

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant

and

1000093910 ONTARIO INC.

Respondent

**IN THE MATTER OF AN 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**

**AMENDED AMENDED NOTICE OF APPEAL**

THE APPELLANT, 2557904 Ontario Inc. ("**255**" or "**Appellant**") appeals to the Court of Appeal for Ontario from the ~~Endorsement, Order and Reasons to follow Decision~~ of the Honourable Mr. Justice Sutherland ("**Justice Sutherland**" or "**Motion Judge**") dated July 4, 2024, ~~and the Decision and Order of Justice Sutherland, dated July 9, 2024 and the Decision of Justice Sutherland, dated July 15, 2024~~ (collectively, the "**Sutherland Orders**"), made at Newmarket, whereby the learned Motion Judge granted 1000093910 Ontario Inc. (the "**Debtor**"), Ravi Aurora, Akash Aurora, and Nick Aurora (collectively, the "**Guarantors**") and Countertop Solutions Inc. and GrafcO International Laminating Inc. (collectively, the "**Tenants**") (collectively, the "**Moving Parties**") an order allowing, among other things, the Debtor to ~~redeem~~ Peakhill Capital Inc.'s mortgage (the "**Order**") after the sales process had already run its course and making the Sutherland Orders provisionally enforceable notwithstanding that 255 had already filed and served the within appeal.

THE APPELLANT, 255, ASKS that the Sutherland Orders be set aside and ~~that, in its place,~~ an order be granted as follows:

- (a) ~~an Order (the “Approval and Vesting Order”), among other things,~~  
~~approving~~Approving the sale transaction (the “**Transaction**”) contemplated by the  
Stalking Horse APS dated November 15, 2023 (as may be amended, the “**Sale**  
**Agreement**”), and vesting in 255 all of the Debtor’s rights, title and interest in and  
to the property described in the Sale Agreement, among other things (the  
“Approval and Vesting Order”); and (ii) an order (the “**Distribution and**  
**Discharge Order**”), among other things;
- (b) ~~(i)~~ Authorizing KSV Restructuring Inc. (the “**Receiver**”) to:
- (i) ~~(1)~~ first, pay the \$140,000 work fee (the “**Work Fee**”) owing to Jones Lang  
LaSalle Real Estate Service, Inc. (“**JLL**”) in accordance with the terms of  
the listing agreement (the “**Listing Agreement**”) by and between JLL and  
the Receiver;
- (ii) ~~(2)~~ second, make one or more distributions from the sale proceeds of the  
Sale Agreement (the “**Sale Proceeds**”) to repay in full the amounts owing  
to Peakhill Capital Inc. (“**Peakhill**”) in respect of the Debtor’s obligations to  
it; and
- (iii) ~~(3)~~ third, following the repayment of Peakhill in full, authorizing the Receiver  
to make one of more distributions from the Sale Proceeds to partially repay  
the amounts owing to Zaherali Visram in respect of the Debtor’s obligations  
to him;
- (c) ~~(b)~~ Approving the Second Report of the Receiver, dated May 31, 2024 (the  
“**Second Report**”);

- (d) ~~(e)~~ Approving the fees and disbursements of the Receiver and its counsel, Bennett Jones LLP ("**Bennett Jones**"), including the \$150,000 fee accrual (the "**Fee Accrual**") (as defined below), as detailed in the fee affidavits (together, the "**Fee Affidavits**") appended to the Second Report;
- (e) ~~(d)~~ Discharging the Receiver upon the filing of a certificate with the Court certifying that all outstanding matters in these receivership proceedings (the "**Receivership Proceedings**") have been completed to the satisfaction of the Receiver (the "**Discharge Certificate**"); ~~and~~
- (f) ~~Obliging the Receiver to indemnify 255 for deposit funds not returned to 255 in the amount of \$1,000,000 (the "Deposit") Debtor, as a term of any redemption, to pay into court the sum of \$1,000,000 as security for 255 for deposit funds not returned to 255, with such funds to be released to 255 should 255 fail to obtain the release of the Deposit from Ren/Tex Realty Inc.~~
- (g) ~~(e) Subject to paragraph (f) above,~~ releasing and discharging the Receiver, upon the filing of the Discharge Certificate, from any and all liabilities that it now has or may hereafter have by any reason of, or in any way arising out of, its acts or omissions while acting as Receiver, save and except for its gross negligence or willful misconduct;
- (h) ~~Awarding the Appellant its costs of the Appeal and costs of the underlying cross-motion and related attendances; and~~
- (i) ~~(f)~~ Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS OF APPEAL are as follows:**

