

COURT OF APPEAL FOR ONTARIO

BETWEEN:

BUDUCHNIST CREDIT UNION LIMITED

Applicant
(Respondent in Appeal)

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC. SASI MACH LIMITED, VICAR HOMES LTD.
and TRADE CAPITAL FINANCE CORP.**

Respondents
(Appellants)

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 RESPONDENT IN APPEAL, BUDUCHNIST CREDIT UNION LIMITED

[Motion to Quash Appeal]

Date: May 24, 2019

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1
Insolvency.Toronto@dentons.com
Barbara Grossman (LSO # 20947K)
Tel: (416) 863-4417
Fax: (416) 863-4592
barbara.grossman@dentons.com

Kenneth Kraft (LSO # 31919P)
Tel: (416) 863-4374
kenneth.kraft@dentons.com

Lawyers for Buduchnist Credit Union Limited

**TO: LAX O'SULLIVAN LISUS
GOTTLIEB LLP**
145 King Street West, Suite 2750
Toronto, ON M5H 1J8

Andrew Winton

Tel: (416) 644-5342

Fax: (416) 598-3730

awinton@lolg.ca

Philip Underwood

Tel: (416) 645-5078

punderwood@lolg.ca

*Lawyers for the Respondents
(Appellants), ~~2321197 Ontario Inc.~~,
~~Carlo Demaria, 2321198 Ontario
Inc.~~, and Vicar Homes Ltd.*

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FACTUM OF THE RESPONDENT IN APPEAL, BUDUCHNIST CREDIT UNION LIMITED

PART I – OVERVIEW

1. The Respondent in Appeal, Buduchnist Credit Union Limited (“BCU”), brings this motion seeking an Order:

- (a) quashing the within appeal on the grounds that this Honourable Court has no jurisdiction to hear the appeal because the Appellants have no appeal as of right to this Court, the Appellants have not sought nor obtained leave to appeal, and the Appellants cannot meet the test for obtaining leave to appeal therefore any belated request for leave to appeal and an extension of time to seek leave to appeal would be doomed to fail; and

- (b) granting BCU costs of this motion and the appeal on a full indemnity basis or, in the alternative, substantial indemnity basis.

PART II – THE FACTS

2. BCU advanced loans to each of the Appellants and other Respondents named in the application (with the exception of Trade Capital Finance Corp. (“**Trade Capital**”). Mortgages on five real properties (the “**Real Properties**”) secure the loans. Each of the subject loans and mortgages fell into default.

Amended Notice of Application, amended December 3, 2018, para 11,
BCU’s Motion Record, Tab 3 [Amended Notice of Application].

3. Complicating the repayment of the BCU loans and mortgages is a Mareva injunction dated May 6, 2015 (the “**Mareva Order**”), which Trade Capital obtained against Carlo Demaria and various other defendants.

Endorsement of the Honourable Justice Penny, dated January 17, 2019,
page 8 of Transcript, BCU’s Motion Record, Tab 6 [January 17
Endorsement].

Amended Notice of Application, para 80.

4. Due to the ongoing defaults on the mortgages, and Carlo Demaria’s assertion to BCU that he is “flat broke” and unable meet his obligations as they fall due, BCU commenced the within application seeking: (a) the appointment of a receiver over the Real Properties pursuant to Section 243 of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) and Section 101 of the *Courts of Justice Act* (Ontario) (“**CJA**”); and (b) judgment for the amount of principal, interest and costs owing to BCU under the loans and mortgages

Amended Notice of Application, pages 3-4 & 15.

5. Pursuant to a series of Orders of the Ontario Superior Court of Justice (Commercial List), KSV Kofman Inc. (“**KSV**”) was appointed as receiver (the “**Receiver**”) of four of the Real Properties.¹

6. At issue in this appeal is the Second Amended and Restated Order of the Honourable Justice Penny, dated January 17, 2019 (the “**Receivership Order**”), pursuant to which KSV was appointed as Receiver of the following two Real Properties owned by Carlo Demaria and his wife, Sandra Demaria: (a) 211 Woodland Acres Crescent, Maple, ON (the “**Woodland Property**”); and (b) 6216 Fifth Line, RR #1, Egbert, Ontario (the “**Cottage Property**”).

Second Amended and Restated Order of the Honourable Justice Penny,
dated January 17, 2019, BCU’s Motion Record, Tab 4 [Receivership
Order].

