

Court of Appeal File No.:

Court File No.: CV-24-00722148-00CL

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N:**

**KINGSETT MORTGAGE CORPORATION AND FIRST SOURCE FINANCIAL  
MANAGEMENT INC.**

Applicants (Respondents)

- and -

**MAPLEQUEST VENTURES INC. AND DIGRAM DEVELOPMENTS CALEDON INC.**

Respondents (Appellants)

**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 MOVING PARTIES/ APPELLANTS  
(Motion For Leave To Appeal)**

Date: November 12, 2025

**FRIEDMANS LLP**  
Barristers and Solicitors  
150 Ferrand Drive, Suite 800  
Toronto, ON M3C 3E5

**Khaled Gheddai (LSO No. 73840B)**  
**William Friedman (LSO No. 18420U)**

Tel: (416) 496-3340  
Fax: (416) 497-3809  
Email: [kg@friedmans.ca](mailto:kg@friedmans.ca)  
[wf@friedmans.ca](mailto:wf@friedmans.ca)

*Lawyers for the Appellants/ Moving Parties*

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## PART I - OVERVIEW

1. The Moving Parties/ Appellants, Maplequest Ventures Inc. (“**Maplequest**”) and Digram Developments Caledon Inc. (“**Digram**”) (collectively the “**Appellants**”) bring this motion for leave to appeal from the order of the Honourable Justice Black (the “**Motion Judge**”) dated October 3, 2025 pursuant to section 193(e) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 and for an order to set aside the order of the Motion Judge dated October 3, 2025, approving the sale of, and vesting all right, title and interest in and to, property municipally known as 54 Phyllis Drive, Caledon, Ontario (“**54 Phyllis**”) between the Receiver, KSV Restructuring Inc., in its capacity as court-appointed receiver-manager of Maplequest and Digram (the “**Receiver**”), and Lakhvir Kaur (“**Kaur**” or the “**Presale Purchaser**”) pursuant to an agreement of purchase and sale dated July 31, 2025, which is purported to have been completed on October 14, 2025.

2. The Motion Judge erred in denying the Appellants’ request for the approval and authorization of the sale transaction contemplated between the Receiver, as vendor, and Auriga Homes Ltd. in trust for a corporation to be incorporated (“**Auriga**”), as purchaser, for 54 Phyllis, notwithstanding that the purchase price submitted by Auriga for 54 Phyllis was higher and more favourable than the purchase price entered with the Presale Purchaser.

3. The Motion Judge further erred by concluding that there was no evidence that Auriga had the necessary funds to pay the down payment, despite the evidence set forth before him to the contrary.

4. The Motion Judge ought to have considered the evidence before abruptly denying the Appellants' requested relief. It is respectfully submitted that leave to appeal should be granted.

## PART II – FACTS

5. Digram was the registered owner of 54 Phyllis.<sup>1</sup>

6. On June 26, 2024, the Receiver was appointed as receiver and manager of all property, assets and undertakings of the Appellants pursuant to the Order of the Honourable Justice Osborne (the “**Receivership Order**”), on the application commenced by Kingsett Mortgage Corporation (“**KMC**”) and First Source Financial Management Inc. (“**FSFM**”).<sup>2</sup>

7. Prior to the appointment of the Receiver, in or around April 2019, Digram entered into a Project Management Agreement with Auriga, appointing Auriga as the project manager to complete the construction of a number of properties owned by Digram, including 54 Phyllis, which had been sold to Kaur. Approximately 90 percent of the construction for 54 Phyllis had already been completed.<sup>3</sup>

8. Following the appointment of the Receiver, on or about June 22, 2025, Auriga submitted an offer to the Receiver to purchase a number of the properties subject to receivership, including 54 Phyllis, for the aggregate purchase price of \$6,000,000.00 (the “**Auriga First Offer**”).<sup>4</sup>

9. The Receiver declined to pursue the Auriga First Offer.<sup>5</sup>

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<sup>1</sup> Motion Record of the Appellants dated November 7, 2025 (“**MPMR**”), Tab 2, Affidavit of Ali Memon sworn September 16, 2025 (“**Memon September Affidavit**”), Exhibit C: Affidavit of Susan Guo sworn November 7, 2025 (“**Guo Affidavit**”), p B-1-165 at para 6 (a)

