in full by the Borrower to the Holder at such place as the Holder may from time to time direct on May 31, 2022.
5. The Borrower shall have the privilege of repaying the whole or any part of the principal amount and interest accrued thereon at any time or times without notice or penalty.
6. The Borrower under this note hereby waive presentment for payment, notice of non-payment, protest and notice of protest and do hereby agree and consent to all extensions and renewals hereof, without notice.

IN WITNESS WHEREOF the Parties have executed this note as of the above date.

WITNESS

NAME: Prakash Kumar

WITNESS

NAME: Prakash Kumar

BORROWER

ANEA GROUP INC.

Nicholas Kyriacopoulos, President

HOLDER

ISSAM A SAAD

TAB 4



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00701672-00CL DATE: DECEMBER 4, 2024

NO. ON LIST: 2

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:

Name of Person Appearing	Name of Party	Contact Info
Jeff Larry	Receiver	jeff.larry@paliareroland.com
Douglas Montgomery	Receiver	douglas.montgomery@paliareroland.com
Bryan Tannenbaum	Receiver	btannenbaum@tdbadvisory.ca
Wendy Greenspoon-Soer	Cameron Stephens	wgreenspoon@garfinkle.com

For Defendant, Respondent, Responding Party, Defence:

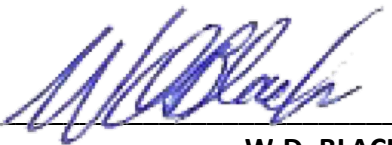
Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Raffaele Sparano	2462686 Ontario Inc	rsparano@himprolaw.com
Ryan Taylor	Issam A. Saad and 2588087	rtaylor@cmbllaw.ca
Michael Byers	Ontario Inc.	mbyers@cmbllaw.ca
Samuel Mosonyi	Estate of Nicholas Kyriacopoulos	smosonyi@robapp.com
Jordan Wajs	Judgment Creditor, Ron Barbaro	jwajs@stikeman.com
Jonathan Kulathungam	Toronto Purchaser	jkulathungam@teplitzskyllp.com
Dale Denis	AJGL Group Inc.	dale@dilitigation.com
Anisha Samat	2083053 Ontario Inc	asamat@blaney.com
Paul F Rooney	500541 Ontario Inc.	rooney@paulfrooneyprofcorp.com

ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] As counsel for the Receiver aptly put it, there has been a “flurry of activity” in this matter in the last 12-24 hours or so before the time set for the hearing, such that it became apparent that more time would be required for various interested parties to exchange and consider one another’s materials, and more time would be required for argument. A half-hour had been booked for the hearing, based on the state of the record at the time the appointment was made, but, given the aforementioned flurry, that proved to be inadequate.
- [2] In simple summary terms, in circumstances in which the Receiver was seeking approval of a proposed sale transaction for the “Islington” or “Toronto” property (as defined in the materials), a handful of additional offers, and certain evidence purporting to confirm a considerably higher value for the property at issue, arrived in the hours before the hearing.
- [3] I felt it was not realistic or fair to all concerned to rush the hearing to conclusion in the circumstances, and so, with a view to minimizing the delay but accommodating the additional information and submissions, I will now hear the matter on Tuesday, December 10, 2024, at 8:30 a.m. In the meantime, the Receiver may file any additional materials that it sees fit to file in response to the late-breaking flurry of additional information received.
- [4] While it may well be that now all offers that will be made are on the table, if any parties wish to file additional offers, I have directed that this be done by no later than Noon on Monday, December 9, so that the Receiver has a realistic opportunity to consider any such additional information.



W.D. BLACK J.**DATE: NOVEMBER 4, 2024**

TAB 5



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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ENDORSEMENT OF JUSTICE W.D. BLACK:

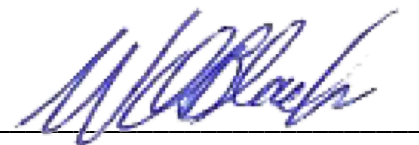
- [1] These parties were before me last week, on December 4, 2024. At that time, as my brief endorsement of that day reflects, there had been considerable activity in the hours leading up to the time appointed for the hearing, including new last-minute offers to purchase the “Toronto Property” that was 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 11th 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.



W.D. BLACK J.

TAB 6

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

SUPPLEMENTARY FACTUM OF THE RECEIVER
(Returnable December 4, 2024)

December 3, 2024

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

TO: Service List

A. Background

1. This is a motion brought by TDB Restructuring Ltd, in its capacity as the Court-appointed receiver (the “**Receiver**”) for the approval of the sale transaction contemplated by an agreement of purchase and sale between the Receiver and Arjun Anand in trust (the “**Purchaser**”) made as of September 26, 2024 (the “**APS**”).

