

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 on Appeal)

- 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 RESPONDING PARTY, THE RECEIVER,  
FOR A MOTION IN WRITING  
(Motion for Leave to Appeal)**

November 24, 2025

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**TO: THE SERVICE LIST**

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## PART I: OVERVIEW

1. The sole issue for this Court is whether the Appellants have met the test for leave to appeal under subsection 193(e) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**").
2. The proposed appeal is moot and, in any event, does not meet the test for leave to appeal. This motion must be denied.
3. The order under appeal (the "**Approval and Vesting Order**"), among other things: (i) approved a sale transaction ( the "**Transaction**") contemplated by an agreement of purchase and sale (the "**APS**") between the Receiver, as vendor, and Lakhvir Kaur, as purchaser (the "**Purchaser**"); and (ii) vested in the Purchaser all of the Appellant Digram Developments Caledon Inc.'s ("**Digram**") right, title and interest in and to the assets.
4. In connection with the Approval and Vesting Order, the Honourable Justice Black (the "**Motion Judge**") – the experienced motion judge hearing the matter – issued an endorsement dated October 3, 2025 (the "**Endorsement**"). The issues decided under the Approval and Vesting Order, as detailed in the Endorsement, are entirely discretionary, within the jurisdiction of the experienced Motion Judge on the specialized Toronto Commercial List, and were decided correctly; the test for leave to appeal is not met:
  - (a) no stay of the Approval and Vesting Order was sought, the Transaction closed in accordance with its terms, and the Approval and Vesting Order was registered on title; as such, the proposed appeal is moot;

- (b) even if not moot, the appeal is not *prima facie* meritorious as no error has been identified that would meet the high threshold for leave to appeal in these circumstances;
- (c) no issue of general importance has been identified – the standard form Approval and Vesting Order is solely relevant to the parties to this proceeding; and
- (d) any proposed appeal would unduly hinder the progress of the receivership proceedings.

## **PART II: SUMMARY OF FACTS**

### **A. Background**

5. On June 26, 2024, the Ontario Superior Court of Justice (Commercial List) granted an order (the "**Receivership Order**") pursuant to subsection 243(1) of the BIA and section 101 of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"), appointing KSV Restructuring Inc. as receiver and manager (in such capacity, the "**Receiver**") of the Property (as defined in the Receivership Order), including the real property known as 54 Phyllis Drive, Caledon, Ontario, being PIN 14235-6773 and PIN 14235-5967 (LT) (collectively, the "**Phyllis Real Property**").

6. The Appellants consist of Maplequest Ventures Inc. ("**Maplequest**") and Digram, each of which is a real estate development company that owns certain of the Real Property (as defined in the Receivership Order) subject to the receivership proceedings, on which the Appellants intended

to develop certain residential projects.<sup>1</sup> As of the date of the Receivership Order, construction had not yet commenced on any of the Real Properties, except for the Real Property owned by Digram, being the Phyllis Real Property.<sup>2</sup>

7. KingSett and First Source Financial Management Inc. ("**First Source**" and together with KingSett, the "**Mortgagees**") are the senior secured creditors of Maplequest and Digram.<sup>3</sup>

8. The Mortgagees each extended loan facilities to Maplequest in connection with the development of its project(s) on the Heritage Real Property<sup>4</sup> (the "**Heritage Loan**") and the Countryside Real Property (the "**Countryside Loan**"), respectively.<sup>5</sup>

9. In connection with the Heritage Loan, Digram and Maplequest granted KingSett various security interests, which include, among other things, a first ranking mortgage charge over various Real Properties owned by Digram, including the Phyllis Real Property.<sup>6</sup>

10. As at September 30, 2024, KingSett was owed approximately \$51.6 million under the Heritage Loan, and First Source was owed approximately \$49 million under the Countryside Loan (interest and fees continue to accrue on these amounts). The Receiver understands that KingSett holds a participation interest of approximately \$31.5 million in the Countryside Loan, with its participation interest in the first position within the loan structure. As such, KingSett is the principal financial stakeholder in both the Heritage Loan and the Countryside Loan.<sup>7</sup>

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<sup>1</sup> Second Report of the Receiver dated September 10, 2025 [Second Report] at s. 2.0, paras 3-4, Motion Record of the Receiver dated September 10, 2025 [Motion Record] at Tab 2, Motion Record of the Appellants dated November 7, 2025 [Appellants' Motion Record] at Tab 2A.

<sup>2</sup> Second Report, *ibid* at s. 2.0, para 5, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>3</sup> Second Report, *ibid* at s. 1.0, para 2, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>4</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Second Report.

<sup>5</sup> Second Report, *ibid* at s. 3.1, para 1, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>6</sup> Second Report, *ibid* at s. 3.1, para 3; s. 7.0, para 1; Appendix "E", Motion Record at Tab 2 & Tab 2E, Appellants' Motion Record at Tab 2A.

<sup>7</sup> Second Report, *ibid* at s. 3.1, para 2, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

**B. The Receivership Order**

11. The Receivership Order, *inter alia*:

- (a) authorized and empowered the Receiver to act at once in respect of the Property, including to:
  - (i) apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free of any liens or encumbrances; and
  - (ii) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Mortgagees' consent, may deem appropriate.<sup>8</sup>

12. On October 7, 2024, the Receiver obtained an order which, among other things, approved a sales process for all of the Appellants' Property, except for the Phyllis Real Property. The Receiver advised in its First Report to the Court dated September 30, 2024, that it was considering various alternative realization options for the Phyllis Real Property.<sup>9</sup>

**C. The Agreement of Purchase and Sale and the Transaction**

13. Prior to the receivership, Digram was developing a single-family detached home on the Phyllis Real Property, which was approximately 90% complete when construction ceased.<sup>10</sup>

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<sup>8</sup> Second Report, *ibid* at Appendix "A", paras 4, 15, Motion Record at Tab 2A, Appellants' Motion Record at Tab 2A.

