Court File No. CV-23-00703161-00CL
Court of Appeal File Nos. COA-23-CV-1129 and COA-23-CV-1163
Court of Appeal Motion File Nos. M54659, M54664 and M54665

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF SECTION 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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant (Respondent on Appeal)

- and -

TUNG KEE INVESTMENT CANADA LTD. and TUNG KEE INVESMENT LIMITED PARTNERSHIP

Respondents (Appellants on Appeal)

FACTUM OF THE MOVING PARTY, ERNST & YOUNG INC.
(Receiver's Motion for Directions Before a Single Judge
of the Court of Appeal returnable November 10, 2023)

November 8, 2023

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TO: **SERVICE LIST**

PART I - OVERVIEW

1. On October 19, 2023, the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) made an Order (a) appointing Ernst & Young Inc. as Receiver over the assets and undertaking of the Respondents (the "**Appointment Order**"), and (b) approving the sale transaction (the "**Times Transaction**") by the Receiver contemplated in an agreement of purchase and sale for the property municipally known as 3143 19th Avenue, Markham, Ontario (the "**Real Property**"), between the Applicant (and first mortgagee) on the underlying Receivership Application, Romspen Investment Corporation ("**Romspen**"), and Times 1010 Inc., dated September 15, 2023, as amended by a waiver, assignment and amending agreement dated September 29, 2023 between Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (collectively, the "**Times Group**") and Romspen (such agreement of purchase and sale, as so amended, the "**Times APS**"), scheduled to close on November 15, 2023 (the "**Approval and Vesting Order**", or "**AVO**").

2. The requirement for the Appointment Order and the AVO were conditions in favour of the buyer in the Times APS.

3. In response to attempted appeals by (i) the Respondent mortgagors on the underlying Receivership Application (the registered owner of the Real Property, and the beneficial owner), and (ii) 2816513 Ontario Inc. ("**281 Ontario**"), the proposed purchaser to whom the fifth mortgagee, SOW Capital Ontario Limited ("**SOW**" or the "**Fifth Mortgagee**"), attempted to sell the Real Property in an attempt to frustrate the first mortgagee (Romspen) from pursuing its rights and remedies under its first ranking security, the Court-appointed Receiver has brought a motion

for directions before this Honourable Court to allow it to close the Times Transaction on November 15, 2023.

4. If there was any doubt that the fact pattern on the underlying Receivership Application was the poster child for a scenario where the appointment of a Receiver and the issuance of an approval and vesting order for the sale of real property was required, the *facta* delivered by the Respondent mortgagors and by the "bitter bidder" 281 Ontario Inc. remove any such doubt.

5. The Application Judge was faced with:

a. Respondent mortgagors who had been in breach of their mortgage loan obligations to the Applicant and first mortgagee Romspen for over a year;

b. five registered mortgages over the Real Property;

c. a lien claimant against the Real Property with an unparticularized priority claim for $4.65 million over some or all of the registered mortgages;

d. Respondent mortgagors who had been attempting (without success) to sell and/or refinance the Real Property since at least 2021;

e. the Fifth Mortgagee (SOW) attempting to trump the first mortgagee's mortgage enforcement with a competing agreement of purchase and sale for the Real Property with 281 Ontario, entered into after the first mortgagee has listed the property for sale, at a purchase price that would actually net the Fifth Mortgagee **less** money, as it is for a lower purchase price and with a later closing date than the Times APS;

f. unexplained closing extensions of the transaction put forward by the Fifth Mortgagee with 281 Ontario, following what Justice Osborne described as the Fifth Mortgagee's "opaque" sales process;

g. repeated threats from the Respondent mortgagors to sue Romspen (the first mortgagee) and the Fifth Mortgagee for damages for improvident sale, regardless as to which agreement of purchase and sale was ultimately chosen, notwithstanding that the Respondent mortgagors had themselves agreed to sell the Real Property in or about April, 2023, for less than the sale price in the agreements of purchase and sale entered into by both the first mortgagee (the Times APS) and the Fifth Mortgagee (with 281 Ontario);

h. a deliberate and intentional public disclosure by the Fifth Mortgagee on the Receivership Application court filings of not only the sale price in its agreement of purchase and sale to 281 Ontario, but also of two appraisals it had commissioned; and,

i. the Respondent mortgagors not delivering any affidavit material on the hearing of the Receivership Application save and except for two appraisals (one from December 2018 and one from September 2023) that were also publicly filed and alleging that the Real Property was worth potentially over twice the value of the three appraisals placed before the Court by Romspen and the Fifth Mortgagee.