2. The Receiver’s motion to approve the APS is scheduled for December 4, 2024. In connection with that motion, the Receiver filed a factum addressing its recommendation that the APS should be approved (the “**First Factum**”).¹

3. The day before hearing, the Receiver received two additional offers as well as one expression of intent to submit an offer for the purchase of the Toronto Property, each of which was higher than the offer made by the Purchaser.

4. The Receiver has placed these offers before the Court in a Confidential Second Supplement to the Third Report of the Receiver.

5. The additional offers put the following additional issue before the Court: under what circumstances should a court consider or accept a late, but higher offer from an unsuccessful bidder?

¹ Unless otherwise defined, all capitalized terms shall have the meanings ascribed to such terms in the First Factum.

B. The Consideration of Late but Higher Bids

6. In an effort to assist the Court on this motion, the Receiver has canvassed the relevant caselaw in circumstances where, as here, a higher offer is presented after the conclusion of the sales process but before the sale approval motion.

7. The case law establishes that where the sales process was fair, the Court will only refuse to approve the existing offer where the new offer is “substantially higher” than the existing offer.

8. In this case, the Receiver is of the view that the high threshold for setting aside the APS is not met.

9. Courts have rarely refused to approve the original offer on the basis that a new offer is “substantially higher”. Ultimately, where the receiver’s process is fair, and its decision to enter into an agreement of purchase and sale was reasonable and sound at the time it was made, courts are generally unwilling to set aside this decision simply because a later, higher bid is made.²

10. Where the difference between the accepted offer and the late, higher offer is not “substantial”, courts generally decline to interfere with the receiver’s sales process. For example:

² *Crown Trust Co. et al. v. Rosenberg et al.*, [1986 CanLII 2760](#) (Ont. Sup. Ct.) citing *Re Selkirk* (1986), 58 C.B.R. (N.S.) 245 (Ont. S.C. Bkcy.).

- (a) In *Re 1730960 Ontario Ltd*, the court held that an 8% difference was insufficient to suggest that the accepted offer was artificially low and should be rejected by the courts.³
- (b) In the CCAA context, Chief Justice Morawetz (as he now is) refused to postpone the approval of an asset purchase agreement where a late entrant made a non-binding offer that was 30% higher than the offer that was subject to approval. Even in that case, Justice Morawetz was satisfied that the higher offer, on its face, did not “lead to an inference that the strategy employed by the Monitor was inadequate, unsuccessful, or improvident, nor the price was unreasonable.”⁴
- (c) Recently, the Saskatchewan Court of Appeal rejected the appeal of a disappointed purchaser who had tendered a \$2.8 million late offer, which was 27.3% higher than the \$2.2 million successful offer approved by the Court. In the Court’s view, accepting a late bid would damage the integrity of the court-mandated sales process, impacting on the ability to secure the highest possible price in other cases.⁵

C. Application to the APS

11. Where there is a late but higher offer, the threshold question for the court remains the same: whether the purchase price in the receiver’s recommended agreement of

³ *1730960 Ontario Ltd. (Re)*, [2009 CanLII 37909](#) at [para. 26](#) (Ont. Sup. Ct.).

⁴ *Terrace Bay Pulp Inc., Re*, [2012 ONSC 4247](#) at [para. 54](#).

⁵ *Smith Street Lands Ltd. v KEB Hana Bank of Canada*, [2020 SKCA 41](#) at [paras. 38-41](#).

purchase and sale is “so unreasonably low ... that the receiver was improvident in accepting it.”⁶

12. In this case, the First Factum sets out the comprehensive marketing efforts undertaken by the Receiver. The existence of the other offers confirms the reasonableness of the purchase price, since the late offers are only marginally (6.7%-14.2%) higher. The purchase price in the APS before the court falls squarely within the range of offers received, and importantly, was compliant with the sales process.

13. Finally, the overriding concern with integrity, fairness and predictability of the court-ordered sales process militate in favour of the approval of the conforming, successful bid. As Justice Cumming pointed out in *Re 1730960 Ontario Ltd*, “[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 which is marginally higher and ask the Court to not approve the agreement of purchase and sale resulting from the accepted bid.”⁷

14. Here, the Purchaser has acted in good faith and is a *bona fide* third party purchaser. 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.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of December, 2024



Jeffrey Larry / Ryan Shah

⁶ *Royal Bank v. Soundair*, 1991 CarswellOnt 205 at para. 30.

⁷ *1730960 Ontario Ltd. (Re)*, [2009 CanLII 37909](#) at [para. 26](#) (Ont. Sup. Ct.).

**CAMERON STEPHENS MORTGAGE CAPITAL
LTD.**

-and-

CONACHER KINGSTON HOLDINGS INC. et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**SUPPLEMENTARY FACTUM OF THE RECEIVER FOR
(RETURNABLE DECEMBER 4, 2024)**

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**CAMERON STEPHENS MORTGAGE
CAPITAL LTD.**
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-and-

CONACHER KINGSTON HOLDINGS INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
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