<sup>9</sup> Second Report, *ibid* at s. 1.0, para 3, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>10</sup> Second Report, *ibid* at s. 2.1, para 1, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

14. At the outset of the receivership proceedings, the Receiver was advised by Ali Muhammad Memon, a director of both of the Appellants, that he was prepared to fund the remaining construction of the home at no cost to the receivership estate, enabling the Receiver to close a sale under an agreement entered into prior to the granting of the Receivership Order with the Purchaser.<sup>11</sup> The Receiver agreed to explore this option with Mr. Ali Memon and followed up with Mr. Ali Memon multiple times in this respect. This option was the Receiver's principal consideration for carving out the Phyllis Real Property from the sales process.<sup>12</sup>

15. However, following the passing of significant time, the Receiver received an offer from a third party that it understood (and continued to understand) to be directly or indirectly related to Mr. Ali Memon proposing instead to provide a first-ranking mortgage loan in order to complete construction on the Phyllis Real Property. This new offer was inconsistent with the prior discussions and unacceptable to the Receiver and the Mortgagees. Accordingly, the Receiver chose to consider alternate realization options for the Phyllis Real Property, culminating in the Transaction.<sup>13</sup>

16. On or around January 16, 2025, the Receiver was approached by the Purchaser, the individual who had previously entered into a pre-sale agreement for the home being constructed on the Phyllis Real Property. The Purchaser advised that it would be willing to either: (i) complete the transaction originally contemplated by its pre-sale purchase agreement dated August 15, 2020 (the "**Pre-Sale Agreement**"), which required construction to be completed; or (ii) complete an "*as-is, where-is*" purchase of the Phyllis Real Property.<sup>14</sup>

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<sup>11</sup> Second Report, *ibid* at s. 2.1, para 2, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>12</sup> Second Report, *ibid* at s. 2.1, para 3, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>13</sup> Second Report, *ibid* at s. 2.1, para 3, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>14</sup> Second Report, *ibid* at s. 4.0, para 1, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.



17. After reviewing the Pre-Sale Agreement, the Receiver identified several issues related to completing the transaction outlined therein, including:

- (a) the vendor in the Pre-Sale Agreement was Auriga Homes Ltd. ("**Auriga**"), a company affiliated with Mr. Ali Memon, rather than Digram, the owner of the Phyllis Real Property;
- (b) the Pre-Sale Agreement provided for deposits of \$175,000, however, the Purchaser alleges that Mr. Ali Memon had agreed to credit the Purchaser a total of \$385,000 on closing in lieu of amounts allegedly owing to the Purchaser from unrelated transactions; and
- (c) the Pre-Sale Agreement provided for the delivery of a completed home, however, the existing structure is incomplete.<sup>15</sup>

18. Given the aforementioned challenges with completing the transaction contemplated by the Pre-Sale Agreement, including the significant costs and risks associated with completing the ongoing construction or undertaking a protracted marketing process that would not likely result in a higher or better offer, the Receiver determined that an "*as-is, where-is*" sale of the Phyllis Real Property to the Purchaser pursuant to the terms of the APS would yield the best outcome for all stakeholders and presented the most viable path forward.<sup>16</sup>

19. Following the Receiver's decision, the Receiver and the Purchaser proceeded to negotiate definitive documents, ultimately resulting in the APS.<sup>17</sup>

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<sup>15</sup> Second Report, *ibid* at s. 4.0, para 2, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>16</sup> Second Report, *ibid* at s. 4.0, paras 4-5, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>17</sup> Second Report, *ibid* at s. 4.0, para 5, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

20. Pursuant to the APS, the Receiver agreed to sell, assign, convey and transfer to the Purchaser, and the Purchaser agreed to purchase, the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances (each as defined in the APS).<sup>18</sup> The Purchased Assets included:

- (a) the Lands, being the Phyllis Real Property, including the partially constructed building thereon;
- (b) prepaid expenses or deposits relating to the Lands;
- (c) the Permits, to the extent transferable; and
- (d) all intellectual property, if any, owned by Digram related to the Lands.<sup>19</sup>

21. The Transaction was on an "*as-is, where-is*" and "*without recourse*" basis, with minimal representations, warranties, and conditions, and no surviving representations or warranties made by the Receiver.<sup>20</sup> The only material conditions to closing were the issuance of the Approval and Vesting Order and the Town Consent (as defined in the APS).<sup>21</sup>

22. Pursuant to the APS, the Closing Date was the first Business Day (each as defined in the APS) which was 10 days after the date on which the Approval and Vesting Order was issued. Due to a federal holiday (Thanksgiving), closing occurred on October 14, 2025. In accordance with paragraph 4 of the Approval and Vesting Order, the Purchaser made an Application for Vesting Order in the prescribed form on Closing (as defined in the APS) which was registered by the Land

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<sup>18</sup> Second Report, *ibid* at s. 4.0, para 5, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>19</sup> Second Report, *ibid* at s. 4.0, para 5(d); Appendix "B", Motion Record at Tab 2 & Tab 2E, Appellants' Motion Record at Tab 2; Tab 2A.

<sup>20</sup> Second Report, *ibid* at s. 4.0, para 5(e), Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>21</sup> Second Report, *ibid* at s. 4.0, para 5(e), Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

Registry Office, Peel Region (No. 43) on October 15, 2025. As a result, the Purchaser is now the registered owner of the Phyllis Real Property.

**D. The Cross-Motion and Appellants' APS**

23. On September 10, 2025, the Receiver served its motion record for its motion returnable September 17, 2025 seeking, among other things, the Approval and Vesting Order.<sup>22</sup> On September 16, 2025 at 10:24 a.m., the day before the return of the Receiver's motion, counsel to the Receiver received an email (the "**Offer Email**") from counsel to the Appellants which attached an Agreement of Purchase and Sale for the Phyllis Real Property (the "**Appellants' APS**"). The Offer Email also requested an adjournment of the Receiver's motion, barring which the Appellants indicated that they intended to bring a cross-motion (the "**Cross-Motion**"). The Offer Email was the first that the Receiver or its counsel had heard from the Appellants or their counsel in respect of the Appellants' APS.<sup>23</sup>

24. On September 16, 2025 at 4:01 p.m., the Appellants served their Cross-Motion on the Service List.<sup>24</sup> Following receipt of the Cross-Motion and certain discussions amongst the Receiver and the Appellants, notwithstanding the late breaking Offer Email and last-minute delivery of the Cross-Motion, the Receiver agreed to adjourn the Approval and Vesting Order and related distribution portion of its motion until October 3, 2025 to give it time to consider the Appellants' APS, the Cross-Motion and to further engage and consult with interested parties.<sup>25</sup>

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<sup>22</sup> Supplement to the Second Report of the Receiver dated September 26, 2025 [Supplement to the Second Report] at s. 2.0, para 1, Appellants' Motion Record at Tab 2E.

<sup>23</sup> Supplement to the Second Report, *ibid* at s. 2.0, para 2, Appellants' Motion Record at Tab 2E.

<sup>24</sup> Supplement to the Second Report, *ibid* at s. 2.0, para 3, Appellants' Motion Record at Tab 2E.

<sup>25</sup> Supplement to the Second Report, *ibid* at s. 2.0, para 4, Appellants' Motion Record at Tab 2E.

