

Court of Appeal Court File No.: COA-23-CV-1357

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

**ONTARIO
COURT OF APPEAL**

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant
(Respondent on Appeal)

and

1000093910 ONTARIO INC.

Respondent
(Appellant)

**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**

**FACTUM OF THE APPELLANT,
1000093910 ONTARIO INC.
(returnable January 19, 2024)**

January 9, 2024

SCALZI CAPLAN LLP
20 Caldari Road, Unit 2
Vaughan, ON L4K 4N8
Gary Michael Caplan (19805G)
E: gary@sclawpartners.ca
Aram Simovonian (73974D)
E: aram@sclawpartners.ca

Lawyers for the Appellant

TO: SERVICE LIST

Court of Appeal Court File No.: COA-23-CV-1357

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

**ONTARIO
COURT OF APPEAL**

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant
(Respondent on Appeal)

and

1000093910 ONTARIO INC.

Respondent
(Appellant)

INDEX

HEADING	Page No.
PART I: STATEMENT IDENTIFYING PARTIES AND APPEAL	3
PART II: CONCISE SUMMARY OF THE FACTS RELEVANT TO THE ISSUES ON THE PROPOSED APPEAL	3
PART III: SPECIFIC QUESTIONS BEFORE THIS MOTIONS COURT	8
PART IV: STATEMENT OF EACH ISSUE RAISED AND STATEMENT OF LAW	8
ISSUE ONE: THE LEAVE TO APPEAL AND STAY QUESTIONS	9
ISSUE TWO: SUBSTANTIVE MOTION QUESTIONS	10
ISSUE THREE: THE SUBSTANTIVE APPEAL QUESTION	11
PART V: ORDER REQUESTED	12

PART I: STATEMENT IDENTIFYING PARTIES AND APPEAL

1. This motion is brought by 1000093910 Ontario Inc. ("**Debtor**") for certain relief arising from the Endorsement and Order of the Honourable Madam Justice Vallee dated December 20, 2023 ("**Vallee Order**"), in the Superior Court of Justice (Newmarket), wherein the learned Motion Judge, in a Court Appointed Receivership proceeding, granted certain relief to the Receiver and dismissed a Cross-Motion brought by the Debtor.¹

2. The Debtor, before a single Justice of this Court of Appeal, seeks the following relief:

- a. if required, an Order extending the time for service of its Motion Record, validating service of its Motion Record in the manner effected, abridging time for service thereof, and/or dispensing with service thereof on any party other than the parties served;
- b. the advice and directions of this Honourable Court as to whether leave to appeal to the Court of Appeal, and a stay of Vallee Order, is necessary in light of the provisions of s. 193 and s. 195 of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3);
- c. assuming such leave is required, pursuant to Rule 61.03.1, an Order granting leave to appeal the Vallee Order and Endorsement of the Honourable Madam Justice Vallee, dated December 20, 2023 ("**Vallee Endorsement**");²
- d. pursuant to Rule 63.02, if required, a stay of the Vallee Order pending the return of this motion, and should leave be granted, a stay of the Vallee Order pending the hearing of the appeal;
- e. costs of this motion on a substantial indemnity basis, or to be determined by the panel hearing the Appeal; and
- f. such further relief as counsel may advise and this Honourable Court may deem just.

PART II: CONCISE SUMMARY OF THE FACTS RELEVANT TO THE ISSUES ON THE PROPOSED APPEAL

3. On or about August 23, 2023, the Debtor, as vendor, entered into a listing agreement with Ren/Tex Realty Inc., as realtor, for the property municipally known as 20 Regina Road, Vaughan, Ontario ("**Property**").³

¹ Motion Record of the Moving Party, 1000093910 Ontario Inc. ("**Moving Party Record**"), Tab 2, page 19: Order of the Honourable Madam Justice Vallee.

² Moving Party Record, Tab 3, page 35: Endorsement of the Honourable Madam Justice Vallee.

