

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

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

2615333 ONTARIO INC.

Applicant
(Appellant)

- and -

**CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC.
and 9654445 CANADA INC.**

Respondents
(Respondents)

**NOTICE OF APPEAL OF THE APPELLANT,
2615333 ONTARIO INC.**

1. The Appellant, 2615333 Ontario Inc., (the “Appellant”) appeals to the Court of Appeal, from the Order and Decision of the Honourable Justice Cavanagh (“Motion’s Judge”) dated March 5th, 2025, (the “Order”) made at Toronto, Ontario, pursuant to the *Bankruptcy and Insolvency Act*, (“BIA”).
2. THE APPELLANT ASKS that the Order and Decision be set aside and a judgment be granted as follows:

- a) The Receiver's application for approval of the Agreement of Purchase and Sale dated September 12, 2024 with the Corporation of the Town of Ajax (the “**Town APS**”) in respect of the Ajax Properties be denied;
- b) The Receiver be directed to conduct a further Sales Procedure;
- c) If necessary, an Order declaring that the Appellant has the right to appeal to this Court under s. 193(c) of the BIA, and that there is a stay of proceedings under s. 195 of the BIA;
- d) In the alternative, an Order granting the Appellant leave to appeal pursuant to s. 193(e) of the BIA, and an order granting a stay of the order pending appeal;
- e) If necessary, an Order for the abridgement of time to serve and file materials for the Notice of Appeal and dispensing with further service thereof;
- f) An Order granting the Appellant its costs of this appeal and of the motion before the Motion’s Judge on a substantial indemnity basis; and
- g) Such further and other relief as the Appellant may request and this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

- 3. The Motion’s Judge erred in fact and in law in his application of the principles of the test in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), (“*Soundair*”).
- 4. The Motion’s Judge erred in fact and in law by condoning the Town’s misuse of Confidential Information obtained in its consultation role under the Appointment Order, for the purpose of the Town’s bid submission.

5. The Motion's Judge erred in fact and law by failing to recognize the disruption to the integrity of the sales process by approving a bid by The Town, using Confidential Information and its own Veto power to drive away other bidders.

6. The Motion's Judge erred in finding "There is no evidence that, when making its offer, the Town had received information that it was not entitled to receive under the Receivership Order" (paragraph 18). In making such finding the Motion's Judge failed to recognize the confidential nature of the information and the purpose of its transmission to the Town under its Veto Power. No such information was ever conveyed to any bidder and, in fact, the Appellant, who also received the Confidential information, was prohibited from bidding.

7. The Motion's Judge erred in fact and law in finding that the sales process of the Receiver had been reviewed during the prior motion to approve the sale to 843 and incorrectly found that "the same process was before the court" (paragraph 25). The Town APS, however, was not in fact generated through the Sales Procedure or bid process, it did not follow the requirements of a qualifying bid and was made by a non-arm's length party using Confidential Information.

8. The Motion's Judge erred in failing to recognize the lack of professionalism of the Receiver's process in not attempting seeking an adjournment to pursue any other opportunities.

9. The Motion's Judge further erred in finding that the Receiver had "considered the relevant circumstances and the interests of all parties" (paragraph 50). The evidence before the court demonstrated that the Appellant was to be significantly prejudiced by the acceptance of the Town APS.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION

10. The Appellant has an automatic right of appeal to the Ontario Court of Appeal pursuant to subsections 193(c) of the BIA, and there is an automatic stay pending appeal pursuant to section 195 of the BIA.

11. In addition, and/or in the alternative, the Appellant seeks leave to appeal pursuant to subsection 193(e) of the BIA. The appeal raises an issue of general importance to bankruptcy/insolvency practice and the administration of justice.

12. The appeal raises issues that are of general importance to the practice of insolvency law and the manner in which Receivership sales may be conducted in the future.

13. The appeal is *prima facie* meritorious because the Motions's Judge made a number of factual and legal errors in reaching the conclusion to approve the Ajax APS.

14. There is no evidence that the appeal would unduly hinder the progress of the proceedings or cause any prejudice to any of the majority stakeholders. The integrity of the court ordered Receiver and Sales Process must be protected. The court has previously consistently favoured an approach that preserves the integrity of the process.

15. There is an automatic stay pending appeal pursuant to section 195 of the BIA. However, if the Court determines that there is no automatic stay pending appeal despite the granting of leave, the Appellant/Moving Party requests that the Court grants a stay pending appeal pursuant to Rule 63.02(1)(b) of the *Rules of Civil Procedure*, as the appeal will be rendered moot if a stay is not granted.

16. Section 183(2) of the *Bankruptcy and Insolvency Act*.
17. Section 31 and 32 of the *Bankruptcy and Insolvency General Rules*.
18. Rule 61.04 of the Rules of Civil Procedure.
19. Such other grounds as counsel may submit and this Honourable Court may accept.

March 14, 2025

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Applicant/Appellant

Respondents/Respondents in the Appeal

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