25. Following the September 17 hearing, the Receiver and its counsel reviewed and considered the Appellants' APS along with the Cross-Motion and related materials. On September 18, 2025 at 4:29 p.m., counsel to the Receiver sent an email (the "**September 18 Email**") to counsel to the Appellants wherein it, among other things: (i) confirmed that the Receiver had already entered into the APS and, as a result, did not view it appropriate to enter into a separate agreement with the proposed purchaser under the Appellants' APS; and (ii) advised as to the Receiver's concerns with the Appellants' APS including, among other things, that:

- (a) the Appellants' APS was on an OREA Form 500 which contemplated ordinary course closing mechanics. The Receiver advised that any offer submitted should use the Receiver's form of agreement of purchase and sale (which was provided to the Appellants) and be subject to the issuance of an approval and vesting order with the appropriate closing mechanics;
- (b) the Appellants' APS did not contemplate the Town Consent (as defined in the APS) which was required to close any transaction in respect of the Phyllis Real Property in light of the s.118 no-transfer restriction registered on title; and
- (c) the deposit contemplated under the Appellants' APS was insufficient in the circumstances given that the Receiver required a minimum deposit of 10% of the purchase price payable upon acceptance. Additionally, the Receiver required evidence of the proposed purchaser's financial wherewithal to tender the balance of the purchase price.<sup>26</sup>

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<sup>26</sup> Supplement to the Second Report, *ibid* at s. 2.1, para 1, Appellants' Motion Record at Tab 2E.

26. Counsel to the Receiver further advised the Appellants' counsel that, to the extent the Appellants were to submit a revised offer that addressed the concerns in the September 18 Email and was otherwise acceptable to the Receiver (a "**Revised Offer**"), the Receiver expected that it would seek advice and directions from the Court as to which agreement of purchase and sale should be completed in the circumstances. In an effort to provide the Court and other stakeholders with adequate notice, the Receiver requested that a Revised Offer be submitted by September 22, 2025 at 5:00 p.m. (the "**Revised Offer Deadline**").<sup>27</sup> The Receiver did not receive a Revised Offer by the Revised Offer Deadline.<sup>28</sup>

27. Despite multiple follow-ups, the Receiver did not hear from the Appellants until September 29, 2025, 11 calendar days following the September 18 Email, on which day the Receiver's counsel received an email from counsel to the Appellants which, among other things, attached a revised form of the Appellants' APS and a copy of a bank draft provided by Auriga to the Appellants' counsel in connection with its deposit of \$120,000.<sup>29</sup>

28. While the revised form of the Appellants' APS addressed certain of the deficiencies and issues identified by the Receiver in the September 18 Email, the Appellants did not provide any evidence of Auriga's financial wherewithal to tender the balance of the purchase price contemplated under the revised Appellants' APS.<sup>30</sup> Following a further request from the Receiver of Auriga's financial wherewithal to close the Appellants' proposed transaction, on September 30, 2025, the Appellants provided the Receiver with a conditional mortgage approval letter from Affinity Mortgage Solutions ("**Affinity**") dated September 30, 2025 (the "**Approval Letter**") and

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<sup>27</sup> Supplement to the Second Report, *ibid* at s. 2.1, para 2, Appellants' Motion Record at Tab 2E.

<sup>28</sup> Supplement to the Second Report, *ibid* at s. 2.1, para 3, Appellants' Motion Record at Tab 2E.

<sup>29</sup> Supplement to the Second Report, *ibid* at s. 2.0, para 2, Appellants' Motion Record at Tab 2E.

<sup>30</sup> Supplement to the Second Report, *ibid* at s. 2.0, para 3, Appellants' Motion Record at Tab 2E.

indicated that it understood all conditions to be satisfied.<sup>31</sup> On October 1, 2025, counsel to the Appellants provided the Receiver with a copy of an email from Affinity dated September 30, 2025, confirming that all broker conditions were satisfied (the "**Confirmation Email**").<sup>32</sup>

29. Despite the Confirmation Email advising that all conditions under the Approval Letter had been satisfied, the Receiver continued to have concerns and reservations regarding Auriga's reliability and ability to close given that: (i) the Approval Letter required a downpayment of \$375,000, whereas the deposit held by the Appellants' counsel was \$120,000 – no evidence was provided that Auriga had the additional \$255,000 to fund a downpayment; and (ii) the purchase price in the Approval Letter was \$1,500,000, which overstated the purchase price in the revised Appellants' APS by approximately \$250,000. In consideration of the foregoing, it appeared to the Receiver that Auriga may have inflated the purchase price to Affinity to avoid needing to put down the full required downpayment, while at the same time securing a larger mortgage commitment in order to satisfy the purchase price.<sup>33</sup>

30. The Receiver's foregoing concerns were compounded by its prior and ongoing negative experiences in other receivership matters where Auriga has submitted offers to purchase but was unable or unwilling to ultimately tender the funds to close a transaction. Of additional concern to the Receiver was the Appellants' history of obstructive behavior throughout the receivership proceedings and attempts to intimidate the Purchaser,<sup>34</sup> including the Appellants' conduct in undermining the APS.<sup>35</sup>

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<sup>31</sup> Supplement to the Second Report, *ibid* at s. 2.0, para 4, Appellants' Motion Record at Tab 2E.

<sup>32</sup> Supplement to the Second Report, *ibid* at s. 2.0, para 5, Appellants' Motion Record at Tab 2E.

<sup>33</sup> Supplement to the Second Report, *ibid* at s. 2.0, para 6, Appellants' Motion Record at Tab 2E.

<sup>34</sup> Supplement to the Second Report, *ibid* at s. 3.0, para 2, Appellants' Motion Record at Tab 2E.

<sup>35</sup> Supplement to the Second Report, *ibid* at s. 3.0, para 3, Appellants' Motion Record at Tab 2E.

31. In light of the foregoing, and the relevant positive considerations in respect of the APS, the Receiver continued to recommend the APS and believed the Transaction to be in the best interests of the stakeholders, including the Purchaser. The Receiver's position was also supported by KingSett, the Appellants' senior secured creditor who would benefit from any increase in sale proceeds.<sup>36</sup>

**E. The Approval and Vesting Order, Closing and the Motion for Leave to Appeal**

32. On October 3, 2025, the Motion Judge granted the Approval and Vesting Order and declined to grant the relief requested by the Appellants in the Cross-Motion for the reasons set forth in the Endorsement.

33. On October 14, 2025, the Transaction contemplated by the APS closed in accordance with its terms, which had been known to the Appellants since September 10, 2025. Concurrent with Closing, the Purchaser made an Application for Vesting Order in the prescribed form on Closing (as defined in the APS) which was registered by the Land Registry Office, Peel Region (No. 43) on October 15, 2025.

34. On October 14, 2025, which is the last date permitted under subsection 31(1) of the *Bankruptcy and Insolvency General Rules* (C.R.C., c. 368) (the "**General Rules**") and after Closing being initiated, the Appellants served a Notice of Motion for Leave to Appeal and a Notice of Appeal in connection with the Approval and Vesting Order. This was the first indication from the Appellants that they would be seeking to appeal the Approval and Vesting Order. On November

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<sup>36</sup> Supplement to the Second Report, *ibid* at s. 3.0, para 4, Appellants' Motion Record at Tab 2E.