³ Moving Party Record, Tab 5, page 250: Cross-Motion Record, Affidavit of Ravi Aurora ("**Aurora Affidavit**"), at para 6.

4. On September 7, 2023, 2557904 Ontario Inc. ("**255**") as purchaser, and the Debtor, as vendor, entered into an unconditional Agreement of Purchase and Sale, for the purchase of the Property for the price of \$31,000,000 ("**Original APS**").⁴

5. On September 7, 2023, 255 paid a deposit of \$1,000,000 to the Debtor's realtor, Ren/Tex. The Original APS contemplated a closing date of December 21, 2023.⁵

6. Had the Original APS closed, there would have been sufficient funds to discharge all of the Debtor's creditors, including, *inter alia*: the first mortgage, as held by Peakhill Capital Inc. ("**Peakhill**"), in the sum of approximately \$19,000,000; the second mortgage in the approximate sum of \$8,000,000; and, property tax arrears owed to the City of Vaughan in the approximate sum of \$162,786. Any remaining balance would have accrued to the benefit of the Debtor.

7. On September 13, 2023, on the Application of the first mortgagee, Peakhill, the Honourable Madam Justice S. Lavine, sitting in Newmarket, appointed KSV Restructuring Inc. as the Receiver and Manager ("**Receiver**") without security over the Debtor, and of all of its assets, undertakings and property, including the Property.⁶

8. The Receivership Order and the Receiver's appointment became effective on October 2, 2023.⁷

9. Between September 2023, and November 13, 2023, the Receiver entered into discussions with 255 with a view to amending the Original APS, substituting the seller as the Receiver and allowing for a Vesting Order of the Property upon completion of the transaction.⁸

10. 255 refused to amend the Original APS to allow for a Vesting Order. The Receiver, appearing to have accepted this position without contest, thereafter, entered into a Stalking Horse Agreement with 255 dated November 13, 2023. The Stalking Horse Agreement set a minimum auction price of \$24,255,000, subject to adjustment.⁹

11. The Receiver prepared a First Report dated December 13, 2023.¹⁰ For the purposes of this Motion, and the proposed Appeal, the following excerpts from the first Report are important:

⁴ Moving Party Record: Tab 5, page 250: Cross-Motion Record, Aurora affidavit at para 7.

⁵ Moving Party Record, Tab 5, page 250: Cross-Motion Record, Aurora Affidavit para 8.

⁶ Moving Party Record, Tab 5, page 250: Cross-Motion Record, Aurora Affidavit at para 9.

⁷ Moving Party Record, Tab 5, page 250: Cross-Motion Record, Aurora Affidavit, at para 10.

⁸ Moving Party Record: Tab 4, page 63: Receiver's Motion Record, Receiver's First Report at s.6.1, para 1.

⁹ Moving Party Record: Tab 4, page 63 and 64: Receiver's Motion Record, Receiver's First Report at s.6.1 para 1 and 2.

¹⁰ Moving Party Record, Tab 4: Page 56: Receiver's Motion Record, Receiver's First Report.

5.0 The Original APS

[...]

3. As a result of the intervening receivership proceedings (which the Company was already on notice at the time of entering into the Original APS), the Original APS could not be closed on its terms because, among other things, the closing mechanics are different in a receivership than in an ordinary course real estate transaction. Accordingly, forthwith after the commencement of the receivership proceedings, the Receiver approached 255 seeking to amend the Original APS to, among other things: (i) add a mutual condition that the Original APS was conditional on the Receiver obtaining an Approval and Vesting Order vesting title in the Real Property to 255, and (ii) contemplate the closing mechanics required in a receivership sale. However, 255 was not prepared to agree to such amendments. Accordingly, the Receiver was unable to close the transaction contemplated by the Original APS. The Receiver has kept all stakeholders advised of these developments, including the Company, Peakhill and Mr. Visram.

[...]

