

Court File No. CV-24-00732901-00CL

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

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

and

**3803DSW TAS LP, 3803 DSW MR LP, 3803 DSW URBAN PROPERTIES
INC. AND TAS DESIGNBUILD LP**

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**

RESPONDING APPLICATION RECORD

January 29, 2025

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Robin Schwill (LSO# 38452I)
Email: rschwill@dwpv.com
Tel: 416.863.5502

Maureen Littlejohn (LSO# 57010O)
Email: mlittlejohn@dwpv.com
Tel: 416.367.6916

Lawyers for the Respondents

TO: **SERVICE LIST**

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

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

and

**3803DSW TAS LP, 3803 DSW MR LP, 3803 DSW URBAN PROPERTIES
INC. AND TAS DESIGNBUILD LP**

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**

TABLE OF CONTENTS

TAB	DOCUMENT	PAGE NO.
1.	Affidavit of Khan Tran, affirmed January 29, 2025	1 – 9
A.	Exhibit A – Pictures of the Real Property	10 – 13
B.	CONFIDENTIAL Exhibit B – Cushman & Wakefield's full narrative appraisal report in respect of the Real Property as of February 10, 2024	14 – 141

TAB 1

Court File No. CV-24-00732901-00CL

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

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

and

3803DSW TAS LP, 3803 DSW MR LP, 3803 DSW URBAN PROPERTIES
INC. AND TAS DESIGNBUILD LP

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

**AFFIDAVIT OF KHAN TRAN
Affirmed January 29, 2025**

I, Khan Tran, of the City of Toronto, in the Province of Ontario, MAKE OATH

AND SAY:

1. I am the Chief Investment Officer of TAS DESIGNBUILD LP (“**LP1**”), which is the sole shareholder of the general partner of each of 3803 DSW TAS LP and 3803 DSW MR LP, respectively.¹ I have held this position since May 2021. Prior to being named as Chief Investment Officer, I was Executive Vice President, Investments from July 2018 to May 2021.

¹ 3803 DSW TAS LP is a 40% shareholder of 3803 DSW Urban Properties Inc. and 3803 DSW MR LP is the 60% shareholder of 3803 DSW Urban Properties Inc.

2. In my capacity as Chief Investment Officer, I am responsible for acquisitions and dispositions of LP1's real estate portfolio, and for financing with respect to the development of projects within that portfolio. In addition to my role as Chief Investment Officer, I am currently a Director of 3803 DSW Urban Properties Inc., which holds title to the land that is the subject of this proposed receivership application (which is defined below as the "**Real Property**") as nominee registered legal titleholder.

3. I have been involved in efforts to finance and, later, to sell the Real Property, since 2018. As such, I have knowledge of the following matters which knowledge is either personal to me, obtained from a review of the documents to which I refer, or, where indicated, based on information and belief, in which case I have stated the source of my information verily believe such information to be true.

4. Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Affidavit of Jerrold Douglas Marriott sworn December 11, 2024 in these proceedings (the "**JDM Affidavit**").

The Borrower

5. The Respondents 3803 DSW TAS LP and 3803 DSW MR LP are beneficial owners of the real property municipally known as 3775-4005 Dundas Street West, Toronto, Ontario (the "**Real Property**"). Title to the Real Property is registered in the name of 3803 DSW Urban Properties Inc. as nominee registered legal titleholder. 3803DSW TAS LP, 3803 DSW MR LP and 3803 DSW Urban Properties Inc. are referred to collectively in my Affidavit as the "**Borrower**".

6. The Real Property is the Borrower's only material asset. The Real Property is not currently in development, so the Borrower does not have ongoing operations beyond the ongoing process outlined below to sell the Real Property.

The Real Property

7. The Real Property over which the Applicant is seeking the appointment of a receiver is vacant land. As noted above, it is not currently being developed. Attached hereto as **Exhibit "A"** to this affidavit are pictures of the Real Property.

8. The Borrower had originally planned to develop the Real Property. The Loan was intended as bridge financing until a construction loan was obtained or, failing that, until a sale of the Real Property was completed. However, because of a number of external market factors, including the effects of the COVID-19 pandemic, the project became uneconomical and development was paused for an extended period of time. Due to various subsequent external market factors, development on the Real Property ultimately did not continue. As a result, the Borrower decided to attempt to sell the Real Property and to pay the Applicant from the proceeds of that sale.

