

CITATION: Ontario Securities Commission v. Cacoeli Asset Management, 2025 ONSC 3012
COURT FILE NO.: CV-25-736396-00CL
DATE: 20250523

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
ONTARIO SECURITIES COMMISSION)
) *Hansen Wong, for the Applicant*
Applicant)
)
– and –)
)
CACOELI ASSET MANAGEMENT INC.,) *Simon Bieber, Caroline Harrell, Cameron*
CACOELI CAPITAL INC., CACOELI) *Rempel for the Cacoeli Rspndents*
DUKE WELLINGTON LP, CACOELI)
LINNWOOD-LOWTHER LP, CACOELI) *Ian Aversa, Miranda Spence, Matilda Lici*
HEIMAN LP, CACOELI ARLINGTON) *for the Monitor/Proposed Receiver*
RENTAL LP, CACOELI HOLBORN-)
CHICIPLEE LP, HOLBORN CHICOPEE) *Samuel M. Robinson for MCAP Financial*
LP, CACOELI BLOOR OSSINGTON LP,) *Corp.*
CACOELI YS HIGH YIELD FINANCE)
LP, CACOELI KENNEDY STEELES LP,) *David T. Ullmann for Terra Bona*
CACOELI FIXED INCOME FUND LP,) *Investments*
11530704 CANADA INC., CACOELI GP)
INC., 10138851 CANADA INC., 11089480) *Gary M. Caplan for Clifton Blake Capital*
CANADA INC., HOLBORN CHICOPEE) *Corporation*
GP INC., CACOELI REAL ESTATE OPP)
GP INC., 11889702 CANADA INC.,) *Thomas Gertner and Heather Fisher for*
2778754 ONTARIO LTD.) *CMLS*
)
) *Shervin Rismani for Vault Capital Inc.*
Respondents)
)
)
)
)
HEARD: April 22 and 29, 2025

REASONS FOR DECISION

J. STEELE J.

Overview

[1] The Ontario Securities Commission (the “Commission”) seeks an order under section 129 of the *Securities Act*, R.S.O. 1990, c. S.5 to appoint Grant Thornton Limited as receiver and manager over all of the assets and properties of each of the respondents. The Commission has an ongoing investigation into Cacoeli’s business for alleged diversion of investor equity for prohibited uses not disclosed to investors.

[2] For the reasons set out below, the order is granted.

[3] I have determined that the receivership order shall cover all the respondents. Certain creditors had argued that the property over which they held security should be excluded if a receivership order was made. For the reasons set out below, I have declined to exempt specific properties from the scope of the receivership.

Background

[4] The respondent, Cacoeli Asset Management Inc. (“CAM”), is one of the central interconnected “Cacoeli” businesses. CAM does not carry on the business of the respondent limited partnerships. However, CAM holds financial interests in some of the limited partnerships by virtue of funds or services it has contributed. Its primary role is to provide asset management services.

[5] The respondent, Cacoeli Capital Inc., is focused on marketing and raising capital.

[6] The remaining respondents are the limited and general partners of various limited partnerships that are in the business of acquiring, holding and managing residential properties in southern Ontario.

[7] For each of the limited partnerships, there is a corporation that serves as the general partner. The Principals (defined below) serve as directors and/or officers for each general partner.

[8] Cacoeli raised funds from investors to partially finance the purchase and redevelopment of various residential real estate properties (usually large multi-unit rental apartments). Cacoeli has raised at least \$13 million from about 53 individual investors since 2015.

[9] When an investor invested in a project, the investor would sign a subscription agreement and receive a copy of the applicable limited partnership agreement for the project.

[10] The Commission's investigation originated as a result of a complaint by Cacoeli's former CFO.

[11] The Commission commenced its investigation into Cacoeli and its principals, Jedidiah Kit Wah Liu ("Liu") and Kasey Ho-Cheung Wong ("Wong") (Liu and Wong, collectively, the "Principals") in December 2023.

[12] The Commission assigned Ying Nam (Flora) Chau and Michael Ho to the investigation.