6. Although the Receivership Application did ultimately seek the approval of a "pre-packaged" transaction, it was not the sort of "quick flip" transaction that typically attracts increased scrutiny from the Court when analyzing the proposed transaction, where a Court has to determine

whether other factors (eg. maintaining a going concern entity and/or preservation of jobs) outweigh or balance concerns about the sale price from an abbreviated sales process reflecting market value.

7. Moreover, it cannot be said that there was an abbreviated sales process in this case. On the contrary, not only was the Real Property subject to a marketing and sales process, it was subject to three different marketing and sales processes (a lengthy and robust one by the first mortgagee approved by Justice Osborne *ex-post*, another one by the Fifth Mortgagee, and even one led by the Respondent mortgagors). More importantly, none of those marketing and sales processes bore out the Respondent mortgagors' assessment that the Real Property is worth anything approaching $130-$140 million.

8. In the totality of the circumstances, there is no way that a sale of the Real Property could have been closed under either mortgagees' private power of sale proceedings in the foreseeable future; this is the quintessential fact pattern for a sale by a court-appointed receiver, and to direct the receiver to close on the superior of the two competing agreements which accurately reflect the market price of the asset in question (the Real Property).

9. The Receiver has brought the within motion for directions on the basis that the attempted appeals of the Appointment Order and the AVO by 281 Ontario dated October 27, 2023 (the "**281 Notice of Appeal**") and of the Respondent mortgagors dated October 30, 2023 (the "**Respondents' Notice of Appeal**") require leave. The Fifth Mortgagee (which entered into an agreement of purchase and sale with 281 Ontario) has not taken steps to attempt to appeal either the Appointment Order or the AVO.

10. The Receiver also seeks an Order that, among other things, 281 Ontario has no standing to bring the 281 Notice of Appeal (on the basis of caselaw regarding the standing of unsuccessful

purchasers, or "bitter bidders"), that the Respondent mortgagors (and 281 Ontario if it has standing) cannot appeal the Appointment Order or the AVO as of right (and that they require leave of the Court to do so, which should be refused), and in the alternative declaring that neither the Appointment Order nor the AVO are stayed by the 281 Notice of Appeal or the Respondents' Notice of Appeal, but if they are stayed, an Order lifting the stay.

11. The Receiver further seeks an Order directing the closing of the sale of the Real Property on November 15, 2023.

12. *Facta* have been delivered by Romspen (the first ranking mortgagee), the Respondent mortgagors, and by 281 Ontario (the bitter bidder on the agreement supported by the Fifth Mortgagee). These parties' written submissions set out, among other things, the facts and issues material to the Receiver's motion for directions. 281 Ontario has further delivered affidavits that purport to introduce fresh evidence on its attempted appeal, though it has not sought leave of the Court to do so.

13. The factum delivered by Romspen sets out the caselaw (a) confirming that 281 Ontario as a bitter bidder had no standing to challenge the approval of the Times Transaction, and no standing to appeal, and (b) analysing the attempted appeals in the context of section 193 (a) through (d) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "***BIA***"), and determining that the pending appeals are not as of right, that leave is required, and that leave should not be granted under section 193 (e) of the *BIA*. The Receiver's factum herein is to clarify certain outstanding issues for the Court raised (or not addressed) in the *facta* before this Court.

PART II - FACTS

14. The Appointment Order and the AVO were made on notice to all stakeholders. The Respondent mortgagors and 281 Ontario each delivered a responding application record on the underlying Receivership Application hearing. 281 Ontario also delivered a factum. The Respondent mortgagors did not deliver a factum, and their responding affidavit material was limited to a 9-page affidavit attaching appraisals valuing the property at $146 million (as at December 1, 2018) and between $130.06 million and $141.88 million (as at September 24, 2023).

