

**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

**FACTUM OF THE RECEIVER
(Fee Approval, Distribution and Discharge)**

May 15, 2026

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in its capacity as Receiver**

TO: THE SERVICE LIST

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PART I – OVERVIEW

1. TDB Restructuring Limited (“**TDB**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), of the real property municipally known as 3775 - 4005 Dundas Street West, Toronto, Ontario (the “**Real Property**”) and all of the assets, undertakings and properties of 3803 DSW Urban Properties Inc., 3803DSW TAS LP and 3803 DSW MR LP (the “**Debtors**”),¹ brings this motion for a discharge and distribution order in the form included at Tab 3 of the Receiver’s Motion Record (the “**Discharge Order**”), which, among other things:

- (a) if necessary, abridges the time for service of this motion and declares that the motion is properly returnable before the Court;
- (b) approves the Second Report of the Receiver dated May 11, 2026 (the “**Second Report**”), and the activities, conduct and the Statement of Receipts and Disbursements of the Receiver described therein;
- (c) approves the fees, costs and expenses, including accruals to complete this matter to discharge, of the Receiver and its legal counsel, Reconstruct LLP (“**RECON**”) as set out in the fee affidavits of Arif Dhanani and Alina Stoica appended to the Second Report (together, the “**Fee Affidavits**”);
- (d) authorizes and directs the Receiver to make the distributions as described in the Second Report (the “**Proposed Final Distribution**”);
- (e) approves the discharge of the Receiver upon the filing of the Discharge Certificate in the form substantially attached as **Schedule “A”** to the Discharge Order (the “**Discharge Certificate**”);
- (f) releases TDB from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of TDB while acting in its capacity as Receiver, save and except for any gross negligence or willful misconduct on the Receiver’s behalf; and

¹ Receivership Order dated March 6, 2025 (“**Receivership Order**”), Appendix “A”, Second Report of the Receiver dated May 11, 2026, Tab 2 of the Receiver’s Motion Record (“**Second Report**”).

(g) directs TDB to pay to Cameron Stephens Mortgage Capital Ltd. (“**Cameron Stephens**” or the “**Applicant**”) any funds received by the Receiver after the issuance of the Discharge Order.

2. The requested relief is necessary to finalize the administration of the Debtors’ estate in accordance with the Receivership Order (as defined below).

3. The Receiver understands that the Applicant supports the issuance of the Discharge Order. The Receiver is not presently aware of any opposition to the relief sought.

PART II – FACTS

A. Overview of the Debtors and the Receivership

4. The Debtors were in default of their obligations owed to the Applicant. Accordingly, on March 6, 2025, TDB was appointed as Receiver, pursuant to the order of Justice Cavanagh (the “**Receivership Order**”), in accordance with Section 101 of the Courts of Justice Act (the “**CJA**”) and Section 243 of the Bankruptcy and Insolvency Act (the “**BIA**”).²

5. The primary purpose of the receivership proceeding was to create a stabilized environment to enable the Receiver to conduct a sale process of the property of the Debtors, including the Real Property (collectively the “**Property**”). To enable the Receiver to carry out its mandate, the Receivership Order, among other things:

- (a) authorized the Receiver to market and solicit offers for the sale of any or all the Property, and to negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (b) authorized the Receiver to sell, convey, transfer, lease or assign the Property with approval of the Court;

² Second Report, section 1.1.

- (c) granted the Receiver and its counsel a charge (the “**Receiver’s Charge**”) on the Property as security for the payment of such fees and disbursements, both before and after the Receivership Order, in respect of this proceeding; and
- (d) granted a second-ranking charge (the “**Receiver’s Borrowing Charge**”) on the Property as security for the Receiver’s Borrowings of up to \$200,000.00 to fund its powers and duties (“**Receiver’s Borrowings**”).³

6. In accordance with its mandate and duties under the Receivership Order, the Receiver took steps to market and solicit interest for a sale of the Real Property (the “**Sale Process**”). As a result of the Receiver’s efforts in the Sale Process, the Receiver successfully sold the Real Property.

