COURT OF APPEAL FOR ONTARIO

CITATION: Cameron Stephens Mortgage Capital Ltd. v. Spotlight on Lawrence Inc., 2025 ONCA 374
DATE: 20250515
DOCKET: COA-25-OM-0132

Dawe J.A. (Motion Judge)

BETWEEN

Cameron Stephens Mortgage Capital Ltd.

Applicant

and

Spotlight on Lawrence Inc., Shahrzad (Sherry) Larjani, and Idin Rangchi

Respondents (Moving Parties)

Albert G. Formosa, Philip Cho and Phil Wallner, for the moving parties

Jeffrey Larry and Daniel Rosenbluth, for the Receiver, The Fuller Landau Group Inc.

Heard: In writing

ENDORSEMENT

A. OVERVIEW AND FACTUAL BACKGROUND

[1] This is a motion for leave to appeal under s. 193(e) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

[2] The moving parties are the registered owners of a property on Lawrence Ave. West in Toronto (“the property”), which they purchased with the intention of

constructing a housing development. There are three mortgages on the property, securing debts well in excess of $30 million. The debt secured by the first mortgage currently stands at approximately $27.5 million. In October 2023, The Fuller Landau Group Inc. was appointed receiver over the property, at the instance of the first mortgagee at the time.[1]

[3] In 2024, the Receiver conducted a process to sell the property, with a bid deadline of December 12, 2024. The Receiver ultimately received two offers, and entered into an agreement to sell the property to the winning bidder, 1000476589 Ontario Inc. The amount of the winning bid, while confidential, is acknowledged by the parties to be less than the debt secured by the first mortgage. On March 25, 2025, the Receiver brought a motion, returnable on April 11, 2025, seeking an approval and vesting order that would enable the sale of the property to proceed, as well as various other ancillary orders.

[4] On the scheduled motion date of April 11, 2025, the moving parties sought an adjournment to enable them to attempt to arrange financing to pay off the debt secured by the first mortgage. Their adjournment request was supported by the second and third mortgagees and some of the investors in the first mortgagee syndicate. As the motion judge noted in his endorsement:

[1] The first mortgagee was originally Cameron Stephens Mortgage Capital Ltd., but this mortgage was later refinanced, and a syndicate of different lenders are now the first mortgagees.

> Acknowledging the lateness of their request, these parties (defined in their materials as the "Affected Stakeholders") advised that a long-awaited municipal zoning order may be received within the next two or three weeks, that the Affected Stakeholders were in the process of developing a proposal to satisfy the first mortgagee, that allowing their proposal to proceed would provide the best chance for the Affected Stakeholders to "realize their original vision of building more affordable housing in the City of Toronto," and that, given that there is an outside date of May 15, 2025 for the Receiver to obtain the AVO relative to the Transaction, there would be no prejudice to the purchaser if the sale approval was adjourned.

[5] The motion judge declined to grant the adjournment, and proceeded to make the order that the Receiver had requested.

B. ANALYSIS

[6] The moving parties now seek leave to appeal from this order. Pursuant to s. 193(e) of the *BIA* and r. 61.03.1(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, they have brought their motion for leave in writing to a single judge of the court. If leave is granted, they also seek to have the order stayed pending their appeal. The Receiver does not object to this latter relief if leave to appeal is granted, but opposes the motion for leave, and requests an expedited hearing date in the event that it is granted.

[7] The moving parties raise two proposed grounds of appeal. First, they argue that the motion judge erred by refusing them an adjournment. Second, they contend that they were denied natural justice because they were not given an

opportunity to make submissions about the merits of the Receiver's motion after their adjournment request was denied.

[8] The test to be applied on leave applications under s. 193(e) of the *BIA* is well-settled. In general, judges must consider 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;
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> b) is *prima facie* meritorious, and
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> c) would unduly hinder the progress of the bankruptcy/insolvency proceedings.

See, e.g., *Business Development Bank of Canada v. Pine Tree Resorts Inc*., 2013 ONCA 282, 115 O.R. (3d) 617, at para. 29; *AFC Mortgage Administration Inc. v. Sunrise Acquisitions (Elmvale) Inc*., 2024 ONCA 764, at para. 32.