7. The Receivership Order is based on the Commercial List Model Receivership Order and it expressly appoints KSV as Receiver pursuant to both Section 243 of the BIA and Section 101 of the CJA.

Receivership Order.

Commercial List Model Order Appointing Receiver, BCU’s Motion
Record, Tab 5.

8. The appointment of the Receiver over the Woodland Property is temporarily stayed on terms pending the determination of a motion to set aside or vary the Mareva Order, and Trade Capitals’ cross-motion for summary judgment, currently scheduled to be argued on August 15 and 16, 2019.

January 17 Endorsement, page 10 of Transcript.

¹ The defaults in respect of the mortgage over the fifth real property were cured prior to the return date of BCU’s application and, on consent, BCU’s application as against the Respondents Sasi Mach Limited and Sandra Demaria in respect of such property was dismissed.

Endorsement of the Honourable Justice Penny, dated April 25, 2019,
BCU's Motion Record, Tab 7.

9. By Notice of Appeal, dated January 29, 2019, and amended March 1, 2019 (the “**Notice of Appeal**”), Carlo Demaria and Vicar Homes Ltd. appealed the Receivership Order. The Appellants did not seek leave to appeal. The Notice of Appeal cites Section 6(1)(b) of the CJA as the basis of this Court's jurisdiction to hear the appeal.

Amended Notice of Appeal, amended March 1, 2019, BCU's Motion
Record, Tab 2. [Notice of Appeal].

10. The Notice of Appeal, which requests that BCU's application to appoint a Receiver over the Woodland Property and the Cottage Property be dismissed, was served on January 29, 2019, more than 10 days after the Receivership Order was made.

Notice of Appeal.

11. Notably, the Notice of Appeal improperly omits from the title of proceedings the following language: “Application Under Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended...”.

PART III – ISSUES AND ARGUMENT

12. The following issues are raised on this motion:

- (a) whether this Court has jurisdiction to hear the appeal; and
- (b) if leave to appeal is required and is belatedly requested by the Appellants together with an extension of time to seek leave to appeal, whether such a motion is doomed to fail and ought not to be entertained.

13. BCU submits that this Honourable Court does not have jurisdiction to hear the appeal for the following reasons:

- (a) Section 193 of the BIA applies and this case does not satisfy any of the criteria for an appeal as of right to this Court;
- (b) the Notice of Appeal was served outside of the 10-day appeal period prescribed by the BIA;
- (c) leave to appeal is required under the BIA appeal provisions and has not been sought or obtained; and
- (d) in the alternative, if this appeal is governed by the appeal provisions of the CJA, as the Receivership Order is an interlocutory order and not a final order, leave to appeal would be required and has not been sought or obtained, and if leave were granted the appeal would lie to the Divisional Court, not to this Court.

14. Furthermore, the test for leave to appeal applicable under the BIA or under the CJA and the *Rules of Civil Procedure* cannot be met. Therefore a belated request for leave to appeal is doomed to fail.

This Court does not have Jurisdiction to Hear the Appeal

(A) The Appeal is Governed by Section 193 of the BIA

15. The Receivership Order was made pursuant to both Section 243 of the BIA and Section 101 of the CJA. It conforms to the Commercial List Model Receivership Order which relies on both Section 243 of the BIA and Section 101 of the CJA for the appointment of a receiver.

Receivership Order.

Commercial List Model Order Appointing Receiver.

16. Section 193 of the BIA authorizes appeals to this Court from orders and decisions of judges in proceedings commenced under the BIA. Combined with the *Bankruptcy and Insolvency General Rules* (“**BIA Rules**”), the federal legislation provides a comprehensive set of procedural rules for all appeals in BIA proceedings.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. D-3, s. 243, s. 193 [BIA].

Bankruptcy and Insolvency General Rules, C.R.C., c. 368 [BIA Rules].

17. In the area of insolvency, the federal legislation exclusively sets down the procedures governing all appeals. As this Court again confirmed in its decisions earlier this year in *Business Development Bank of Canada v. Astoria Organic Matters Ltd. et al.*, in cases “...where the court’s power may be grounded in the *BIA* or the *CJA*, the doctrine of paramountcy would prevent an appellant from resorting to the *CJA* appeal provisions as they are in operational conflict with those of the *BIA* in respect of timing and leave requirements.”