15. Regardless of who delivered what material and when on the Receivership Application, no stakeholders, including the Respondent mortgagors, sought or requested an adjournment of the hearing that took place on October 6, 2023. This is consistent with Justice Osborne noting in his Reasons for Decision that the Appointment Order was "supported" (*i.e.* consented to) by the Respondents.[1]

16. There was no evidence before the Court that the condition in the Times APS for the Appointment Order and the AVO were conditions included by or at the request of Romspen, let alone a "contrivance" as the Respondent mortgagors allege at paragraph 7 their factum. Section 17(ii) of the Times APS[2] provides that the buyer's obligation to complete the transaction is subject to a condition in favour of the buyer that Romspen shall have obtained an order appointing the Receiver and an order authorizing the Receiver to complete the transaction pursuant to an AVO. <u>It</u>

[1] Motion Record of the Receiver dated November 1, 2023 ("**Receiver's Record**"), First Report of the Receiver dated October 31, 2023 ("**First Report**"), Appendix D - Endorsement of Justice Osborne dated October 19, 2023 ("**Reasons**"), at para. 6.

[2] Receiver's Record, First Report, Appendix F - Affidavit of Wesley Roitman sworn September 29, 2023 ("**Second Roitman Affidavit**"), Exhibit D – Times APS, p. 946.

is the Times Group's condition, not Romspen's. Moreover, the Respondent mortgagors did not raise this issue in their affidavit on the Receivership Application, and did not cross-examine the Times Group or Romspen to lead evidence that the clause was a seller's condition disguised as a buyer's condition.

17. Similarly, the Respondent mortgagors also allege in paragraph 7 of their factum that the Times APS expressly contemplates clear title being transferred by way of private power of sale without a receiver being appointed. This too is a misstatement of what the Times APS provides, without any evidence, or even a suggestion of that allegation on cross-examination or in a responding affidavit. In section 17(iii) of the Times APS[3], the buyer has the option but not the obligation to compel Romspen to convey the Real Property under power of sale if no order appointing the Receiver and order authorizing the receiver to complete the Times Transaction pursuant to an AVO is granted within 5 business days of the outside date for obtaining such orders.

18. 281 Ontario's responding application record included an affidavit of Hunter Lam sworn October 4, 2023. On the within motion for directions (and on the 281 Notice of Appeal), 281 Ontario purports to rely on two subsequent affidavits from Hunter Lam, both sworn November 3, 2023, wherein 281 Ontario attempts to provide evidence for the first time of discussions that it (and companies related to it) has had with the City of Markham over the prior six months regarding development of the Real Property in conjunction with the acquisition and development of a block of land across from the Real Property (the ownership of this other property is not discussed in the new affidavit material). Apart from procedural descriptions of the timing for service of the 281 Notice of Appeal, neither of these two new affidavits includes any information or documentation

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[3] *Ibid*.

that could not, by the exercise of due diligence, have been obtained for the Receivership Application. As a result, any such information and documentation is inadmissible on 281 Ontario's attempted appeal.

19. Notwithstanding the evidence of the Real Property's value in three appraisals delivered by Romspen and the Fifth Mortgagee, the purchase price in the Times APS and the 281 Ontario APS, and the amount the Respondent mortgagors were prepared to sell the property for in or about April, 2023, the factum of the Respondent mortgagors confirms, at paragraph 1, that the motivation for the Respondents' opposition to the AVO, and for the Respondent mortgagors' Notice of Appeal, is to sue Romspen for damages for improvident sale. The Respondent mortgagors make this same threat regarding the 281 Ontario offer that the Fifth Mortgagee attempted to use to trump Romspen.[4] The Respondent mortgagors believe that notwithstanding that they granted Romspen the ability to appoint a Receiver under its mortgage and general security agreement, the elimination of the right to sue for improvident sale should be carved out from the Commercial List model Receivership Order in the case at bar.