[9] Some decisions have also listed a fourth factor, namely, whether the point raised in the proposed appeal is of significance to the action itself. However, as Blair J.A. explained in *Pine Tree Resorts*, at para. 30:

> [I]t seems to me that this particular consideration is likely to be of lesser assistance in the leave to appeal context because most proposed appeals to this court raise issues that are important to the action itself, or at least to one of the parties in the action, and if that consideration were to prevail there would be an appeal in almost every case.

This case is no exception, since the order at issue would clear the way for the property to be sold, and thus bring the proceedings to an end.

(1) Does the proposed appeal raise issues of general importance?

[10] Although the moving parties' first ground of appeal is that the motion judge erred by refusing their request to adjourn the Receiver's motion, they acknowledge that the legal test for granting or refusing an adjournment is well-established. They focus on their underlying reason for seeking the adjournment in this case: namely, to give them more time to try to raise funds to exercise their equity of redemption, in the hope that that they could continue pursuing their housing development project. They argue:

> The Motion Judge's Orders effectively terminated a development project anticipated to provide hundreds of affordable and attainable housing units in the City of Toronto. This is a clearly incorrect and unjust result given the minimal prejudice that would have resulted from granting the short adjournment requested by the Moving Parties and the Affected Stakeholders.
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> Having fair consideration of the interests of stakeholders in the face of adjournment requests is of significant importance to the insolvency bar. The second part of the test for leave under section 193(e) of the *Act* is therefore satisfied.

[11] In my view, it is important to bear in mind why the motion judge refused the adjournment request in this case. As his reasons make clear, he was skeptical about whether the moving parties would have been able to justify their being permitted to exercise their equity of redemption at such a late date, even if they had not needed an adjournment to give them more time to attempt to raise the necessary funds. As he explained:

> In order even to consider an extremely late-breaking proposal to exercise the equity of redemption in the face of a Transaction that has been fully negotiated and executed and is ready to close, the party seeking to redeem must turn up with “cash in hand”, i.e. must be ready to fully redeem the mortgage(s) on the property at issue. Even in those circumstances, the relevant case law provides that [a] late-breaking offer, unless it provides exceptional value in comparison to the proposed transaction, should not be allowed to interfere with the integrity of the receivership sale process.

[12] The Receiver points out that in *Rose-Isli Corp. v. Smith*, 2023 ONCA 548, a decision released less than two years ago, a panel of this court addressed the factors that should be considered by judges when deciding whether to give priority to a debtor’s right to redeem, in cases where a receiver is proposing to sell the debtor’s assets. The court endorsed the following principles, at para. 9:

> - In considering a request by an encumbrancer to redeem a mortgage on property in receivership, a court should consider the impact that allowing the encumbrancer to exercise its right of redemption would have on the integrity of a court-approved sales process;
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> - Usually, if a court-approved sales process has been carried out in a manner consistent with the principles set out in *Royal Bank of Canada v. Soundair Corp*., (1991), 4 O.R. (3d) 1 (C.A.), a court should not permit a latter attempt to redeem to interfere with the completion of the sales process. In our view, the reason the *Soundair* principles apply to circumstances where an encumbrancer seeks to redeem a mortgage is that once the court’s process has been invoked to supervise the sale of assets under receivership, the process must take into consideration all

> affected economic interests in the properties in question, not just those of one creditor; and
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> - In dealing with the matter, a court should engage in a balancing analysis of the right to redeem against the impact on the integrity of the court-approved receivership process.

[13] The court added, at para. 10:

> We adopt the rationale for those guiding principles articulated in *B&M Handelman Investments Limited v. Mass Properties Inc.* (2009), 55 C.B.R. (5th) 271 (Ont. S.C.), where the court stated, at para. 22:
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> > A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and for the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders.

