COURT OF APPEAL FOR ONTARIO

CITATION: Cameron Stephens Mortgage Capital Ltd. v. Conacher Kingston Holdings Inc., 2025 ONCA 732
DATE: 20251027
DOCKET: COA-24-CV-1328

Miller, Paciocco and Coroza JJ.A.

BETWEEN

Cameron Stephens Mortgage Capital Ltd.

Applicant (Respondent)

and

Conacher Kingston Holdings Inc. and 5004591 Ontario Inc.

Respondents (Respondents)

Jonathan Kulathungam, for the appellant Arjun Anand, in Trust for a Company to Be Incorporated

Wendy H. Greenspoon-Soer, for the respondent Cameron Stephens Mortgage Capital Ltd.[1]

Raffaele Sparano, for the respondents Yury Boltyansky and 2462686 Ontario Inc.[2]

Dale Denis and Paul Rooney, for the respondents AJGL Group Inc. and 1001079582 Ontario Inc.

Jeffrey Larry and Ryan Shah, for the receiver TDB Restructuring Ltd.

Michael L. Byers and Katarina Wasielewski, for the respondents Issam A. Saad and 2858087 Ontario Inc.

[1] Wendy H. Greenspoon-Soer appeared but made no written or oral submissions on behalf of the respondent.
[2] Raffaele Sparano appeared but made no written or oral submissions on behalf of the respondents.

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Jordan D. Wajs, for the interested party Ron Barbaro[3]

Heard: May 26, 2025

On appeal from the order of Justice William Black of the Superior Court of Justice, dated December 10, 2024.

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Coroza J.A.:

I. OVERVIEW

[1] The appellant, Arjun Anand, entered into an Agreement of Purchase and Sale ("APS") with a court-appointed receiver ("Receiver") to purchase a debtor's real estate. Consequently, the Receiver brought a motion before the Superior Court of Justice seeking an approval and vesting order. However, due to late-breaking offers, including one that was 37% higher than the appellant's offer, the motion judge declined to approve the sale. Instead, the motion judge ordered a six-day extension of the bidding process to ensure that the creditors received the highest value for the property.

[2] The appellant submits that the motion judge erred in re-opening the process, and in doing so, improperly applied the principles articulated by this court in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.). The appellant asks this court to set aside the motion judge's order and direct the Receiver to proceed with the sale of the property to him.

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[3] Jordan D. Wajs appeared but made no written or oral submissions on behalf of the interested party.

[3] As I will explain, I do not accept the appellant's submission that the motion judge erred. Accordingly, I would dismiss the appeal.

II. FACTUAL BACKGROUND

[4] To provide context for the appeal, some brief background is necessary.

[5] On December 6, 2023, TDB Restructuring Limited was appointed as the Receiver over a series of the debtor's properties on Islington Avenue (the "Toronto Property"). The appointment of the Receiver was sought by a secured lender, Cameron Stephen Mortgage Capital Inc., pursuant to a mortgage in the amount of $15,600,000 registered on the Toronto Property. AJGL Group Inc. ("AJGL") is the owner of the Toronto Property.

[6] The Receiver conducted a sales process over the course of eight months. Initially, the Receiver invited eight commercial real estate brokers to submit proposals for the marketing and sale of the Toronto Property. An MLS listing agreement was subsequently entered into between the Receiver and Colliers Macaulay Nicolls Inc. ("Colliers").

[7] Colliers listed the property on March 25, 2024. It conducted an extensive marketing campaign by sending the listing to approximately 3,000 parties. Offers were received, but Colliers could not close on the sale of the property. As a result, the Toronto Property was re-marketed by Colliers beginning on August 29, 2024.

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[8] On October 7, 2024, the Receiver entered an APS with the appellant, subject to the approval of the court (the "Subject Transaction"). The appellant completed his due diligence and waived all conditions. Court approval was the only remaining contingency.

[9] The Receiver filed a motion before the Superior Court of Justice seeking approval of the sale of the Toronto Property to the appellant. The approval motion was scheduled for December 4, 2024.

[10] On December 3, 2024, a third party, 1001079582 Ontario Inc. ("100 Inc."), made two offers on the Toronto Property. 100 Inc. is a wholly owned subsidiary of AJGL. These two offers were 6.7% and 14.2% higher than the price of the Subject Transaction.