<sup>2</sup> MPMR, Tab 2, Memon September Affidavit, Exhibit C: Guo Affidavit, p B-1-165 at para 4

<sup>3</sup> MPMR, Tab 2, Memon September Affidavit, Exhibit C: Guo Affidavit, p B-1-166 at paras 6 (b)-(c)

<sup>4</sup> MPMR, Tab 2, Memon September Affidavit, Exhibit C: Guo Affidavit, p B-1-166 at paras 6 (e)

<sup>5</sup> MPMR, Tab 2, Memon September Affidavit, Exhibit C: Guo Affidavit, p B-1-167 at paras 6 (g)

10. On or about July 30, 2025, the Receiver entered into an “as is” Agreement of Purchase and Sale with Kaur for the property known as 54 Phyllis Drive and subsequently brought a motion, returnable on September 17, 2025, seeking an AVO and related relief.<sup>6</sup>

11. The Receiver did not conduct any marketing and sales process for 54 Phyllis but instead entered directly into an agreement of purchase and sale with the Presale Purchaser.<sup>7</sup>

12. On or about September 15, 2025, Auriga submitted an offer to the Receiver to acquire 54 Phyllis for the purchase price of \$1,250,000.00, with the proposed scheduled closing for September 30, 2025.<sup>8</sup>

13. The submitted offer by Auriga represented a higher purchase price than that contained in the Presale Purchaser’s offer.<sup>9</sup>

14. On or about September 16, 2025, the Appellants delivered a responding motion record and cross-motion, seeking to have Auriga’s contemplated offer to the Receiver for 54 Phyllis approved and authorized.<sup>10</sup>

15. The Appellants’ responding materials included an email correspondence from the Presale Purchaser confirming their preference for the sale transaction contemplated between the Receiver and Auriga. It is the Appellants’ position that the Presale Purchaser expressed this preference on

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<sup>6</sup> MPMR, Tab 2, Memon September Affidavit, Exhibit C: Guo Affidavit, p B-1-167 at paras 6 (h)

<sup>7</sup> MPMR, Tab 2, Memon September Affidavit, Exhibit C: Guo Affidavit, p B-1-167 at paras 6 (i)

<sup>8</sup> MPMR, Tab 2, Memon September Affidavit, Exhibit C: Guo Affidavit, p B-1-167 at paras 6 (k)

<sup>9</sup> MPMR, Tab 2, Memon September Affidavit, Exhibit C: Guo Affidavit, p B-1-167 at paras 6 (k)

<sup>10</sup> MPMR, Tab 2, Memon September Affidavit, Exhibit C: Guo Affidavit; MPMR, Tab 2, Notice of Cross Motion Dated September 16, 2025, Exhibit D: Guo Affidavit, pp B-1-236- B1-242

the basis that Auriga would complete the remaining construction work prior to the delivery of 54 Phyllis.<sup>11</sup>

16. On September 17, 2025, the Receiver's motion for the AVO with the Presale Purchaser, together with the Appellants' cross-motion, was adjourned by the Honourable Justice Steele to October 3, 2025.<sup>12</sup>

17. The purchase price agreed to with the Presale Purchaser is subject to a sealing order by Justice Steele dated September 17, 2025.<sup>13</sup>

18. On September 18, 2025, the Receiver's counsel requested that Auriga provide a revised offer in the Receiver's standard form of agreement of purchase and sale, together with certain additional information and documentation. The request also required an increased deposit sum from the offer submitted on September 15, 2025.<sup>14</sup>

19. On or about September 29, 2025, the Appellants' counsel sent a revised agreement of purchase and sale submitted by Auriga, in trust for a corporation to be incorporated, for 54 Phyllis, prepared in the Receiver's standard form, for a purchase price of \$1,250,000.00, with a proposed closing date of ten (10) days following the Receiver's receipt of an approval and vesting order.<sup>15</sup>

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<sup>11</sup> MPMR, Tab 2, Memon September Affidavit, Exhibit C: Guo Affidavit, p B-1-167 at paras 6 (k)

<sup>12</sup> MPMR, Tab 2, Supplement to the Second Report of KSV Restructuring Inc. dated September 26, 2025, Exhibit E: Guo Affidavit, p E1403

<sup>13</sup> Ibid

<sup>14</sup> MPMR, Tab 2, Second Supplement to the Second Report of KSV Restructuring Inc. dated October 2, 2025, Exhibit G: Guo Affidavit, p E1468 Para 2