6.3 Termination of Original APS and Return of Original APS Deposit

1. On November 20, 2023, in accordance with the terms of the Stalking Horse Agreement, counsel for 255, Concorde Law Professional Corporation, delivered an irrevocable direction to Ren/Tex directing Ren/Tex to the Original APS Deposit to the Receiver (the "Direction").

2. The Direction was not complied with as Ren/Tex expressed concerns over a breach of trust claim as a result of the Confirmation of Co-operation and Representation Agreement that was executed with 255's brokerage as part of the Original APS.

3. The Receiver is seeking the termination of the Original APS and a direction to Ren/Tex to return the Original APS Deposit to 255.

4. The Receiver and its legal counsel have engaged extensively with counsel to the Company regarding the Original APS. Counsel to the Company has advised that prior to the return of this motion, the Company intends to either: (a) repay Peakhill and bring a motion to terminate the receivership proceedings; or (b) bring a motion to amend the receivership order to allow the Company to close the Original APS. In connection with the foregoing, the Receiver has been advised by counsel to the Company that the Company is negotiating a commitment letter to repay Peakhill. As of the date of this Report, the Receiver has not seen a copy (including any drafts) of any such commitment letter, despite multiple requests therefor.

5. As the Receiver has not seen any commitment letter and the Company has not filed its materials as of the date of this Report, the Receiver intends to file a supplemental report with its views on any motion brought by the Company. The supplemental report may or may not include revised recommendations for the Court.

12. The above excerpts reveal the following:

- a. The Receiver appears to have accepted 255's unwillingness to amend the Original APS, without more. The first Report fails to request and/or suggest that the advice and direction of the Court be sought with a view to compelling the completion of the Original APS by the Receiver, or for an Order amending the Receivership Order to complete the transaction pursuant to the Original APS, the closing of which was to take place on December 21, 2023, eight (8) days after the first Report was published.
- b. The Receiver left it to the buyer to "*bring a motion to amend the receivership order to allow the Company to close the Original APS*", failing which, the Receiver recommended the auction process and the Stalking Horse APS with the same seller.¹¹

13. On December 13, 2023, the Receiver brought a motion in the Superior Court, Newmarket, returnable on December 20, 2023 (one (1) day before the Original APS was to have closed), and the Receiver enclosed its First Report as an appendix.¹²

14. On December 19, 2023, the Debtor, pursuant to the suggestion set out in the Receiver's First Report, served and filed a Cross-Motion seeking, *inter alia*, an Order amending the Receivership Order to allow it to close on the Original APS, an Order approving the Original APS, and an Order directing the Receiver to permit the Debtor to complete the purchase transaction as contemplated by the Original APS.¹³

15. The Receiver's Motion, and the Debtor's Cross-Motion were heard before the Honourable Madam Justice Vallee on December 20, 2023. Given the imminent closing on December 21, 2023, the Receiver should have sought the advice and directions with respect to the Debtor's Cross-Motion and ought to have supported it. Had the Receiver done so, and had the Court granted the relief sought in the Cross-Motion, the Debtor would have proceeded to close on the following day. Had the buyer (255) refused to

¹¹ Moving Party Record, Tab 4, page 67: Receiver's Motion Record, Receiver's First Report at s.6.3 at para 4.

¹² Moving Party Record, Tab 4, page 39: Receiver's Motion Record.

¹³ Moving Party Record, Tab 5, page 232: Cross-Motion Record.

close, the Debtor and Receiver could have then sought the advice and directions of the Court to bring a motion, in the Receivership proceeding, for specific performance, if necessary.¹⁴

16. Instead, the learned Motion Judge granted all of the relief sought by the Receiver except for an Order terminating the Original APS. The learned Motion Judge dismissed the Debtor's Cross-Motion without considering its merits because it was late served and, in any event, had "*little chance of success*".¹⁵

17. In particular, the Endorsement reads as follows:

For several reasons, I will not consider the cross-motion.

[...]