[13] The Commission's investigation to date has involved interviews with 12 investors in the various Cacoeli projects. Further, the Commission interviewed two of Cacoeli's former Chief Financial Officers, both of whom are also investors in Cacoeli projects. The Commission also interviewed two of Cacoeli's former business partners.

[14] The Commission's investigation is still ongoing.

[15] The Commission summonsed records from various sources, including banks, Cacoeli's lenders, and the vendor and assignor of the Holborn-Chicopee Property purchase agreement.

[16] The Commission's investigation focused on the following Cacoeli projects:

- a. **The Holborn-Chicopee Property:** In March 2022, Cacoeli assumed a purchase and sale agreement to buy an apartment complex in Kitchener for about \$37 million. Cacoeli took out additional loans secured against existing properties in its portfolio. In addition, Cacoeli sold certain existing properties and used part of the sale proceeds to repay loans taken out to fund the deposit on the property. Cacoeli was not able to close on the Holburn-Chicopee Property. There is litigation related to this failed transaction.
- b. **The Heiman LP Transactions:** Heiman LP is an investment project to buy and improve a residential apartment complex in Kitchener. The general partner of Heiman LP borrowed about \$5.3 million from a lender secured against the Heiman LP property. About \$1.1 million was used towards the purchase of an unrelated property (the Jane Teston LP property), and to pay \$1.08 million as a loan receivable to "other properties."
- c. **The Linnwood-Lowther LP Transactions:** The Linnwood-Lowther LP is an investment project to buy and improve a residential apartment complex in Cambridge. In 2021 Cacoeli took out loans of about \$10.75 million against the Linnwood-Lowther LP properties. Approximately \$6.5 million was wired from the Linnwood-Lowther LP bank account to Cacoeli's lawyers. The funds were wired the day before Cacoeli bought 60 Centreville Street, an apartment complex in Kitchener for \$9.25 million.
- d. **The YS High Yield LP Transactions:** The YS High Yield LP is an investment project to provide loans to a developer of a project located at Yonge and Steeles. In 2022, the YS High Yield LP raised \$1 million from investors. However, none

of the funds raised were used to provide the loans. A portion of the funds raised were used for other purposes.

[17] Prior to investing in the various Cacoeli projects, potential investors were provided with marketing materials. The marketing materials were project-specific—that is, the materials indicate that investors would be investing in a specific real property tied to a specific limited partnership.

[18] The evidence of the Commission’s lead investigator, based on investor interviews conducted by the Commission, was that she understood that each of the investors that the Commission interviewed “believed that their funds would be used solely for the benefit of the project in which they invested.” And further, she understood that “[n]one of the investors believed that their funds would be used for purposes unrelated to the project in which they invested.” As discussed below, the respondents have objected to this evidence on the basis that it is hearsay.

[19] On or about February 14, 2025, pursuant to an order of Cavanagh J., Doane Grant Thornton LLP (“Grant Thornton”) was appointed as Monitor over the respondents’ assets and property.

[20] CMLS, the first mortgagee on the Centreville Property, one of the respondents’ properties, supports the Commission’s application. CMLS’s mortgage is in default.

[21] The second mortgagee on the Centreville Property is Vault Capital. Vault’s mortgage has matured, and the mortgage has not been repaid.

[22] MCAP has first mortgages on the Heiman property and the Linnwood-Lowther property. Both mortgages are in default.

[23] Clifton Blake Capital Corp. is the first mortgagee on certain lands located at 4577 Steeles Avenue East, Toronto, owned by Cacoeli Kennedy Steeles LP. The mortgage on 4577 Steeles has been in default since January 2024.

[24] There is a second mortgage on the 4577 Steeles property, which is also in default. Terra Bona Developments Inc. claims a construction lien against 4577 Steeles and asserts that it has priority over the Clifton Blake mortgage.

Analysis

[25] The Commission seeks the appointment of a receiver under section 129(2) of the *Securities Act*. Section 129(2) of the *Securities Act* provides that the court shall not make an order under s. 129(1) to appoint a receiver unless the court is satisfied that:

- a. The appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or
- b. It is appropriate for the due administration of Ontario securities law.

