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.

Respondent

AFFIDAVIT OF SIMION KRONENFELD

I, **SIMION KRONENFELD**, of the City of Toronto, MAKE OATH AND SAY:

1. I am a director of AJGL Group Inc. ("AJGL").

2. AJGL has for several years carried on business as, among other ventures, a property developer in various locations, including in the greater Toronto area, at times in association with other entities.

3. As such, I have personal knowledge of the facts and matters hereafter deposed, save and except where same are stated to be upon information and belief, and where so stated, I verily believe same to be true.

4. This affidavit is being prepared on short notice, with respect to the Notice of Motion of the Receiver dated October 1, 2024 for a motion returnable on October 9, 2024. This affidavit is not intended as a full account of AJGL's involvement and interest in the five properties on Islington Avenue in Toronto (2849, 2851, 2853, 2855 and 2857 Islington Avenue, hereinafter the "**Toronto Lands**"), more time is required.

5. As an example of AJGL's involvement, AJGL's online presence has for several years featured the Toronto Lands as an AJGL project, by identifying the Toronto Lands under the heading "AJGL Group", with a description of the land assembly. Also, this web page includes a copy of the AJGL site plan for the Toronto Lands. This web page is separate from another AJGL webpage which identifies other AJGL development projects.

6. I have read the affidavit of Mario Kalemi in this matter, sworn July 19, 2024 (the "Kalemi Affidavit") and I have read the affidavit of Jamie Erlick sworn October 3rd 2024 (the "Erlick Affidavit")

7. To the best of my knowledge information and belief, the contents of the Kalemi Affidavit and the contents of the Erlick Affidavit are true and accurate. In particular, wherever these two affidavits make reference to me or to facts which I knew or understood to be true, I confirm that all such statement are true and accurate.

<u>The Agreement with Nick Kyriacopoulos</u>

8. By early 2019 Kyriacopoulos ("Nick") and I were close friends, I trusted him. In early 2019 Nick and I entered into an oral agreement regarding the ownership and development of the Toronto Lands (the "Agreement").

9. In early 2019, before 5004591 Ontario Inc. ("5004591") took title to the Toronto Lands Nick and I agreed to the following terms of the Agreement:

1) 5004591 would hold title to the Toronto Lands as a nominee for AJGL as to a 75% ownership interest in the Toronto Lands and as nominee for Nick's 25% ownership interest in the Toronto Lands;

2) Since 5004591 was a nominee title holder, we agreed that the shares of 5004591 were to be held in trust in the same percentages as the land, with Nick as a 25% shareholder of 5004591 and AJGL as a 75% shareholder of 5004591;

3) Nick would pay for his 25% interest by personally contributing the amount of $2,575,000, which was the amount of the Mortgage from Firm Capital Mortgage Fund Inc. ("Firm Capital"), registered against title to the Toronto Lands on September 4, 2014, recording 2382713 Ontario Inc as the Chargor and Firm Capital Mortgage Fund Inc. as the Chargee, in the amount of $2,575,000. A copy of this mortgage is attached as Exhibit 16 to the Erlick Affidavit;

4) Nick's financial contribution also required Nick to fund the carrying costs (taxes etc) and development costs (architects, consultants etc) for the development of the project. We agreed that Nick would be reimbursed for payment of the carrying costs at the end of the project from the (expected) profits from the successful development. The agreement was that we would, if he paid the contribution of $2,575,000, do an accounting at the end of the project to reimburse Nick for his payment of the carrying costs from the expected profits. I was not required to fund any of the carrying costs;

5) With respect to the control of the venture, we agreed that because I was the founder and majority owner, my approval was required for any material decisions regarding the venture, including, of course, any financing or sale of the Toronto Lands;

6) Nick was responsible for the day-to-day management of the venture. We agreed that he would do whatever work was required to complete the development, construction and sale of the project (ie. the sale of the condominiums or sale of the development). That time, effort and performance was to be part of his contribution to earn his 25% share.

10. I entered into the Agreement with Nick because, in addition to the fact that I trusted him, I was impressed with what he had achieved by early 2019 with his development of the Kingston Lands. Nick had made progress in servicing the Kingston Lands, expending millions of dollars which I understood had added significant equity to the value of the Kingston Lands. Under my Agreement with Nick, he was to apply his construction expertise (and bring his contacts with trades and workers) from his Kingston venture to complete the development of the Toronto Lands.

11. Nick advised at the time (before the closing of the purchase by 5004591 on May 19, 2019) that he required additional time to contribute the $2,575,000 (which we had agreed would be used to discharge the Firm Capital mortgage, leaving no debt on title to the Toronto Lands). I agreed to provide Nick with additional time to pay. Because I trusted Nick, I allowed 5004591 to hold title to the Toronto Lands without immediate payment by Nick of his contribution of $2,575,000. We agreed that his ownership interest of 25%

was conditional on paying the $2,575,000, as well as on his performance of his other obligations. To date, Nick has not paid the $2,575,000.

