COURT OF APPEAL FOR ONTARIO

CITATION: 2615333 Ontario Inc. v. Central Park Ajax Developments Phase 1 Inc., 2026 ONCA 544
DATE: 20260728
DOCKET: COA-25-CV-0335

Roberts, Favreau and Rahman JJ.A.

BETWEEN

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)

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

Craig Aitken, for the appellant

Alexander Soutter and Rudrakshi Chakrabarti, for the respondent TBD Restructuring Limited

No one appearing for the respondents Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc., 9654372 Canada Inc., 9617680 Canada Inc. and 9654445 Canada Inc.

Heard: December 15, 2025

On appeal from the order of Justice Peter J. Cavanagh of the Superior Court of Justice, dated March 5, 2025.

Favreau J.A.:

A. INTRODUCTION

[1] The appellant, 2615333 Ontario Inc. ("261"), appeals an order approving the sale of properties to the Corporation of the Town of Ajax (the "Town"). 261 submits that the motion judge erred by failing to ensure that the properties are being sold at a fair market value.

[2] In response, as a preliminary issue, TDB Restructuring Limited (the "Receiver") submits that 261 requires leave to appeal under s. 193(e) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*") and that leave should not be granted.

[3] I agree. As I explain below, 261's proposed appeal does not fall within the scope of s. 193(c) of the *BIA*, which is the provision 261 relies on for bringing its appeal as of right. Therefore, leave to appeal is required. I also would not grant leave to appeal because the proposed appeal does not raise any issue of general importance and is not *prima facie* meritorious. Fundamentally, 261's proposed appeal is a collateral attack on previous orders made in the receivership which 261 cannot challenge by appealing the motion judge's order.

B. BACKGROUND

a. The receivership

[4] The lands at issue form part of properties referred to as the Harwood Properties, which are comprised of the “Phase 1A Lands” (a parking lot intended to be the main site of a future condominium development), the “Phase 1B Lands” (lands adjacent to the parking lot that include units in a strip mall) and the “Utility Lands” (other units in the strip mall).

[5] The Phase 1A Lands and the Utility Lands were subject to a Development Agreement between the Town and Lemine Real Estate Consulting Inc. (“Lemine”). Lemine is a real estate developer and is affiliated with the respondents.[1]

[6] The Development Agreement provided that, if Lemine defaulted, the Town would be permitted to purchase the Phase 1A Lands and Utility Lands. Prior to the receivership proceedings, the Town brought an action to enforce its purchase rights.

[7] 261 holds a mortgage over the Harwood Properties. 261 brought an application to appoint a receiver, which was granted on April 15, 2021. The receivership order gives the Receiver the power to market the Harwood Properties on terms summarized by the motion judge as follows:

[1] The “respondents” here refers to Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc., 9654372 Canada Inc., 9617680 Canada Inc. and 9654445 Canada Inc. I am not referring to the Receiver.

> a. to market any or all of the Harwood Properties as the Receiver in its discretion may deem appropriate, provided, however, that such terms and conditions must be satisfactory to the Town, unless otherwise ordered by [the Superior Court], and
>
> b. to sell, convey, transfer, lease or assign the Harwood Properties or any part or parts thereof out of the ordinary business with the approval of this Court, in consultation with the Town, in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in paragraph 3(j)(i); and
>
> c. unless otherwise agreed to by the Town and the applicable purchaser or transferee, none of the real property presently subject to the Development Agreement shall be sold, conveyed, transferred, leased or assigned by the Receiver without the purchaser or transferee agreeing to enter into a development agreement with the Town, on mutually agreeable terms, which include a right of repurchase in favour of the Town, substantially similar to such right provided for in the Development Agreement.

b. The prior attempts to sell the property

[8] The Receiver determined that the Development Agreement between Lemine and the Town would create too much uncertainty to market the Harwood Properties. After what the motion judge described as "extensive efforts", the Receiver was able to negotiate a New Development Agreement with the Town. The New Development Agreement still requires the purchaser to build a development on the Harwood Properties in accordance with existing development plans. The New Development Agreement sets timelines for the purchaser to apply for a building permit, start construction, and complete construction. In the event

the purchaser fails to start construction as provided, the Town can require that the Receiver repurchase the properties, which can ultimately result in the Town purchasing the properties.