Business Development Bank of Canada v. Astoria Organic Matters Ltd. et al., 2019 ONCA 269, para 67, BCU Book of Authorities, Tab 1 [*BDC v. Astoria*].

18. Accordingly, pursuant to the doctrine of paramountcy, any appeal in respect of orders granted pursuant to Section 243 of the BIA and Section 101 of the CJA are exclusively governed by the BIA and the BIA Rules.

BDC v. Astoria, para 68; Affirming *Business Development Bank of Canada v. Astoria Organic Matters Ltd. et al.*, Endorsement of the Honourable Justice Watt, dated January 7, 2019, unreported, paras 19-22, BCU Book of Authorities, Tab 2 [Endorsement of Justice Watt].

19. As the Receivership Order sought to be appealed was made pursuant to Section 243 of the BIA and Section 101 of the CJA, the Appellants are required to follow the BIA appeal route.

20. The cases relied upon by the Appellants as authority that an appeal lies to this Court as of right from a receivership order are wholly inapplicable to the within appeal. These decisions concern appeals from the appointment of a receiver solely pursuant to Section 101 of the CJA. They do not involve the appointment of a receiver under both the BIA and CJA.

Akagi v. Synergy Group (2000) Inc., 2015 ONCA 368, BCU Book of Authorities, Tab 3.

Ontario v. Shehrazad Non Profit Housing Inc., 2007 ONCA 267, BCU Book of Authorities, Tab 4.

(B) Notice of Appeal was Served Late and in the Wrong Court

21. Pursuant to Rule 31(1) of the BIA Rules, an appeal to this Court must be made by filing a notice of appeal (including the necessary application for leave to appeal if the appeal is brought under Section 193(e) of the BIA) with the office of the registrar of the court appealed from (i.e. the Commercial List) within 10 days after the day of the order.

BIA Rules, Rule 31(1).

22. The Receivership Order was made on January 17, 2019. The Appellants served their Notice of Appeal on January 29, 2019, outside of the 10-day appeal period prescribed by the BIA Rules and did not file their Notice of Appeal with the Commercial List. Accordingly, the appeal is out of time and would require an order extending the 10 day appeal period. No extension of time has been sought or obtained.

(C) Leave to Appeal is Required

Under the Appeal Provisions of the BIA

23. Pursuant to Section 193 of the BIA, in certain circumstances, appeals to this Court are as of right, and in any other case, leave is required:

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:

- (a) if the point at issue involves future rights;
- (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
- (c) if the property involved in the appeal exceeds in value ten thousand dollars;
- (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars;² and
- (e) in any other case by leave of a judge of the Court of Appeal.

BIA, s. 193.

24. There is no appeal as of right under Subsections 193(a)-(d) of the BIA from an order appointing a receiver and, accordingly, leave is required to appeal such an Order under Subsection 193(e).

Business Development Bank of Canada v. Pine Tree Resorts, 2013 ONCA 282, para 12, BCU Book of Authorities, Tab 5 [*BDC v. Pine Tree Resorts*].

25. The appeals as of right set out in Subsections 193(a)-(c) of the BIA are to be narrowly interpreted.

² Subsection 193(d) of the BIA is clearly inapplicable to this appeal.

2403177 Ontario Inc. v. Bending Lake Iron Group Ltd., 2016 ONCA 225, paras 49-50 & 52-53, BCU Book of Authorities, Tab 6 [*Bending Lake*].

26. With respect to Subsections 193(a) and (c), neither of these provisions apply to the appeal of a receivership order. Future rights under 193(a) means future legal rights, not rights that presently exist.

BDC v. Pine Tree Resorts, paras 14-16.

27. Subsection 193(c) is not applicable to orders that are (a) procedural in nature, (b) do not bring into play the value of the debtor's property, or (c) do not result in a loss. A receivership order "does not bring into play the value of the property; it simply appoints an officer of the court to preserve and monetize those assets, subject to court approval." Accordingly, Subsection 193(c) does not apply to an appeal from a receivership order.

Bending Lake, para 53.

Endorsement of Justice Watt, para 25.

BDC v. Pine Tree Resorts, para 17.

28. With respect to Subsection 193(b) of the BIA, appeal courts have interpreted this section as meaning that a right of appeal will arise where "the decision in question will likely affect another case raising the same or similar issues in the same bankruptcy [or receivership] proceedings."