12. A summary of the facts and the documents relevant to the fact that Nick did not pay any amount towards the original purchase price of the Toronto Lands, and did not pay any amount when 5004591 took title to the Toronto Lands, as nominee, on May 19, 2019, are set out in paragraphs 166 to 121 of the Erlick Affidavit. The mortgage to Firm Capital mortgage was not discharged at this time.

13. Later in 2019, Nick asked if I would allow him to potentially contribute the $2,575,000 by first helping him to obtain financing on the Kingston Lands, on the basis that he would use a portion of the funds he obtained from the financing of the Kingston Lands, to pay off the Firm Capital mortgage of $2,575,000, and would pay the funds advanced to Conacher under the Commitment for the Kingston Lands resulting in the discharge of the security on the Toronto Lands, with the result that the Toronto Lands would not be subject to any debt.

14. I assisted Nick in obtaining the financing of the Kingston Lands by introducing him to my contacts at Cameron Stephens and engaging in discussions and negotiations with Cameron Stephens about the terms of the financing.

15. My discussions with Cameron Stephens ultimately lead to the Letter of Commitment dated November 29, 2019 (the "Commitment") attached as Exhibit C to the Affidavit of Curtis Jackson sworn June 26, 2023 (the "Jackson Affidavit")

16. However, because Cameron Stevens had not had prior dealings with Nick, it wanted a guarantee from the Toronto Lands, as a guarantee of repayment by Conacher of the full Cameron Stevens loan amount. I considered this, and ultimately, I agreed to allow this.

17. From a business perspective, I understood that, although the Cameron loan amount guaranteed by 500 and secured on the Toronto Lands would be approximately $13,000,000, I understood that there was no real risk to AJGL's equity in the Toronto Lands because the value of the Kingston Lands was much more than $13,000,000 and once Cameron received payment in full, then the security on the Toronto Lands would be discharged. Simply, the terms of the Commitment provided that the Toronto Lands would not be at risk unless there was a shortfall from the sale of Kingston.

18. However, this new arrangement meant that Nick was not actually contributing the $2,575,000 from his own resources; that result would arise only when the Cameron security was removed from the Toronto Lands and 500 was released from its guarantee. Nick advised that he would pay down the financing under the Commitment within 24 months, at which point the collateral mortgage placed on title to the Toronto Lands (Exhibit H to the Jackson Affidavit) would be discharged.

19. Thereafter, I did not review the actual loan documents to implement the Commitment, because that was Nick's responsibility.

20. AJGL did not receive any of the funds advanced under the Commitment.

21. My understanding of the deal terms set out in the Commitment include the requirement that the charge on the Toronto Lands had to be discharged once Conacher paid in full all amounts advanced by Cameron under the Commitment.

22. The deal I negotiated was that, if and only if the funds from the sale of Kingston were not enough to pay Cameron Stephens in full, then Cameron Stephens could enforce against the Toronto Property. The current proposed sale of the Toronto Lands, in circumstances where Cameron Stephens is also paid out in full from the sale of the Kingston Lands, is contrary to my understanding of the terms of the agreement with the lender Cameron Stephens, as set out in the Commitment.

23. AJGL did not receive any of the funds advanced under the Commitment.

24. Unfortunately, Nick did not fulfil his obligations under our Agreement. Not only did Conacher fail to repay Cameron and cause the discharge and release of security against 500 and the Toronto Lands (and thereby failing to contribute the $2,575,000), he did not pay ongoing expenses and did not do the work necessary to advance the development of the Toronto Lands.

<u>The Second and Third Mortgagees of the Kingston Lands</u>

25. With respect to the second ranking charge in favour of 2462686 Ontario Inc. and the third ranking Charge in favour of 2478659 Ontario Ltd (as described in paragraphs 11, Exhibits K and L of the Jackson Affidavit):

a) Neither AJGL nor 5004591 have agreed with anyone to pay or assume the debt obligation of any debtor (including Conacher Kingston Holdings Inc.) to either 2462686 Ontario Inc. or 2478659 Ontario Ltd;

b) AJGL has not received any funds, or loan advance, from 2462686 Ontario Inc. or 2478659 Ontario Ltd;

c) To my knowledge 5004591 has not received any funds or loan advance, from 2462686 Ontario Inc. or 2478659 Ontario Ltd (and there is no evidence of any delivery of funds from either of them to 5004591 in the material filed by either of them).

SWORN BEFORE ME at the City of Toronto this 8th day of October, 2024. Commissioner for Taking Affidavits (or as may be) S. Dale Denis	**SIMION KRONENFELD**

CAMERON STEPHENS MORTGAGE CAPITAL LTD. Applicant **and** **CONACHER KINGSTON HOLDINGS INC.,** ***et al*** Respondent

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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

AFFIDAVIT OF
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