[26] The Commission relies on either of the above paragraphs in this application.

[27] The case law establishes that under section 129 of the *Securities Act* the courts have “broad discretion” to make an order, “which does not require evidence of a breach.” *Ontario Securities Commission v. Sbaraglia* (23 December 2010), Toronto, CV-10-883-00CL (Ont. S.C.). In *Sbaraglia*, Morawetz J. (as he then was) noted that the Commission had raised “very serious concerns” with respect to possible breaches of the *Securities Act*.

[28] The Commission needs to show that they have serious concerns that there have been possible breaches of the *Securities Act*. As noted by the Commission, they do not need to prove a breach of the *Securities Act* for the court to order the appointment of a receiver. The Commission says that the evidence is that the respondents repeatedly took investor equity from one property and diverted the equity to an unrelated property or for unrelated purposes.

[29] In *Ontario (Securities Commission) v. Sextant Strategic Opportunities Hedge Fund LP*, [2009] O.J. No. 3063 (S.C.), Morawetz J. (as he then was) set out the following criteria to be considered on a section 129 application, at paras. 54-56:

[54] The criteria for determining what is in the best interests of creditor, security holders or subscribers for the purpose of the appointment of a receiver under the Act is broader than a solvency trust. The criteria should [take] into consideration all the circumstances and whether, in the context of those circumstances, it is in the best interest of creditors that a receiver be appointed. The criteria should also take into account the interest of all stakeholders. [citations omitted.]

[55] Further, where there is a history of mismanagement, no evidence of a tangible alternative resolution, evidence that investors’ interests will not be served by maintaining *status quo* and evidence that the company is not in a better position than a receiver to protect investor’ interests, it is appropriate to appoint a receiver. [citations omitted.]

[56] In addition, where there is evidence of regulatory breaches and evidence that the value and integrity of assets purchased with investor funds has been compromised, it is in investors’ best interests, that a receiver be appointed so that such investors are provided with an independent and verifiable review and analysis. Investors deserve treatment they can rely upon. [citations omitted.]

[30] Importantly, at para. 54 in *Sextant* the court indicated that the court should consider all the circumstances and whether the appointment of a receiver is in the best interests of creditors, considering the interests of all stakeholders.

What is the applicable evidentiary standard?

[31] The respondents submit that although the jurisprudence requires the Commission to show a serious concern about fraud or breaches of the *Securities Act*, there is no guidance on the applicable evidentiary standard.

[32] The respondents submit that the Commission should be held to a strong *prima facie* case standard in an application under section 129 of the *Securities Act*. The respondents argue that from their perspective, the order sought by the Commission is akin to a final order. They submit that it cannot be too low of an evidentiary threshold.

[33] The respondents point to the standard applicable on injunctions where the injunctive order may effectively provide all of the relief sought in the action, citing *Prince Rupert Grain Ltd. v. Grain Workers', Local 333*, 2002 BCCA 641, 8 B.C.L.R. (4th) 91. The B.C. Court of Appeal in that case stated at para. 27:

[I]n cases where the order may effectively provide the whole of the relief sought in the action, and particularly in picketing cases, the threshold test is much higher: whether the applicant has established a strong *prima facie* case.

[34] The Commission notes that there is no case law to support the respondents' submission that the evidentiary threshold for a s. 129 application ought to be a requirement for the Commission to show a strong *prima facie* case.

[35] The Commission points to another section of the *Securities Act* where the Commission has other powers to protect investors, s. 126, which permits the continuation of freeze directions. The Court of Appeal has interpreted the evidentiary burden for matters under s. 126 of the *Securities Act*. In *Qin v. Ontario Securities Commission*, 2021 ONCA 165, at paras. 19-27, the Court of Appeal accepted that the evidentiary burden for continuing freeze directions is the "serious issue to be tried" standard.

[36] I see no reason to elevate the standard to strong *prima facie* case for applications under section 129 of the *Securities Act*. These applications are often brought while investigations are ongoing, and the Commission seeks to take protective steps in the interim.

