

COURT OF APPEAL FOR ONTARIO

CITATION: Peoples Trust Company v. Rose of Sharon (Ontario) Retirement
Community, 2014 ONCA 534
DATE: 20140707
DOCKET: C58426

Feldman, MacPherson and Cronk JJ.A.

BETWEEN

Peoples Trust Company

Applicant (Respondent)

and

Rose of Sharon (Ontario) Retirement Community

Respondent (Respondents)

APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c B-3, as amended and under Section 101 of the *Courts of
Justice Act*, R.S.O. 1990, c. C-43

Justin Baichoo, for the appellant Unimac Group Ltd.

Clifton P. Prophet and Haddon Murray, for the respondent Peoples Trust
Company

Lou Brzezinski, for the respondent Deloitte & Touche in its capacity as court-
appointed Receiver of Rose of Sharon (Ontario) Retirement Community

Heard: July 4, 2014

On appeal from the order of Justice David M. Brown of the Superior Court of
Justice, dated February 6, 2014.

ENDORSEMENT

[1] The appellant, Unimac Group Ltd., appeals from the Order of D.M. Brown J. of the Superior Court of Justice dated February 6, 2014, declaring that the respondent Peoples Trust Company is entitled to priority over any other interest claimed in certain “Life Lease” units in the Rose of Sharon (Ontario) Retirement Community in Toronto, except for any valid and prior construction lien claims.

[2] The appellant’s principal argument is that the motion judge erred by determining the Priority Motion, brought by the respondent, separate and apart from the Lien Reference, where the appellant will be a significant participant.

[3] We do not accept this submission, which ignores two crucial factors.

[4] First, the bifurcation of the priority of security and construction lien issues flows from a previous court order dated December 27, 2012:

7. THIS COURT ORDERS that the issues of liability, timeliness and quantum in the Construction Lien Action shall be determined in a Reference before a Master.

8. THIS COURT ORDERS that the issue of the priorities of the construction lien vis-à-vis any other encumbrance shall be determined by a Judge of the Commercial List in these receivership proceedings.

No party appealed this order.

[5] In a subsequent component of the priority of security proceedings, the appellant made submissions about its lien and the construction lien component of the proceedings. In her endorsement, Mesbur J. said:

The construction lien in relation to UNIMAC and its assignee is being dealt with in a construction lien action, #CV-11-9399-OOCL. Once the quantum of the lien is determined, the issue of priority will be decided in this overall receivership application on a date to be fixed.

The appellant did not appeal Mesbur J.'s decision.

[6] Second, the motion judge's Order specifically preserves the construction lien issues and recognizes that, at a later time in both proceedings, the two streams will merge. The Order granted the respondent's motion on the priority issue "save and except for any construction lien claims found to be valid and prior by a judge presiding over the Superior Court of Justice (Commercial List)."

[7] The appellant also submits that the motion judge erred by not giving effect to its 'security' and 'equity' interests at the priority hearing.

[8] We disagree and say simply that we agree with the motion judge's succinct rejection of these claims at paragraphs 3 and 4 of his endorsement.

[9] Finally, in oral argument the appellant expressed the concern that it might not receive any money in the receivership proceedings because the receiver would distribute funds to Peoples Trust Company in accordance with its priority.

[10] This concern is misplaced. The receiver is collecting assets in accordance with the relevant court orders. There can be no distribution until all claims, including the appellant's, are dealt with by the court.

[11] The appeal is dismissed. The respondent is entitled to its costs of the appeal fixed at \$7400, inclusive of disbursements and HST.

K. Feldman J.A.

J. G. MacPherson J.A.

E. A. Coule J.A.