9. In November 2021, the Borrower commissioned Colliers International ("Colliers") to undertake a process to market and sell the Real Property. Colliers is a global real estate company with offices in Toronto. A full marketed process was completed, and the Borrower entered into an agreement to sell the Real Property for approximately \$38 million, subject to a due diligence condition. However, the transaction ultimately failed to close because of external market factors – namely, the rising interest rate environment that began in 2022.

10. Since that time, the Borrower has continued to consider options to sell the Real Property. However, in light of the state of the development land market (again, due to external market factors), to date a sale has not been executed.

11. Most recently, the Borrower has commissioned Cushman & Wakefield (“**Cushman**”) to undertake a process to market and sell the Real Property. Cushman is a global commercial real estate company with offices in Toronto.

12. The costs to the Borrower of managing the Real Property and of managing the sale process with Cushman are negligible. The Borrower otherwise has no ongoing business operations for a potential receiver to manage.

The Value of the Real Property

13. As reflected in Exhibit “R” from the Affidavit of Jerrold Douglas Marriott, on November 18, 2024, the Applicant advised the Borrower that the “full amount outstanding” on the Loan was \$17,017,038.57.

14. In February 2024, the Borrower commissioned an appraisal of the Real Property from Cushman & Wakefield. Attached hereto as confidential **Exhibit “B”** to this Affidavit is Cushman’s full narrative appraisal report in respect of the Real Property as of February 10, 2024 (the “**Appraisal**”). The Respondents propose to file the Appraisal under seal, for reasons that I set out more fully below.

15. While it is not yet clear to us what sale price the Borrower may be able to achieve for the Real Property, our ability to maximize the sale price for the Real Property has already been prejudiced by the existence of this Application. As recently as this

week, we were contacted by a party that had become aware of the existence of this Application, and therefore assumed that the Real Property was in a distressed situation. Additionally, Cushman was unwilling to launch a public sale process in January 2025 as planned, because if a receiver is ultimately appointed by the Court, that sale process would need to be withdrawn at reputational risk to Cushman. Accordingly, Cushman is currently undertaking private solicitations of interest. While the market was looking positive into 2025 with reduced interest rates and other favourable market dynamics, interest in financing new condominium or rental housing development has been arrested again as a result of threatened tariffs from the U.S. government.

The Appropriate Sales Process

16. I understand from the JDM Affidavit and believe that the Applicant is proposing to have TDB Restructuring Limited ("**TDB**") appointed by this Court as receiver over the Real Property and the assets of the Borrower.

17. I understand from Robin Schwill of Davies and believe that it is typical for receivers like TDB to retain commercial real estate brokers in order to realize on assets like the Real Property. In other words, my understanding is that in order to realize on the Real Property (which, as stated above, is the only material asset of the Borrower), TDB would likely need to appoint a real estate broker like Cushman. Accordingly, it is not clear to me how a receiver like TDB could add value in the process of marketing or selling the Real Property.

18. As set out in Exhibit "Q" to the Affidavit of Jerrold Douglas Marriott, the Borrower has offered to work jointly with the Applicant to manage the sale process with

Cushman, and remains willing to do so. This would give the Applicant better visibility and input into the Real Property sale process, and a better understanding of when the Real Property will likely be monetized. The Borrower has also offered to:

- (a) have Cushman provide the Applicant with timely and regular reporting so it remains fully apprised of the status of the sale process;
- (b) provide the Applicant with any offers, as well as full consent rights as to any transaction; and
- (c) provide the design options that were determined for the Real Property.

19. To date, however, the Applicant has not agreed to any of this and insists that a receiver must be appointed.

20. In circumstances where: (i) the Borrower does not have an operating business; (ii) the Borrower's only material asset is the Real Property; (iii) the Borrower does not have operating costs beyond the negligible cost of keeping the property vacant and running the sale process for the Real Property; (iv) a sale process overseen by professionals is already underway; (v) the Applicant has been offered the opportunity to oversee and provide approvals in respect of the sale process; and (v) to the best of my knowledge, TDB has no unique expertise in selling real estate, it does not appear to me that imposing a receiver on the Borrower will improve the Applicant's ability to realize on either the business or the Real Property. Instead, it appears that a receiver will only add unnecessary costs.