20. The Respondent mortgagors' request that they be permitted to maintain a claim for an improvident sale must be viewed in the context of the sales process for the Real Property that the Respondents themselves had engaged in starting in or around May of 2022 (and the results thereof). The evidence put forward by Romspen on the Receivership Application confirmed that the Respondents were willing to sell the Real Property in the Spring of 2023 for less than the price payable under the Times APS (which is more than the sale price in the agreement of purchase and

[4] Factum of the Respondent Mortgagees dated November 6, 2023, paras 91 and 94.

sale between the Fifth Mortgagee and 281 Ontario). Romspen's evidence in this regard, unchallenged by the Respondents, was as follows:

> 33. Since May of 2022, the Debtors were promoting a sale of the easterly parcel of the Property identified in PIN 03055-0379 to Element Media Group, Inc. ("**Element**"), who purportedly planned to develop a studio thereon. An unredacted copy of the agreement of purchase and sale between TKIC and Element, as amended, is attached as **Confidential Appendix C**. A redacted copy is attached as **Exhibit 54**.
>
> 34. Copies of unredacted communications exchanged between the Debtors' counsel and Romspen's counsel, Friedman Law Professional Corporation and Dickinson Wright LLP, between November 4, 2022 and February 24, 2023 are attached, collectively, as **Confidential Appendix D**. Redacted copies of the communications are attached as **Exhibit 55**.
>
> 35. As appears from the communications:
> • the deposit money payable under the Element transaction that was promised from overseas never materialized;
> • other efforts on the part of the Debtors to refinance and sell the Property also never materialized;
> • the Debtors were unable or unwilling to put the Loan into financial good standing, which was consistently expressed to be the basis upon which Romspen would agree to forbear from continuing with enforcement of its security; and
> • the Debtors unilaterally attempted to impose a forbearance arrangement by wiring $80,000 to Romspen, which Romspen refused to accept and the Debtors have refused to cooperate with Romspen's efforts to return the funds.
>
> 36. On April 27, 2023, Mr. Preger received a letter from the Debtors' counsel, Ali Baniasadi of Miller Thomson LLP advising that TKIC had been negotiating a sale of the Property and was contemplating finalizing a purchase agreement. An unredacted copy of the letter is attached as **Confidential Appendix E**. A copy of the letter, with the commercial terms and identity of the buyer redacted, is attached as **Exhibit 56**. Bizarrely, in the letter, Romspen was asked to confirm within 24 hours that TKIC should not enter into the purchase agreement, failing which TKIC would finalize and execute the purchase agreement.
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> 37. On April 28, 2023, Mr. Preger responded by email that he was at a loss to understand why TKIC was asking Romspen to approve anything, as TKIC was free to do whatever it wished. A copy of the email is attached as **Exhibit 57**.
>
> 38. No purchase agreement was subsequently produced by TKIC to Romspen.[5]

[5] Receiver's Record, First Report, Appendix E - Affidavit of Wesley Roitman sworn July 19, 2023 ("**First Roitman Affidavit**"), paras 33-38, Exhibit 54 – Redacted APS between TKIC and Element, Exhibit 55 –

21. The unredacted copies of the exhibits referenced in the above passage are subject to a Sealing Order. Copies will be forwarded to Justice Trotter as a separate brief of confidential appendices in advance of the Receiver's motion for directions.

22. Finally, at paragraph 74 of their factum, the Respondent mortgagors mischaracterize the prejudice identified by Justice Osborne that would result as being solely "accrual of interest". In addition to the accrual of interest at $709,000 per month (approximately $22,871 per day), Justice Osborne also noted that the disclosure by the Fifth Mortgagee of the confidential appraisals and sale price information "is likely to have a negative impact on any future sales process, as it effectively sets a price ceiling at an amount between the two appraisal values now publicly disclosed by SOW."[6]

PART III - ISSUES

23. In addition to the issues raised by the other stakeholders in their respective *facta*, the Receiver will address the following issues raised on its motion for directions:

a. Do the two new affidavits delivered by 281 Ontario satisfy the test for leave to introduce new evidence on an appeal?

b. Does the AVO impact the Respondent mortgagors' "future rights" in the context of the s.193(a) analysis?

Redacted communications among counsel between November 4, 2022 and February 24, 2023, Exhibit 56 – Redacted letter dated April 27, 2023, and Exhibit 57 – Email dated April 28, 2023.