[9] On June 1, 2023, the Receiver obtained an order approving a sales procedure. The New Development Agreement was considered by the court in approving the sales process. After the order was made, the Receiver received two bids. The first bidder, 1000612843 Ontario Inc. (the "First Bidder"), failed to pay the deposit and was disqualified. The second bidder requested a $3 million abatement on the price set out in its bid, which was not acceptable to the Receiver or to 261 (the "Second Bidder").

[10] In March of 2024, 261 brought a motion to vary the receivership order. Specifically, 261 sought to remove the Town's rights arising from the Development Agreement. On the motion, the Receiver reported that the New Development Agreement was not well received by the market and that it was seen as one-sided and onerous. The motion was dismissed on March 11, 2024.

[11] Following the dismissal of the motion, the Receiver engaged the Town in further negotiations to try to modify the New Development Agreement. Those negotiations were unsuccessful.

[12] The Town then made a proposal to purchase the Harwood Properties.

[13] During the negotiations between the Receiver and the Town, the Receiver received a new offer from the First Bidder. The Receiver entered into an agreement of purchase and sale with the First Bidder. As part of the agreement, the First Bidder agreed to enter into the New Development Agreement with the Town.

[14] After entering into the agreement with the First Bidder, the Receiver entered into an agreement of purchase and sale with the Town as a back-up bid.

[15] The Receiver brought a motion for approval of the agreement of purchase and sale to the First Bidder and for approval of the agreement of purchase and sale to the Town as a back-up bid. 261 objected to the approval of the sale to the Town. The motion judge approved the agreement of purchase and sale with the First Bidder and adjourned the issue of the back-up bid from the Town.

[16] The First Bidder failed to close on the agreement of purchase and sale.

c. The order approving the sale to the Town

[17] After the First Bidder defaulted, the Receiver brought a motion for approval of the agreement of purchase and sale to the Town. The motion judge granted the order. This is the order 261 seeks to appeal.

[18] On the motion to approve the sale of the lands to the Town, 261 submitted that the Receiver's efforts to obtain the best price for the lands were insufficient and that the Receiver was trying to end the receivership without regard to the creditors' interests. 261 further submitted that the Town was misusing the powers

it had been granted under the receivership order for its own financial benefit, including by relying on confidential information from the Second Bidder to set the price of its offer.

[19] The motion judge rejected 261's positions and approved the sale.

[20] The motion judge applied the principles in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.), at p. 6, which required him to consider:

(a) Whether the receiver made sufficient efforts to get the best price and had not acted improvidently;

(b) The interests of all parties;

(c) The efficacy and integrity of the process by which the offers were obtained; and

(d) Whether there had been an unfairness in the working out of the process.

[21] The motion judge rejected 261's arguments that the Receiver was trying to end its responsibilities without regard to the interests of all creditors and that the Town was seeking to misuse its powers under the order appointing the Receiver:

> I do not accept these submissions. While the Applicant may now regard the restrictions imposed by the rights conferred on the Town under the Receivership Order to be unreasonable, these rights were conferred on the Town at the request of the Applicant, on consent of the Applicant and the Town. The Applicant's prior motion to

> vary the Receivership Order to remove the rights given to the Town thereunder was dismissed.

[22] The motion judge further rejected 261's argument that the Receiver had made insufficient efforts to market the Harwood Properties. The motion judge held that the Receiver robustly marketed the properties but that there were no successful bids. The motion judge stated, "[T]he Receiver is entitled to prefer a bird in the hand where it has not been shown that a fresh sales process is likely to produce a better offer than the Town's agreement of purchase and sale."

[23] The motion judge also considered two further offers the Receiver obtained that it chose not to pursue. The motion judge found that the Receiver considered both these offers and the motion judge accepted the Receiver's explanation for not pursuing them further. The first offer came from a prospective purchaser who sought several conditions, including a requirement that it would enter into a development agreement that would exclude the Town's New Development Agreement. The motion judge concluded that this offer was "highly conditional" and that it did not "show that the price in the Town's offer was so unreasonably low that the Receiver acted improvidently in accepting it." The second offer was in the form of a "commitment letter" from the First Bidder. The Receiver decided not to pursue this offer in part because the First Bidder failed to pay a deposit during a previous sale process and failed to close on a previous agreement of purchase and sale. The First Bidder appeared on the motion and asked for an adjournment for the

purpose of completing the agreement of purchase and sale. The motion judge declined the request for an adjournment and concluded that the Receiver reasonably exercised its judgement not to pursue these offers.

