

Court of Appeal File No.
Commercial List Court File No. CV-22-00674810-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant / Respondent in Appeal

- and -

30 ROE INVESTMENTS CORP.

Respondent / Appellant in Appeal

NOTICE OF APPEAL

THE APPELLANT appeals to the Court of Appeal from the order of the Honourable Justice Steele (the “**Motion Judge**”), of the Superior Court of Justice (Commercial List), dated February 16, 2023 (“**Order**”), and made at Toronto, authorizing and approving the sale of certain real property (“**the Units**”) belonging to the Appellant, by KSV Restructuring Inc., in its capacity as Court-appointed Receiver of the Respondent (the “**Receiver**”), and vesting title to the Units in certain purchasers (the “**Purchasers**”), pursuant to two agreements of purchase and sale;

THE APPELLANTS ASK that the Order be set aside and an Order be granted as follows:

1. Dismissing the motion brought by the Receiver;

2. Awarding the Appellants' costs of this appeal, and the motion below, on a substantial indemnity basis; and
3. Such further and other relief as counsel may request and that seems just to this Honourable Court.

THE GROUNDS OF APPEAL are as follows:

1. the Motion Judge erred in granting the Order;
2. the decision to approve the sale of the Units and vest title in the Purchasers was clearly wrong;
3. the evidence on the motion was clear that the Units were part of a larger commercial enterprise (the “**Enterprise**”), and ought not to have been sold off separately, “piecemeal”;
4. the Receiver ought not to have marketed the Units, or offered them for sale, as separate properties, but ought to have marketed them, and offered them for sale all, together, as one entire Enterprise;
5. the failure by the Receiver to market the Units and offer them for sale together led to a marked diminution in value of the Enterprise;
6. the Motion Judge failed to appreciate the entire concept of the Enterprise and the loss in value of the Enterprise, if the Units were sold off separately;
7. the Motion Judge failed to apply the “Soundair” test to the facts of this case, and failed to find, in particular, that the process by which the Units were offered for sale was not a fair process, as the Units ought not to have been marketed or offered for sale in the first place;

8. the Motion Judge failed to find that the marketing and offering of the Units for sale here, on their own, would not be in the best interests of the creditors or the other stakeholders here;
9. the Motion Judge failed to find that it would be best here, in this case, to market and offer the entire Enterprise for sale, comprising all nine of the condominium units together, as that would maximize value for the creditors and the other stakeholders;
10. section 193 of the *Bankruptcy and Insolvency Act* (“**BIA**”); and
11. such further and other grounds as counsel may advise and this Court permit.

THE BASIS OF THE JURISDICTION OF THE COURT OF APPEAL IS:

12. this is an appeal as of right pursuant to s. 193 (a) – (c) of the BIA;
13. the Order appealed from is a final order. It is a sale approval and vesting order and authorizes the sale of the Units to two separate arms length purchasers;
14. Leave is not required for the commencement of this appeal under ss. 193(a) to (c) as:
 - a. Matters raised in the within appeal involve future rights, including the manner in which the Units, as well as the other seven condominium units in the same building, and which are part of the Appellant’s Enterprise and the receivership, are to be sold.
 - b. The Order is likely to affect other cases of a similar nature in the proceeding. The Units are part of a larger hospitality enterprise, which includes seven other condominium units in the same building. Other sale approval and vesting orders are likely to be sought in this proceeding by the Receiver, and the appeal herein and the rights to be determined will impact those sales, and other aspects of this proceeding.

c. The value of the property that is the subject of the Order and that is involved in this appeal exceeds ten thousand dollars. The Order is a final order and is not procedural in nature, and the grounds of appeal are substantive, concerning the manner in which the sale of the Units and the other units that are part of the receivership proceeding will proceed. The Appellant stands to lose millions of dollars if the appeal is not granted and the sale of the Units, and the other units, goes ahead.

15. in the alternative, if leave is required under section 193(e) of the BIA, the Appellants seek leave to appeal the Order, and ask that the leave application be heard at the same time as the appeal;

16. it is appropriate that leave be granted because the appeal:

a. Is of general importance to the practice of bankruptcy/insolvency matters and/or to the administration of justice as a whole;

b. Is *prima facie* meritorious; and

c. Would not unduly hinder the progress of the herein proceedings.

17. this appeal raises issues that go beyond the parties themselves and are of general importance to the practice of insolvency law, namely the manner in which the Units and the Enterprise itself may and ought to be marketed and sold;

18. in addition, the appeal concerns issues important to the administration of justice as a whole;

19. the appeal is *prima facie* meritorious because the Motion Judge made a number of factual and legal errors in reaching the conclusion to approve the sale of the Units, separate and apart from the other units that are part of the overall Enterprise; and

20. the appeal would not unduly hinder the proceedings in a meaningful way. The Receiver's job is to get the best value for the assets under its control. The entire manner in which the Receiver has proceeded with respect to these assets under its control is in question here, and the Court ought to prevent the sale of the Units on a piecemeal basis.

Date: February 23, 2023

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30 Roe Investments Corp (Appellants in Appeal)

Court of Appeal File No.
Court File No. CV-20-00651299-00CL

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced in Toronto

NOTICE OF APPEAL

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