[6] Receiver's Record, First Report, Reasons at para 62.

c. What is the effect of the s. 133 of the *Courts of Justice Act* (the "*CJA*") on the appeal rights of the Respondent mortgagors vis-à-vis the Appointment Order?

PART IV – LAW AND ARGUMENT

Fresh Evidence

24. The Supreme Court of Canada has made clear that appellate courts are rarely to admit fresh evidence.[7] Courts typically apply the following four criteria:

(i) the evidence could not, by the exercise of due diligence, have been obtained for the trial (provided that this general principle will not be applied as strictly in a criminal case as in civil cases);

(ii) the evidence is relevant in that it bears upon a decisive or potentially decisive issue;

(iii) the evidence is credible in the sense that it is reasonably capable of belief; and

(iv) the evidence is such that, if believed, it could have affected the result at trial.

25. The evidence in the two new affidavits tendered by 281 Ontario offend the first of the criteria set out by the Supreme Court of Canada in *Palmer*, which directs appellate courts to generally not admit fresh evidence that, by the exercise of due diligence, could have been obtained and adduced at the court below. In the circumstances, the two new affidavits should not be admitted on the appeal.

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[7] *Palmer v. The Queen*, 1979 CanLII 8 (SCC), [1980] 1 S.C.R. 759 at 775; *Barendregt v. Grebliunas*, 2022 SCC 22, 469 D.L.R. (4th) 1, at para. 31.

Section 193(a) of the BIA and "future rights"

26. In their factum, the Respondent mortgagors conflate what they say are their rights "to commence an improvident sale proceeding following the sale of a property" with "future rights", as contemplated by s.193(a) of the *BIA*. Underlying their submissions in this regard is the Respondent mortgagors' position that the Real Property must be remarketed by the Receiver before it can be sold.

27. The Respondent mortgagors' submissions are a dressed-up challenge to the methodology or procedures followed in the sale process for the Real Property. In fact, there was not just one procedure (the one initiated by Romspen that resulted in the Times APS), but two others; those of the Respondent mortgagors and of the Fifth Mortgagee SOW. This Court recently held that, in the circumstances, an appeal on the basis of methodology or procedures followed for the sale process concerns rights that presently exist, not ones that may be exercised in the future:

> [30] In the present case, the Notice of Appeal challenges the Approval Orders on the basis of the methodology, or procedure, followed by the Receiver for the unit sale process and alleged commercial disadvantages caused by that process. 30 Roe's appeal concerns rights that presently exist, not ones that may be exercised in the future. Consequently, the appeal of the Approval Orders does not engage *BIA* s. 193(a).[8]

28. Consequently, the Respondent mortgagors' appeal of the AVO does not engage s.193(a) of the *BIA*. If an improvident sale claim is a future right for the purpose s. 193(a), then every AVO would of necessity be appealable as of right, which would be diametrically inconsistent with the

[8] *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, 2023 ONCA 219 (CanLII) at paras 29 and 30.

policy objective underlying s. 193 which favours a narrow construal of ss. 193 (a) through (d) (see *Bending Lake*[9]).

Consent to the Appointment Order

29. Justice Osborne noted that the Appointment Order was supported by the Respondents:

> 6. The appointment of a receiver is not opposed by any party appearing today, and indeed is supported by the Respondents / Debtors as well as subsequent ranking mortgagees and the holder of a lien registered against title to the Property. As stated, Sow however seeks an order that no receivership powers be executed or acted upon until after the 281 Transaction closes.[10]

30. The exact wording from the Respondent mortgagors' affidavit on the Receivership Application is as follows:

> 3. For the reasons set out below, the Respondents oppose the proposed sale transactions put forward by Romspen and Sow. Both transactions are well below the appraised value of the Real Property and should not be allowed to proceed. In particular, the Respondents oppose Romspen's request for an approval and vesting order in what is essentially a power of sale proceeding. Such relief is not appropriate in the circumstances and represents nothing more than Romspen's attempt to restrict the Respondents' from pursuing their claim for an improvident sale, a remedy that they are entitled to avail themselves of under a power of sale proceeding.
>
> 4. The Respondents do not oppose the appointment of the Receiver for the purpose of marketing the Real Property for sale in a court supervised process. The Respondents agree with the following statements made by Wesley Roitman, Romspen's representative, in his Affidavit sworn on July 19, 2023 (the "Receivership Affidavit") in support of this receivership application: "a Court-appointed receiver will ensure that the interests of all of the Debtors' stakeholders are considered and facilitate a fair and

[9] *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, [2016 ONCA 225](#) (CanLII).