<sup>15</sup> MPMR, Tab 2, Supplementary Affidavit of Ali Memon sworn October 1, 2025 ("**Memon October Affidavit**"); Exhibit F: Guo Affidavit, p B-1-310 at Para 6

20. The submitted revised offer provided for a deposit in the amount of \$120,000.00 to be paid immediately to the Receiver's counsel, Bennett Jones LLP, upon acceptance of the agreement of purchase and sale.<sup>16</sup>

21. The Appellants' counsel then wrote to the Receiver's counsel, confirming that a bank draft in the sum of \$120,000.00 had been received and provided a copy of the receipt evidencing payment.<sup>17</sup>

22. On September 30, 2025, and in response to the Receiver's inquiry, the Appellants' counsel provided a conditional mortgage commitment letter from the lender, Affinity Mortgage Solutions Inc. ("**Affinity**"), reflecting a proposed closing date of October 10, 2025.<sup>18</sup>

23. The following day, October 1, 2025, the Appellants' counsel provided an email from the lender's mortgage agent confirming that the conditions set out in the commitment letter had been satisfied.<sup>19</sup>

24. On October 3, 2025, the Motion Judge heard submissions from the parties with respect to the Receiver's AVO motion and the Appellants' cross motion.

25. The following evidence was on the record before the Motion Judge:

- (a) The Presale Purchaser, by her email correspondence, confirmed her preference to support the contemplated sale transaction between the Receiver and Auriga;

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<sup>16</sup> MPMR, Tab 2, Memon October Affidavit; Exhibit F: Guo Affidavit, pp B-1-310- B-1-311 at Para 7

<sup>17</sup> Ibid.

<sup>18</sup> MPMR, Tab 2, Memon October Affidavit; Exhibit F: Guo Affidavit, p B-1-311 at Para 8

<sup>19</sup> Ibid

- (b) Auriga is licensed as a Vendor and Builder pursuant to the Home Construction Regulatory Authority
- (c) Auriga had satisfied the conditions for financing from Affinity and had the necessary funds to complete the sale transaction to acquire 54 Phyllis from the Receiver.

26. During the motion before the Motion Judge, the Presale Purchaser, who had confirmed their preference to support the contemplated sale transaction between Auriga and the Receiver, logged into the videoconference while submissions were being made and abruptly logged out shortly thereafter. The Presale Purchaser did not return to the videoconference motion.<sup>20</sup>

27. The Receiver then proceeded to read into the record purported text messages allegedly received from the Presale Purchaser, which were neither included in the Receiver's motion materials nor disclosed to the Appellants prior to the motion.<sup>21</sup>

28. The Receiver further asserted that its prior negative experiences with Auriga were the reason it did not wish to enter into a sale transaction with Auriga. However, the Receiver provided no evidence or disclosure substantiating these purported experiences.<sup>22</sup>

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<sup>20</sup> MPMR, Tab 4, Endorsement of the Honourable Justice Black dated October 3, 2025 ("**Justice Black's Endorsement**");

<sup>21</sup> Ibid.

<sup>22</sup> MPMR, Tab 4, Justice Black's Endorsement;



29. On October 7, 2025, an endorsement and the Motion Judge's order were provided to the parties. The endorsement indicated that the Motion Judge had denied the Appellants' cross-motion and granted the AVO order requested by the Receiver.<sup>23</sup>

30. On October 14, 2025, after the Appellants delivered the Notice of Motion for Leave to Appeal and Notice of Appeal, the Receiver's counsel advised that the sale transaction to the Presale Purchaser was completed on the same day. The Appellants, therefore, delivered an Amended Notice of Appeal dated October 16, 2025, seeking to set aside the Sale Transaction to the Presale Purchaser.<sup>24</sup>

### **PART III – ISSUES FOR THE PROPOSED APPEAL**

31. If leave to appeal is granted, the questions to be addressed is as follows:

- (a) Did the Motion Judge err in law by relying solely on the Receiver's business judgment to approve the Receiver's requested relief for an AVO?;
- (b) Did the Motion Judge err in law by denying the Appellants' request for the approval and authorization of the sale transaction between the Receiver and Auriga for 54 Phyllis dated September 29, 2025?

