

COURT OF APPEAL FOR ONTARIO

BEFORE: COROZA J.A.

HEARD: IN WRITING

DISPOSITION OF COURT HEARING:



COURT FILE NO.: COA-26-OM-0325

TITLE OF PROCEEDING: WANG, FENGXI
FANSEAY V. CAMERON STEPHENS
MORTGAGE CAPITAL LTD. ET AL.

DATE RELEASED: OCTOBER 5, 2026

The moving party brings a motion for an extension of time to file his appeal.

The moving party is Mr. Fengxi Fanseay Wang ("Mr. Wang"), the principal of 2011836 Ontario Corp. and Jefferson Properties Limited Partnership ("the Debtors"), developers of a condominium project. In 2022, Mr. Wang personally guaranteed a loan from Cameron Stephens Mortgage Capital LTD ("Cameron Stephens") for this project. After the Debtors defaulted on this loan, Justice Cavanaugh appointed a receiver, Albert Gelman, at the request of Cameron Stephens. Mr. Wang did not make any payments on the loan and on December 1, 2025, Justice Kimmel declared Mr. Wang to be a bankrupt.

On May 21, 2026, Justice Myers heard a motion brought by the receiver for an amendment to an approval and vesting order granted in January of 2026 for one of the units in the condominium project as well as an amendment to an order authorizing the receiver to sell units without further court approval where the sales incorporated an approved set of terms and met a certain target price for each unit.

Justice Myers denied the moving party standing on the motion, granted the receiver's requests and ordered costs against Mr. Wang in the amount of \$1,500.

It is from this order Mr. Wang is seeking leave to appeal pursuant to s. 193(e) of the *Bankruptcy and Insolvency Act* ("BIA").

Justice Myers released his endorsement on May 21, 2026. He then digitally signed an order dated May 21, 2026, on June 1, 2026. On June 9, 2026, Mr. Wang served a notice of application for leave with corresponding materials and submitted them to this court. On June 16, 2026, Mr. Wang was informed by this court that he was also required to serve the notice with the registrar of the bankruptcy court, which he had not done. Mr. Wang was advised he would require leave for an extension of time.

The issue on this motion is whether the court should grant Mr. Wang an extension of time to file his notice of appeal pursuant to r. 3.02(1) of the *Rules of Civil Procedure* ("the Rules").

WARNING: This court's endorsements are usually provided to the parties only. The endorsements may be subject to a publication ban or other restriction(s) on public access. Those receiving these endorsements are responsible for ensuring any subsequent dissemination by them complies with any applicable bans or restrictions.

Mr. Wang acknowledges that r. 31(1) of the *Bankruptcy and Insolvency General Rules* require that an appeal under s. 193(e) must be filed within 10 days of the underlying order. He submits that his filing was within the 10-day deadline, as the order of Justice Myers was signed on June 1, 2026, and he filed his notice of appeal, along with other materials, on June 9, 2026. He contends the defect arose because he did not realize his materials must be filed with the registrar of the bankruptcy court. In support of his motion for an extension of time, Mr. Wang submits that he acted promptly and in good faith, took further steps immediately upon realizing the defect, and his underlying motion is not frivolous.

I do not accept Mr. Wang's submission that he has filed his materials within the time under the BIA. The 10-day deadline prescribed by r. 31(1) expired on June 1, 2026, 10 days after the order, dated May 21, 2026 was made. Section 31(1) of the *Bankruptcy and Insolvency General Rules* states:

31 (1) An appeal to a court of appeal referred to in subsection 183(2) of the Act must be made by filing a notice of appeal at the office of the registrar of the court appealed from, **within 10 days after the day of the order or decision appealed from**, or within such further time as a judge of the court of appeal stipulates.

(2) If an appeal is brought under paragraph 193(e) of the Act, the notice of appeal must include the application for leave to appeal. [Emphasis added.]

Accordingly, Mr. Wang requires an extension of time to proceed with the motion for leave.

The receiver submits this request should be dismissed for two reasons.

First, Mr. Wang should not be granted standing based on outstanding cost orders. The receiver relies on r. 57.03(2) and r. 60.12 of the *Rules*. Respectively, these rules address the court's ability to dismiss or stay proceedings based on a party's failure to pay the costs of a motion, and the failure of a party to comply with an interlocutory order. The receiver contends that Mr. Wang has repeatedly refused to pay costs ordered against him and therefore should be denied standing to proceed. The most recent costs order is the order of Rahman J.A. dated July 24, 2026, where costs were ordered in favour of the receiver in the amount of \$8,000.