Are the transcripts of the Commission's interviews of the investors admissible evidence?

[37] As noted above, the Commission's evidence given by Ms. Chau sets out her understanding of what investors believed or felt. The respondents requested the transcripts so they could determine if Ms. Chau was accurately summarizing the investors' statements. The Commission produced the transcripts but took the position that the respondents could not use them without violating the non-disclosure obligation imposed by sections 16 and 17 of the *Securities Act*.

[38] Section 16 of the *Securities Act* prohibits the disclosure of the testimony of any witnesses examined by an investigator, among other things:

16(1) Except in accordance with subsection (1.1) or section 17, no person or company shall disclose at any time,

- a) The nature or content of an order under section 11 or 12; Or
- b) The name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13.

[...]

(2) If the Commission issues an order under section 11 or 12, all reports provided under section 15, all testimony given under section 13 and all documents and other things obtained under section 13 relating to the investigation or examination that is the subject of the order are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed or produced to any other person or company or in any other proceeding except in accordance with subsection (1.1) or section 17.

[39] Under section 17 of the *Securities Act*, the Capital Markets Tribunal may make an order authorizing the disclosure of the details of the testimony provided to an investigator, among other things. Under s. 17(5), a court having jurisdiction under the *Provincial Offences Act* initiated by the Commission is authorized to compel the production of the testimony. Under section 17(6), the investigator is authorized to disclose or produce the testimony under certain circumstances:

17(6) A person appointed to make an investigation or examination under this Act may disclose or produce anything mentioned in subsection (1)¹, but may do so only in connection with,

- a) A proceeding commenced or proposed to be commenced under this Act; or
- b) An examination of a witness, including an examination of a witness under section 13.

[40] The parties requested directions of the Court related to the non-disclosure obligation. This was heard by Osborne J. on February 28, 2025. The parties agreed to a protocol to get the transcripts before the Court in a way that does not violate the *Securities Act*, which Osborne J.

¹ 17(1) provides that if the Tribunal considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of, (a) the nature or content of an order under section 11 or 12; (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13; or (c) all or part of a report provided under section 15.

determined was appropriate. However, he noted that there would be issues related to the use of the transcripts that would have to be determined by the judge hearing the application.

[41] The respondents submit that the transcripts are hearsay. They submit that they are out of court statements that are being submitted by the Commission for the truth of their contents. Hearsay evidence is presumptively inadmissible, absent an exception: *R. v. Khelawon*, 2006 SCC 57, [2006] 2 S.C.R. 787. The Supreme Court set out the defining features of hearsay in *Khelawon*, at para. 35:

- a. The fact that the statement is adduced to prove the truth of its contents; and
- b. The absence of a contemporaneous opportunity to cross-examine the declarant.

[42] The onus is on the party seeking to rely on the hearsay statements to establish the admissibility on a balance of probabilities: *Khelawon*, at para. 47.

[43] The respondents submit that the Commission is seeking a final order that could be extremely detrimental to them. They argue that the context of what is sought on the application requires the rules of evidence to be followed.

[44] The respondents suggested that *Ontario Securities Commission v. Go-To Developments Holdings Inc.*, 2022 ONCA 328 may be interpreted as having raised a similar hearsay issue regarding the admissibility of investigation transcripts. However, the Commission, referencing its submission made in *Go-To*, confirmed that the issue was whether the prior form of s. 17(6) of the *Securities Act* permitted the Commission to use investigation transcripts.

[45] In their reply factum, the Commission states that the transcripts are relevant and admissible. However, the Commission does not provide relevant authority that would permit them to use the transcripts for the truth of their contents. I agree with the respondents that the transcripts are admissible for a non-hearsay purpose, but not admissible for the truth of their contents.

[46] The Commission argued that the respondents relied on the transcripts in their factum. However, the respondents were not using the transcripts for the truth of their contents. They put the transcripts to Ms. Chau to try to impeach her, which is a non-hearsay use. I agree with the respondents that there is nothing inconsistent about them tendering the transcripts for a permissible use, while taking the position that the Commission cannot rely on them for an impermissible use.