[11] Following these offers, the Receiver filed a factum with the court outlining its position. The Receiver was of the view that the court had discretion to consider the late offers, but that these offers were not "substantially higher", such that they would not cast doubt on the providence of the sales process. The Receiver did not disclose the price of the Subject Transaction or the late offers. Rather, the Receiver provided the percentage differences between the two.

[12] On December 4, 2024, the parties appeared before the motion judge. The motion judge adjourned the matter to December 10, because of the "flurry of activity" leading up to the hearing. He acknowledged the two late-breaking offers

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from 100 Inc. and sought to give all parties more time to respond. The motion judge directed that any parties who wished to submit additional offers could do so by December 9, 2024.

[13] On December 6, 2024, 100 Inc. submitted a third, higher offer. The third offer was 37% higher than the appellant's offer.

[14] On December 10, 2024, the parties appeared again before the motion judge. At this hearing, the Receiver put forward an alternative position. The Receiver continued to seek approval of the Subject Transaction but recognized that given the magnitude of the third offer, the court could order a further auction process whereby the bidders are asked to submit their best offers by a specified date.

[15] The motion judge declined to approve the sale, finding that the preferable approach was to re-open the auction process. He recognized the need to preserve the integrity and predictability of the sales process within receiverships but found that the unique circumstances of the case warranted re-opening the auction process.

[16] The motion judge recognized that there were no flaws in the sales process, and that the Receiver's conduct throughout the process was unassailable. However, the motion judge held that the magnitude of the third offer qualified as "substantially higher", such that the price of the Subject Transaction risked

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improvidence. Further, he found that it would not be in the interests of the stakeholders to forego the value differential between the two offers.

[17] To maintain fairness to the appellant, the motion judge ordered that if the appellant did not remain the successful bidder following the auction process, AJGL would reimburse his reasonable legal costs associated with the process to date.

[18] The motion judge's order provided that all bidders who previously submitted an offer, including the appellant and 100 Inc., would be able to re-bid on the Toronto Property.

[19] Consequently, the motion judge ordered that the auction process would run from December 10, 2024, to 5:00 p.m. on December 16, 2024. The appellant appealed, and the auction process was automatically stayed as the appellant filed the appeal as an appeal as of right.

III. ISSUES

Preliminary Issue

[20] In his notice of appeal and amended notice of appeal, the appellant took the position that he had an automatic right of appeal to this court under s. 193(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "*BIA*"). In the alternative, if necessary, the appellant sought leave to appeal under s. 193(e) of the *BIA*.

[21] During oral argument, this court asked the appellant to address whether his appeal was before the court as of right under s. 193(c), or whether he needed

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leave to appeal under s. 193(e). The respondents and Receiver took no position on this issue.

[22] Section 193(c) of the *BIA* states:

> 193 Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:
>
> …
>
> (c) if the property involved in the appeal exceeds in value ten thousand dollars.

[23] This provision has been narrowly interpreted by this court: *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, 2016 ONCA 225, 369 D.L.R. (4th) 635, at paras. 46-53. Section 193(c) does not apply to orders that: (1) are procedural in nature; (2) do not bring into play the value of the debtor's property; or (3) do not result in a loss. As Pepall J.A. recently clarified, falling into any of the three categories identified in *Bending Lake* is fatal to an as of right appeal under s. 193(c): *North House Foods Ltd. (Re)*, 2025 ONCA 563, 20 C.B.R. (7th) 1, at para. 48.

[24] The motion judge's decision to re-open the auction process is about the method of the sale of the Toronto Property. The core effect of the order is to dismiss the Receiver's motion seeking approval of the Subject Transaction, and to set the terms for the auction process. Arguably, this is a procedural step in the Receiver's sale of the Toronto Property. Even the grounds of appeal are also

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process-related. The appellant seeks to set aside the order based on his concerns about the timing of the late offers and their impact on the receivership process. The claim to leave therefore fails on *Bending Lake* exception (2). In addition, the operative effect of the motion judge's order does not directly result in a loss. It solely concerns a matter of procedure and is an order as to the manner of sale alone: *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228, at para. 40. For these reasons, the appellant does not have an automatic right of appeal under s. 193(c). Leave must be granted pursuant to s. 193(e) of the *BIA*.