- (a) The learned Motion Judge ought to have dismissed the Debtor's late-served cross-motion on the basis that it was not filed in accordance with the timelines set out in the *Rules of Civil Procedure*;
- (b) The learned Motion Judge ought not to have used his discretion to allow the Moving Parties to exercise a right of redemption after a Court ordered sale process had commenced, a bid accepted, and a hearing date for a vesting order set;
- (c) The Learned Motion Judge erred in law in failing to consider, or properly consider, the impact of allowing late breaking requests to redeem on the integrity of an advanced Court Ordered Sale process;
- (d) The learned Motion Judge erred in law by preferring the interests of the Debtor, the Tenants, the Guarantors and the Second Mortgagee over 255 without sufficient reasons;
- (e) The learned Motion Judge erred in law by failing to apply, or consider, the principles laid out by this Court in [Rose-Isli Corp. v. Smith, 2023 ONCA 548](#) regarding when a Court should exercise its discretion to allow a late redemption in the face of a complete sales process;
- (f) Had the Learned Motion Judge considered the principles set out in that case, he would have denied the Moving Parties right to redeem at such a late stage of the sale process;

- (g)     The Learned judge amended the initial Order after the jurisdiction of the Court was lost as a result of the Appeal and did so contrary to the permissible rules permitting amendments after a hearing was concluded;
- (h)     ~~(g)~~ If required or necessary, a stay of the Order appealed from pending the hearing of this appeal by this Honourable Court;
- (i)     ~~(h)~~ If required or necessary, leave to Appeal the Order; and
- (j)     ~~(i)~~ Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

- (k)     ~~(j)~~ Rule 61.04 of the *Rules of Civil Procedure*;
- (l)     ~~(k)~~ Section 6(1)(b) of the *Courts of Justice Act*, R.S.O., c. C.43 (the "**Courts of Justice Act**");
- (m)     Leave to Appeal the Sutherland Orders is not required;
- (n)     Section 134(1) of the *Courts of Justice Act*;
- (o)     ~~(g)~~ Sections 193(b), 193(c) and 195 of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3);
- (p)     ~~(h)~~ Rule 31 of the *Bankruptcy and Insolvency General Rules* (C.R.C., c. 368); and
- (q)     ~~(i)~~ Such further and other statutes/rules as counsel may advise and this Honourable Court may permit.

~~July 4, 2024, 2024~~  
~~July 15, 2024,~~  
July 16, 2024

**MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto ON M5H 3S1

**Kevin D. Sherkin** (LSO#:27099B)  
Tel: 416-597-6028  
[ksherkin@millerthomson.com](mailto:ksherkin@millerthomson.com)

**Mitchell Lightowler** (LSO#:76305T)  
Tel: 416-595-7938  
[mightowler@millerthomson.com](mailto:mightowler@millerthomson.com)

Lawyers for the Appellant (Intervener),  
**2557905 Ontario Inc.**

TO:

**BENNETT JONES LLP**  
Barristers and Solicitors  
1 First Canadian Place  
Suite 3400  
P.O. Box 130  
Toronto ON M5X 1A4

**Richard B. Swan** (LSO#:32076A)  
Tel: 416-777-7479  
[swanr@bennettjones.com](mailto:swanr@bennettjones.com)

**Sean Zweig** (LSO#:57307I)  
Tel: 416-777-6254  
[zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**Aiden Nelms** (LSO#:74170S)  
Tel: 416-777-4642  
[nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com)

Lawyers for the Receiver, KSV Restructuring Inc.

AND TO:     **KSV RESTRUCTURING INC.**  
220 Bay Street Toronto, ON M5H 1J9

**Noah Goldstein**  
Tel:     (416) 932-6207  
[ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)

**Ben Luder**  
Tel:     (437) 889-9995  
[bluder@ksvadvisory.com](mailto:bluder@ksvadvisory.com)

The Receiver

AND TO:     **ROBINS APPLEBY LLP**  
Barristers and Solicitors  
120 Adelaide Street West  
Suite 2600  
Toronto ON M5H 1T1

**Dominique Michaud** (LSO#:56871V)  
Tel:     416-360-6795  
[dmichaud@robapp.com](mailto:dmichaud@robapp.com)

**Joseph Jamil** (LSO#:74614L)  
Tel:     416-360-3783  
[jjamil@robapp.com](mailto:jjamil@robapp.com)

Lawyers for the Applicant,  
Peakhill Capital Inc.