[47] The Commission submits that under section 17(6) of the *Securities Act* it has the right to use investigation information for its proceedings under the statute. The Commission can use the information, but that does not mean that it can be adduced to prove the truth of its contents.

[48] The Commission states that at this stage it is only required to show that the Commission has serious concerns of a breach of the *Securities Act*. The Court is not being asked to make conclusive findings on whether there was fraud, among other things. The Commission seeks the appointment of a receiver based on the wide array of evidence that the Commission has collected. The Commission states that it is not asking the Court to accept the investor evidence in the

transcripts as true. The transcripts are merely part of the facts that the Commission has collected to date. The Commission's investigation is ongoing.

What is the evidence regarding the projects investigated by the Commission?

[49] As noted above, the Commission alleges that \$2.2 million of equity from Cacoeli Heiman LP was misused. \$1.1 million was used to fund the purchase of the Jane Teston property and \$1.08 million was loaned to other Cacoeli projects. The respondents do not dispute that the funds were used in this way. However, the respondents point to a financial overview investor presentation dated June 2021. In that presentation, it is disclosed that \$1.1 million was invested in a multi-residential rental property development project and \$1.08 million was invested as a loan receivable to other properties. The investment and the loan were similarly reflected on the Heiman LP balance sheet as at September 20, 2022. There was also a tax filing for Cacaoeli Jane Teston LP showing the interest of Cacoeli Heiman LP. For Heiman LP the evidence supports the respondents' assertion that investors were provided with an interest in the other property where the Heiman LP funds were invested. Investors were also informed, albeit after the transaction was effected.

[50] The Commission similarly alleges that investor equity in the Linnwood Lowther LP was used to buy the Centreville property, without granting any corresponding interest to Linnwood Lowther LP investors. The respondents acknowledge that \$3.551 million of Linnwood Lowther funds were used to buy the Centreville property. However, the Linnwood Lowther LP investors received a corresponding interest in the Centreville LP. Linnwood Lowther LP's investment is recorded in Centreville LP's T5013 tax filing for the year ending December 31, 2022.

[51] Consistent with the above, Ms. Liu's evidence was that "[w]hen one project contributes equity to a second project by mortgaging its property(ies) and contributing the funds to the second project – for example, Heiman LP and Linnwood Lowther LP [...] – the first project receives an interest in the second project."

[52] To acquire the Holburn Chicopee property, certain Cacoeli LPs borrowed funds against their assets and invested in the Holburn Chicopee LP. The Holburn Chicopee transaction was unable to close. Holburn Chicopee LP is suing the vendors of the property for specific performance and the litigation is ongoing. The investors in the project included Arlington Rental LP, Duke Wellington LP, and Linnwood Lowther LP. As noted above, the investors in Arlington Rental LP have been paid in full and signed releases. The evidence of Ms. Liu is that she has spoken with the Duke Wellington LP investors and reached an agreement with each of them that they will be repaid with interest by the end of 2025. The Linnwood Lowther LP investors have been advised that distributions to them cannot be made at this time because Centreville LP, owned by Linnwood Lowther LP, requires significant funding for development and carrying costs for the Centreville property.

[53] Ms. Liu's evidence is that she had intended to fold certain LPs into a larger entity. However, this consolidation did not occur because the Holburn Chicopee property did not close. Ms. Liu states that if it had come together then the Linnwood Lowther LP investors would have held an interest in the Holburn Chicopee property through their interest in Centreville LP.

[54] There were also funds raised from investors in the YS High Yield LP that were paid to Holborn Chicopee LP and contributed toward the purchase of the property. Ms. Liu's evidence is that "[i]t was (and continues to be) [her] intention to provide YS High Yield LP investors an interest in the Holdborn Chicopee project."

[55] The issue, however, is that as set out below, the governing documents for each LP, as well as the marketing materials relied upon for investors to make the investments, did not contemplate the diversion of investor equity from one project to other projects.

Has the Commission satisfied the Court that there are serious concerns such that an order under s. 129 is appropriate?

