COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
MONTREAL SEAT

No.: 500-09-031482-250
(500-11-064625-243)

MINUTES OF HEARING

DATE: August 7, 2025

CORAM: THE HONOURABLE PETER KALICHMAN, J.A.
JUDITH HARVIE, J.A.
MYRIAM LACHANCE, J.A.

IN THE MATTER OF THE RECEIVERSHIP OF BOIS BSL INC. / BSL WOOD PRODUCTS INC. & INVESTISSEMENT BDG BSL INC. :

APPELLANT	COUNSEL
BRANDT TRACTOR LTD.	Mtre JEAN-PHILIPPE GERVAIS (*GBC Légal*) Absent
RESPONDENTS	COUNSELS
FTI CONSULTING CANADA INC.	Mtre JULIANA BOUTOT (*Robinson Sheppard Shapiro*) Absent
BANQUE TORONTO-DOMINION	Mtre FRANÇOIS D. GAGNON Mtre DAPHNÉ POMERLEAU-NORMANDIN (*Borden Ladner Gervais*) Absent

DESCRIPTION: **Application to dismiss an appeal by Banque Toronto-Dominion** (article 365 *C.C.P.*).

Clerk at the hearing: Ariane Simard-Trudel	Courtroom: Pierre-Basile-Mignault

HEARING

Continuation of the hearing held on August 6, 2025. The parties were excused from appearing in Court.

BY THE COURT : Judgment – see page 3.

Ariane Simard-Trudel, Clerk at the hearing

JUDGMENT

[1] The appellant, Brandt Tractor Ltd. (**Brandt**), appeals from a judgment of the Superior Court (the honourable Donald Bisson)[1] dismissing its Motion in appeal of a disallowance of a proof of claim. The respondent, La Banque Toronto-Dominion, brings an application to dismiss the appeal on the basis that it is abusive or, at the very least, has no reasonable chance of success.

[2] In the context of the receivership of Bois BSL Inc. (the **Debtor**), Brandt filed a proof of claim as owner with the receiver, FTI Consulting Inc. (the **Receiver**) regarding a piece of equipment worth $285,900. According to Brandt, the sale to the Debtor never took place or, in the alternative, was conditional upon full payment which was never received.

[3] The Receiver disallowed the proof of claim. He determined that under s. 2 of the *Bankruptcy and Insolvency Act* (the ***BIA***), Brandt is considered a secured creditor and since it failed to register its reservation of ownership in the Register of Personal and Movable Real Rights (the **RDPRM**) until after the appointment of the Receiver, its security could not be set up against it. The Receiver added that according to the proof of claim filed by Brandt, the sale to the Debtor occurred after the Receiver's appointment on September 16, 2024, and that even if the sale actually occurred in July 2024 (*i.e.* before the appointment), the fact that it was not registered in the RDPRM within 7 days of the sale in accordance with art. 1745 *C.C.Q.*, means that it cannot be set up against other secured creditors (art. 1749 *C.C.Q.*) whose rights and charges now encumber the equipment. According to the Receiver, Brandt should thus have filed a proof of claim as an ordinary creditor.

[4] Brandt appealed the disallowance. The judge found no error in the Receiver's position and dismissed the appeal.

[5] In its notice of appeal, Brandt raises the following grounds: (i) that the judge erred in agreeing with the Receiver that instead of filing its claim as owner (s. 81 *BIA*), it should have filed a claim as a secured creditor (s. 135 *BIA*); (ii) that the judge erred in attaching importance to an obvious error in the proof of claim, which misidentified the date of the sale to the Debtor; and (iii) the judge erred in failing to adopt the reasoning set out in the dissent of the honourable Joseph Nuss in this Court's judgment in *Maschinenfabrik Rieter a.g. c. Canadian Fidelity Mills Ltd.*[2]

[6] Regarding the third ground of appeal, Brandt explains the different views of the majority and minority opinions in the *Maschinenfabrik* case as follows: "the majority opinion ruled that in the context of a bankruptcy, the hypothec did indeed attach to the

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1 *Séquestre de Bois BSL inc. / BSL Wood Products Inc.*, 2025 QCCS 1827.
2 2005 QCCA 1033 [*Maschinenfabrik*].

assets, whereas the minority opinion of Justice Nuss concluded that since the assets in question never entered the patrimony of the debtor, they did not constitute “present or future assets” of said debtor, and could not be subject to any preexisting hypothec.” Brandt adds that the fact that the Debtor was in receivership, and not bankruptcy, bolsters its argument that the equipment never passed into the hands of a third-party acquirer.

[7] As the respondent points out, Brandt has identified no jurisprudence or doctrine that supports Justice Nuss’ dissent in the *Maschinenfabrik* case. However, notwithstanding the challenges that the appeal may face, the respondent has failed to demonstrate that it has no reasonable chance of success or that it is in any way abusive.

[8] The respondent argues that the Court need not even consider whether or not there is merit in Brandt’s argument regarding the *Maschinenfabrik* case because, at any rate, there is no error in the decision to refuse to allow it to file a claim as owner and no requirement on the part of the Receiver to transform the proof of claim into that of a secured creditor.

[9] It will of course be up to the bench of the Court that hears the appeal to determine whether it can be dismissed solely on the basis that Brandt filed the wrong proof of claim. However, given the fact that Brandt has indicated that it may file a proof of claim as a secured creditor and restart the entire process, the Court may choose to grapple with Brandt’s argument regarding the *Maschinenfabrik* decision in regards to the Receiver’s rejection of the proof of claim as owner as well as his determination that since Brandt failed to register within 7 days of the sale, it cannot set up its reservation of ownership against other secured creditors.

FOR THESE REASONS, THE COURT:

[10] **DISMISSES** the application to dismiss the appeal with judicial costs to follow suit.

PETER KALICHMAN, J.A.

JUDITH HARVIE, J.A.

MYRIAM LACHANCE, J.A.