

**From:** Conway, Madam Justice Barbara (SCJ)

**Sent:** Monday, October 5, 2020 3:54 PM

**To:** Jeff.Larry@paliareroland.com; wgreenspoon@garfinkle.com; GruberD@bennettjones.com; Elizabeth.Rathbone@paliareroland.com; Tannenbaum, Bryan <bryan.tannenbaum@rsmcanada.com>; Weisz, Daniel <daniel.weisz@rsmcanada.com>; rshastri@ksllp.ca; jwortzman@teplitskycolson.com; amcewan@airdberlis.com; smitra@airdberlis.com; callen@teplitskycolson.com

**Cc:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>

**Subject:** CAMERON STEPHENS MORTGAGE CAPITAL LTD. V. YORKVILLE INVESTMENTS INC. ET AL. CV-20-00644927-00CL

**Importance:** High

This hearing proceeded before me today by Zoom. The names of the attendees are listed on the attached counsel slip.

In April 2020, SC Lands entered into an agreement of purchase and sale (APS) to acquire the Respondents' properties for \$16 million. The Respondents are now in receivership. SC Lands brought a motion for an order directing the Receiver to sell the properties to it, and a vesting order re same, for the same net price as in the APS. The first and second mortgagees supported the motion. The motion was adjourned by Justice Dietrich to permit, among other things, the Receiver to ascertain the value of the properties and prepare a report to the court with respect to the marketing of the properties. It has now done so.

I have reviewed the Receiver's first and supplemental reports and the Confidential Appendix. The Receiver takes no position on the SC Lands' motion and can neither recommend or oppose same. It states, at paragraph 43 of its first report, that "the Receiver is not in a position at this time to conclude that the purchase price set out in the Proposed Agreement is the most advantageous to the stakeholders in this proceeding".

Based on the record before me, I am not prepared to approve the SC Lands transaction without giving the Receiver at least some opportunity to expose the properties to the market and be in a position to make a recommendation to this court. The court simply cannot be satisfied that the price offered by SC Lands maximizes the recovery for the Respondents' stakeholders. That said, the court is mindful of the fact that a lengthy process could erode recovery as receivership costs, taxes and interest continue to accrue. The Receiver is prepared to develop a sales process (with terms worked out with SC Lands to be a stalking horse bidder, that the Receiver is prepared to recommend to the court) and return to court on an expedited basis to get the process started.

I advised counsel that this is the better route to follow. The Receiver shall return to court on **October 14, 2020 for 30 minutes before me (time to be confirmed with the Commercial List office)** to seek court approval of a sales process with a stalking horse bidder. The proposed process will be on a relatively quick time frame, to enable the Receiver and the court to determine if indeed there is interest for the properties for a price that will yield greater recovery to stakeholders, taking into account the additional costs that will have to be incurred throughout the process.

SC Lands' motion is dismissed without costs and without prejudice to it pursuing the purchase of the properties as a stalking horse bidder, subject to court approval. I will continue to case manage

this matter to ensure that the process can move forward in a practical and commercially sensible manner, taking into account the factors referred to above.

I am granting a sealing order with respect to the Receiver's Confidential Appendix. I am satisfied that the *Sierra Club* test has been met for these materials. **On the resumption of regular court operations, it will be the responsibility of counsel for the Receiver to ensure that the subject materials are properly identified and protected under seal in the court file.**

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.

Superior Court of Justice (Toronto)

## COUNSEL SLIP

MATTER: **CAMERON STEPHENS MORTGAGE CAPITAL LTD. V. YORKVILLE INVESTMENTS INC. ET AL.**

COURT FILE NO.: CV-20-00644927-00CL

HEARING DATE: October 5, 2020, 12:00 P.M.

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