13, 2025, a full month later, the Appellants served the Appellants' Leave to Appeal Materials in connection with the within motion.

### **PART III: ISSUES**

35. The sole issue to be determined on this motion is whether leave to appeal should be granted under subsection 193(e) of the BIA.

### **PART IV: LAW AND ARGUMENT**

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

36. Where, as here, a receiver is appointed pursuant to both subsection 243(1) of the BIA and section 101 of the CJA, this Court has held that the "more restrictive appeal provisions in the *BIA* govern the rights of appeal and appeal routes".<sup>37</sup>

37. Under the well-established test for leave to appeal under subsection 193(e) of the BIA, this Court must consider the following: (i) is the proposed appeal *prima facie* meritorious; (ii) does the proposed appeal raise an issue that is of general importance to the practice in bankruptcy/insolvency matters or the administration of justice as a whole; and (iii) would the appeal unduly hinder the progress of the proceedings.<sup>38</sup>

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<sup>37</sup> *Buduchnist Credit Union Limited v 2321197 Ontario Inc.*, [2019 ONCA 588](#) at para [10](#) citing to *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, [2019 ONCA 269](#) at paras [66-67](#) where the Court of Appeal decided the appeal provisions of the BIA govern due to the doctrine of federal paramountcy.

<sup>38</sup> *Marshallzehr Group Inc. v La Pue International Inc.*, [2025 ONCA 124](#) at para [13](#) [*La Pue*] citing to *Business Development Bank of Canada v Pine Tree Resorts Inc.*, [2013 ONCA 282](#) at para [29](#).



(i) **The proposed appeal is moot and not *prima facie* meritorious**

38. The Appellants never sought a stay of the Approval and Vesting Order and therefore, in accordance with its terms and in the ordinary course, the Transaction closed and the Approval and Vesting Order has been registered on title.<sup>39</sup> This Court's decision in *Regal Constellation Hotel Ltd.*<sup>40</sup> therefore dictates that the Appellants' proposed appeal is moot.

39. In *Regal Constellation Hotel Ltd.*, the Court of Appeal was considering the appeal of a sale approval and vesting order in respect of hotel assets sold by the receiver. The respondents argued that "[...] once the vesting order granted by Sachs J. was registered on title -- no stay having been obtained -- its effect was spent, the court's power to set it aside is extinguished, and no appeal can lie from it".<sup>41</sup> This Court agreed:

"[a] vesting order, then, has a dual character. It is on the one hand a court order ("allowing the court to effect the change of title directly"), and on the other hand a conveyance of title (vesting "an interest in real or personal property" in the party entitled thereto under the order). This duality has important ramifications for an appeal of the original court decision granting the vesting order because, in my view, **once the vesting order has been registered on title, its attributes as a conveyance prevail and its attributes as an order are spent**; the change of title has been effected. **Any appeal from it is therefore moot**".<sup>42</sup> [Emphasis added]

40. While a vesting order is, in the ordinary course, subject to appeal, the filing of a notice of appeal in Ontario "[...] does not automatically stay the order and, in the absence of such a stay, it remains effective and may be registered on title under the land titles system -- indeed, the land registrar is required to register it on a proper application to do so".<sup>43</sup> Appeal rights may be protected

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<sup>39</sup> Phyllis Real Property Parcel Registers dated November 14, 2025, Affidavit of Shawn Kirkman Sworn November 23, 2025 [Kirkman Affidavit] at Exhibit "A", Motion Record of the Respondent dated November 24, 2025 [Respondent's Motion Record] at Tab 2A; Application for Vesting Order, Kirkman Affidavit at Exhibit "B", Respondent's Motion Record at Tab 2B.

<sup>40</sup> *Regal Constellation Hotel Ltd.*, Re, [2004 CanLII 206 \(ON CA\)](#) [*Regal*].

<sup>41</sup> *Regal*, *ibid* at para 28.

<sup>42</sup> *Regal*, *ibid* at para 33.

<sup>43</sup> *Regal*, *ibid* at para 35.

by obtaining a stay but where an appellant has not taken any steps to seek a stay and the order is registered, the appeal rights are lost, and any attack on the vesting order is limited to the remedies provided under the *Land Titles Act*, RSO 1990, c L.5, as amended.<sup>44</sup>

41. The first indication that the Appellants would be seeking leave to appeal was when the Notice of Motion for same was received on October 14, 2025, the same date that the Transaction closed in accordance with its terms.

42. The Appellants were familiar with the terms of the APS, including the timeline for closing, and have had a copy since the Receiver served the Second Report of the Receiver (the "**Second Report**") on September 10, 2025. Yet, the Appellants provided the Receiver with no indication that they were even considering an appeal.

43. In connection with closing, the Receiver understands that the Purchaser made an application to the Land Registry Office to register the Approval and Vesting Order on title to the Phyllis Real Property. Once the Approval and Vesting Order was registered following closing, and as this Court discussed in *Regal* at paragraph 39, it became effective as a registered instrument and its characteristics as an order were overtaken by its characteristics as a registered conveyance on title. As such, any attempt to impeach the Approval and Vesting Order by way of appeal is without merit as its effect is spent – the appeal is moot and this motion must be dismissed.

44. In any event, even if not moot, the proposed appeal is not meritorious. The standard of review that would be applicable to the proposed appeal is a high one: "This court will only interfere if the motion judge erred in law, seriously misapprehended the evidence, exercised his discretion

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<sup>44</sup> *Regal*, *ibid* at paras 45 & 49.

based upon irrelevant or erroneous considerations, or failed to give any or sufficient weight to relevant considerations".<sup>45</sup> This must be considered in the context that this Court "gives substantial deference to the discretion of commercial court judges supervising insolvency and restructuring proceedings".<sup>46</sup>

45. At paragraph 38 of their Factum, the Appellants purport to identify the errors which they submit satisfy the high threshold for a meritorious appeal in this case. All are discretionary decisions which were grounded in the law and evidence before the Motion Judge; all are entitled to deference and none demonstrate a *prima facie* meritorious appeal.

46. In summary, the Appellants argue that the Motion Judge erred in denying the Cross Motion for the following reasons:

- (a) Finding that Auriga did not have the necessary funds;
- (b) Relying on the Receiver's evidence related to prior and ongoing negative experiences with Auriga; and
- (c) Relying on the Receiver's submissions regarding text messages received from the Purchaser during the hearing.

47. *First*, while the purchase price contemplated by the offer submitted by Auriga was *modestly* higher, the Appellants failed to provide satisfactory evidence that Auriga had the financial means to close its transaction. Despite significant engagement with Auriga following delivery of the Appellants' APS and the Cross-Motion, which engagement included material

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<sup>45</sup> *Cameron Stephens Mortgage Capital Ltd. v Conacher Kingston Holdings Inc.*, [2025 ONCA 732](#) at para [29](#) [Cameron].