[56] The Commission submits that the Court ought to consider what investors were told having regard to the marketing materials provided for the projects and the limited partnership agreements.

[57] As noted above, when investors made an investment in a project, they would sign a subscription agreement binding them to the applicable limited partnership agreement. The terms of the limited partnership agreements are substantially similar and were relied on by both the Commission and the respondents.

[58] Section 3.2 of the limited partnership agreement sets out the powers of the general partner. The respondents rely on the powers set out in sections 3.2.2.9 and 3.2.2.13 as permitting them to divert funds to other investments:

3.2.2 Without limiting the generality of Section 3.2.1 hereof, it is acknowledged and agreed that the General Partner shall the right, on behalf of and without further authority from the Limited Partners, including by way of illustration and not limitation, the following:

- 3.2.2.9 To invest funds not immediately required for the business of the Partnership in such investments or securities as the General Partner determines;
- 3.2.2.13 To engage in any transaction with affiliates of the General Partner, including entering into and amending ad restating any Management Agreement with the Fund Partner;
- 3.2.2.14 To borrow or raise monies or otherwise commit the credit of the Partnership for Partnership activities...
- 3.2.2.21 To possess, sell, transfer, mortgage, pledge or otherwise deal in or dispose of, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, Investments held or owned by the Partnership with the ultimate objective of the preservation, protection, improvement and enhancement in value thereof and to hold such securities in the name of the Partnership or any subsidiary thereof or in the name of any securities broker or firm, in the name of any nominee of such firm or in

the name of any other nominee or any other street name, or any combination thereof; ...

[59] The respondents rely on these powers. The respondents state that the investor money was used to buy the real property for the project governed by the applicable limited partnership agreement. The general partner would then borrow money against the real property owned by the limited partnership and invest the money in other projects. The respondents submit that section 3.2.2.14 permits them to borrow money against the assets of the partnership. They submit that the powers set out in section 3.2.2.9 allow them to invest the funds they do not require for the first project in another project, and section 3.2.2.13 permits them to engage in transactions with other Cacoeli entities.

[60] The Commission points to the definition of “Property” in the limited partnership agreements. In each case “Property” is defined as the specific real property for that investment project. I have focused on the Cacoeli Duke Wellington LP Limited Partnership Agreement; however, as noted above, the terms of the limited partnership agreements are substantively similar. For Cacoeli Duke Wellington LP, “Property” is defined as “the real property and improvements thereon located at 350-356 Duke Street West & 122-132 Wellington Street North, Kitchener, Ontario together with all related personal property.”

[61] Section 3.1 of the limited partnership agreement sets out the purpose of the partnership, which specifically relates to the Property, as follows:

- 3.1 **PURPOSE.** The purpose to be conducted or promoted by the Partnership (the “**Business**”) is to engage only in the following activities:
 - 3.1.1 To acquire, own, renovate, operate, manage, mortgage, encumber, refinance and sell the Property; and
 - 3.1.2 To do any and all things necessary or incidental to accomplish the foregoing business purpose.

[62] Section 3.11 sets out the restrictions on the general partner:

- 3.11 **RESTRICTIONS UPON THE GENERAL PARTNER.** The General Partner covenants that it shall not either directly or indirectly:
 - 3.11.1 cause the Partnership to invest in or provide any financial assistance, whether by way of loan, guarantee or otherwise, to the General Partner, a Limited Partner or any Related Party of the General Partner or a Limited Partner or in respect of any asset or business in which any Related Party has an interest where the Partnership does not have an interest unless special approval is received from the Limited Partners;
 - 3.11.2 permit a General Partner, a Limited Partner or any Related Party of the General Partner or a Limited Partner to grant security in any property, rights and interests in property contributed to the Partnership by a Partner

or Partners, or acquired, whether by purchase or otherwise, on account of the Partnership or for the purposes of and in the course of the Business unless special approval is received from the Limited Partners;

3.11.3 ...