### **PART IV – LAW AND ARGUMENT**

#### **The Test for Leave to Appeal**

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<sup>23</sup> MPMR, Tab 2, Email from His Honour's judicial assistant providing endorsement and order; Exhibit H: Guo Affidavit, pp 739- 759

<sup>24</sup> MPMR, Tab 2, Guo Affidavit, p 19 at para 5; see also MPMR; Tab 3, Amended Notice of Appeal dated October 16, 2025, pp 762- 771

32. Section 193 of the [Bankruptcy and Insolvency Act, RSC 1985, c B-3](#) (the “*Act*”) governs appeals from orders made pursuant to the *Act*.

33. The exercise of granting leave pursuant to section 193(e) of the [Act](#) is discretionary.

34. The principles respecting granting leave to appeal were outlined by Justice Rouleau in the Ontario Court of Appeal decision of [Canada \(Superintendent of Bankruptcy\) v 407 ETR Concession Company Limited](#), as follows:

(47) Generally speaking, the factors to be considered on an application for leave to appeal are:

- a) whether the point of appeal is of significance to the practice;
- b) whether the point raised is of significance to the action itself;
- c) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
- d) whether the appeal will unduly hinder the progress of the action.<sup>25</sup>

35. Justice Rouleau further states:

(48) ...there is no stringent test for determining whether to grant leave to appeal pursuant to s. 193(e) of the *BIA*. There is a variety of factors to consider depending on the circumstances of the case... the existence of arguable grounds of appeal and issues of significance to the bankruptcy practice that ought to be considered and addressed by the Court of Appeal.<sup>26</sup>

36. In the present case, the proposed appeal is *prima facie* meritorious and involves an issue of general importance to the practice in insolvency matters and to the administration of justice as a whole.

37. It is submitted that leave to appeal should be granted.

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<sup>25</sup> [2012 ONCA 569 \(CanLII\) at para 47](#); also confirmed in [Menzies Lawyers Professional Corporation v Morton, 2015 ONCA 553 \(CanLII\) at para 24](#)

<sup>26</sup> [Canada \(Superintendent of Bankruptcy\) v 407 ETR Concession Company Limited, 2012 ONCA 569 \(CanLII\) at para 48](#)

**(A) The Proposed Appeal is Meritorious**

38. The proposed appeal has merit because (i) the Motion Judge misdirected himself in denying the Appellants' request for the approval and authorization of the sale transaction contemplated between the Receiver, as vendor, and Auriga, purchaser, for 54 Phyllis dated September 29, 2025; (ii) the Motion Judge erred in concluding Auriga did not have the necessary funds to pay the downpayment for the sale, despite Affinity confirming that the conditions for the Auriga transaction had been satisfied; (iii) the Motion Judge erred by relying on the Receiver's bald, self-serving, and inadmissible evidence in respect to purported prior and ongoing negative experiences with Auriga as a basis for the Receiver's alleged appropriate basis in denying Auriga's submitted offer, without any corroborating or supporting evidence; and (iv) the Motion Judge erred by relying on the Receiver's bald, self-serving, and inadmissible evidence concerning purported text messages sent by the Presale Purchaser to the Receiver as a basis for the Receiver's alleged appropriate basis in denying Auriga's submitted offer, without any corroborating or supporting evidence.

***(i) The Motion Judge Erred in Denying the Appellants' Request for AVO***

39. Paramount to this proposed appeal is that the Motion Judge erred in refusing to grant the Appellants' cross-motion for the approval and authorization of the sale transaction between Auriga and the Receiver for 54 Phyllis.

40. The evidence before the Motion Judge demonstrated that Auriga had offered to purchase 54 Phyllis for a higher and more favourable price than the agreement entered into with the Presale Purchaser. Auriga's offer further contemplated completion of the transaction within the same timeframe as the Presale Purchaser's agreement and confirmed that it had secured the required

deposit and obtained the necessary financing to satisfy the down payment obligations for the purchase. The Motion Judge refused to consider this in its analysis of granting the Appellants' cross-motion.

41. The evidence also established that the same Presale Purchaser with whom the Receiver sought an Approval and Vesting Order preferred that the sale to Auriga proceed instead. Auriga's proposal contemplated completing the remaining construction at 54 Phyllis, whereas the Receiver's agreement with the Presale Purchaser involved an "as is" sale. Despite this evidence, the Motion Judge failed to properly consider the comparative advantages of the Auriga transaction, which, it is submitted, was inconsistent with the Receiver's duty to maximize recovery for the benefit of all stakeholders.