7. The sale of the Real Property was approved by the Court, pursuant to the approval and vesting order granted by the Court on March 20, 2026 (the “**AVO**”), which among other things, approved the agreement of purchase and sale (the “**APS**”) between the Receiver and 10361968 Canada Inc. (the “**Purchaser**”) and vested the Real Property in Dundas West Project Limited Partnership (“**Dundas LP**”).⁴ The sale of the Real Property closed on April 2, 2026, and title was conveyed to 17736959 Canada Inc., as general partner of Dundas LP.⁵

8. After the issuance of the First Report, the Receiver identified documentation relating to two bank accounts of the Debtors and made inquiries to of the Toronto Dominion Bank (“**TD**”) and Canadian Imperial Bank of Commerce (“**CIBC**”), each of which confirmed that the applicable account belonged to the Debtors and held balances of \$14,498.03 and \$142,245.45, respectively. Those funds have since been transferred to the Receiver’s trust account and the accounts have been closed.⁶

³ Receivership Order.

⁴ Second Report, section 1.2.

⁵ Second Report, section 2.8.

⁶ Second Report, section 3.9-3.10.

B. Proposed Final Distribution

9. The Receiver to make in Proposed Final Distribution the following order of priority:

- (a) first, any and all remaining unpaid fees and disbursements of the Receiver and its counsel as they relate to the receivership administration; and
- (b) second, to Cameron Stephens, any remaining funds in the Receiver's trust account after filing with the Court the Receiver's Discharge Certificate.⁷

10. The Receiver's Proposed Final Distribution is consistent with the applicable priorities of charges and security interests in respect of the Debtors' assets and the Real Property.⁸

11. Based on the net proceeds from the realization of the Real Property, there are insufficient funds to repay the entirety of the Debtors' debt to the Applicant. Therefore, it is not anticipated that any creditors ranking below the Applicant will receive any repayments. The Receiver understands that the Applicant does not oppose the Proposed Final Distribution.⁹

C. Substantial Completion of the Receiver's Duties

12. Following, among other things, the extensive Sale Process and the subsequent sale approval of the Real Property, the Receiver has completed its duties as set out in the Receivership Order, save and except for the following:

- (a) preparation and filing of the Final Statement of the Receiver prescribed under section 246(3) of the BIA;
- (b) payment of the Proposed Final Distribution;
- (c) closing its HST account and trust account;

⁷ Second Report, section 3.9.

⁸ Second Report, section 3.11.

⁹ Second Report, section 5.12-5.13.

- (d) filing the Discharge Certificate with the Court upon completion of the receivership; and
- (e) attending to other administrative matters as necessary (collectively, the “**Remaining Duties**”).¹⁰

13. The Receiver accordingly brings this motion for approval of the Second Report, its fees and those of its counsel since the last approval by the Court, including an accrual to discharge, distribution of the Proposed Final Distribution, discharge and release of the Receiver, and directing the Receiver to pay to Cameron Stephens any funds received by the Receiver after the issuance of the Discharge Order.

PART III – ISSUES

14. The issues in this motion are whether this Court should grant an Order that:
- (a) approves the Second Report and the activities described therein;
 - (b) approves the Receiver’s Statement of Receipts and Disbursements for the period from March 6, 2025 to May 5, 2026;
 - (c) approves the fees and disbursements of the Receiver and RECON, as set out in the Fee Affidavits appended to the Second Report (the “**Professional Fees**”);
 - (d) authorizes the Proposed Final Distribution;
 - (e) approves the discharge and release of the Receiver, upon filing of the Discharge Certificate; and
 - (f) directs TDB to pay to Cameron Stephens any funds received by the Receiver after the issuance of the Discharge Order.

¹⁰ Second Report, section 5.9.