[24] The motion judge also considered an appraisal from an expert tendered by 261 suggesting that the value of the Harwood properties was substantially higher than the price under the agreement of purchase and sale with the Town:

> The appraisals obtained by the Applicant do not show that the Receiver failed to make sufficient effort to get the best price or that it acted improvidently. The fact is that the sales process did not produce any acceptable offers for the Harwood Properties. The offer by [the First Bidder] and the offer by the Town came outside of this sales process. There is no evidence that a new sales process would produce a better offer or that the Receiver's business judgment should be questioned.

[25] The motion judge ultimately granted an order approving the agreement of purchase and sale between the Receiver and the Town.

C. ISSUES AND ANALYSIS

[26] 261 raises the following issues on appeal, as described in its factum:

(a) Did the motion judge err in allowing the sale despite the absence of an effective marketing process to arms-length buyers? Or an alternative method to determine an appropriate fair market value for the Town's purchase price?

(b) Did the motion judge err in giving no or insufficient weight to the Town's purchase of the Harwood Properties not being equivalent to a purchase by arms-length buyers because the Town will not be bound by the New Development Agreement?

(c) Did the motion judge err in allowing the Town to use confidential information to determine the purchase price in its offer?

(d) Did the motion judge err in balancing the interests of the parties by failing to provide directions prioritizing the integrity of the sales process used to determine the price of the asset being sold?

[27] In response to the appeal, the Receiver submits that 261 cannot appeal the motion judge's order approving the sale as of right under s. 193(c) of the *BIA* and that it must first obtain leave to appeal pursuant to s. 193(e). The Receiver further submits that leave should not be granted. Even if leave is granted or 261 has a right of appeal, the Receiver submits that the appeal should be dismissed because the motion judge made no error in applying the *Soundair* principles.

[28] I agree with the Receiver that 261 requires leave to appeal the motion judge's order. I further agree that leave should not be granted in this case. I address both issues in turn below.

Issue 1: Does 261 have a right of appeal under s. 193(c) of the *BIA* or is leave required?

[29] Section 193 of the *BIA* sets out the circumstances under which an appeal lies to this court from a decision under the Act. Sections 193(a) to (d) provide a direct right of appeal in enumerated circumstances. Section 193(e) provides for a right of appeal "in any other case by leave of a judge of the Court of Appeal." The issues of whether leave is required and whether leave should be granted are generally to be decided by a single judge of this court on a preliminary motion. However, in "some unusual but necessary circumstances", such a motion may be heard by a panel: *North House Foods Ltd. (Re)*, 2025 ONCA 563, 20 C.B.R. (7th) 1, at para. 34. This includes circumstances, such as here, where the appellant asserted there was a right of appeal but sought leave in the alternative: *North House*, at para. 34; *Crown Capital Private Credit Fund v. Mill Street & Co. Inc.*, 2022 ONCA 194, at para. 5; and *Proex Logistics Inc. (Re)*, 2025 ONCA 832, at para. 11.

[30] In this case, 261 relies on s. 193(c) of the *BIA* to submit that it has a right of appeal from the motion judge's order. Section 193(c) of the *BIA* provides that an appeal lies to the Court of Appeal from an order or decision "if the property involved in the appeal exceeds in value ten thousand dollars".

[31] This court has consistently held that the right of appeal under s. 193(c) of the *BIA* is to be interpreted narrowly: *North House*, at para. 28; *Hillmount Capital*

Inc. v. Pizale, 2021 ONCA 364, 462 D.L.R. (4th) 228, at para. 28; *Enroute Imports Inc. (Re)*, 2016 ONCA 247, 35 C.B.R. (6th) 1, at para. 5; and *Romspen Investment Corporation v. Courtice Auto Wreckers Limited*, 2017 ONCA 301, 138 O.R. (3d) 373, at para. 22, leave to appeal refused, [2017] S.C.C.A. No. 238. In *Enroute*, at para. 5, the court explained that this narrow approach derives from the "broad nature" of the automatic stay imposed by s. 195 of the *BIA* that applies to appeals to this court under the Act.