The cross-motion has little chance of success. It concerns a different real estate transaction entered into six days before the receivership order. The closing date is tomorrow. The receiver states that it could not close this transaction because of certain terms that it contains. Another agreement of purchase and sale entered into by the receiver and 2557004 Ontario Inc. dated November 13, 2023, referred to as the "stalking horse agreement" is now in play. The receiver's motion concerns this transaction. The purchaser states that it would refuse to close the earlier transaction, which it considers to be null and void.

18. Importantly, although not expressly stated in her Endorsement, the learned Motion Judge refused to terminate the Original APS as the Receiver had sought. Instead, the issued Order omitted any reference to the termination of the Original APS (which term had been included in the Receiver's proposed Draft Order).¹⁶ As a result, there were two live agreements of purchase and sale as of the closing date, December 21, 2023: the Original APS, and the Stalking Horse Agreement (which could be completed after the auction process).

19. On December 21, 2023, the Debtor tendered on the Buyer (255).

20. On December 29, 2023, the Debtor served and filed a Notice of Appeal, relying on s. 193(c) and s. 195 of the *BIA* and Rule 31 of the *Bankruptcy and Insolvency General Rules* (C.R.C., c. 368).¹⁷

21. On January 2, 2024, the Receiver took the position that the service of a Notice of Appeal was improper and that there was no automatic stay of the Vallee Order because the Order appealed from was procedural, not substantive.

¹⁴ Moving Party Record, Tab 4, page 67: Receiver's Motion Record, Receiver's First Report, at s. 6.3 at para 5.

¹⁵ Moving Party Record, Tab 2, page 19: Order of the Honourable Madam Justice Vallee.

¹⁶ Moving Party Record: Tab 4, page 217: Receiver's Motion Record, Draft Order at para 3.

¹⁷ Moving Party Record: Tab 1, page 15: Notice of Appeal.

22. The Debtor disagreed with the Receiver's position; however, out of an abundance of caution, and without prejudice to the Debtor's position, the Debtor now seeks the relief set forth in this Notice of Motion.

PART III: SPECIFIC QUESTIONS BEFORE THIS MOTIONS COURT

23. The Debtor submits the following specific questions before this Court:

a. ISSUE ONE: LEAVE TO APPEAL AND STAY QUESTIONS

- i. **ISSUE ONE (A):** Is leave to appeal required, or is there an automatic right to appeal?
- ii. **ISSUE ONE (B):** Is a stay required, or is there an automatic stay imposed?

b. ISSUE TWO: SUBSTANTIVE MOTION QUESTIONS

- i. Assuming leave to appeal is required, should leave be granted?
- ii. Assuming leave to appeal is required, should a stay be granted pending a successful leave application?

c. ISSUE THREE: SUBSTANTIVE APPEAL QUESTIONS

- i. Did the learned Motion Judge err by failing to hear the Debtor's Cross-Motion, despite its late delivery?
- ii. Did the learned Motion Judge err in failing to consider and weigh the factors set out in *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (ONCA), and *Re Regal Constellation Hotel Ltd.*, 2004 CanLII 206 (ON CA)?
- iii. Should the Court of Appeal substitute its own opinion or remand the matter back to the Superior Court in Newmarket for reconsideration?
- iv. Should the Order of Madam Justice Vallee be stayed pending the appeal?

PART IV: STATEMENT OF EACH ISSUE RAISED AND STATEMENT OF LAW

24. The jurisprudence of this Court of Appeal establishes a well-accepted practice that a single Justice dealing with motions involving orders made under the *BIA* has the authority to determine whether a party

has a right of appeal under s. 193(a) – (d) of the *BIA*, or whether a party requires leave to appeal under s. 193(e) of the *BIA*, and if leave is required, whether leave should be granted.¹⁸

ISSUE ONE: THE LEAVE TO APPEAL AND STAY QUESTIONS

25. Section 193 of the *BIA* provides, in relevant part:

Court of Appeal

193 Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

[...]