PART IV – LAW & ARGUMENT

A. The Court Should Approve the Second Report, the Activities of the Receiver and the R&D

15. The Receiver seeks approval of its activities as set out in the Second Report, which describes the closing of the Real Property, activities of the Receiver since the First Report, the Proposed Final Distribution and the Receiver’s Remaining Duties.

16. The Court has inherent jurisdiction to review and approve the activities of a court appointed receiver as set out in a receiver’s reports.¹¹ The Commercial List Model Discharge Order expressly contemplates the approval of the reports of the receiver, along with its activities referred to therein.¹² Courts frequently provide such approval where the court is satisfied that the court officer’s activities have been conducted in a prudent and diligent matter.¹³

17. The Receiver submits that the activities described in the Second Report are appropriate, timely, and in the interest of stakeholders. The activities were all necessary and efficiently undertaken pursuant to the Receiver’s duties and powers set out in the Receivership Order. The approval of the Second Report and the Receiver’s activities would be beneficial for the administration of the Debtors’ estate.

18. The Receiver also seeks approval of its receipts and disbursements for the period from March 6, 2025 to May 5, 2026, attached as Appendix “E” to the Second Report.¹⁴ Such approval is simply a recognition of the amounts received and paid to facilitate a transparent and proper receivership process.¹⁵

¹¹ *Bank of America Canada v Willann Investments Ltd.*, 1996 CanLII 2782 (ON CA).

¹² *Toronto Commercial List’s Receiver Discharge Order Form (Word)*.

¹³ See *Target Canada Co. (Re)*, 2015 ONSC 7574, paras. 2, 23; *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400, paras 65, 66.

¹⁴ *Interim Receipts and Disbursements*, Appendix “E”, Second Report.

¹⁵ *Rose-Isli Corp. v Frame-Tech Structures Ltd.*, 2023 ONSC 832, para. 134.

19. Therefore, the Receiver submits that the Second Report and the activities of the Receiver described therein, including the Receiver's statement of receipts and disbursements, should be approved.

B. The Court Should Authorize and Approve the Payment of Professional Fees and the Remaining Fees and Disbursements of the Receiver and its Counsel

20. The Receiver seeks authorization and approval to pay Professional Fees. The Receiver also seeks approval of the Remaining Fees and Disbursements to increase efficiency in the receivership proceeding by alleviating the need for a further motion and passing of accounts.

21. The Receivership Order provides, among other things, that:

- (a) the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges;
- (b) the Receiver and its counsel are granted a Receiver's Charge on the Property as security for the payment of such fees and disbursements, both before and after the Receivership Order, in respect of this proceeding, which charge ranks in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, subject only to section 14.06(7) (environmental remediation), 81.4(4) (unpaid wages), and 81.6(2) (pension plan liabilities) of the BIA; and
- (c) the Receiver and its legal counsel shall pass their accounts from time to time by motion to a judge of the Ontario Superior Court of Justice.¹⁶

22. In accordance with the Receivership Order, the Receiver is seeking approval of the Professional Fees, which are comprised of:

¹⁶ Receivership Order.

- (a) as set out in the fee affidavit of Arif Dhanani sworn on May 4, 2026 on behalf of the Receiver, for the period from March 1, 2026 to April 30, 2026, the Receiver's accounts total \$24,173.50 in fees, plus disbursements of \$0.00, plus HST of \$3,142.56, for a total of \$27,316.06; and
- (b) as set out in the fee affidavit of Alina Stoica sworn on May 11, 2026 on behalf of the Receiver's independent legal counsel, RECON, for the period from March 4, 2026 up to April 28, 2026, RECON's accounts total \$45,649.00 in fees, plus disbursements of \$915.23, plus applicable taxes of \$6,053.35, for a total of \$52,617.58.¹⁷

23. On the assumption that there are no delays, disputes, or unforeseen developments, the Receiver estimates that the costs associated with the completion of the administration of the Debtors' estate will total approximately \$21,300.00 (the "**Remaining Fees**"). This includes payment of the Receiver and its independent counsel's fees and disbursements post-dating the Fee Affidavits, including the finalization of the Second Report, the preparation of materials for and attendance at the within motion, and the Remaining Duties noted above.¹⁸