Bending Lake, para 32.

29. There is nothing on the record indicating that the appointment of the Receiver over the Woodland Property and the Cottage Property will affect another case raising the same or similar issues in these receivership proceedings. The issues raised in the Notice of Appeal are factual, specific to these properties and do not extend to any of the other Real Properties.

Notice of Appeal, paras 19-23.

30. Accordingly, as none of the exceptions set out in Subsections 193(a)-(d) of the BIA are applicable to the Receivership Order, there is no appeal as of right and, pursuant to Section 193(e), leave to appeal is required.

Under the Appeal Provisions of the CJA

31. In the alternative, if this Court determines that the CJA and the *Rules of Civil Procedure* govern the within appeal, leave is required as the Receivership Order is not a final order.

32. Section 6(1)(b) of the CJA provides that an appeal lies to the Court of Appeal as of right from a final order of a judge of the Superior Court of Justice. Section 19(1)(b) of the CJA provides that leave to appeal is required to appeal an interlocutory order of a judge of the Superior Court of Justice and the appeal lies with leave to the Divisional Court, not to this Court.

Courts of Justice Act, R.S.O. 1990, c. C-43, s. 6(1)(b) and 19(1)(b)
[CJA].

33. Ordinarily, orders under Section 101 of the CJA are interlocutory orders.

Royal Bank of Canada v. CFNDRS Inc., 2017 ONSC 7661, para 4, BCU
Book of Authorities, Tab 7.

34. In addition, the Amended Notice of Application not only seeks the appointment of the Receiver, it also requests judgment against the debtor and guarantor Respondents in the amount of the debt each owe to BCU.

Amended Notice of Application, page 4.

35. Accordingly, the appointment of the Receiver pursuant to the Receivership Order is interlocutory relief in a larger proceeding, the Receivership Order is not a final order and, pursuant to Section 19(1)(b) of the CJA, leave is required to appeal it to the Divisional Court.

CJA, s. 19(1)(b).

36. In summary, as there is no appeal as of right from the Receivership Order under the BIA or under the CJA, this Court does not have jurisdiction to hear the appeal and the appeal should be quashed.

The test for leave to appeal cannot be met, therefore any belated leave and extension of time request would be doomed to fail and should not be entertained

Under the BIA

37. The test for leave to appeal under the BIA cannot be met and therefore any belated application for leave to appeal is doomed to fail. As noted by Blair J.A., appeals in the area of CCAA and BIA insolvency proceedings “often arise from discretionary decisions made by judges attuned to the particular dynamics of the proceeding. Those decisions are entitled to considerable deference.”

BDC v. Pine Tree Resorts, para 33.

38. The application judge with carriage of the receivership proceedings is an experienced Commercial List judge who is attuned to the various issues in this proceeding. The appointment of the Receiver was a discretionary decision that is entitled to considerable deference.

39. In addition, the errors the Appellants claim that the application judge made are strictly questions of fact, not law or, at most, mixed fact and law.

Housen v. Nikolaisen, [2002] 2 SCR 235, 2002 SCC 33, paras 10-18 & 26-28, BCU Book of Authorities, Tab 8.

40. Leave to appeal is discretionary. The factors that are considered in granting leave pursuant to Section 193(e) of the BIA are as follows:

- (a) whether 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) whether the appeal is *prima facie* meritorious; and
- (c) whether the appeal would unduly hinder the progress of the bankruptcy/insolvency proceedings.

BDC v. Pine Tree Resorts, para 29.

2403177 *Ontario Inc. v. Bending Lake Iron Group Ltd.*, 2016 CarswellOnt 9527, 2016 ONCA 485, paras 21-24, BCU Book of Authorities, Tab 9.

(A) The appeal does not raise an issue of general importance

41. The issues raised in the within appeal are of importance to the parties. However, they fall far short of being of general importance to the practice of insolvency or the administration of justice as a whole. The main issues raised by the Appellants are: (a) whether the reversal of funds as a result of the NSF cheques deposited by a related party, and then credited to the line of credit secured by the Woodland Property mortgage, disentitles BCU to the appointment of a receiver; and (b) whether the application judge erred in assessing on the facts whether the appointment of a receiver was just and convenient in light of the nature of the subject Real Properties and the competing claims to same. These issues are factual in nature, specific to this case, are not complicated or novel and are not of general interest to the insolvency community.