(c) if the property involved in the appeal exceeds the value ten thousand dollars;

[...]

(e) in any other case by leave of a judge of the Court of Appeal.

26. In Ontario, the Court of Appeal has restricted the right to appeal as of right under s. 193(c) of the *BIA* with the result that, in most cases, an appellant must seek leave under s. 193(e).

27. The caselaw in Ontario makes it clear that s. 193(c) is not to be used: for matters of procedure; where an Order does not bring into the play the value of the debtor's property; or, Orders that do not result in a loss of more than \$10,000.¹⁹

28. Although the Order of Madam Justice Vallee, on its face, appears to involve procedure (that is, it orders an auction process and a Stalking Horse Agreement), the true substance and effect of the Order affected substantive rights. By not terminating the Original APS the Court opened the door for the Receiver or the Debtor to complete the deal on December 21, 2023. But, on the other hand, by dismissing the Cross-Motion, the Court effectively suspended those substantive rights by opting for an auction process and Stalking Horse Agreement.

29. Had the Court allowed the relief set out in the Cross-Motion and had the Original APS closed or had there been an Order for specific performance, the value of the Debtor's Property would have been set at \$31,000,000. Instead, by ordering an auction process and Stalking Horse Agreement, the value of the Debtor's Property is now put into play and is jeopardized, and is now subject to the vicissitudes of an

¹⁸ [Cardillo v Medcap Real Estate Holdings Inc.](#), 2023 ONCA 852 (CanLII) at para 25 ("*Medcap*").

¹⁹ [Medcap](#) at para 21.

uncertain future market. There is a likelihood that the Property will sell at a price less than \$31,000,000, resulting in a “loss” that will accrue to either the second mortgagee, or the Debtor.

30. It is respectfully submitted therefore, that the right to have completed the Original APS is the gravamen of the Order, not the auction process and the Stalking Horse Agreement. The right to complete the Original APS is not a matter of procedure, it is a substantive right.²⁰

31. If there is an automatic right of appeal, s. 195 of the *BIA* provides for an automatic stay.

ISSUE TWO: SUBSTANTIVE MOTION QUESTIONS

32. Assuming s. 193(e) of the *BIA* applies, the Debtor seeks leave of this Court to appeal the Order of the Honourable Madam Justice Vallee.

33. It is trite law that the overriding proposition is that the exercise of the granting of leave to appeal under s. 193(e) is discretionary and must be exercised in a flexible and contextual way. The following are the prevailing considerations:

- a. the appeal raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole, and is one that this court should therefore consider and address;
- b. the appeal is *prima facie* meritorious;
- c. the appeal would unduly hinder the progress of the bankruptcy/ insolvency proceedings; and
- d. the question whether the point raised is of significance to the action itself.²¹

34. The Receiver fell into error, *ab initio*, in succumbing to the buyer’s refusal to amend the Original APS to allow the Receiver to complete the transaction. To maximize recovery for all stakeholders, and, in particular, the Debtor, the Receiver, in its First Report, should have sought the advice and directions of the Court to compel a closing in its name, or as the Receiver’s First Report suggested, ought to have sought an order to amend the Receivership Order to allow the Debtor to complete the transaction.

35. Had the Receiver’s First Report, published on December 13, 2023, engaged the *Soundair* principles in a comparative analysis between the completion of the Original APS on the one hand, and the Stalking

²⁰ [2403177 Ontario Inc. v Bending Lake Iron Group Limited](#), 2016 ONCA 225 (CanLII); [Enroute Imports Inc. \(Re\)](#), 2016 ONCA 247 (CanLII); and [Downing Street Financial Inc. v Harmony Village-Sheppard Inc.](#), 2017 ONCA 611 (CanLII); [First National Financial GP Corporation v Golden Dragon HO 10 Inc.](#), 2019 ONCA 873 (CanLII); [Hillmount Capital Inc. v Pizale](#), 2021 ONCA 364.