24. In determining whether to approve the accounts of a court-appointed receiver and its counsel, it is well established that the court will consider the overall value contributed, taking into account (a) the nature, extent and value of the assets, (b) the complications encountered, (c) the degree of assistance provided by the debtor, (d) the time spent, (e) the receiver's knowledge, experience and skill, (f) the diligence and thoroughness displayed, (g) the responsibilities assumed, (h) the results of the receiver's efforts and (i) the cost of comparable services when performed in a prudent and economical manner.¹⁹

25. The Receiver respectfully submits that the Professional Fees and the Remaining Fees are fair and reasonable, properly incurred, and should be approved. The Receiver, with the

¹⁷ Fee Affidavit of Arif Dhanani sworn May 4, 2026 and Fee Affidavit of Alina Stoica sworn May 11, 2026, Appendix "G" and Appendix "H", Second Report.

¹⁸ Second Report, section 6.14-6.15.

¹⁹ BIA, s. 243(6); see Bank of Nova Scotia v Diemer, 2014 ONCA 851, paras. 33, 44, 45.

assistance of RECON, has provided and will continue to provide significant value to the Debtors' stakeholders including by, among other things, creating a stabilized environment for the receivership proceeding, taking all necessary and reasonable steps to maximize the realization of the Debtors' Property, and conducting the Sale Process.

26. The Professional Fees are supported by detailed invoices and Fee Affidavits confirming, *inter alia*, that the Professional Fees are substantially comparable to fees charged by other Licensed Insolvency Trustee and law firms for similar services in Toronto and London, and comparable to fees charges by TDB and Reconstruct LLP in similar proceedings in Toronto and London. Moreover, the Receiver understands that the Applicant does not oppose the approval and payment of the Professional Fees and the Remaining Fees and Disbursements.

C. The Court Should Approve and Authorize the Proposed Final Distribution

27. The Receiver seeks authorization to make the Proposed Final Distribution. Courts routinely grant order permitting distribution in insolvency proceedings, including receiverships.²⁰ Distributions are also expressly contemplated by the Commercial List Model Discharge Order.²¹ As such, the Court has jurisdiction to approve the Proposed Final Distribution.

28. In determining whether to approved a distribution in an insolvency proceeding, courts have considered, among other things:

- (a) whether the proposed distribution is in accordance with the applicable order of priorities, including whether the payee holds a valid and enforceable security interest;

²⁰ See, among other cases, *GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.*, 2014 ONSC 1173 ("**GE Canada**"); *Harbert Distressed Investment Fund, L.P. v General Chemical Canada Ltd.*, 2007 ONCA 600 ("**Harbert**"); *Runco v Engenheiro*, 2023 ONSC 7231 para. 32.

²¹ Toronto Commercial List's Receiver Discharge Order Form (Word).

- (b) whether any reserves or holdbacks are appropriate, such as in respect of the completion of the administration of the estate, professional fees, receiver's borrowings and certain statutory deemed trust claims;
- (c) whether the debtor's indebtedness to the payee exceeds the amount of the proposed distribution; and
- (d) generally, whether the distribution is just or convenient in the circumstances.²²

29. The Proposed Final Distribution meets the above-noted criteria and should be approved for the following reasons, among others:

- (a) the Proposed Final Distribution reflects the priorities, namely: (i) all amounts secured by the Receiver's Charge; (ii) all priority payables have already been paid; and (iii) the first-ranking secured indebtedness owing to the Applicant;
- (b) based on the net proceeds from the realization of the Real Properties, there are insufficient funds to repay the entirety of the Debtors' monetary liabilities. It is not anticipated that the Applicant will be paid in full, nor will any creditors ranking below the Applicant receive any repayment; and
- (c) the Receiver is not aware of any opposition to the Proposed Final Distribution, nor of any material prejudice or other compelling reason not to proceed with the Proposed Final Distribution.