(B) The proposed appeal is not *prima facie* meritorious

42. A proposed appeal is *prima facie* meritorious where the decision, (a) appears to be contrary to law, (b) amounts to an abuse of judicial power, or (c) involves an obvious error causing prejudice for which there is no remedy.

BDC v. Pine Tree Resorts, para 31.

43. The decision to appoint the Receiver was a discretionary decision of the application judge that was arrived at after full and complete response from the Appellants. There is no suggestion in the Notice of Appeal that the application judge misapprehended the test for the appointment of a receiver. In addition, there is nothing in the decision of the application judge that amounts to an abuse of judicial power or involves an obvious error causing prejudice for which there is no remedy. There is no basis to find that the Receivership Order has prejudiced the Appellants. In fact, the Receivership Order was temporarily stayed with respect to the Woodland Property (a personal residence) to provide the Appellants with time to address the continued application of the Mareva Order.

(C) The appeal will unduly hinder the receivership proceedings

44. The ongoing appeal has affected the progress of the receivership proceedings as the Receiver has been reluctant to freely exercise its powers to market and sell the Cottage Property while the appeal is pending (the Receivership Order in respect of the Woodland Property was temporarily stayed on terms pending the outcome of the Mareva Order cross motions). The receivership in respect of the Cottage Property has, until very recently, been effectively on hold because of the appeal. During this time, interest has continued to accrue on the total amounts outstanding.

45. Accordingly, the test for leave to appeal cannot be met and a belated application for leave to appeal should not be entertained.

Under the CJA

46. The restrictive two part test for obtaining leave to appeal an interlocutory order of a Superior Court Judge, as set out under Rule 62.02(4), cannot be met under either of the alternative branches because, among other things, there is no conflicting decision and no issue of general or public importance that transcends the interests of the immediate parties to the litigation.

Costs

47. BCU requests costs of its motion to quash and the appeal on a full indemnity basis or, in the alternative, substantial indemnity basis. BCU is entitled to full indemnity costs pursuant to the terms of the loan and mortgage documentation executed and delivered by the Appellants.

48. It was plain and obvious on the authorities that the BIA appeal provisions govern the within appeal and that leave is required.

BDC v. Astoria.

Endorsement of Justice Watt.

BDC v. Pine Tree Resorts.

Benarroch v. Abitbol, 2018 ONCA 203, para 7, BCU's Book of Authorities, Tab 10 [*Benarroch v. Abitbol*].

49. Furthermore, counsel for BCU immediately put the Appellants' counsel on notice of its position that there is no appeal as of right to this Court from the Receivership Order. BCU's

counsel also, (a) provided copies of decisions of this Court clearly setting out the paramountcy of the BIA appeal route and, (b) after the release of this Court's decisions in *BDC v. Astoria* again confirming the paramountcy of the BIA appeal provisions, invited the Appellants to withdraw their appeal. The Appellants refused, leaving BCU with no choice but to bring the within motion to quash.

Benarroch v. Abitbol, para 7.

Affidavit of Sara-Ann Van Allen, sworn May 23, 2019, BCU's Motion Record, Tab 8.

50. In the circumstances, substantial indemnity costs are appropriate.

Benarroch v. Abitbol, para 7.

PART IV – ORDER SOUGHT

51. BCU respectfully requests that the appeal be quashed, with costs of this motion and the appeal awarded to BCU on a full indemnity or, in the alternative, substantial indemnity basis.

52. BCU estimates that it requires ¼ hour to argue this motion, not including reply.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

May 24, 2019


DENTONS CANADA LLP
Lawyers for Buduchnist Credit Union Limited

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Business Development Bank of Canada v. Astoria Organic Matters Ltd. et al.*, 2019 ONCA 269.
2. *Business Development Bank of Canada v. Astoria Organic Matters Ltd. et al.*, Endorsement of the Honourable Justice Watt, dated January 7, 2019, unreported.
3. *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368.
4. *Ontario v. Shehrazad Non Profit Housing Inc.*, 2007 ONCA 267.
5. *Business Development Bank of Canada v. Pine Tree Resorts*, 2013 ONCA 282.
6. *2403177 Ontario Inc. v. Bending Lake Iron Group Ltd.*, 2016 ONCA 225.
7. *Royal Bank of Canada v. CFNDRS Inc.*, 2017 ONSC 7661.
8. *Housen v. Nikolaisen*, [2002] 2 SCR 235, 2002 SCC 33.
9. *2403177 Ontario Inc. v. Bending Lake Iron Group Ltd.*, 2016 CarswellOnt 9527, 2016 ONCA 485.
10. *Benarroch v. Abitbol*, 2018 ONCA 203.