<sup>46</sup> *Cameron*, [ibid](#) at para [30](#).

indulgences, including an adjournment to provide the parties with the time to consider the Appellants' APS, the Cross-Motion and to further engage and consult with interested parties, the Receiver's reasonable concerns remained.

48. As noted in the Endorsement, the Appellants also failed to provide any explanation to the Receiver and the Motion Judge for the irregularities in the Approval Letter, including the issues related to the deposit and the overstated purchase price:

"[...] the Receiver has the following concerns, all of which I accept as legitimate and significant:

(a) The Approval Letter requires a downpayment of \$375,000, whereas the deposit held by Respondents' counsel is \$120,000, and there is no evidence that Auriga has the additional \$255,000 to fund the downpayment. **I asked Respondents' counsel about this issue in the course of the hearing, and his answer was not responsive;**

(b) The Purchase Price in the Approval Letter is noted as \$1,500,000, which is overstated relative to the price set out in the revised Respondents' APS by about \$250,000. The Receiver expresses the concern that Auriga may have inflated the purchase price to Affinity to avoid having to put down the full required downpayment while at the same time securing a larger mortgage commitment in order to satisfy the purchase price. **Again, when I asked Respondents' counsel about this issue, no answer was forthcoming [...]**"

49. *Second*, the Appellants have not provided any authority that stands for the proposition that it is irrelevant or erroneous for a supervising judge to consider a court-officer's past and present experiences as a consideration when exercising its discretion or considering the reasonableness of a court-officer's business judgment. In fact, the opposite is true – courts, while carefully considering the procedure followed by a receiver, rely upon the expertise of their appointed receiver and are reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations.<sup>47</sup> The Receiver's experience can inform this consideration.

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<sup>47</sup> *Regal*, *supra* note 40 at para 23.

Moreover, and a complete answer to the Appellants' concern, the Motion Judge was clear that this was not primary evidence and was treated appropriately in the circumstances (i.e., it was simply not "entirely discounted"):

(c) The Receiver advises that it has had prior and ongoing negative experience, in other unrelated receivership matters where Auriga has submitted offers to purchase but has been unable or unwilling to ultimately tender the funds to close a transaction. **While this is of course indirect hearsay evidence, when it is raised by an officer of the court it cannot be entirely discounted;**

50. *Third*, there was no error on the part of the Motion Judge as it relates to permitting the Receiver to speak to certain factual inaccuracies made by counsel to the Appellants, which submissions included referring to text messages being received from the Purchaser in real time. Again, the Motion Judge is clear in his Endorsement that this was only one consideration, was not determinative of the decision and – another complete answer to the Appellants' concerns – the evidence was given very little, if any, weight:

"(d) ...In the circumstances I asked the Receiver's representative in attendance to advise me as to his understanding of the Phyllis APS purchasers' wishes. The Receiver's representative, Mr. Tallat, advised that to his knowledge the Phyllis APS purchasers wished to close the Transaction (i.e., with the Receiver), and that they had been intimidated by the Respondents into saying what they had in the mid-September emails. Consistent with that notion, the Phyllis APS purchasers sent a text to Mr. Tallat just as he was speaking at my request, saying that they had dropped out of the session because of their concern that Respondents' counsel was referring to the evidence of the mid-September emails which had been coerced out of them. **Again, given the hearsay nature of this evidence, I cannot place much weight on it, but suffice it to say that whatever its impact, it does not assist the Respondents.**"

51. As seen from the above, the Appellants' general proposition that the Motion Judge failed to consider their evidence regarding the Appellants' APS is factually incorrect. It is evident from the Endorsement that the Motion Judge gave due consideration to all of the evidence, including the Appellants' evidence regarding the Appellants' APS and the fact that their offer, to the extent

it could be credited, was only modestly higher than the purchase price under the APS.<sup>48</sup> The Motion Judge exercised his discretion appropriately and there is no basis to allege he seriously misapprehended the evidence.

52. The Appellants' submissions that the Motion Judge failed to apply the appropriate legal standard and committed an error of law are also unsubstantiated and incorrect. The *Soundair* principles were canvassed by the Receiver in its Second Report<sup>49</sup> and highlighted in the Receiver's Factum (dated September 15, 2025) for the September 17 motion. These materials were before the Motion Judge when granting the Approval and Vesting Order. The Endorsement also references the *Soundair* criteria, with the Motion Judge concluding that "[...] the Receiver's approach to the exercise complies with the *Soundair* criteria and is reasonable and appropriate in the circumstances".<sup>50</sup> It is trite that a court's reasons need not set out all evidence and cases considered and that "[...] the absence of reasons cannot be a ground for appellate review when the finding is otherwise supportable on the evidence or where the basis of the finding is apparent from the circumstances".<sup>51</sup>

53. Additionally, the uncontroverted case law provides that deference is to be afforded to a receiver when evaluating its sales process and recommending a transaction.<sup>52</sup> Absent a violation of the *Soundair* test or other exceptional circumstances, the court should uphold the business judgment of the receiver, as its court-officer.<sup>53</sup>

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<sup>48</sup> Endorsement of the Honourable Justice W.D. Black dated October 3, 2025 [Black Endorsement] at para 15, Appellants' Motion Record at Tab 4.

<sup>49</sup> Second Report, *supra* note 1 at section 6.5.3, para 1, Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.

<sup>50</sup> Black Endorsement, *supra* note 48 at para 18, Appellants' Motion Record at Tab 4.

<sup>51</sup> *R. v Sheppard*, 2002 SCC 26 at para 36 citing to *R. v Barrett*, 1995 CanLII 129 (SCC) at para 1.

<sup>52</sup> *Romspen Investment Corp. v 6176666 Canada Ltée.*, 2012 ONSC 1727 at para 18; *9-Ball Interests Inc. v Traditional Life Sciences Inc.*, 2012 ONSC 2788 at para 28; *Business Development Bank of Canada et al v 1673747 Ontario Inc. et al.*, 2013 ONSC 286 at para 38, citing *Crown Trust Co. et al. v Rosenberg et al.*, 1986 CanLII 2760 (ON SC) at para 77 [Rosenberg].

<sup>53</sup> *Rosenberg*, *ibid* at para 77; *Downing Street Financial Inc. v Harmony Village-Sheppard Inc.*, 2017 ONCA 611 at para 40 [Downing]; *Homedale-Eagle Corporation v 253 Queen Street Inc.*, 2024 ONSC 6590 at para 35.