[10] Receiver's Record, First Report, Reasons at para 6.

> transparent marketing and sale process for achieving a definitive disposition of the Property".[11]

31. The Receiver's position is that this is akin to a consent to the relief sought. Section 133(a) of the *CJA* requires leave to appeal a consent order. As set out above, the Respondent mortgagors did not deliver a factum on the Receivership Application, and their responding affidavit attempted to resist the approval of either the Times Transaction or the sale advanced by the Fifth Mortgagee by putting forward a description of the status of the development of the Real Property, and inflated appraisals for same.

32. In *Mendes v Mendes*, Justice Perell dealt with an appeal of a court supervised sale of a property authorized by a consent order of Master Short. Justice Perell noted that while s. 133(a) of the *CJA* does not specify grounds for granting leave to appeal a consent order, and no clear test has developed in the case law, "courts are very reluctant to grant leave to appeal when the parties have consented to an order, which is to say that they have represented to the court that a matter has been resolved."[12]

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[11] Receiver's Record, First Report, Appendix G – Affidavit of Pui Ling Lai sworn October 5, 2023, at paras 3 and 4, page 1039 and 1040.

[12] *Mendes. v. Mendes*, 2019 ONSC 6036 (CanLII) at para 44.

33. Justice Perell went on to state:

> Consent orders are regarded as contractual in nature and applying contractual principals leave to appeal should not be granted, unless the evidence before the court on the leave application demonstrates an arguable case that when the Order was made, the consent of the party seeking was obtained by fraud, duress, mistake, undue influence or some other vitiating circumstance.[13]

34. With no such evidence of vitiating circumstances, and given that the appellant was represented by a lawyer at the time of the consent order at issue in that matter, Justice Perell determined there was no basis to grant leave to appeal.[14]

35. In the case at bar, no vitiating circumstances existed, or have even been alleged, that would preclude the Respondent mortgagors from requiring leave to appeal the Appointment Order.

36. That being said, as set out above and in the Romspen factum, regardless of whether or not the Respondents mortgagors consented to the Appointment Order, this is not a situation where they have leave as of right, or where leave should be granted.

[13] *Ibid.*

[14] *Supra* at para 45.

PART V – RELIEF REQUESTED

37. The Receiver respectfully requests an Order declaring that 281 Ontario has no standing to appeal the Appointment Order or the AVO, an Order declaring that there is no automatic stay of the Appointment Order or the Approval and Vesting Order notwithstanding the Respondents' Notice of Appeal (and the 281 Notice of Appeal, if it does have standing), or in the alternative if they are stayed, lifting the stay, and an Order directing the closing of the Times Transaction on November 15, 2023, pursuant to the AVO and Times APS.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of November, 2023.

Eric Golden and Chad Kopach

SCHEDULE "A"

1. *Palmer v. The Queen*, 1979 CanLII 8 (SCC), [1980] 1 S.C.R. 759
2. *Barendregt v. Grebliunas*, 2022 SCC 22, 469 D.L.R. (4th) 1
3. *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, 2023 ONCA 219 (CanLII)
4. *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, 2016 ONCA 225 (CanLII)
5. *Mendes. v. Mendes*, 2019 ONSC 6036 (CanLII)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

Court of Appeal

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

(a) if the point at issue involves future rights;

(b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;

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

(d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and

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

Stay of proceedings on filing of appeal

195 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.

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

Leave to appeal required

133 No appeal lies without leave of the court to which the appeal is to be taken,

(a) from an order made with the consent of the parties; or

(b) where the appeal is only as to costs that are in the discretion of the court that made the order for costs. R.S.O. 1990, c. C.43, s. 133.

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