42. Contrarily, the Motion Judge denied the Appellants' cross-motion, relying on the Receiver's bald, self-serving, and inadmissible assertions regarding purported prior and ongoing negative experiences with Auriga as justification for rejecting Auriga's offer, without any corroborating evidence.

43. It is respectfully submitted that there was no evidence before the Court substantiating Auriga's purported negative experiences, as was alleged.

44. It is further submitted that the Motion Judge did not consider uncontroverted evidence before the Court that, prior to the Receiver entering into an agreement with the Presale Purchaser, Auriga had submitted an offer to purchase 54 Phyllis to which the Receiver provided no response. The Appellants then indicated that Auriga thereafter submitted a revised offer consistent with the Receiver's standard form of Agreement of Purchase and Sale and provided documentation

confirming receipt of the required deposit and satisfaction of all conditions relating to the payment of the down payment.

45. The Motion Judge further relied upon purported text messages allegedly sent by the Presale Purchaser to the Receiver on the day of the motion as a basis to justify the Receiver's decision to reject Auriga's offer. These text messages were not properly introduced into evidence, were not the subject of any affidavit, and therefore should not have been considered by the Motion Judge in his decision.

46. In rejecting the Appellants' position (as set out above), the Motions Judge did not consider the evidence introduced by Auriga, but rather, found that the *Receiver* had considered such evidence, and that that was good enough, and no further inquiry by the Court was therefore necessary.

47. In so deciding, the Motions Judge failed to apply the appropriate legal standard and, therefore, committed an error of law that must be overturned.

48. The purpose of a sale process in a receivership (in this case, the granting of the AVO) is to obtain the highest and best price for a property for the benefit of all creditors and other stakeholders.<sup>27</sup>

49. In assessing the reasonableness and adequacy of the request proposed by a Court-appointed receiver, the Court must consider the following factors, which were identified by the Court of Appeal in its decision in [\*Royal Bank of Canada v. Soundair Corp.\*](#)<sup>28</sup>

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<sup>27</sup> [\*American Iron v. 1340923 Ontario Inc.\*, 2018 ONSC 2810 at para. 44](#)

<sup>28</sup> [1991 CanLII 2727 \(ON CA\)](#) at para 16

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the efficacy and integrity of the process by which offers are obtained;
- (c) whether there has been unfairness in the working out of the process; and
- (d) the interests of all parties.<sup>29</sup>

50. Although deference is owed to a receiver's judgment in some circumstances, this deference is not absolute. In general, the court will defer to a receiver's business judgment when a receiver seeks approval of a sale, because this approach allows for certainty and finality in receivership sales.

51. Although the receiver's judgment is one factor to consider, in [\*Bank of Montreal v. Renuka Properties Inc.\*](#), Blok J. cautioned against placing excessive weight and too high a premium on the deference factor, as the interest of creditors is still the primary factor.<sup>30</sup>

52. The Motions Judge's approach, as articulated at paragraph 13 of the Endorsement, fails to consider the interests of all parties, which is an express component of the *Soundair* test.

53. In *Canada Trust Mortgage Co. v. Windsor Painting Contractors Ltd.*, Cusinato J., citing Lord Denning's decision in *Standard Chartered Bank v. Walker*, [1982] 1 W.L.R. 1410, [1982] 3 All E.R. 938, noted that when monetizing an asset, even a private receiver has a duty to guarantors so that they are made liable for as little as possible:

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<sup>29</sup> See [1991 CanLII 2727 \(ON CA\)](#) at para 16; Also see [CCM Master Qualified Fund v blutip Power Technologies](#), [2012 ONSC 1750 \(CanLII\)](#) at para 6

<sup>30</sup> [2015 BCSC 2058 \(CanLII\)](#) at para. 42

44 His Lordship expressed the duties of a mortgagee who enters into possession and realizes a mortgage property as a duty "to use reasonable care to obtain the best possible price which the circumstances of the case permit. He owes this duty not only to himself (to clear off as much of the debt as he can) but also to the mortgagor so as to reduce the balance owing as much as possible, and also to the guarantor so that he is made liable for as little as possible on the guarantee. This duty is only a particular application of the general duty of care to your neighbour which was stated by Lord Atkin in *Donoghue v. Stevenson*, [1932] A.C. 562 , ... and applied in *Anns v. Merton London Borough*, [1977] 2 All E.R. 492 ... There are several dicta to the effect that the mortgagee can choose his own time for the sale, but I do not think this means that he can sell at the worst possible time. It is at least arguable that, in choosing the time, he must exercise a reasonable degree of care .