[14] In my view, the fact that the moving parties in this case needed an adjournment to give them time try to raise the funds they would have needed to exercise their right of redemption does not significantly change the analysis. The factors the motion judge had to consider when deciding whether to grant an adjournment for this purpose largely overlapped with the factors he would have had to consider if they had been in a position to exercise that right, as outlined in *Rose-Isli Corp.* I am accordingly not persuaded that this proposed ground of

appeal raises issues on which either the lower courts or the insolvency bar require additional guidance from this court, nor does it raise any broader matters of more general concern to the administration of justice.

[15] The moving parties' second proposed ground of appeal is that they were denied natural justice because they did not have a fair opportunity to address the merits of the Receiver's motion after their adjournment request was denied. The Receiver disputes this. For present purposes, however, the important point is that this disagreement turns on "fact-specific issues of procedural fairness" that have no discernible broader "significance beyond the interests of the parties": *Enroute Imports Inc. (Re)*, 2016 ONCA 247, 35 C.B.R. (6th) 1, at para. 8. I am not satisfied that this ground of appeal raises any issues of broader general importance, either to the insolvency bar or to the justice system as a whole.

(2) Does the proposed appeal have *prima facie* merit?

[16] I turn now to the merits of the proposed appeal.

[17] In my view, the first proposed ground appears to have little prospect of success. The moving parties recognize that a decision to deny an adjournment "is discretionary and the scope for appellate intervention is accordingly limited": *Van Decker Estate v. Van Decker*, 2022 ONCA 712, 163 O.R. (3d) 227, at para. 4. Moreover, as I have already noted, courts generally look askance at late-breaking efforts by debtors to redeem property that has already been provisionally sold

under a court-approved process: see *Rose-Isli Corp.*, at paras. 9-10. As this court observed in *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*, 2024 ONCA 584, at para. 16, "[l]ast-minute derailments of a court-approved sale process by a debtor's request to redeem are not common".

[18] The moving parties will accordingly face an uphill battle persuading a panel of this court that the motion judge erred by refusing them an adjournment to give them more time to raise funds to redeem the property. The motion judge was plainly skeptical about whether the moving parties would be able to raise the necessary funds, even if an adjournment was granted. He was also evidently unimpressed by their proposed bid, noting, at paras. 23-24 and 26:

> [T]he ability of the Affected Stakeholders to assemble a bid superior to the purchase price in the APS (which I have reviewed on a confidential basis), is highly speculative and very far from certain.
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> The timing for that to occur, if it can, is also very uncertain.
>
> …
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> In addition to being highly speculative at this stage, the hoped-for purchase price to which the Affected Stakeholders aspire, is not a substantially higher bid than the (actual and tangible) purchase price reflected in the APS.

[19] In my view, the moving parties will have difficulty demonstrating to a panel that the motion judge erred in exercising his discretion as he did.

[20] The moving parties emphasize the social utility of their proposed development project, noting that it "would contain a significant percentage of affordable and attainable rental and ownership units". However, the motion judge expressly considered this factor, observing:

> [O]f course the objective of providing additional affordable housing in the City of Toronto is extremely important and laudable (as reflected in the notes in the Affected Stakeholders' materials from various community organizations who have expressed support).

It will in my view be difficult for the moving parties to successfully argue on appeal that the motion judge erred in principle by not giving this factor more weight in the overall balancing analysis.

[21] I also find it significant that the moving parties were seeking an adjournment of only a few weeks, to a date prior to the "outside date" of May 15, 2025 by which the agreement of purchase and sale required the Receiver to obtain the approval and vesting order. That date has now arrived, but the moving parties have not sought to present fresh evidence demonstrating that the zoning order they hoped on April 11, 2025 "may be received within the next two or three weeks" has been granted, or that they are now in a position to redeem the first mortgage. This will make it more difficult for them to establish that the motion judge's refusal of the adjournment ultimately made any difference, and that he would not have inevitably granted the Receiver the order sought even if the adjournment had been granted.

[22] Turning to the moving parties' second ground of appeal, I am not persuaded that they have a strong case that they were denied natural justice or treated unfairly by the motion judge. Their complaint is that they were not given a chance to make substantive submissions regarding the merits of the Receiver's motion after their adjournment request was denied.

