COURT OF APPEAL FOR ONTARIO

CITATION: Ontario Securities Commission v. Cacoeli Asset Management Inc., 2025 ONCA 654
DATE: 20250923
DOCKET: COA-25-CV-0645

Hourigan, Zarnett and Pomerance JJ.A.

BETWEEN

Ontario Securities Commission

Applicant (Respondent)

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-Chicopee 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 (Appellants)

Simon Bieber, Cameron Rempel and Caroline Harrell, for the appellants

Erin Hoult and Hansen Wong, for the respondent

Ian Aversa and Miranda Spence, for the Receiver, Grant Thornton Limited[1]

Heather Fisher, for CMLS Financial Ltd.[2]

Heard: September 17, 2025

[1] Mr. Aversa and Ms. Spence appeared but made no written or oral submissions on behalf of the Receiver.
[2] Ms. Fisher appeared but made no written or oral submissions on behalf of CMLS Financial Ltd.

2025 ONCA 654 (CanLII)

On appeal from the order of Justice Jana Steele of the Superior Court of Justice, dated June 5, 2025, with reasons reported at 2025 ONSC 3012.

2025 ONCA 654 (CanLII)

REASONS FOR DECISION

A. INTRODUCTION

[1] This is an appeal of an order appointing a receiver pursuant to s.129(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act").

[2] For the reasons that follow, the appeal is dismissed.

B. FACTS

[3] The Cacoeli businesses are engaged in acquiring, holding, and managing residential properties in southern Ontario. Most of the appellants are the general partners (GPs) or limited partners (LPs) for individual Cacoeli projects, while two of the appellants (Cacoeli Asset Management Inc and Cacoeli Capital Inc.) provide services to the GPs and LPs (collectively "Cacoeli"). The principals of Cacoeli are Jedidiah Liu and Kasey Wong.

[4] The Ontario Securities Commission ("OSC") started investigating Cacoeli after receiving a complaint from the firm's former chief financial officer. The OSC's investigation focused on four Cacoeli projects and pursued allegations that funds raised from investors for these projects were used for other purposes not disclosed to investors. The investigation is ongoing. After commencing its investigation, the OSC sought the appointment of a receiver pursuant to s. 129(1) of the Act.

[5] Since 2015, Cacoeli has raised at least $13 million from 53 individual investors to partially finance the purchase and redevelopment of various residential properties through the sale of LP units for particular projects. The OSC's allegations relate to transactions that have taken place since 2021 or 2022. Cacoeli used investor equity from certain projects to fund other projects, and it used proceeds from the sale of existing projects to repay loans taken out to fund deposits on a proposed property purchase. Another project raised funds from investors for a particular investment opportunity (to provide loans to a developer), but none of the $1 million raised was used for those loans, and some of the funds were used for other purposes.

[6] The appellants admitted that equity and/or funds were diverted between projects. They argued, however, that such uses were permitted and that Liu either had an intention to, or did, provide investors with an interest in the other projects to which such equity/funds were diverted. The application judge rejected this argument and found that diversion of funds was not permitted.

[7] During oral argument before the application judge, Cacoeli asserted the court should require a strong *prima facie* case of potential breaches of the Act to appoint a receiver. The application judge rejected that argument and found that the correct evidentiary standard is a serious concern that there have been possible breaches of the Act. She also found that the OSC had met its onus. On appeal, Cacoeli submits that the application judge erred in declining to impose a strong

2025 ONCA 654 (CanLII)

prima facie evidentiary standard and that she erred by finding the OSC had met its onus.

2025 ONCA 654 (CanLII)

C. ANALYSIS

[8] Section 129(2) of the Act provides that the court shall not make an order appointing a receiver unless it 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.

The OSC relied on both subparagraphs in its application for the appointment of a receiver.

(i) Evidentiary Standard

[9] According to the appellants, the appointment of a receiver under s. 129 is a final and powerful remedy that wrests control of a company's assets and legal rights from management and delivers the power to a receiver. They concede that the OSC is not required to establish a breach of the Act on a balance of probabilities. However, they argue that the statutory scheme - read as a whole and in light of the exceptional nature of a receivership - requires the OSC to establish

a strong *prima facie* case of alleged breaches of the Act for a receiver to be appointed. They rely on jurisprudence that holds that where an injunctive order may effectively provide all the relief sought in a proceeding, the threshold test is higher: *Jorshal Enterprises Limited v. J.D.H. Holdings Limited,* 2025 ONSC 3216*,* at para. 17*.*

[10] We do not accept the underlying premise of this submission. The injunctive relief found in s. 129(1) is a statutory remedy. To understand its scope and effect, it is essential to consider the subsection in the context and scheme of the Act. Subsection 129(8) provides that "[a]n order [appointing a receiver] made under this section may be varied or discharged by the court on motion." Thus, while an order appointing a receiver is final for the purposes of determining the correct appeal route, it is not final in the sense of being a final adjudication on the merits of the request for a receiver. The Superior Court retains its ongoing supervisory jurisdiction and may vary or discharge the order.

[11] The "serious concern" standard is consonant with the language, context and purpose of s. 129. The ability to seek a receiver is consistent with the OSC's statutory mandate to pursue timely and effective steps to protect investors and the capital markets (see e.g., ss. 1.1(a) and 2.1 of the Act). A receivership is an important tool available to the OSC while an investigation continues. As the application judge observed, "these applications are often brought while investigations are ongoing, and the Commission seeks to take protective steps in

2025 ONCA 654 (CanLII)

the interim." Moreover, the appointment of a receiver affords the OSC the opportunity to understand all the circumstances of the respondent issuer. To impose an onerous evidentiary standard for a receivership would impede the public protection mandate of the OSC, as it could potentially make it impossible for the OSC to obtain a receivership at the early stages of an investigation when the facts are not fully known.

2025 ONCA 654 (CanLII)

[12] The appellants also argue that s.126(5.1) of the Act, which permits the continuation of freeze directions, has specific statutory language that imposes a serious issue to be tried standard (i.e., "if the court is satisfied that the order would be reasonable and expedient in the circumstances"). Given the nature of a receivership order and the absence of specific language, they submit that the legislature intended for a higher evidentiary standard to apply to the appointment of a receiver.

[13] We are not persuaded by this submission and do not accept that the legislature's expressed intent for a lower standard for the continuation of freeze orders means that a higher standard applies to receivership orders. In any event, s. 126 was amended to provide for a lower standard of proof in response to case law that held that a strong *prima facie* case was required for the continuation of freeze orders: *OSC v. Future Solar*, 2015 ONSC 2334, at paras. 16-17, 22. There is no basis to suggest that the legislature intended to impose a strong *prima facie* standard for receivership orders.

(ii) Strength of OSC Case

[14] The appellants submit that the OSC failed to meet the strong *prima facie* standard. Given our finding that the strong *prima facie* standard is inapplicable, it is unnecessary to consider this ground of appeal. There is no question that the OSC has established a serious concern that there have been possible breaches of the Act, which was the appropriate evidentiary standard.

D. DISPOSITION

[15] The appeal is dismissed. The appellants shall pay the OSC its costs of the appeal, fixed in the agreed upon all-inclusive sum of $15,000.

"C.W. Hourigan J.A."
"B. Zarnett J.A."
"R. Pomerance J.A."

2025 ONCA 654 (CanLII)