[25] In deciding whether to grant leave under s. 193(e), the court 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;

(b) is *prima facie* meritorious; and

(c) would unduly hinder the progress of the bankruptcy/insolvency proceedings: *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 29.

[26] Granting leave under s. 193(e) "must be exercised in a flexible and contextual way": *Pine Tree*, at para. 29. I am satisfied that leave should be granted.

[27] The appellant submits that the appeal raises an issue of general importance because it seeks to clarify whether the magnitude of a late offer, alone, can warrant re-opening the auction process. I agree that this issue may be of significance

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beyond the parties and to receivership proceedings where late-breaking offers are made. Furthermore, I am satisfied that the appeal is arguable. No party suggests that hearing the appeal will unduly hinder the progress of the bankruptcy proceedings.

[28] The appellant raises three issues on appeal:

- First, the appellant submits that the motion judge misapplied the principles articulated by this court in *Soundair* in deciding to re-open and extend the bidding process.
- Second, the appellant contends that the Receiver improperly disclosed the appellant's confidential bid price causing prejudice to him.
- Third, the appellant submits that the motion judge erred in granting standing to the respondent 100 Inc.

IV. ANALYSIS

[29] The standard of review on this appeal is not controversial. The motion judge's order relating to the approval of a sale is discretionary. This court will only interfere if the motion judge erred in law, seriously misapprehended the evidence, exercised his discretion based upon irrelevant or erroneous considerations, or failed to give any or sufficient weight to relevant considerations: see *Reciprocal Opportunities Incorporated v. Sikh Lehar International Organization*, 2018 ONCA

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713, 426 D.L.R. (4th) 273, at para. 54; *Bank of Canada v. Regal Constellation Hotel (Receiver of)* (2004), 71 O.R. (3d) 355 (C.A.), at para. 22.

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Issue 1: Did the motion judge misapply the principles articulated in *Soundair*?

[30] This court gives substantial deference to the discretion of commercial court judges supervising insolvency and restructuring proceedings: *Ravelston Corporation Limited (Re)*, 2007 ONCA 135, 85 O.R. (3d) 175, at para. 3; *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375, 90 C.B.R. (6th) 39, at para. 18. Accordingly, the motion judge's decision to re-open the auction process is entitled to substantial deference.

[31] Commercial court judges also give substantial deference to the recommendations of a court-appointed receiver, so long as: (1) the receiver's recommendations are within the broad bounds of reasonableness; and (2) the receiver proceeded fairly: *Ravelston*, at para. 3; *Marchant Realty*, at para. 19.

[32] The appellant argues that the motion judge misapplied the principles set out by this court in *Soundair* for reviewing and approving a receiver's sale of property.

[33] Under the principles described in *Soundair*, the motion judge had to consider:

- whether a sufficient effort has been made to obtain the best price and whether the Receiver has acted improvidently;

- the interests of all of the parties;
- the efficacy and integrity of the process by which the offers were obtained; and
- whether the working out of the process was unfair: *Soundair*, at p. 9.

[34] Starting from this point of deference, I do not agree that the motion judge erred in his application of *Soundair*. The *Soundair* principles are flexible and case specific. No one factor is determinative. Rather, they are principles that a court must consider when deciding whether a receiver who has sold a property acted properly.

(i) Whether a sufficient effort has been made to obtain the best price and whether the Receiver has acted improvidently

[35] First, the motion judge considered whether the Receiver made sufficient efforts to get the best price, and whether the Receiver acted improvidently. For ease of reference, I reproduce the relevant passages of the motion judge's reasons on this point:

> [32] I do so, also, with an appreciation of the need to preserve the integrity and predictability of the marketing and sale process within receiverships, and the reasonable expectation in the vast majority of cases that the process will yield a value-maximizing result that should not be subverted by late-breaking offers.
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> [33] As noted, I do not find that there are any flaws with the sale and marketing process undertaken here; to the contrary I find that the conduct of the Receiver, and those

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> involved in the process, including Collier, was unassailable.
>
> [34] Nonetheless I find that the magnitude by which the Third Offer exceeds the subject price does in fact qualify as "substantially higher," and that it is not appropriate or in the interests of a majority of stakeholders to leave that much money "on the table."