54. The Appellants' reliance on the Supreme Court of British Columbia's decision in *Bank of Montreal v. Renuka Properties Inc.*<sup>54</sup> is misplaced, specifically in face of their failure to raise any such argument to the Motion Judge at first instance. In that case, the Court concluded that according deference to the receiver's decision in the circumstances where another bidder appears willing to pay a *significant* amount more would place excessive weight and too high a premium on the deference factor.<sup>55</sup> Here, as the Motion Judge noted in the Endorsement, to the extent the purchase price under the Appellants' APS can be credited, it was *modestly* higher than the purchase price contemplated in the APS.<sup>56</sup> Moreover, the Appellants fail to note all of the other concerns that were found by the Receiver and accepted by the Motion Judge.

55. It should also be noted that the Court in *Renuka Properties Inc.* relies on the Court of Appeal for British Columbia's decision in *British Columbia v. Baron Enterprises Ltd.*, which noted as follows:

"[t]he passage referred to by the chambers judge in this case was clearly obiter but was intended to emphasize that a receiver's decision to enter into an agreement for sale subject to court approval should not be set aside "simply because a later and a higher bid is made". I do not disagree with that point of view provided it is applied within reasonable limits. ***Where the later offer is higher, the court may refuse to entertain it and to approve the sale recommended by the receiver or other person given conduct of sale. But in practice, that is done only where the improvement on the price is not significant and, in most cases, where it also appears that the late bid is less firmly secured than the recommended one.***"<sup>57</sup> [Emphasis added]

56. Not only was the purchase price provided for in the Appellants' APS only modestly higher, but the late bid by the Appellants was less firm, had unexplained financing flaws and lacked any real credibility. In these circumstances, any appeal is plainly not *prima facie* meritorious.

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<sup>54</sup> *Bank of Montreal v Renuka Properties Inc.*, [2015 BCSC 2058](#) [Renuka].

<sup>55</sup> *Renuka*, *ibid* at para [42](#).

<sup>56</sup> Black Endorsement, *supra* note 48 at para 15, Appellants' Motion Record at Tab 4.

<sup>57</sup> *British Columbia v Baron Enterprises Ltd.*, [2000 BCCA 317](#) at para [40](#).

57. The record is clear that the Receiver, well aware of its fiduciary obligations to act honestly and fairly, undertook all efforts to satisfy itself that the best and most certain outcome for all stakeholders was supporting the APS and seeking approval of the Approval and Vesting Order. As discussed, these efforts included multiple indulgences to the Appellants along with tireless efforts to engage with them in connection with the Appellants' APS. KingSett, the senior secured creditor who is owed in excess of \$80 million, supported the Receiver's recommendation and the Approval and Vesting Order. The Appellants have failed to identify any credible violation of the *Soundair* test or any error of law made by the Motion Judge.

58. Overlaying all of the foregoing is that "[b]ankruptcy and insolvency matters stand apart from other forms of secured debt collection and are governed by their own standard of review, which accords considerable deference to the Chambers judge".<sup>58</sup> The grounds upon which the Appellants seek leave to appeal the Approval and Vesting Order, an order which attracts significant deference in the circumstances, do not meet the threshold of *prima facie* meritorious.

**(ii) The proposed appeal does not raise an issue that is of general importance to the practice or the administration of justice as a whole**

59. The Approval and Vesting Order is a standard vesting order, almost identical in form to the Commercial List Model Order, and was supported by the senior secured creditor which sought and obtained the appointment of the Receiver.<sup>59</sup> The proposed appeal is rooted in the specifics of the dealings between the Receiver, the Purchaser and the Appellants, and is grounded in the fact-

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<sup>58</sup> *Re Harmon International Industries Inc.*, 2020 SKCA 95 at para 40. See also *Cameron*, *supra* note 45 at para 30 and *Peakhill Capital Inc. v 1000093910 Ontario Inc.*, 2024 ONCA 261 at para 3.

<sup>59</sup> Ontario Superior Court of Justice (Commercial List) Model Approval and Vesting Order; Application for Vesting Order, Kirkman Affidavit, *supra* note 39 at Exhibit "B", Respondent's Motion Record at Tab 2B; Second Report, *supra* note 1 at section 4.1 para 1(e) and section 4.1 para 1(g), Motion Record at Tab 2, Appellants' Motion Record at Tab 2A.



specific discretionary decision by the Motion Judge to grant the standard form Approval and Vesting Order.<sup>60</sup> Where grounds of appeal challenge a Motion Judge's application of established principles to specific facts, they do not give rise to issues of general importance.<sup>61</sup> This Court has ruled that a fact-specific dispute about the propriety of a receiver's sale does not raise issues of general importance to insolvency practice or the broader administration of justice.<sup>62</sup> The Motion Judge's decision was rooted in applying the specific facts of the case to the well-established principles from *Soundair*, and therefore issues of general importance are not at play here.

60. There is no issue raised that is of general importance to the practice or the administration of justice as a whole; the proposed appeal is of interest to the Appellants only.

**(iii) The appeal would unduly hinder the progress of the proceeding**

61. The proposed appeal would undoubtedly hinder the progress of the receivership to the detriment of stakeholders generally.<sup>63</sup> As this Court has concluded in similar cases,<sup>64</sup> in light of the indebtedness owing to, among others, KingSett, which amounts remain outstanding with interest and other costs continuing to accrue daily, any delay in finality relating to the Phyllis Real Property will unduly prejudice the stakeholders, further erode value and fail to serve the interests of justice. In addition, any further uncertainty would be of great prejudice to the Purchaser who transacted for the Phyllis Real Property, applied to register the Approval and Vesting Order on

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<sup>60</sup> See *La Pue*, [supra](#) note 38 at para 15.

<sup>61</sup> *Royal Bank of Canada v Ten 4 System Ltd.*, [2023 ONCA 839](#) at para 20 [*Ten 4*].

<sup>62</sup> *Downing*, [supra](#) note 53 at para 41.

<sup>63</sup> *Ten 4*, [supra](#) note 61 at para 21.

<sup>64</sup> *B&M Handelman Investments Limited v Drotos*, [2018 ONCA 581](#) at para 47; *Cosa Nova Fashions Ltd. v The Midas Investment Corporation*, [2021 ONCA 581](#) at para 42; *First National Financial GP Corporation v Golden Dragon HO 10 Inc.*, [2019 ONCA 873](#) at paras 40 & 42.

title to the Phyllis Real Property and has in all likelihood begun taking steps to complete construction of the partially built home.

62. Additionally, the Receiver continues its efforts to monetize the Property, other than the Purchased Assets, for the benefit of stakeholders – any delay caused by an appeal may materially impact those realization efforts and preclude the conclusion of the receivership proceedings.<sup>65</sup>

**PART V: RELIEF REQUESTED**

63. The Receiver requests this Court dismiss the Appellants' motion, with costs on a substantial indemnity basis in view of the indemnity entitlement in the Receivership Order, to the extent applicable.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24<sup>th</sup> DAY OF NOVEMBER  
2025**



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<sup>65</sup> *La Pue*, *supra* note 38 at para 17.