30. Based on the foregoing, the Receiver submits that the Proposed Final Distribution should be approved.

D. The Court Should Approve the Discharge and Release of the Receiver upon Filing of the Discharge Certificate

31. Upon the completion of the Remaining Duties, the main objective of this receivership will be achieved.

32. The Discharge Order provides that upon filing of the Discharge Certificate certifying that all matters in connection with the receivership of the Debtors have been completed to the

²² *GE Canada*, para. 53; *Harbert*, para. 47.

satisfaction of the Receiver, the Receiver shall be discharged and released. However, TDB shall remain the Receiver for the performance of such incidental duties as may be required to complete the administration of the Debtors' estate. In fulfilling such duties, the Receiver shall continue to have the benefit of the provisions of all orders made in connection with this receivership.²³

33. The termination, discharge and release in the Discharge Order are appropriate given that there will be no more assets for the Receiver to realize upon, the Receiver will have completed all its statutory duties and duties under the Receivership Order, and the administration of the Debtors' estate will be complete.

34. The Receiver respectfully submits that it is also appropriate to grant a limited release in favour of it. In *Pinnacle v Kraus*, this Court granted an Order discharging and releasing a court-appointed receiver. In doing so, the Court noted that such a release is expressly contemplated by the Commercial List Model Discharge Order and that in the absence of improper or negligent conduct on the part of the Receiver, such releases should be granted.²⁴

35. Throughout the proceeding, the Receiver has acted prudently and contributed to the administration of the proceedings. Accordingly, the Receiver respectfully submits that the requested release is reasonable in the circumstances, will provide the Receiver with finality, and should be granted.

E. The Court Should Direct TDB to Remit Subsequently Received Funds to Cameron Stephens

36. The Receiver seeks a direction from this Court requiring TDB to remit to Cameron Stephens any funds received by TDB in its capacity as Receiver following the issuance of the

²³ Second Report, section 6.10 and 6.14.

²⁴ *Pinnacle v Kraus*, 2012 ONSC 6376, para. 47; referred to in *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, 2024 ONSC 7127, para. 47.

proposed Discharge Order, provided that the aggregate amount so remitted shall not exceed the Debtors' indebtedness to Cameron Stephens.

37. The Receiver has the authority to seek the Court's directions under s. 249 of the *BIA* and paragraph 26 of the Receivership Order.²⁵

38. The Receiver submits that the direction sought is appropriate for the reasons set out in Section C above and is proper in the circumstances.

PART V – RELIEF REQUESTED

39. Based on the foregoing, the Receiver respectfully requests that this Court grant the proposed form of Discharge Order found at Tab 3 of the Motion Record.

PURSUANT TO RULE 4.06.1(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.



Colin Hunt (LSO No.87267D)

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15th DAY OF May, 2026



RECONSTRUCT LLP

²⁵ BIA, s. 249; Receivership Order.

SCHEDULE "A"

List of Authorities

1. *Bank of America Canada v Willann Investments Ltd.*, 1996 CanLII 2782 (ON CA)
2. Toronto Commercial List's Receiver Discharge Order Form (Word).
3. *Target Canada Co. (Re)*, 2015 ONSC 7574
4. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400
5. *Rose-Isli Corp. v Frame-Tech Structures Ltd.*, 2023 ONSC 832
6. *Bank of Nova Scotia v Diemer*, 2014 ONCA 851
7. *GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.*, 2014 ONSC 1173
8. *Harbert Distressed Investment Fund, L.P. v General Chemical Canada Ltd.*, 2007 ONCA 600
9. *Runco v Engenheiro*, 2023 ONSC 7231
10. *Pinnacle v Kraus*, 2012 ONSC 6376
11. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, 2024 ONSC 7127

SCHEDULE "B"

Statutory Authorities

[Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3](#)

243(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

249 A receiver may apply to the court for directions in relation to any provision of this Part, and the court shall give, in writing, such directions, if any, as it considers proper in the circumstances.

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

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