3.11.4 Commingle funds of the Partnership with the funds of any other Person;

[63] The Commission submits that it would lead to an absurd result if on the one hand the purposes were only to advance the Duke Wellington Property (section 3.1 of the limited partnership agreement), but on the other hand permit the diversion of funds into other projects as the general partner saw fit. The Commission argues that its interpretation of the limited partnership agreement is consistent with what was communicated to investors in the marketing materials.

[64] Reading the limited partnership agreement as a whole and taking into account what was communicated to investors when they made the investment, I am of the view that the diversion of funds from one limited partnership to another limited partnership was not permitted. The purpose is clearly set out in the limited partnership agreement, and it relates to the owning and management of the specific Property. The broad powers given to the general partner in section 3.2 of the limited partnership agreement are there so the business can be carried on in furtherance of the purpose of the partnership and subject to the restrictions. For example, the power to invest funds that are not immediately needed could be used when rental income is earned by the partnership that is not immediately needed for the partnership's business.

[65] Ms. Liu's evidence was that "[i]nvesting in a Cacoeli project involves subscribing for units of a limited partnership set up for the specific project." Her evidence is consistent with the limited partnership agreement.

[66] The respondents state that the marketing materials have detailed disclaimers that discuss the interconnection between Cacoeli's various projects and the associated risks, pointing to the following clause:

... The limited partnership's management team also provides services to businesses similar and dissimilar to the limited partnership. Conflicts of interests between the limited partnership's management and the best interests of the limited partnership may arise. Because limited partnership intends to use leverage with the project, there is a risk of foreclosure and complete loss of the limited partnership's assets. There is also a risk that a foreclosure of any other acquired or managed through the limited partnership's management may trigger default or other detrimental terms of any loan agreements or other financial obligations or operations detrimental to the limited partnership ...

[67] The above language does not disclose to investors that their investment in a specific project may be used to fund another project.

[68] The marketing materials for each project also support the Commission's position that the investor funds were improperly diverted among projects:

- a. **Duke Wellington LP:** The marketing brochure refers to a “strong buy-hold property Kitchener, Ontario” and describes the investment as a “low-risk multifamily property with tremendous upside potential in the heart of downtown Kitchener.” The property is described as being “comprised of nine 3-bedroom townhomes and a duplex, totalling 11 units.” There are numerous pictures of the property, as well as a location map showing its location. The document states that “[f]or the purposes of acquiring this property, we have formed a single purpose limited partnership registered in Ontario.”
- b. **Linnwood Lowther LP:** The marketing brochure refers to “an opportunity to own a combined 65-unit apartment [complex] and earn a solid 11.5-15.9% return on investment.” It is described as “low-risk, stable buy-hold properties Cambridge, Ontario.” There are numerous pictures of the property and a location map showing its location. The investment is described as being “[c]omprised of a total of 65 units, Lowther-Linnwood properties are situated in a “B” neighborhood of Cambridge with high quality blue-collar tenant profile.” The property is marketed as being “fully tenanted with 100% occupancy.” The document states that “[f]or the purposes of acquiring this property, we have formed a single purpose limited partnership, registered in Ontario.”
- c. **YS High Yield LP:** The marketing materials state that “[t]he fund plans to finance the working capital requirement for the land entitlement process of a mixed-use multi-residential development project located at Yonge St & Steeles Ave in the city of Markham.”

[69] Consistent with the limited partnership agreement terms, investors were marketed a specific project or property. The marketing materials described in detail the property that the “single purpose limited partnership” was acquiring. The materials do not state that the investments made in respect of a particular property could be diverted and used for another property. When the marketing materials are reviewed, it is clear that investors were told they were making an investment in a specific property.

[70] The respondents diverted funds to other investments, which was contrary to what the limited partnership agreement provided, and contrary to what a reasonable person would have understood based on the marketing materials.

[71] Accordingly, I am satisfied that there are serious concerns such that an order under section 129 of the *Securities Act* is appropriate.

Should the receivership encompass all the Cacoeli properties/entities?