## SCHEDULE A – LIST OF AUTHORITIES

### *Cases Cited*

1. *B&M Handelman Investments Limited v Drotos*, [2018 ONCA 581](#)
2. *Bank of Montreal v Renuka Properties Inc.*, [2015 BCSC 2058](#)
3. *British Columbia v Baron Enterprises Ltd.*, [2000 BCCA 317](#)
4. *Buduchnist Credit Union Limited v 2321197 Ontario Inc.*, [2019 ONCA 588](#)
5. *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, [2019 ONCA 269](#)
6. *Business Development Bank of Canada v Pine Tree Resorts Inc.*, [2013 ONCA 282](#)
7. *Business Development Bank of Canada et al v 1673747 Ontario Inc. et al.*, [2013 ONSC 286](#)
8. *Cameron Stephens Mortgage Capital Ltd. v Conacher Kingston Holdings Inc.*, [2025 ONCA 732](#)
9. *Cosa Nova Fashions Ltd. v The Midas Investment Corporation*, [2021 ONCA 581](#)
10. *Crown Trust Co. et al. v Rosenberg et al.*, [1986 CanLII 2760 \(ON SC\)](#)
11. *Downing Street Financial Inc. v Harmony Village-Sheppard Inc.*, [2017 ONCA 611](#)
12. *First National Financial GP Corporation v Golden Dragon HO 10 Inc.*, [2019 ONCA 873](#)
13. *Homedale-Eagle Corporation v 253 Queen Street Inc.*, [2024 ONSC 6590](#)
14. *Marshallzehr Group Inc. v La Pue International Inc.*, [2025 ONCA 124](#)
15. *Peakhill Capital Inc. v 1000093910 Ontario Inc.*, [2024 ONCA 261](#)
16. *R. v Barrett*, [1995 CanLII 129 \(SCC\)](#)
17. *R. v Sheppard*, [2002 SCC 26](#)
18. *Royal Bank of Canada v Ten 4 System Ltd.*, [2023 ONCA 839](#)
19. *Re Harmon International Industries Inc.*, [2020 SKCA 95](#)
20. *Regal Constellation Hotel Ltd., Re*, [2004 CanLII 206 \(ON CA\)](#)
21. *Romspen Investment Corp. v 6176666 Canada Ltée.*, [2012 ONSC 1727](#)
22. *9-Ball Interests Inc. v Traditional Life Sciences Inc.*, [2012 ONSC 2788](#)

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

Dated: November 24, 2025

  
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**Signature**

## **SCHEDULE B – STATUTES AND REGULATIONS RELIED ON**

### **Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3**

#### **Section 193**

##### **Court of Appeal**

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.

#### **Section 195**

##### **Stay of proceedings on filing of appeal**

Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper.

#### **Section 243 (1)**

##### **Court may appoint receiver**

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.

**Bankruptcy and Insolvency General Rules, C.R.C. c. 368**

**Section 31**

**Appeal to Court of Appeal**

(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**

**Section 101**

**Injunctions and receivers**

(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. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

**Terms**

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

**R.R.O. 1990, Reg. 194: Rules of Civil Procedure**

**Rule 37.07**

**Service of Notice**

***Required as General Rule***

**37.07** (1) The notice of motion shall be served on any party or other person who will be affected by the order sought, unless these rules provide otherwise. R.R.O. 1990, Reg. 194, r. 37.07 (1); O. Reg. 260/05, s. 9 (1).

### ***Where Not Required***

(2) Where the nature of the motion or the circumstances render service of the notice of motion impracticable or unnecessary, the court may make an order without notice. R.R.O. 1990, Reg. 194, r. 37.07 (2).

(3) Where the delay necessary to effect service might entail serious consequences, the court may make an interim order without notice. R.R.O. 1990, Reg. 194, r. 37.07 (3).

(4) Unless the court orders or these rules provide otherwise, an order made without notice to a party or other person affected by the order shall be served on the party or other person, together with a copy of the notice of motion and all affidavits and other documents used at the hearing of the motion. O. Reg. 219/91, s. 3; O. Reg. 260/05, s. 9 (2).

### ***Where Notice Ought to Have Been Served***

(5) Where it appears to the court that the notice of motion ought to have been served on a person who has not been served, the court may,

- (a) dismiss the motion or dismiss it only against the person who was not served;
- (b) adjourn the motion and direct that the notice of motion be served on the person; or
- (c) direct that any order made on the motion be served on the person. R.R.O. 1990, Reg. 194, r. 37.07 (5).

### ***Minimum Notice Period***

(6) Where a motion is made on notice, the notice of motion shall be served at least seven days before the date on which the motion is to be heard.

## **Rule 37.12.1**

### **Hearing without Oral Argument**

#### ***Consent motions, unopposed motions and motions without notice***

37.12.1 (1) Where a motion is on consent, unopposed or without notice under subrule 37.07 (2), the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise. O. Reg. 465/93, s. 4 (2).

(2) Where the motion is on consent, the consent and a draft order shall be filed with the notice of motion. O. Reg. 766/93, s. 1 (1).

(2.1) In the case of a motion on consent in the Court of Appeal, an affidavit or other document setting out the reasons why it is appropriate to make the order sought on the motion shall also be filed with the notice of motion. O. Reg. 82/17, s. 3.

(3) Where the motion is unopposed, a notice from the responding party stating that the party does not oppose the motion and a draft order shall be filed with the notice of motion. O. Reg. 766/93, s. 1 (1).

### ***Opposed Motions in Writing***

(4) The moving party may propose in the notice of motion that the motion be heard in writing without the attendance of the parties, in which case,

(a) the motion shall be made on at least fourteen days notice;

(b) the moving party shall serve with the notice of motion and immediately file, with proof of service in the court office where the motion is to be heard, a motion record, a draft order and a factum entitled factum for a motion in writing, setting out the moving party's argument;

(c) the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise. O. Reg. 465/93, s. 4 (2); O. Reg. 766/93, s. 1 (2); O. Reg. 689/20, s. 25.

(5) Within ten days after being served with the moving party's material, the responding party shall serve and file, with proof of service, in the court office where the motion is to be heard,

(a) a consent to the motion;

(b) a notice that the responding party does not oppose the motion;

(c) a motion record, a notice that the responding party agrees to have the motion heard and determined in writing under this rule and a factum entitled factum for a motion in writing, setting out the party's argument; or

(d) a notice that the responding party intends to make oral argument, along with any material intended to be relied upon by the party. O. Reg. 465/93, s. 4 (2).

(6) Where the responding party delivers a notice under subrule (5) that the party intends to make oral argument, the moving party may either attend the hearing and make oral argument or not attend and rely on the party's motion record and factum. O. Reg. 465/93, s. 4 (2).