[23] However, there is no indication in the record before me that the moving parties ever had any substantive submissions to make on the motion, apart from seeking to have it adjourned so they could prepare and submit a competing redemption bid to the first mortgagee. The Aide Memoire they delivered to the motion judge in advance of the April 11, 2025 hearing was entirely devoted to their adjournment request, which they characterized as intended "to permit a reasonable period of time to allow the Affected Stakeholders to put forward a proposal to the first mortgagee and exercise their equity of redemption." The moving parties were evidently not in a position to redeem the first mortgage on April 11, 2025. Since they do not appear to have ever taken issue with the Receiver's sales process, which the motion judge described as "robust and thorough", there is no reason to believe that they had any other basis to oppose the sale being approved that they might have put forward once their adjournment request was denied.

[24] The moving parties rely on the rule that when there has been a denial of natural justice that compromises the fairness of a hearing, the result cannot be

upheld on the basis that the outcome would probably have been the same if there had been a fair hearing. I agree that this is the applicable legal principle. However, the threshold issue in this case is whether the moving parties were, in fact, denied a fair opportunity to make submissions. The alternative construction put forward by the Receiver about what happened during the April 11, 2025 hearing is that the motion judge only "requested" submissions on the merits of the motion from counsel for the Receiver because everyone understood that if the moving parties' adjournment request was denied, they had nothing further they wanted to say. Indeed, while the moving parties now object that they were denied a fair opportunity to make submissions on the merits of the motion, they have not given any indication as to what those submissions might have been.

[25] I cannot be entirely certain about what happened at the hearing without a transcript of the proceedings. However, there is considerable force to the Receiver's argument that the moving parties' counsel must have known that if motion judge denied their adjournment request, by calling on the Receiver's counsel to make submissions on the merits he was signalling that he meant to decide the motion on its merits if he ruled against the moving parties on their adjournment request. As the Receiver points out, even if the motion judge did not expressly invite submissions on the merits from the moving parties' counsel, nothing prevented them from speaking up if they had anything to say.

[26] I accordingly agree with the Receiver's characterization of this ground of appeal as "weak".

(3) Would granting leave unduly hinder the bankruptcy proceedings?

[27] Importantly, the moving parties justified their request for an adjournment on April 11, 2025 by emphasizing that they were only seeking a brief adjournment, which would not prevent the Receiver from obtaining the order it needed to complete the sale of the property by May 15, 2025 in the event that the moving parties were ultimately unsuccessful in persuading the motion judge to allow them to redeem the first mortgage, rather than allowing the sale to proceed.

[28] The situation is now very different. As the Receiver submits:

> The proposed appeal would unduly delay a time-sensitive sale. As noted above, the Receiver's sale process generated only two bids, and the Purchaser was the only viable bidder. The market for development sites is currently weak and the Receiver is dealing with a niche, expensive Property.
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> If leave is granted, there is a risk that additional months of delay could lead the Purchaser to rely on the termination provisions of the APS. The Receiver believes that this result would be disastrous for all stakeholders.

[29] The Receiver's suggestion that "all stakeholders" would suffer if the sale falls through is undercut to some extent by its acknowledgment that "the expected proceeds of the Transaction are not sufficient to repay the First Mortgagees in full", so even if the purchaser were to abandon the transaction the second and third

mortgagees would seemingly be no worse off than they are now. Even so, the Receiver's broader point remains valid.

(4) Summary of conclusions

[30] For these reasons, I am satisfied that all three branches of the test for leave weigh against the moving parties: their proposed appeal does not in my view raise issues of broader importance to the insolvency bar or the administration of justice in general; it has little apparent merit; and granting leave would be potentially prejudicial to at least some of the first mortgagees.

C. DISPOSITION

[31] In the result, the motion for leave to appeal is dismissed. This makes it unnecessary for me to address the moving parties' further request for a stay of the order pending their appeal.

[32] The parties did not address the issue of costs of this motion in their written materials. If they are unable to agree on costs, they may file brief written submissions of no more than two pages in length, along with their bills of costs. The Receiver's submissions and bill of costs shall be served and filed within two weeks of the date of the release of these reasons, and the moving parties' responding submissions and bill of costs within a further two weeks.

"J. Dawe J.A."