

COURT OF APPEAL FOR ONTARIO

CITATION: Peoples Trust Company v. Rose of Sharon (Ontario) Retirement
Community, 2014 ONCA 533
DATE: 20140707
DOCKET: C58130

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 2383431 Ontario Inc.

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

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

Heard: July 4, 2014

On appeal from the judgment of Justice Ruth E. Mesbur of the Superior Court of
Justice, dated December 13, 2013.

ENDORSEMENT

[1] The appellant 2383431 Ontario Inc. (“238”) appeals from the Order of Mesbur J. of the Superior Court of Justice dated December 13, 2013. The sole basis of the appeal is 238’s claim that the motion judge erred by not granting an adjournment on the hearing date to enable 238 to consider its position and file material.

[2] 238 was an assignee of a second mortgage on the property. It had assumed this position in September 2013, three months before the settlement hearing scheduled for December 13. Its predecessor in title, IWOK, had participated in the receivership proceedings.

[3] The appellant asserts that it had no notice of the December 13 hearing, that it only retained counsel a day before, and that the motion judge erred by not granting it an adjournment.

[4] We do not accept this submission. The decision to grant or refuse an adjournment is a discretionary one and is, therefore, entitled to deference on appellate review: see: *R. v. Wood*, 2005 CanLII 13779 (ONCA), at para. 7. We can see no basis for interfering with the motion judge’s decision to refuse 238’s request for an adjournment. Indeed, her reasoning on this issue, especially at paragraph 2, is entirely sound.

[5] The appeal is dismissed. The respondent Peoples Trust Company is entitled to its costs of the appeal fixed at \$7000, inclusive of disbursements and HST. No costs to the respondent Deloitte & Touche Inc.

K. Felder J.A.

J.B. MacPherson J.A.

S.A. Chouk J.A.