SCHEDULE "B"
RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C. 1985, c. D-3

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:

- (a) if the point at issue involves future rights;
- (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
- (c) if the property involved in the appeal exceeds in value ten thousand dollars;
- (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
- (e) in any other case by leave of a judge of the Court of Appeal.

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(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.

Meaning of disbursements

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

Bankruptcy and Insolvency Act General Rules, C.R.C. c. 328

Appeal to Court of Appeal

31 (1) An appeal to a court of appeal referred to in subsection 183(2) of the Act must be made by filing a notice of appeal at the office of the registrar of the court appealed from, within 10 days after the day of the order or decision appealed from, or within such further time as a judge of the court of appeal stipulates.

(2) If an appeal is brought under paragraph 193(e) of the Act, the notice of appeal must include the application for leave to appeal.

Courts of Justice Act, R.S.O. 1990, c. C-43

PART I – COURT OF APPEAL FOR ONTARIO

Court of Appeal jurisdiction

6 (1) An appeal lies to the Court of Appeal from,

(a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave of the Court of Appeal as provided in the rules of court;

(b) a final order of a judge of the Superior Court of Justice, except an order referred to in clause 19 (1) (a) or an order from which an appeal lies to the Divisional Court under another Act;

(c) a certificate of assessment of costs issued in a proceeding in the Court of Appeal, on an issue in respect of which an objection was served under the rules of court;

(d) an order made under section 137.1.

Combining of appeals from other courts

(2) The Court of Appeal has jurisdiction to hear and determine an appeal that lies to the Divisional Court or the Superior Court of Justice if an appeal in the same proceeding lies to and is taken to the Court of Appeal.

(3) The Court of Appeal may, on motion, transfer an appeal that has already been commenced in the Divisional Court or the Superior Court of Justice to the Court of Appeal for the purpose of subsection (2).

DIVISIONAL COURT

Divisional Court jurisdiction

19 (1) An appeal lies to the Divisional Court from,

(a) a final order of a judge of the Superior Court of Justice, as described in subsections (1.1) and (1.2);

(b) an interlocutory order of a judge of the Superior Court of Justice, with leave as provided in the rules of court;

(c) a final order of a master or case management master.

INTERLOCUTORY ORDERS

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

APPEALS

Power to quash

134 (3) On motion, a court to which an appeal is taken may, in a proper case, quash the appeal.

Rules of Civil Procedure, RRO 1990, Reg 194

MOTIONS IN APPELLATE COURT

Motions Required to be Heard by Panel

61.16 (2.2) A motion in the Court of Appeal for an order that finally determines an appeal, other than an order dismissing the appeal on consent, shall be heard and determined by a panel consisting of not fewer than three judges sitting together, and always of an uneven number of judges

Grounds on Which Leave May Be Granted

62.02 (4) Leave to appeal from an interlocutory order shall not be granted unless,

(a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the panel hearing the motion, desirable that leave to appeal be granted; or

(b) there appears to the panel hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in the panel's opinion, leave to appeal should be granted.

BUDUCHNIST CREDIT UNION LIMITED

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA
DEMARIA, 2321198 ONTARIO INC., SASI MACH LIMITED,
VICAR HOMES LTD. and TRADE CAPITAL FINANCE
CORP.**

Applicant
(Respondent in Appeal)

Respondents
(Appellants)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE RESPONDENT IN APPEAL,
BUDUCHNIST CREDIT UNION LIMITED**

DENTONS CANADA LLP

77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1
[Insolvency.Toronto@dentons.com](mailto:Toronto@dentons.com)

Barbara Grossman (LSO # 20947K)

Tel: (416) 863-4417

Fax: (416) 863-4592

barbara.grossman@dentons.com

Kenneth Kraft (LSO # 31919P)

Tel: (416) 863-4374

kenneth.kraft@dentons.com

Lawyers for Buduchnist Credit Union Limited