[32] Based on this narrow approach, this court has held that, to qualify as an appeal as of right under s. 193(c), in addition to the $10,000 statutory threshold, an appellant must meet three criteria: (1) the order must be more than procedural in nature; (2) the order must involve the value of the debtor's property; and (3) the order must result in a loss to the appellant: *North House*, at para. 28, citing *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, 2016 ONCA 225, 396 D.L.R. (4th) 635, at para. 53; *Proex*, at paras. 48-49.

[33] In this case, the Receiver submits that the order does not fall within the scope of s. 193(c) because 261 has not demonstrated that it suffered a loss. I agree.

[34] In considering whether the appeal of an order falls within s. 193(c), a court must critically examine the effect of the order from which an appeal is sought. This inquiry is fact-specific and evidence-based: *North House*, at para. 28, citing

Hillmount, at paras. 41-42. The loss must be based on the evidentiary record: *North House*, at para. 30. The appeal must relate to a clear difference in value between the order under appeal and evidence in the record that a debtor could have obtained a higher value: *Proex*, at para. 52, citing *Downing Street Financial Inc. v. 1000162497 Ontario Inc.*, 2024 ONCA 639, 176 O.R. (3d) 37, at paras. 18, 20.

[35] The question is not simply whether a higher value for the property could be obtained: *Proex*, at para. 50, citing *First National Financial GP Corporation v. Golden Dragon HO 10 Inc.*, 2019 ONCA 873, 74 C.B.R. (6th) 1, at para. 18. Loss should be determined by way of a "substantive assessment of competing offers" as opposed to a "mere comparison of formal prices": *Downing Street Financial Inc. v. Harmony Village-Sheppard Inc.*, 2017 ONCA 611, 49 C.B.R. (6th) 173, at para. 28; *First National*, at para. 18.

[36] 261 submits that the loss is evident from the restrictions in the New Development Agreement and the Receiver's evidence that it could obtain a higher price for the properties without these restrictions. This argument is misplaced. If 261 was permitted to proceed with this appeal, it could not challenge the validity or terms of the New Development Agreement. As noted by the motion judge, the Superior Court had already dismissed a motion to vary the receivership order. 261 did not appeal that order. The issue of the validity or wisdom of the New Development Agreement is a collateral attack on the receivership order and the

order dismissing the motion to vary, and does not properly arise on 261's proposed appeal.

[37] 261 also submits that the loss arises from the Town's alleged misuse of confidential pricing information from the Second Bidder. Again, this argument does not support 261's position that it can appeal the order as of right. The motion judge rejected 261's argument on this issue, finding that there was no evidence that, in making its offer, the Town had received information it was not entitled to receive under the receivership order.

[38] Arguably, the only valid evidence of a loss were the two offers the Receiver chose not to pursue and the appraisal submitted by 261.

[39] In *First National*, at para. 26, the court found that offers received after the agreement of purchase and sale was entered into were not credible and could not be used as a benchmark for loss under s. 193(c) of the *BIA*. While there was a gap between the appraised value and the purchase price, the court was provided with information explaining that gap: *First National*, at para. 31.

[40] Here, as the motion judge found, the first offer rejected by the Receiver included several conditions, including that it enter into a development agreement that would exclude the Town's New Development Agreement. This did not amount to evidence that the Receiver could have obtained a better price. Given the history

of this matter, including the prior motion to vary the receivership order, it was very unlikely the sale could be completed without the New Development Agreement.

[41] Further, the commitment letter from the First Bidder could not be characterized as evidence that the Receiver could have received a better price. There was no firm offer. More importantly, the First Bidder had failed to pay a deposit during a previous sale process and failed to close on a previous agreement of purchase and sale.

[42] Finally, 261's appraisal does not serve to support its position that the loss suffered is more than $10,000. As the motion judge observed, despite the content of the appraisal, the Receiver's previous efforts to market the properties were unsuccessful.

[43] Accordingly, 261 has not established that the value of the loss is more than $10,000. At best, it has provided speculative evidence that the Receiver may have been able to obtain a higher price.

Issue 2: Should leave be granted under s. 193(e) of the *BIA*?

[44] 261 submits that, even if leave is required, its proposed appeal meets the test for leave.

[45] The test for leave to appeal under s. 193(e) of the *BIA* is set out in *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, 115

O.R. (3d) 617, at para. 29, and it requires the court to look at whether the proposed appeal:

(a) Raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole, and is one that this court should therefore consider and address;

(b) Is *prima facie* meritorious; and

(c) Would unduly hinder the progress of the bankruptcy/insolvency proceedings.