## **Rule 61.03**

### **Motion for Leave to Appeal to Court of Appeal**

#### ***Motion in Writing***



61.03.1 (1) Where an appeal to the Court of Appeal requires the leave of that court, the motion for leave shall be heard in writing, without the attendance of parties or lawyers. O. Reg. 333/96, s. 2 (1); O. Reg. 575/07, s. 4.

### ***Notice of Motion***

(2) The notice of motion for leave to appeal shall state that the motion will be heard on a date to be fixed by the Registrar. O. Reg. 82/17, s. 7 (1).

(3) The notice of motion,

(a) shall be served within 15 days after the making of the order or decision from which leave to appeal is sought, unless a statute provides otherwise; and

(b) shall be filed with proof of service in the office of the Registrar within five days after service. O. Reg. 61/96, s. 6; O. Reg. 14/04, s. 30 (1).

### ***Moving Party's Motion Record, Factum and Transcripts***

(4) The moving party shall serve a motion record and transcripts of evidence, if any, as provided in subrule 61.03 (2), and a factum consisting of the following elements:

1. Part I, containing a statement identifying the moving party and the court from which it is proposed to appeal, and stating the result in that court.

2. Part II, containing a concise summary of the facts relevant to the issues on the proposed appeal, with such reference to the evidence by page and line as is necessary.

3. Part III, containing the specific questions that it is proposed the court should answer if leave to appeal is granted.

4. Part IV, containing a statement of each issue raised, immediately followed by a concise statement of the law and authorities relating to that issue.

5. Schedule A, containing a list of the authorities referred to.

6. Schedule B, containing the text of all relevant provisions of statutes, regulations and by-laws. O. Reg. 61/96, s. 6; O. Reg. 333/96, s. 2 (2).

(5) Parts I to IV shall be arranged in paragraphs numbered consecutively throughout the factum. O. Reg. 61/96, s. 6.

(6) The moving party shall file three printed copies of the motion record, factum and transcripts, if any, and an electronic version of the factum, and may file three copies of a book of authorities, if any, with proof of service, within 30 days after the filing of the notice of motion for leave to appeal. O. Reg. 61/96, s. 6; O. Reg. 82/17, s. 7 (2).

***Responding Party's Motion Record and Factum***

(7) The responding party may, if of the opinion that the moving party's motion record is incomplete, serve a motion record as provided in subrule 61.03 (3). O. Reg. 61/96, s. 6; O. Reg. 333/96, s. 2 (3).

(8) The responding party shall serve a factum consisting of the following elements:

1. Part I, containing a statement of the facts in the moving party's summary of relevant facts that the responding party accepts as correct and those facts with which the responding party disagrees and a concise summary of any additional facts relied on, with such reference to the evidence by page and line as is necessary.
2. Part II, containing the responding party's position with respect to each issue raised by the moving party, immediately followed by a concise statement of the law and authorities relating to it.
3. Part III, containing a statement of any additional issues raised by the responding party, the statement of each issue to be followed by a concise statement of the law and authorities relating to it.
4. Schedule A, containing a list of the authorities referred to.
5. Schedule B, containing the text of all relevant provisions of statutes, regulations and by-laws. O. Reg. 61/96, s. 6.

(9) Parts I to III shall be arranged in paragraphs numbered consecutively throughout the factum. O. Reg. 61/96, s. 6.

(10) The responding party shall file three printed copies of the factum, and of the motion record, if any, and an electronic version of the factum, with proof of service, within 25 days after service of the moving party's motion record and other documents. O. Reg. 61/96, s. 6; O. Reg. 82/17, s. 7 (3).

***Moving Party's Reply Factum***

(11) If the responding party's factum raises an issue on which the moving party has not taken a position in the moving party's factum, that party may serve a reply factum. O. Reg. 61/96, s. 6.

(12) The reply factum shall contain consecutively numbered paragraphs setting out the moving party's position on the issue, followed by a concise statement of the law and authorities relating to it. O. Reg. 61/96, s. 6.

(13) The moving party shall file three copies of the reply factum with proof of service within 10 days after service of the responding party's factum. O. Reg. 61/96, s. 6.

### ***Date for Hearing***

(14) The Registrar shall fix a date for the hearing of the motion, which shall not be before the earlier of the filing of the moving party's reply factum, if any, and the expiry of the time for filing the moving party's reply factum. O. Reg. 82/17, s. 7 (4).

### ***Oral Hearing***

(15) If, on considering the written materials, the court determines that an oral hearing is warranted, the court shall, despite subrule (1), order an oral hearing to determine the motion, and the Registrar shall fix a date for it. O. Reg. 82/17, s. 7 (4).

### ***Time for Delivering Notice of Appeal***

(16) Where leave is granted, the notice of appeal shall be delivered within seven days after the granting of leave. O. Reg. 61/96, s. 6.

### ***Costs Appeal Joined with Appeal as of Right***

(17) Where a party seeks to join an appeal under clause 133 (b) of the Courts of Justice Act with an appeal as of right,

- (a) the request for leave to appeal shall be included in the notice of appeal or in a supplementary notice of appeal as part of the relief sought;
- (b) leave to appeal shall be sought from the panel of the Court of Appeal hearing the appeal as of right;
- (c) where leave is granted, the panel may then hear the appeal. O. Reg. 175/96, s. 2; O. Reg. 14/04, s. 30 (2); O. Reg. 82/17, s. 18, 19.

### ***Costs Cross-Appeal Joined with Appeal or Cross-Appeal as of Right***

(18) Where a party seeks to join a cross-appeal under a statute that requires leave for an appeal with an appeal or cross-appeal as of right,

- (a) the request for leave to appeal shall be included in the notice of appeal or cross-appeal or in a supplementary notice of appeal or cross-appeal as part of the relief sought;
- (b) leave to appeal shall be sought from the panel of the Court of Appeal hearing the appeal or cross-appeal as of right;
- (c) where leave is granted, the panel may then hear the appeal. O. Reg. 175/96, s. 2; O. Reg. 206/02, s. 14; O. Reg. 14/04, s. 30 (3); O. Reg. 394/09, s. 25; O. Reg. 82/17, s. 18, 19.

***Application of Rules***

(19) Subrules (1) to (16) do not apply where subrules (17) and (18) apply. O. Reg. 175/96, s. 2.

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

Applicants (Respondents on Appeal)

- and -

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

Respondents  
(Appellants)

Court of Appeal File No.: \_\_\_\_\_  
Court File No.: CV-24-00722148-00CL

**COURT OF APPEAL FOR ONTARIO**

Proceedings commenced in Toronto

**FACTUM OF THE RESPONDING PARTY,  
THE RECEIVER, FOR A MOTION IN  
WRITING,  
(Motion for Leave to Appeal)**

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