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[36] While the motion judge found that the Receiver's conduct was unassailable, this did not assuage his concern that the Subject Transaction risked improvidence based on the magnitude of the price differential between the Subject Transaction and 100 Inc.'s third offer. This concern was reflected in earlier paragraphs of the reasons:

> [9] While the Receiver, quite appropriately, stands by its submissions about the integrity of the process, and the worrisome precedent associated with giving effect to an offer received very late in the process (and in the face of the subject offer that the Receiver has accepted and recommended), the Receiver also clearly recognizes that at a certain level, a late-breaking offer can and perhaps must be considered simply by dint of its value.
>
> [10] It is apparent that the Receiver allows that the Third Offer may be in that category. Before me today Receiver's counsel submitted that, albeit the Receiver's first position remains that the proposed subject transaction should be approved, it now says that, as a second possibility, if the court is persuaded that 37% is a sufficiently higher price to qualify as "substantially higher" such that that the subject price risks improvidence, then the Receiver suggests a further "auction" process whereby the bidders are asked to submit their best offers by a specified date in the near term. [Emphasis added.]

[37] I see no error in the motion judge's approach. I also find no support for the appellant's submission that the first *Soundair* factor imposes a mandatory two-step test before re-opening the bidding that required the motion judge to find both: (1) a significantly higher price; and (2) that the integrity of the process was compromised. I see nothing in *Soundair* that would support the appellant's interpretation.

[38] I agree with the Receiver's submission on appeal that the appellant's submission, if accepted by this court, would establish a rigid rule to be applied without exception, would unduly restrict the court to address fast-moving commercial realities, and would be contrary to the principles of insolvency which requires courts to respond with practical solutions. In my view, the motion judge's approach and his assessment that a late-breaking offer should be considered in this case is entirely consistent with the court's guidance at p. 14 of *Soundair*:

> If, however, the subsequent offer is so substantially higher than the sale recommended by the receiver, then it may be that the receiver has not conducted the sale properly. In such circumstances, the court would be justified itself in entering into the sale process by considering competitive bids. However, I think that that process should be entered into only if the court is satisfied that the receiver has not properly conducted the sale which it has recommended to the court. [Emphasis added].

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(ii) Interests of all of the parties

[39] Second, the motion judge considered the interests of all parties and creditors. The motion judge acknowledged that re-opening the auction process was contrary to the appellant's interests. However, the motion judge also recognized the interests of the creditors in securing the best possible price. In my view, the motion judge's reasons reflect a thoughtful and practical balancing of competing interests.

(iii) The efficacy and integrity of the process by which the offers were obtained

[40] Third, the motion judge considered the efficacy and integrity of the process that led to the Subject Transaction. The motion judge was satisfied that up to the point of the late offer, there were no issues with the sales process. He rejected the appellant's submission that re-opening the auction and considering the late offer would create unpredictability and instability in future receiverships. He found that the concern was diminished in this case because the circumstances were "unique, likely singular, and unlikely to be replicated in the future (or certainly not often)". One of these unique facts is the Receiver's change in position following 100 Inc.'s third offer to alternatively recommend re-opening the auction process.

[41] Plainly, the motion judge appropriately considered and grappled with the Receiver's alternate recommendation that the process be re-opened. The motion judge stated:

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> [28] As noted, despite its appropriately stated concerns about the integrity of the process, the 37% delta between the Third Offer and the subject price caused the Receiver to suggest, as an alternative to approval of the subject offer, a further process to ensure that the value of the Third Offer is captured and maximized.
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> [29] In the unique circumstances as described, I find that this is the preferable approach.
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> [30] I do so without suggesting that the subject purchaser acted in anything other than good faith.
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> [31] I do so, also, with an appreciation of the need to preserve the integrity and predictability of the marketing and sale process within receiverships, and the reasonable expectation in the vast majority of cases that the process will yield a value-maximizing result that should not be subverted by late-breaking offers.

[42] I see no reversible error in the motion judge's approach. Again, commercial judges should "be reluctant to second guess, with the benefit of hindsight, the considered business decisions made by its receiver": *Soundair*, at p. 8. Put another way, the motion judge owed deference to the Receiver's business judgment. And, in this case, the Receiver sought to balance between competing concerns and stakeholders in offering the court more than one option in how best to proceed. It was not an error for the motion judge to proceed with the alternate recommendation.