... The receiver is the agent of the company, not of the debenture holder, the bank" (by analogy, the mortgagee is the agent of the mortgagor). "He owes a duty to use reasonable care to obtain the best possible price which the circumstances of the case permit. He owes a duty not only to the company (of which he is the agent) to clear off as much of its indebtedness to the bank as possible, but he also owes a duty to the guarantor, because the guarantor is liable only to the same extent as the company. The more the overdraft is reduced, the better for the guarantor. It may be that the receiver can choose the time of sale within a considerable margin, but he should, I think, exercise a reasonable degree of care about it . The debenture holder, the bank, is not responsible for what the receiver does except in so far that it gives him directions or interferes with his conduct of the realisation. If it does so, then it too is under a duty to use reasonable care towards the company and the guarantor.

If it should appear that the mortgagee or the receiver have not used reasonable care to realise the assets to the best advantage, then the mortgagor, the company, and the guarantor are entitled in equity to an allowance . They should be given credit for the amount which the sale should have realised if reasonable care had been used. Their indebtedness is to be reduced accordingly. [emphasis added]<sup>31</sup>

54. The same duty applies to a Court-appointed receiver, with a fiduciary duty to act honestly and in the best interests of all parties, including the debtor and any guarantors.<sup>32</sup>

55. Here, both the Receiver and the Motions Judge failed to consider the interests of all stakeholders. In these circumstances, the Motions Judge committed an error of law.

## **(B) The Proposed Appeal Raises Matters of Significant Importance**

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<sup>31</sup> *Canada Trust Mortgage Co. v. Windsor Painting Contractors Ltd.*, 1991 CarswellOnt 617, at para. 44, Book of Authorities of the Appellants, Tab 1

<sup>32</sup> [\*CCM Master Qualified Fund v blutip Power Technologies\*, 2012 ONSC 1750 \(CanLII\) at para 6](#)

56. In *Toms v Agro*, the Court held that a matter of public importance (as the test was then) is raised where permitting the order to stand would result in a clear injustice to the moving party.<sup>33</sup>

In *Rankin v McLeod Young Weir Ltd.*, Justice Catzman explained that the “significant importance” requirement can consider both the “individual litigants” and the “general public”.<sup>34</sup>

57. In bankruptcy and receivership proceedings, cases are often fast-moving and require courts to make difficult determinations balancing the interests of various stakeholders within a limited timeframe.

58. Courts in bankruptcy proceedings are required to balance the diverse interests of stakeholders.

59. The key issue on this proposed appeal is the extent of the deference that the Court owes to a receiver’s business judgment when the receiver is seeking an AVO.

60. As a Court-appointed receiver’s primary task is to monetize the assets under receivership, this issue will arise in virtually every receivership. Even in receiverships where the receiver does not expressly seek the Court’s approval of a sale process, the receiver will typically be tasked with selling or disposing of assets under its control, and will exercise its judgment in deciding how to do so.

61. In the present case, the Appellants sought an Approval and Vesting Order in respect of Auriga’s offer, which reflected a higher and more favourable purchase price and was therefore in the best interests of the stakeholders. The evidence before the Motion Judge confirmed that Auriga

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<sup>33</sup> [1992 CanLII 7502 \(ON SC\)](#)

<sup>34</sup> [1986 CanLII 2749 \(ONSC\) at para 7](#)



was prepared to complete the sale transaction in accordance with the Receiver's requirements, had secured a deposit in the amount of \$120,000.00, and had obtained the necessary financing to complete the purchase.

62. The Motion Judge's Order denying this relief effectively deprived the stakeholders of the opportunity to realize the highest and best value for 54 Phyllis. This outcome is inconsistent with the principles guiding bankruptcy and receivership proceedings and results in a manifestly unjust outcome.