[46] The test for leave is not met in this case.

a. The proposed appeal does not raise an issue of general importance

[47] The issues raised by 261 on appeal are essentially factual issues. While 261 lists four issues on appeal, these come down to two arguments: (1) the motion judge erred in finding that the Receiver acted diligently and reasonably in approving the agreement of purchase and sale with the Town; and (2) the motion judge erred in failing to find that the Town relied on confidential pricing information from another bidder when setting the price for its offer to purchase the Harwood Properties.

[48] These matters do not raise issues of broader importance in the area of bankruptcy and insolvency law.

[49] 261 submits that the dual and conflicting role of the Town raises issues of general importance in this case. In addition, 261 submits that its proposed appeal raises an issue regarding the supervisory role of the Superior Court in applying the *Soundair* factors, specifically whether the motion judge had a duty to intervene once it became apparent that the Receiver's initial mandate was not workable in practice. There is no doubt that the Town's role is unusual. The sale of the Harwood properties depends on a purchaser entering into the New Development Agreement with the Town. The provisions of the agreement have proven to be an obstacle in marketing the properties given that it is perceived by the market as extremely onerous and one-sided with unrealistic timelines and severe penalties. In addition, under the New Development Agreement, in the event of a default, the Town can direct the Receiver to repurchase the properties, which in turn gives the Town the opportunity to purchase them.

[50] These are unusual circumstances that have made the Receiver's task of selling the properties challenging. However, these circumstances are idiosyncratic and do not raise issues of general importance. In addition, these circumstances arise principally from previous orders made by the Superior Court and not from the motion judge's order approving the sale to the Town. In particular, the receivership order itself foresaw these circumstances. 261 brought the application to have the Receiver appointed and consented to the terms of the appointment order. In

addition, prior to the order approving the sale, the court had already dismissed a motion to vary the receivership order.

[51] The issue of whether the Town relied on confidential pricing information is also factual and does not raise any issues of general importance.

b. The proposed appeal is not *prima facie* meritorious

[52] This factor considers whether there are arguable grounds of appeal or whether the appeal is frivolous: *Bank of Montreal v. 11977636 Canada Inc.*, 2025 ONCA 561, at para. 6. Examples include where the order under appeal appears to be contrary to law, amounts to an abuse of judicial power or involves an obvious error causing prejudice for which there is no remedy: *Pine Tree*, at para. 31.

[53] Even if the appeal raised an issue of general importance, it is not *prima facie* meritorious. As previously indicated, 261's appeal focuses on previous orders made by the court below, including the receivership order itself. 261 did not appeal these earlier orders. 261's dissatisfaction with these previous orders is a collateral attack on those orders and not an issue that this court could address in the context of this appeal.

[54] I also see no merit to 261's submission that the motion judge erred in his application of the *Soundair* factors. The motion judge understood the limitations the Receiver faced in marketing and selling the properties given the New Development Agreement. He found that, given these limitations, the Receiver's

efforts to sell the properties and its business judgment were sound. These are findings to which this court owes deference.

[55] The appellant argues that the motion judge failed to give sufficient weight to the Town's use of confidential information in setting the purchase price for its offer. As mentioned above, the motion judge found that there was no evidence that, in making its offer, the Town had received information it was not entitled to receive under the receivership order. This is a finding to which this court owes deference. Moreover, there is no other bidder being displaced by the Town's purchase.

c. Allowing the appeal would unduly hinder the progress of the bankruptcy

[56] The history of these proceedings makes clear that selling the Harwood Properties has been challenging. Requiring the Receiver to attempt afresh to market the properties will cause further delay and prejudice.

[57] There is no indication that such efforts would lead to a better outcome; in other words, there is no evidence that the Receiver would be able to sell the properties at a better price to another purchaser.

[58] In addition, further delay will prejudice the interests of the non-secured creditors as interest accrues on the mortgages held by 261.

D. DISPOSITION

[59] This court does not have jurisdiction to hear the appeal unless leave is granted under s. 193(e) of the *BIA*. Leave to appeal is denied.

[60] The parties agreed that there should be no costs of the appeal. Accordingly, no costs are awarded.

Released: July 28, 2026 L.B.R.

C. Favreau J.A.

I agree. Roberts J.A.

I agree. M Rahman J.A.