

CITATION: Royal Bank of Canada v. 2339366 Ontario Inc., 2026 ONSC 327
COURT FILE NO.: CV-25-00003662-0000
DATE: 2026 01 16

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: ROYAL BANK OF CANADA, **Applicant**

AND:

2339366 ONTARIO INC.
SINGH, Surinder
DHALIWAL, Kuldeep, **Respondents**

BEFORE: Justice D.E. Harris

COUNSEL: JONES, Spencer, for the **Applicant Royal Bank**
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DI MONTE, Patrick, for the **Respondents**
Email: patdimonte@on.aibn.com

LICI, Matilda, for Grant Thornton Ltd. in its capacity as
Receiver of 2339366 ONTARIO INC.
Email: mlici@airdberlis.com

HEARD: January 13, 2026 by video conference

ENDORSEMENT

[1] Grant Thornton Limited was appointed by Miller J. as receiver of the property of the respondent debtors on September 9, 2025. It is not disputed that contrary to the Receivership Order, the respondents have not provided books or records nor disclosed the location of the long list of equipment, trucks and other property outstanding (the respondents are in the construction business).

- [2] Now, four months into the receivership, an order is sought to immediately deliver the books, records and equipment, permit the receiver to access the respondents' business premises, allow the breaking of any locks to access the property and authorize the police to assist the receiver. A declaration is also sought that the respondents have breached the Receivership Order. Lastly, an order is requested approving the First Report of the Receiver dated December 8, 2025. There is no issue with respect to this last and so the First Report is approved.
- [3] The respondents have but one response to the other claims. It is strictly procedural in nature. As they have sought leave in the Court of Appeal against Miller J.'s decision appointing the receiver, it is said by the respondents that the Receivership Order is automatically stayed. They are entitled to take a position of obstinate non-cooperation and the receiver's powers have been forced as a matter of law into abeyance.
- [4] Are the respondents correct that the receivership order is stayed? There is no support for their position. The law is clear that lodging an appeal stays a Receivership Order but there is no indication in the statutory framework or in the case law that filing an application for leave to appeal has the same effect.
- [5] Section 193(a)—(d) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "Act") which deals with appeals, specifically addresses situations in which an appeal lies as of right. None of those situations pertain in the present circumstances. Counsel for the respondent did not argue that they did.

Subsection (e) states that an appeal exists when leave to appeal has been granted by a judge of the Court of Appeal. In this instance, the leave process is pending.

- [6] When an appeal is filed, a stay of proceedings is expressly imposed in the *Act* by s. 195 but a judge of the court may vary or cancel the stay if the appeal is not being prosecuted diligently or for any other proper reason.
- [7] If Parliament had intended that the filing of a leave application would result in an automatic stay as does filing an appeal pursuant to s. 195, it would have said so. It is written in The Construction of Statutes, 7th Ed.(online) by Ruth Sullivan with respect to *expressio unius est exclusio alterius* at 8.09:

As Laskin J.A. succinctly put it, “legislative exclusion can be implied when an express reference is expected but absent”. The force of the implication depends on the strength and legitimacy of the expectation of express reference. The better the reason for anticipating express reference to a thing, the more telling the silence of the legislature.

- [8] If there is a statutory provision that an appeal stays the proceedings, one would expect that if a stay were activated by filing a leave to appeal, it would be spelled out in the statute as well in no uncertain terms. Furthermore, “Appeals are solely creatures of statute”: *Kourtessis v. Minister of National Revenue*, [1993] 2 S.C.R. 53 (S.C.C.), at pp. 69-70. So too are the legislatively prescribed consequences of filing an appeal. In this situation, there is expressly a stay for filing a notice of appeal but no provision for a stay upon filing an application for leave.
- [9] In this context, the case law is concerned that filing an appeal triggers an automatic stay, reflecting that the appeal as of right provision in s. 193 a-d should

be strictly construed because a stay would “unduly hinder the progress of the administration of the receivership ... thereby preventing the receiver from exercising its power under the Receivership Order to market and sell the Real Property”: *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, 2022 ONCA 479 at para 36, also see *Enroute Imports Inc. (Re)* 2016 ONCA 247 at para. 5; *Crate Marine Sales Limited (Re)* 2016 ONCA 140 at para. 6.

[10] These same concerns would be all the more serious if filing a motion for leave itself could automatically impose a stay. The mischief that could be caused in an area in which expedition and efficiency are all important (see *In the Matter of the Bankruptcy of Galty B.V.*, 2024 ONSC 57) would be enormous. It makes no sense that Parliament would have intended to permit such disruption and havoc in the commercial world and in bankruptcy proceedings.

[11] There is no hardship occasioned to the respondent in not being granted an automatic stay. An aggrieved debtor can always make a free-standing application to the Court of Appeal for a stay. The debtor would have to demonstrate an issue of general importance to bankruptcy law and practice, show that the proposed appeal had merit and, lastly, persuade the court that the appeal would not unduly hinder the bankruptcy\insolvency proceedings: *Kingsett*, at para. 26. By this means, the Court of Appeal can control their own process and at the same time take into consideration the potential disruption to the duties and obligations of the receiver.

- [12] A rule that a leave application automatically stays a Receivership Order lies at the other end of the spectrum. The debtor could control the receivership process. That cannot be the law.
- [13] The respondents have raised a frivolous procedural legal argument. They could and should have brought a stay application in the Court of Appeal. Together with their failure to co-operate with the receiver over a period of four months, an adverse conclusion against them ought to be drawn. Clearly, there is a good deal of stalling going on. The respondents are in clear breach of the Receivership Order. If they continue not to cooperate, contempt proceedings may well be appropriate.
- [14] I will sign the draft order. Counsel should agree on costs but if not, each can file submissions of a maximum of three pages along with their bill of costs. The applicant receiver will have 20 days from the issuance of this endorsement to file and the respondents will have 15 days to file after the date of the applicant's filing.
- [15] I remain seized of this matter.

Released: January 16, 2026



Harris J.