63. It is respectfully submitted that the Motions Judge altered the applicable legal test by relying solely on the Receiver's business judgment to decide among conflicting approaches to the sale of 54 Phyllis, without any consideration of the merits of the agreement of purchase and sale proposed by Auriga, or the other factors required to be considered pursuant to the [\*Royal Bank of Canada v. Soundair Corp.\*](#)

**(C) The Proposed Appeal Will Not Unduly Hinder the Progress of the Proceeding**

64. If the Appellants receive leave to appeal of the Motion Judge's Order, the sole issue in dispute pertains to the sale transaction of 54 Phyllis.

65. The Receiver will still be able to continue with its duties, which are not dependent upon the sale transaction of 54 Phyllis. The Appellants seek to obtain the best possible purchase price for 54 Phyllis, which is for the benefit of all stakeholders. This, it is respectfully submitted, is sufficiently important, as it directly concerns the recoveries.

66. For the above reason, the Appellants respectfully request that leave to appeal be granted.

**PART V – ORDER REQUESTED**

67. The Appellants request:

- (a) An order granting leave to appeal to the Court of Appeal for Ontario from the Motion Judge's Order; and
- (b) costs of this motion, if opposed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12<sup>th</sup> November, 2025



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**FRIEDMANS LLP**

Barristers and Solicitors  
150 Ferrand Drive, Suite 800  
Toronto, ON M3C 3E5

**Khaled Gheddai (LSO No. 73840B)**  
**William Friedman (LSO No. 18420U)**

Tel: (416) 496-3340  
Fax: (416) 497-3809  
Email: [kg@friedmans.ca](mailto:kg@friedmans.ca)  
[wf@friedmans.ca](mailto:wf@friedmans.ca)

## SCHEDULE A

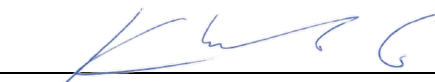
### AUTHORITIES TO BE CITED

TAB	AUTHORITY
1.	<a href="#"><i>American Iron v. 1340923 Ontario Inc.</i>, 2018 ONSC 2810</a>
2.	<a href="#"><i>Bank of Montreal v. Renuka Properties Inc.</i>, 2015 BCSC 2058 (CanLII)</a>
3.	<a href="#"><i>Canada (Superintendent of Bankruptcy) v 407 ETR Concession Company Limited</i>, 2012 ONCA 569 (CanLII)</a>
4.	<i>Canada Trust Mortgage Co. v. Windsor Painting Contractors Ltd.</i> , 1991 CarswellOnt 617
5.	<a href="#"><i>CCM Master Qualified Fund v blutip Power Technologies</i>, 2012 ONSC 1750 (CanLII)</a>
6.	<a href="#"><i>Menzies Lawyers Professional Corporation v Morton</i>, 2015 ONCA 553 (CanLII)</a>
7.	<a href="#"><i>Royal Bank of Canada v. Soundair Corp.</i>, 1991 CanLII 2727 (ON CA)</a>
8.	<a href="#"><i>Rankin v McLeod Young Weir Ltd.</i>, 1986 CanLII 2749 (ONSC)</a>
9.	<a href="#"><i>Toms v Agro</i>, 1992 CanLII 7502 (ON SC)</a>

I certify that I am satisfied as to the authenticity of every authority.

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date November 12, 2025



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Signature

**SCHEDULE “B”****RELEVANT LEGISLATIVE PROVISIONS****Bankruptcy and Insolvency Act, RSC 1985, c B-3**

Appeals

**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.

R.S., 1985, c. B-3, s. 193; 1992, c. 27, s. 68

**KINGSETT MORTGAGE CORPORATION et al**  
Applicants

-and-

**MAPLEQUEST VENTURES INC. et al**

Respondents

Court of Appeal File:

Court File No. CV-24-00722148-00CL

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM OF THE MOVING PARTIES/ APPELLANTS**

**FRIEDMANS LLP**

Barristers and Solicitors  
150 Ferrand Drive, Suite 800  
Toronto, ON M3C 3E5

**Khaled Gheddai (LSO No. 73840B)**  
**William Friedman (LSO No. 18420U)**

Tel: (416) 496-3340  
Fax: (416) 497-3809  
Email: [kg@friedmans.ca](mailto:kg@friedmans.ca)  
[wf@friedmans.ca](mailto:wf@friedmans.ca)

*Lawyers for the Appellants*

RCP-E 4C (May 1, 2016)