²¹ [Casa Nova Fashions Ltd. v The Midas Investment Corporation](#), 2021 ONCA 581 (CanLII) at para 37.

Horse Agreement / auction process on the other hand, the Court would have had the appropriate issue before it on December 20, 2023. Instead, the Receiver advanced the Stalking Horse Agreement / auction process option and as an Officer of the Court, failed to fairly describe the choice of substantive rights before the Court. It is respectfully submitted that, in so doing, the Receiver clearly preferred the interests of the buyer (255) over those of the Debtor.

36. The Receiver could have cured its error by supporting the Debtor's Cross-Motion on December 20, 2023. It did not. Instead, it sought to terminate the Original APS and advance only the Stalking Horse Agreement / auction process approach to the potential detriment of the Debtor and other stakeholders. As it turns out, the Court did not terminate the Original APS but failed to further the analysis by providing a remedy. The Original APS, today, hangs in mid-air, but, if the Vallee Order is stayed, the Original APS can be completed.

37. It is not surprising that the learned Motion Judge did not cite or set out the *Soundair* test in her Endorsement. There was *no Soundair* analysis because the only choice put before the Court was that which the Receiver had advanced: the Stalking Horse Agreement / auction process.

38. It is respectfully submitted that, for the forgoing reasons, the proposed appeal is, *prima facie*, meritorious and a stay is warranted. Because neither the buyer (255) or the seller (be it the Receiver or the Debtor), was ready, willing and able to close the Original APS on December 21, 2023, the Original APS is alive. The caselaw in Ontario is clear that it is open to a Court to fix a new closing date in accordance with the principles set out in [*King et al v Urban & Country Transport Ltd. et al*](#), 1973 CanLII 740 (ON CA).

ISSUE THREE: THE SUBSTANTIVE APPEAL QUESTION.

39. The Debtor's proposed appeal raises substantive issues as outlined in the Notice of Appeal (attached as Schedule A to the Notice of Motion). Summarily, the Debtor will respectfully submit, on appeal, that:

- a. the failure of the learned Motion Judge to consider and hear the Cross-Motion, and her failure to have considered and applied the *Soundair* principles resulted in procedural unfairness and substantive error;
- b. at a minimum, the learned Motion Judge ought to have considered, based on the Receiver's recommendation (which ought to have been put before her), whether the Receivership Order should be amended to allow the Debtor or the Receiver to complete the Original APS;

- c. the learned Motion Judge refused the Receiver's request to terminate the Original APS, thereby creating two competing and conflicting processes with the same buyer (255) (while failing to grant to the Receiver, or the Debtor the ability to close on the Original APS); and
- d. the learned Motion Judge ought to have allowed the closing of the Original APS to proceed, and if the buyer (255) had refused to close, at that point, invited the Receiver's recommendations on next steps.

PART V: ORDER REQUESTED

40. The Debtor respectfully requests that this Honourable Court grant to it the following relief:
- a. if required, an Order extending the time for service of the Debtor's Motion Record, and this Factum, validating service of its Motion Record and this Factum, in the manner effected, abridging time for service thereof, and/or dispensing with service thereof on any party other than the parties served;
 - b. an Order that the Debtor has a right of appeal, without leave, to the Court of Appeal, and that the Order of the Honourable Madam Justice Vallee be stayed pending the hearing of that Appeal;
 - c. in the alternative, an Order granting leave to appeal the Order of the Honourable Madam Justice Vallee;
 - d. costs of this motion on a substantial indemnity basis, or to be determined by the panel hearing the Appeal; and
 - e. such further relief as counsel may advise and this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th day of January 2024.