[72] Certain creditors made submissions that the property over which they have security should be exempted from any receivership:

- a. Vault Capital submitted that the proposed stay under the receivership order should not prevent it from enforcing its rights with respect to its mortgage on the Centreville property. Vault Capital also argued that the terms of appointment

should not alter existing priorities with respect to any proceeds of sale regarding the Centreville property. However, the first mortgagee of the Centreville property, CMLS, supports the Commission's application for the appointment of the receiver over all of the properties of the respondents.

- b. Clifton Blake seeks to exclude the 4577 Steeles property from any receivership order. Clifton Blake notes that section 129 of the *Securities Act* allows the appointment of a receiver over all or any part of the property. Clifton Blake submits, among other things, that there is no evidence linking investor funds or securities misconduct to the 4577 Steeles property, and that there is no prejudice to the class of investors the Commission seeks to protect if Clifton Blake is permitted to privately enforce its rights. Clifton Blake says it will suffer ongoing and increased prejudice because of the delays and costs of a receivership. However, Terra Bona, which asserts a lien on the 4577 Steeles property, takes the position that if a receiver is appointed, it should be appointed over all the respondents.

[73] Grant Thornton, the interim Monitor, filed a brief on this issue. Grant Thornton stated that if the Court determined that a receiver should be appointed, the Monitor was of the view that conclusive evidence was required that the property proposed to be excluded from the receivership was not, in any way, part of or connected with a fraud or wrongdoing alleged to have been committed by the respondents. As noted by the Monitor in its First Report, several interparty payments between certain respondents have already been identified.

[74] I agree with the submission of CMLS that the receivership should cover all the properties. As noted by CMLS, if certain of the respondents' properties are exempted from the receivership, there will be a "free for all" among the mortgagees with no central oversight or coordination. There will likely be a multiplicity of separate receivership and private sale proceedings.

[75] Certain creditors and the proposed Receiver agreed that if the court appointed a receiver, the following would be included in the endorsement: The proposed Receiver confirms that: (i) if any of the MCAP borrowers, the CMLS borrower or the Clifton Blake borrower has sufficient net cashflow (after maintenance and operational costs) to make the mortgage payments, then the Receiver will cause the MCAP borrowers, the CMLS borrower, or the Clifton Blake borrower, as the case may be, to do so when due under the terms of the respective governing loan documents; and (ii) the Receiver will communicate its determination regarding (i) to MCAP, CMLS or Clifton Blake, as the case may be, as soon as reasonably possible so that MCAP, CMLS or Clifton Blake, as the case may be, can return to Court, if necessary, for other directions or relief. For clarity, if the net cash flow is not sufficient in any month to make the full amount of any mortgage payment, then the Receiver will cause the MCAP borrowers, the CMLS borrower or the Clifton Blake borrower, as the case may be, to pay the net amount on hand to MCAP, CMLS or Clifton Blake, as the case may be, in partial satisfaction of the mortgage payment due in that month.

[76] The parties shall coordinate with the Commercial List Office to book a one-hour case conference before me to address next steps.

J Steele J.

Released: May 23, 2025

CITATION: Ontario Securities Commission v. Cacoeli Asset Management, 2025 ONSC 3012
COURT FILE NO.: CV-25-736396-00CL
DATE: 20250521

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

– and –

CACOELI ASSET MANAGEMENT INC., CACOELI CAPITAL INC., CACOELI DUKE WELLINGTON LP, CACOELI LINNWOOD-LOWTHER LP, CACOELI HEIMAN LP, CACOELI ARLINGTON RENTAL LP, CACOELI HOLBORN-CHICPEE LP, HOLBORN CHICOPEE LP, CACOELI BLOOR OSSINGTON LP, CACOELI YS HIGH YIELD FINANCE LP, CACOELI KENNEDY STEELES LP, CACOELI FIXED INCOME FUND LP, 11530704 CANADA INC., CACOELI GP INC., 10138851 CANADA INC., 11089480 CANADA INC., HOLBORN CHICOPEE GP INC., CACOELI REAL ESTATE OPP GP INC., 11889702 CANADA INC., 2778754 ONTARIO LTD.

Respondents

REASONS FOR DECISION

J. Steele J.

Released: May 23, 2025