Second, the receiver argues that even if Mr. Wang is granted standing, the court should not exercise its discretion in granting the motion because there is no merit to the proposed appeal.

The court may order an extension or abridgment of time on such terms as are just: r. 3.02(1). The overarching principle is that an extension should be granted if required by the "justice of the case": *Frey v. MacDonald* (1989), 33 C.P.C. (2d) 13 (Ont. C.A.), at p. 14; *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at para 15; and *2363523 Ontario Inc. v. Nowack*, 2018 ONCA 286, 10 C.P.C. (8th) 296, at para 4. In applying this principle, the court has generally considered the following factors:

- 1) whether the appellant formed an intention to appeal within the relevant period;
- 2) length of, and explanation for delay;
- 3) prejudice to respondent; and
- 4) merits of the appeal.

The first two factors favour Mr. Wang's position on the motion. However, the third and fourth factors do not.

Mr. Wang asserts that his proposed motion for leave to appeal concerns appropriate supervision of the receiver and procedural fairness. He specifically asserts in his notice for leave to appeal:

- The proposed appeal raises issues of general importance to the administration of justice in insolvency proceedings: whether a self-represented stakeholder who makes a limited, non-obstructive value-preservation response may be personally ordered to pay costs and face broad approval language that may chill future stakeholder participation.
- The proposed appeal also raises the issue of whether broad conduct approval, fee approval, future sale authority, sealing relief, and approval-and-vesting language stating that a transaction is not oppressive or unfairly prejudicial should be granted on an expedited and partly sealed record without sufficient non-prejudice protection for stakeholder rights.
- The proposed appeal raises a serious issue as to whether the receiver may rely on a prior court-approved target price framework, which Mr. Wang says was obtained on an incomplete or contested record, as a substitute for proving that the receiver made diligent, current, and transaction-specific efforts to preserve value before reducing a firm pre-receivership sale and seeking broader related relief.

I acknowledge that the the delay is short, and Mr. Wang has provided a reasonable explanation for the delay.

However, I am unable to find anything in the materials filed by Mr. Wang that suggests he has an arguable appeal. This is a relevant consideration.

I am unable to construct any basis for an arguable appeal in the above noted grounds of appeal. There is no basis for asserting that Mr. Wang was denied procedural fairness.

Moreover, Mr. Wang's appeal is based on a highly fact specific objection to the receiver's conduct and an attempt to re-litigate objections that have been made to previous orders granted by judges of the Commercial List. His grounds of appeal do not suggest otherwise.

Nor has Mr. Wang identified any potential error in the exercise of Justice Myers' decision to order costs against him for requiring the receiver to expend more time in arguing what should have been an unopposed motion.

Ultimately, I conclude that this court is not likely to grant leave under s.193(e) of the BIA. Nor would the court grant leave to appeal the costs awarded to the receiver. Under these circumstances, the justice of the case does not require granting an extension. This is especially so, because the receiver is continually prejudiced by having to respond to the litigation that Mr. Wang has decided to pursue. I adopt the following comments made by Justice Myers which are relevant to this motion:

I understand very well that through his lenses Mr. Wang believes he has been mistreated by the applicant. Whether his actions against the applicant will proceed or will become bound up in a bankruptcy is for another day. His continued efforts to oppose steps because of perceived injustices that have already been heard and dismissed by the court just raise costs for all concerned. And it is the applicant who will end up bearing those costs from its shortfall. [Emphasis added.]

In sum, while the delay in filing the leave application is short, the interests of justice do not require an extension in this case, as the motion for leave to appeal does not raise a serious issue on appeal. A panel considering Mr. Wang's leave application is likely to dismiss it because it is simply an attempt to re-litigate issues that have already been determined, it is a proposed appeal that has no general importance to the insolvency bar and it is a factual objection to the receivership proceeding. Moreover, granting leave would unduly hinder the underlying insolvency proceedings: *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 29.

As a result of this conclusion, there is no need to deal with the receiver's alternative argument that Mr. Wang must be required to pay the outstanding costs order before he has another audience in this court for the purposes of any appeal.

For these reasons, Mr. Wang's motion is dismissed. The receiver is entitled to its costs for having to respond to the motion. However, I do not think it is appropriate to order elevated costs in favour of the receiver. As I have explained, the delay in filing his motion for leave to appeal was short. I fix costs payable to the receiver in the amount of \$5,000.

S. CORONA J.A.