COURT OF APPEAL FOR ONTARIO

CITATION: Bank of Montreal v. 11977636 Canada Inc., 2025 ONCA 561
DATE: 20250725
DOCKET: COA-25-OM-0101

Lauwers J.A. (Motion Judge)

BETWEEN

Bank of Montreal

Applicant
(Respondent/Responding Party)

and

11977636 Canada Inc.

Respondent
(Appellant/Moving Party)

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

Amarnath Misir, for the appellant/moving party

Steven L. Graff and Matilda Lici, for the respondent/responding party

Heard: in writing

ENDORSEMENT

[1] At the request of a secured lender, the Bank of Montreal, the application judge appointed a receiver of the property owned by the debtor, 11977636 Canada Inc., under s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3,

and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The debtor seeks leave to appeal the order.

[2] The debtor had entered into agreements of purchase and sale for two properties. The Hamilton property sale was unconditional and was set to close on February 28, 2025. The Watford property sale was conditional (and therefore somewhat speculative), and the debtor told the Bank that the property was likely to be refinanced.

[3] The debtor sought an adjournment of the application, which had already been adjourned once, to March 4, 2025 to permit the sale of the Hamilton Property. The argument is that, if the adjournment were granted, the sale price would allow the debtor to pay out the amount owing and negate the need for a receiver. The motion judge refused the adjournment and appointed the receiver. The debtor now takes issue with the appointment, and argues that the property value has declined given current market conditions, reducing the amount that could be received from the sale of the property.

[4] The debtor advances several proposed grounds of appeal, but its strongest claim is that the application judge made a factual error as to the date of the pending sale of the Hamilton property. The debtor contends that the judge next improperly relied on that error to infer that the Bank's lack of confidence that the debtor "will be accountable to the bank and its other creditors, going forward" was justified.

[5] The application judge appears to have believed that the debtor said the Hamilton property sale would close before February 11, 2025, which was the date of his ruling. However, the debtor consistently told the Bank and the court that the property sale would close on February 28, 2025, hence its request for the adjournment to March 4, 2025.

[6] This Court has cited three considerations – the *Pine Tree* considerations – in evaluating whether to grant leave under s. 193(e):[1]

> a) Whether the proposed appeal 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;
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> b) Whether the proposed appeal is *prima facie* meritorious – i.e., "whether there are arguable grounds of appeal or, on the other hand, whether it is frivolous."[2] This criterion also entails that the proposed appeal be of significance to the parties. Examples include when the order under appeal:
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> I. Appears to be contrary to law; or
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> II. Amounts to an abuse of judicial power; or
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> III. Involves an obvious error causing prejudice for which there is no remedy;[3] and

[1] See *Business Development Bank of Canada v. Pine Tree Resorts Inc*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 29, for the general restatement of the law.
[2] *Menzies Lawyers Professional Corporation v. Morton*, 2015 ONCA 553, 28 C.B.R. (6th) 136, at para 32.
[3] *Pine Tree,* at para 31; *Menzies*, at para 30.

c) Whether the proposed appeal would unduly hinder the progress of the bankruptcy/insolvency proceedings.

[7] Taken together, the *Pine Tree* considerations reflect Parliament's desire that bankruptcy proceedings progress swiftly, without undue interference, unless there is a good reason of general public importance to justify delay: *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, 2016 ONCA 225, 369 D.L.R. (4th) 635, at para. 47.

[8] In this case, the debtor's only plausible ground of appeal is that the motion judge misapprehended the facts about the closing date on the sale of the Hamilton property and exercised his discretion in refusing a second adjournment on an incorrect basis. Thus, if leave were to be granted, the proposed appeal would be for error-correction purposes alone.

[9] Two of the three *Pine Tree* considerations for leave to appeal are plainly not met by this proposed appeal. The proposed appeal is not of significance to the practice of insolvency law or the administration of justice generally. The refusal of an adjournment for case-specific reasons does not rise to this broader significance. Moreover, the proposed appeal would impede the progress of the bankruptcy. As noted in its factum, the Receiver is now seeking approval to sell one of the properties. The sale approval hearing was scheduled for June 10, 2025. No sale approval order has been entered on the Receiver's website. It is not clear whether the sale approval was impacted by this proposed appeal.

[10] The remaining *Pine Tree* consideration is whether the debtor's proposed appeal is *prima facie* meritorious. As outlined above, the debtor identifies one error made by the application judge: his misapprehension of the closing date of the Hamilton property sale.

[11] In my view, the proposed appeal is not meritorious. The closing date of the Hamilton property sale is only one of several reasons cited by the application judge in justifying the Receiver's appointment. Reading his reasons as a whole, the application judge focused on the debtor's lack of accountability and transparency with its senior secured creditor, the Bank, despite many months of discussion and the Bank's repeated requests for reasonable information. The debtor's submissions do not address why the application judge's error about the closing date of the Hamilton property sale was determinative in the face of these considerations. The debtor has not put forward a credible argument that, had the application judge not made the error, the receiver would not have been appointed and the debtors' debt to the Bank would have been fully paid. There was, as the application judge implicitly found, an irretrievable breakdown in the relationship.

[12] Because none of the three considerations for granting leave to appeal under s. 193(e) of the *BIA* is satisfied by the proposed appeal, I decline to grant the debtor leave to appeal.

"P. Lauwers J.A."