AND TO:     **SCALZI CAPLAN LLP**  
20 Caldari Road, Unit 2  
Vaughan ON L4K 4N8

**Gary M. Caplan** (LSO#:19805G)  
Tel:     416-568-7747  
[gary@sclawpartners.ca](mailto:gary@sclawpartners.ca)

**Derek Ketelaars** (LSO#:67154R)  
Tel:     437-242-4088  
[derek@sclawpartners.com](mailto:derek@sclawpartners.com)

Lawyers for the Respondent

AND TO:     **MANIS LAW**  
2300 Yonge Street, Suite 1600  
Toronto, ON M4P 1E4

**Howard Manis**  
Tel:     (416) 417-7257  
[hmanis@manislaw.ca](mailto:hmanis@manislaw.ca)

Insolvency Lawyers for Respondent  
Lawyers for the Applicant 1000093910 Ontario Inc.

AND TO:     **LERNERS LLP**  
Barristers and Solicitors  
225 King Street West  
Suite 1500  
Toronto ON M5V 3M2

**Domenico Magisano (LSO#:45725E)**  
Tel:     416-601-4123  
[dmagisano@lerner.ca](mailto:dmagisano@lerner.ca)

**Jason Squire (LSO#:43183O)**  
Tel:     416-867-2404  
[jsquire@lerner.ca](mailto:jsquire@lerner.ca)

Lawyers for Ren/Tex Realty Inc. and ReMax Premier Inc.

AND TO:     **CHAITONS LLP**  
Barristers and Solicitors  
5000 Yonge Street  
10th Floor  
Toronto ON M2N 7E9

**George Benchetrit**  
[george@chaitons.com](mailto:george@chaitons.com)  
Tel: 416-954-6514

**Laura Culleton (LSO#:82428R)**  
[laurac@chaitons.com](mailto:laurac@chaitons.com)  
Tel:     416-218-1128

Lawyers for Zaherali Visram



AND TO:     **THORNTON, GROUT, FINNIGAN**  
Barristers and Solicitors  
Canadian Pacific Tower  
100 Wellington Street West, Suite 3200  
P.O. Box 329, TD Centre  
Toronto ON M5K 1K7

**D. J. Miller** (LSO#:34393P)  
[djmiller@tgf.ca](mailto:djmiller@tgf.ca)  
Tel: 416-304-0559

Lawyers for Firm Capital Corporation

AND TO:     **THC LAWYERS**  
Toronto-Dominion Centre  
TD West Tower  
Suite 2130, P.O. Box 321  
Toronto ON M5K 1K7

**Ran He** (LSO#:72243P)  
[rhe@thclawyers.ca](mailto:rhe@thclawyers.ca)  
Tel: 416-890-1200 ext. 1

Lawyers for 20 Regina JV Ltd.

PEAKHILL CAPITAL INC. ~~et al.~~ and 1000093910 ONTARIO INC.

Court of Appeal File No.: COA-24-CV-0671

Court File No.: CV-23-00004031-0000

Applicant

Respondent

**COURT OF APPEAL FOR ONTARIO**  
Proceeding Commenced at NEWMARKET

**AMENDED AMENDED NOTICE OF APPEAL**

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto ON M5H 3S1

**Kevin D. Sherkin** (LSO#: 27099B)

[ksherkin@millerthomson.com](mailto:ksherkin@millerthomson.com)

Tel: 416-597-6028

**Mitchell Lightowler** (LSO#: 76305T)

[mlightowler@millerthomson.com](mailto:mlightowler@millerthomson.com)

Tel: 416-595-7938

Lawyers for the Appellant (Intervener),

**2557905 Ontario Inc.**

Served by Email: To The Service List ~~Dominique Michaud:~~

~~[dmichaud@robapp.com](mailto:dmichaud@robapp.com)~~

Howard F. Manis: [hmanis@manislaw.ca](mailto:hmanis@manislaw.ca)

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