

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE BROWN)
THE HONOURABLE JUSTICE HARVISON YOUNG)
THE HONOURABLE JUSTICE GOMERY)

FRIDAY THE 24TH
DAY JULY 2024

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant
(Respondent in Appeal)

and

1000093910 ONTARIO INC.

Respondent
(Respondent in Appeal)

**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**

ORDER

THIS APPEAL, by 2557904 Ontario Inc. (“**255**”), from the Order of the Honourable Justice P. Sutherland, dated July 9, 2024 (the “Order”), was heard this day at 130 Queen St. W., Toronto, Osgoode Hall, in person and by remote videoconference;

ON READING the Exhibit Book, the Appeal Book and Compendium of 255, the Factum of 255, the Amended Appeal Book and Compendium of 255, the Supplementary Factum of 255, the Responding Compendium and Factum of the Respondent in Appeal 1000093910 Ontario Inc. (“**910**”), the Supplement to the Second Report and Factum of the Court-appointed Receiver, KSV Restructuring Inc. (the “**Receiver**”), the Factum of the Respondent in Appeal Peakhill Capital Inc.

("Peakhill"), and on hearing the submissions of the lawyers for 255, 910, Peakhill, Zaherali Visram, and the Receiver;

1. **THIS COURT ORDERS** that 255 has standing to pursue this appeal.
2. **THIS COURT ORDERS** that 255 is entitled to seek appellate review of the Order.
3. **THIS COURT ORDERS** that 255's appeal be allowed in part and that paragraph 3 of the Order be varied, and a new paragraph 3 be substituted, as follows:

3. THIS COURT ORDERS *that the refinance of 910's indebtedness and the completion of the Refinance Transaction is hereby approved and that 910 is authorized and directed to take such steps to complete the Refinance Transaction as may be required by the terms of the documents comprising the Refinance Transaction, provided that, as a condition of the closing of the Refinancing Transaction, 910 pay the following two amounts:*

- i. *to the Receiver's Counsel, the Receivership Expenses -- Professional Fees, including the Additional Fee Accrual, Receivership expenses and Broker Work Fee, -- as set out in the table in paragraph 1 of Section 3.0 of the Receiver's Supplement to its Second Report; and*
- ii. *to Counsel for 255, in trust for 255, the sum of \$300,000, as compensation for 255's costs thrown away in the receivership sale process.*


3A. THIS COURT ORDERS *that in the event that the Refinancing Transaction referenced in paragraph 3 of the July 9, 2024 Order does not close by 5:00 p.m. on Monday, July 22, 2024, on the terms set out in paragraph 3 of the July 9, 2024 Order as varied by this Order on appeal, the July 9 Order is set aside and in its place the relief set out in the Receiver's Motion Record dated May 31, 2024, specifically the Approval and Vesting Order and Distribution and Discharge Order, is granted, but subject to variation to reflect the updated Receiver's expenses as set out in Paragraph 3 of this Order, as varied.*

4. **THIS COURT ORDERS** that paragraph 9 of the Order is hereby set aside.
5. **THIS COURT ORDERS** that there shall be no costs of this appeal as between 255 and 910.

ENTERED AT / INSCRIPT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

July 24th, 2024

PER / PAR: ND


Noah Dragalin-Reeves
Registrar, Court of Appeal for Ontario

PEAKHILL CAPITAL INC.
Applicant (Respondent in Appeal)

and 1000093910 Ontario Inc.
Respondent (Respondent in Appeal)

COURT OF APPEAL FOR ONTARIO

ORDER ON APPEAL

SCALZI CAPLAN LLP
20 Caldari Road, Unit 2
Vaughan, ON L4K 4N8

Gary Michael Caplan (19805G)
E: gary@sclawpartners.ca
Derek Ketelaars
E: derek@sclawpartner.com

Lawyers for the Respondent

LIMA LAW PC
Aram Simovonian (73974D)
E: asimovonian@limalaw.ca

Agent for Scalzi Caplan LLP