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(iv) Whether the working out of the process was unfair

[43] Finally, the motion judge considered whether there was unfairness in extending the bidding process. It is obvious that the motion judge recognized that the late-breaking offer was contrary to the interests of the appellant. He considered the effect that re-opening would have on the appellant and, to remedy any potential unfairness, he ordered that if the appellant is not the successful bidder, AJGL will reimburse the appellant's reasonable legal costs incurred to date. This was a practical solution to the potential prejudice suffered by the appellant and has been ordered by this court in other cases to maintain fairness: e.g., *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*, 2024 ONCA 584, 14 C.B.R. (7th) 230, at paras. 13-20.

[44] In sum, the appellant's submissions are an invitation to engage in a minute parsing of specific phrases used by the motion judge, in search of error. Read fairly, the motion judge applied the guidance in *Soundair*. His decision balances the interests of all parties and favours the Receiver's judgment in recommending that the auction process be re-opened. There is no basis to disturb the motion judge's considered decision.

Issue 2: Did the Receiver improperly disclose the appellant's confidential bid price?

[45] The appellant submits that the process was unfair because the Receiver disclosed confidential information by including the percentage differences between

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the Subject Transaction and the late offers in its factum before the motion judge. I do not agree with the appellant that the Receiver's choice to disclose the percentage differences worked any unfairness.

[46] First, the order appointing the Receiver explicitly provides that it can disclose information relating to the Toronto Property and the receivership as it deems appropriate. Disclosing information about the late offers was a matter within the Receiver's discretion, and within its authority as a court-appointed officer.

[47] Second, the court should not forensically examine the Receiver's choice to disclose the percentage differences. This was a reasonable approach that balanced the confidentiality of the Subject Transaction with the need to alert the motion judge to the significance of the late offers.

[48] Third, the Receiver's disclosure of the percentage differences did not cause prejudice to the appellant. By disclosing the percentage differences rather than gross figures, only the appellant and 100 Inc. could determine the price of the Subject Transaction and the late offers. The world at large, or other bidders who might engage in the auction process, do not know the quantum of the offers. Further, this is not a situation where a late bidder tactically used confidential information to make an offer slightly above that of the appellant. The third offer made by 100 Inc. was 37% higher than the appellant's. The offer is of such a magnitude that it does not suggest tactical use of confidential information.

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Issue 3: Did the motion judge err in granting standing to the respondent 100 Inc.?

[49] In his written material, the appellant also advanced a submission that the motion judge erred in granting standing to the respondent 100 Inc. to participate in the motion hearing. This argument was not pressed in oral argument, and it can be disposed of briefly.

[50] It is not clear whether 100 Inc. was explicitly granted standing. In any event, the motion judge's exercise of discretion did not depend on whether 100 Inc. was granted standing. I see nothing in the record that suggests that 100 Inc.'s involvement in the motion caused delay, additional expense, or prejudice to the appellant in any way. This submission has no merit.

V. DISPOSITION

[51] For these reasons, I would dismiss the appeal. I would order the appellant to pay the respondents and the Receiver the costs of the appeal in the agreed upon amount of $45,000, all-inclusive. If the parties cannot agree on the distribution of costs amongst the respondents and the Receiver, written submissions may be made within seven days of the release of these reasons.

[52] In the event the appeal was dismissed, the Receiver requested that this court revise the motion judge's order about the timeline for the re-opened auction process. As noted above, the motion judge's order provides that the auction

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process will run from December 10, 2024, to 5:00 p.m. on December 16, 2024. This appeal was filed at 3:54 p.m. on December 16, 2024, and the auction process was automatically stayed because the appeal was filed as an appeal as of right. According to the Receiver, there is only 1 hour and 6 minutes remaining in the auction, and the Receiver requested that this court vary the motion judge's order to extend the time to give bidders an additional 48 hours to submit their bids.

[53] Consequently, I would vary the motion judge's order to allow bidders an additional 48 hours to submit bids. The 48-hour period begins to run after the Receiver has notified bidders that this court's decision has been released. The parties are also directed to contact the motion judge if any further issues arise regarding the auction process.

Released: October 27, 2025 "B.W.M."

"S. Coroza J.A."
"I agree. B.W. Miller J.A."
"I agree. David M. Paciocco J.A."

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