Gary M. Caplan
 Gary M. Caplan

Aram Simovonian
 Aram Simovonian

SCALZI CAPLAN LLP
 20 Caldari Road, Unit 2
 Vaughan, ON L4K 4N8
Gary Michael Caplan (19805G)

E: gary@sclawpartners.ca
Aram Simovonian (73974D)
E: aram@sclawpartners.ca

Lawyers for the Appellant

TO: SERVICE LIST

SCHEDULE A

STATUTES AND RULES

1. *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3).
2. *Bankruptcy and Insolvency General Rules* (C.R.C., c. 368).
3. Rule 61.03.1.
4. Rule 63.02.

JURISPRUDENCE

1. *2403177 Ontario Inc. v Bending Lake Iron Group Limited*, 2016 ONCA 225 (CanLII).
2. *Cardillo v Medcap Real Estate Holdings Inc.*, 2023 ONCA 852 (CanLII).
3. *Casa Nova Fashions Ltd. v The Midas Investment Corporation*, 2021 ONCA 581 (CanLII).
4. *Downing Street Financial Inc. v Harmony Village-Sheppard Inc.*, 2017 ONCA 611 (CanLII).
5. *Enroute Imports Inc. (Re)*, 2016 ONCA 247 (CanLII).
6. *First National Financial GP Corporation v Golden Dragon HO 10 Inc.*, 2019 ONCA 873 (CanLII).
7. *Hillmount Capital Inc. v Pizale*, 2021 ONCA 364.
8. *King et al v Urban & Country Transport Ltd. et al*, 1973 CanLII 740 (ON CA).
9. *Re Regal Constellation Hotel Ltd.*, 2004 CanLII 206 (ON CA).
10. *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (ONCA).

SCHEDULE B

N/A

Court of Appeal Court File No.: COA-23-CV-1357

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

**ONTARIO
COURT OF APPEAL**

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant
(Respondent on Appeal)

and

1000093910 ONTARIO INC.

Respondent
(Appellant)

CERTIFICATE PURSUANT TO RULE 61.11(e)

THE MOVING PARTY, 1000093910 Ontario Inc., by its lawyers, certifies the following:

- a. an Order under subrule 61.09(2) is not required;
- b. the Moving Party requires 1.2 hours for their argument, not including reply;
- c. the Factum of the Moving Party complies with Rule 61.11(3);
- d. there are 3,840 words between Part I - V of the Factum, including footnotes; and
- e. the Counsel signing the Certificate are satisfied of every authority listed in Schedule "A".

Gary M. Caplan

Gary M. Caplan

Aram Simovonian

Aram Simovonian

SCALZI CAPLAN LLP

20 Caldari Road, Unit 2

Vaughan, ON L4K 4N8

Gary Michael Caplan (19805G)

E: gcaplan.scalzilaw@outlook.com

Aram Simovonian (73974D)

E: aram@sclawpartners.ca

Lawyers for the Appellant

Court of Appeal Court File No.: COA-23-CV-1357

Court File No. CV-23-00004031-0000

PEAKHILL CAPITAL INC.
Applicant (Respondent on Appeal)

and 1000093910 Ontario Inc.
Defendants / Appellants

ONTARIO
COURT OF APPEAL

CERTIFICATE PURSUANT TO RULE 61.11(e)

SCALZI CAPLAN LLP
20 Caldari Road, Unit 2
Vaughan, ON L4K 4N8
Gary Michael Caplan (19805G)
E: gcaplan.scalzilaw@outlook.com
Aram Simovonian (73974D)
E: aram@sclawpartners.ca

Lawyers for the Appellant

PEAKHILL CAPITAL INC.
Applicant (Respondent on Appeal)

and 1000093910 Ontario Inc.
Defendants / Appellants

**ONTARIO
COURT OF APPEAL**

**FACTUM OF THE APPELLANT,
1000093910 Ontario Inc.**

SCALZI CAPLAN LLP
20 Caldari Road, Unit 2
Vaughan, ON L4K 4N8
Gary Michael Caplan (19805G)
E: gcaplan.scalzilaw@outlook.com
Aram Simovonian (73974D)
E: aram@sclawpartners.ca

Lawyers for the Appellant