

COURT OF APPEAL FOR ONTARIO

BETWEEN:

PEOPLES TRUST COMPANY

Applicant

and

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY

Respondent

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

AMENDED NOTICE OF APPEAL

2383431 ONTARIO INC. (the "Appellants"), APPEALS to the Court of Appeal from the Judgment of the Honourable Justice R. E. Mesbur, dated December 13, 2013, made at Toronto, Ontario.

THE APPELLANTS ASKS THAT that a judgment be granted as follows:

1. The Order of the Honourable Justice R. E. Mesbur, dated December 13, 2013, made at Toronto, Ontario (the "Order"), approving the sale and/or settlement of Units Nos., located at 15-17 Maplewood Avenue, Toronto, Ontario, (the "Property"):
 - a. 203;
 - b. 205;
 - c. 801;
 - d. 802;
 - e. 804;

- f. 809;
- g. 811;
- h. 903;
- i. 1001;
- j. 1003;
- k. 1007;
- l. 1107;
- m. 1109; and
- n. 1111;

of the Rose of Sharon (Ontario) Retirement Community (the "Units") be set aside;

2. The Order be stayed until the final determination of the within appeal; and
3. Such other and further relief as counsel may advise and the Honourable Court may permit.

THE GROUNDS OF APPEAL are as follows:

1. The Honourable Justice R. E. Mesbur erred in law and/or exercised her discretion on the wrong principles by approving the sale and/or settlement of the Units;
2. The Honourable Justice R. E. Mesbur erred in law by misapprehending and/or disregarding the facts, evidence and law submitted by the parties in respect of the motion by Deloitte & Touche Inc., in its capacity as Court-appointed Receiver and Manager of the Rose of Sharon (Ontario) Retirement Community (the "Respondent") by approving the sale and/or settlement of the Units;
3. The Appellant, 2383431 Ontario Inc., has been assigned the second mortgage on the Property by Morrison Financial Mortgage Corporation ("Morrison Financial"), which was originally held by IWOK Corporation ("IWOK");

4. The Honourable Justice R. E. Mesbur erred in fact by finding that the previous holder of the second mortgage, IWOK, advised that they did not wish to participate in these proceedings, and that they were fully aware of the same:
5. Accordingly, the Appellant, 2383431 Ontario Inc., is a secured creditor of the Property, and as such, it is directly affected by any orders made with respect to the Property;
6. However, the Appellant, 2383431 Ontario Inc., never received any notice of the within proceedings, including the motion brought below by the Respondent in order to seek approval of the sale and/or settlement of the Units of the Property;
7. The Receiver has refused to provide 2383431 Ontario Inc. with any information regarding the Property;
8. In this regard, the administration of justice and the principles of fairness and due process afford a party, or non-party, whose rights may be affected by the result of a motion and/or proceeding, the right to be heard and be provided with notice of the same, in order to provide it with the opportunity to participate therein;
9. The administration of justice and the principles of fairness and due process also require all relevant facts, evidence and law with respect to issues to be decided on a motion and/or proceeding to be provided to the Court, in order to render a just and informed decision thereon;
10. However, the Appellant, 2383431 Ontario Inc. never had such an opportunity to participate in the motion below and/or the within proceeding, in order to put forth relevant facts, evidence and law with respect to its position on the sales and/or settlements of the Units of the Property;
11. In this regard, the Honourable Justice R. E. Mesbur erred in fact and law by misapprehending and/or disregarding the facts, evidence and law submitted by the parties in respect of the motion by the Respondent by refusing to adjourn the same, and

approving the sale and/or settlement of the Units, despite the fact that the Appellant, 2383431 Ontario Inc., never received any notice of the within proceedings;

12. Accordingly, it is respectfully submitted that the Judgment of the Honourable Justice R. E. Mesbur, dated December 13, 2013, has been rendered without all relevant facts, evidence and law before her, and contrary to the principles of fairness and due process;
13. In addition, the Honourable Justice R. E. Mesbur erred in fact and law by misapprehending and/or disregarding the facts, evidence and law submitted by the parties in respect of the motion by the Respondent by finding that the Appellant, 2383431 Ontario Inc., did not complete its due diligence when it was assigned the second mortgage on the Property by Morrison Financial;
14. The Honourable Justice R. E. Mesbur erred in fact and law by misapprehending and/or disregarding the facts, evidence and law submitted by the parties in respect of the motion by the Respondent by finding that the Appellant, 2383431 Ontario Inc., should be in no different position than its assignor, Morrison Financial, or the assignor of the secured, mortgage interest to Morrison Financial;
15. There is good reason to doubt the correctness of the Judgment and Reasons of The Honourable Justice R. E. Mesbur, dated December 13, 2013;
16. The Judgment and Reasons of The Honourable Justice R. E. Mesbur, dated December 13, 2013, conflict with other decisions in Ontario and elsewhere;
17. The proposed appeal involves matters of importance to the development of the law and to the administration of justice; and
18. Such further and other grounds as counsel for the Appellants may advise and the Honourable Court deems just.

THE BASIS FOR THE APPELLATE COURT'S JURISDICTION IS:

1. The Judgment of the Honourable Justice R. E. Mesbur is a final Order of the Superior Court of Justice in an action under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("BIA");
2. An appeal from a final Order of the Superior Court of Justice in an action under the BIA lies to the Court of Appeal, pursuant to Section 193 of the BIA;
3. Leave to appeal to the Court of Appeal is not required in the following cases, pursuant to Section 193 of the BIA:
 - (a) if the point at issue involves future rights;
 - (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
 - (c) if the property involved in the appeal exceeds in value ten thousand dollars;
 - (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars;
4. The Judgment of the Honourable Justice R. E. Mesbur falls within the above-noted, enumerated categories;
5. Rules 1.03, 1.04, 1.05, 2.01, 2.03, 3, ~~20, 31-08~~, 37, 59, 61, ~~and 62~~, and 63 of the *Rules of Civil Procedure* RRO 1990, Reg 194;
6. Sections 6, 19, 131, 132, and 134 of the *Courts of Justice Act* RSO 1990, c C-43; ~~and~~
7. Section 53 of the *Conveyancing and Law of Property Act*, RSO 1990, c C-34;
8. Section 31 of the *Mortgages Act*, RSO 1990, c M-40; and

9. Section 193 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

December 23, 2013

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PROCEEDINGS COMMENCED AT TORONTO

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