21. More importantly, if the Borrower is put into receivership at this stage, I have serious concerns about how that will impact the proceeds that could be received for the Real Property in the sale process. If a receiver is appointed over the Real Property, I believe that will send a signal to the market that the Real Property cannot be profitably developed, whether because of the general stigma associated with a receivership sales process, the implication that the value that the Borrower ascribes to the Real Property is lower than the value of the debt, or the perception of distressed pricing being available. Such a message to the market risks reducing significantly the sale price that the Borrower is able to obtain for the Real Property.

22. The Borrower has no other creditors of significance besides the Applicant, who is the only mortgagee. It is the Borrower's intention to pay off the Loan promptly upon receiving proceeds of the sale. While I acknowledge that both the timeline and the proceeds for such a sale are uncertain, realization on the Real Property is the simplest way for the Applicant to have the Loan repaid.

The Guarantee

23. The **Guarantor**, TAS DesignBuild LP (defined above as "**LP1**"), is a private partnership established under the laws of the Province of Ontario. It was formed on March 2, 2012, for the purpose of investing in opportunities in emerging residential markets and unique opportunities in established markets in the Greater Toronto Area.

24. It is not clear to me why the Applicant would pursue the Guarantee as an unsecured creditor when it is the only secured creditor of the Real Property, and a sale

process is underway. However, to the extent that the Applicant pursues judgment on the Guarantee, I have a number of concerns:

- (a) The Applicant never delivered any formal demand to LP1 that the Guarantor pay the Loan. It is not clear to me why an Application was filed in respect of the Guarantee before a demand was even made;
- (b) The Guarantor has insufficient current assets to pay the Loan. The Applicant is fully aware of this, as the Borrower provided the Applicant with a copy of the Guarantor's financial statements by email on November 1, 2024;
- (c) In circumstances where the Applicant is insistent that a receiver be appointed in respect of the Real Property, any failure by the Applicant to realize fair value for the Real Property may result in the Guarantor raising certain defences in respect of its liability under the Guarantee; and
- (d) The Borrower has not yet seen a final calculation of the expenses that the Applicant would propose to recover as part of the Guarantee. In light of the Borrower's view that this Application is unnecessary, and represents an unreasonable cost expenditure by the Applicant, the Borrower is reserving its right to take issue with the Applicant's calculation of the final amount owing.

25. I am not aware of any good faith reason why the Applicant would need to enforce on the Guarantee at the same time as it pursues realization on a secured debt

(for which it has first priority). I have serious concerns that it arises not from the Applicant's desire to more quickly realize on the full value of the Loan, but rather from its desire to cause harm to the Guarantor.

The Appraisal is Confidential and Must be Filed Under Seal

26. Under the terms of our engagement with Cushman, we are obligated to maintain the confidentiality of the Appraisal. This is reflected directly in the Appraisal. In circumstances where the Real Property is undergoing a sale process, public disclosure of the Appraisal creates a serious risk that the Borrower will be unable to maximize the value that can be realized for the Real Property.

AFFIRMED remotely by Khan Tran at the City of Toronto, in the Province of Ontario, before me on the 29th day of January, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

}



Commissioner for Taking Affidavits
(or as may be)

KHAN TRAN

TAB A

This is Exhibit "A" referred to in the Affidavit of Khan Tran at the City of Toronto, in the Province of Ontario, before me on the 29th day of January, 2025. in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



Commissioner for Taking Affidavits (or as may be)





013

© 2024 Google



TAB B

This is Exhibit "B" referred to in the Affidavit of Khan Tran at the City of Toronto, in the Province of Ontario, before me on the 29th day of January, 2025. in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



Commissioner for Taking Affidavits (or as may be)

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and- 3803DSW TAS LP, AND OTHERS.
Respondents

Court File No. CV-24-00732901-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

AFFIDAVIT OF KHAN TRAN
AFFIRMED JANUARY 29, 2025

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Robin Schwill (LSO# 384521)
Email: rschwill@dwpv.com
Tel: 416.863.5502

Maureen Littlejohn (LSO# 570100)
Email: mlittlejohn@dwpv.com
Tel: 416.367.6916

Lawyers for the Respondents

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and- 3803DSW TAS LP, AND OTHERS.
Respondents

Court File No. CV-24-00732901-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

RESPONDING APPLICATION RECORD

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Robin Schwill (LSO# 384521)
Email: rschwill@dwpv.com
Tel: 416.863.5502

Maureen Littlejohn (LSO# 570100)
Email: mlittlejohn@dwpv.com
Tel: 416.367.6916

Lawyers for the Respondents