

Ontario Court of Appeal Court File No.

Court File No. CV-25-00740567-00CL

COURT OF APPEAL FOR ONTARIO

BETWEEN:

DOSANJH CARE INC.

Appellant (Defendant)

-AND-

THE TORONTO DOMINION BANK

Respondent (Plaintiff)

NOTICE OF APPEAL

TAKE NOTICE that the Appellant, Dosanjh Care Inc. appeals to the Court of Appeal from the Order of the Honourable Justice J. Steele dated June 2, 2025 (the "Order"), to be heard as directed by the Registrar.

THE APPELLANT REQUESTS:

- (a) An Order setting aside the Order of the Honourable Justice J. Steele, dated June 2, 2025 (the "Order"), appointing Albert Gelman Inc. ("AGI") as receiver, without security, over all of the assets, undertakings, and properties of the Appellant, acquired for, or used in relation to, the business carried on by the Appellant, including all proceeds thereof (collectively, the "Property"), which includes, without limitation, the real property municipally known as 532 Main Street, Powassan, Ontario;
- (b) Costs of this motion; and
- (c) Such further and other Relief as this Honourable Court may seem just.

THE GROUNDS FOR THE APPEAL ARE:

- a) Section 193(c) of the Bankruptcy and Insolvency Act, RSC , 1985, c. B-3;
- b) Section 13 of the Companies' Creditors Arrangement Act, R.S.C 1985, c. C-36;

I. Overview

- c) On June 2, 2025, the Respondent obtained an Order appointing AGI as receiver over the Appellant's assets and Property.
- d) On June 12, 2025, the Appellant received the Receiver's Notice and Statement under subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c. B-3.
- e) There appears to be good reason to doubt the correctness of the Order as the learned judge erred in concluding that it was "just and convenient" to appoint a receiver in the circumstances.
- f) While acknowledging that the appointment of a receiver is an extraordinary remedy, the learned judge failed to consider the disproportionate consequences of the receivership, namely, the significant diminution in the value of the Property which would result in a substantial shortfall, ultimately exposing the Appellant's sole director to personal liability for the deficiency.
- g) The receivership was premised on alleged defaults under a Forbearance Agreement dated August 14, 2024 (the "Forbearance Agreement"). The learned judge failed to assess the context in which the Agreement—a standard form adhesion contract unilaterally drafted by the Respondent—was entered into, nor did the Court properly apply the doctrine of *contra proferentem* to resolve any ambiguity in the Agreement's terms in favour of the Appellant.
- h) The learned judge erred in finding that the Appellant was in default. At all material times, the Appellant made timely payments under the Forbearance Agreement. The alleged defaults cited by the Respondent pertain instead to non-monetary obligations, namely, to maintain the Property in good repair and to operate in compliance with environmental, health and safety laws.
- i) These alleged defaults arose due to circumstances outside the Appellant's control. In October 2023, the Canadian Mental Health Association – North Bay (CMHA), which governs the Community Homes for Opportunity (CHO) program, unilaterally and unlawfully rescinded the Appellant's licence to operate the CHO facility at the Property. The Appellant has initiated legal proceedings against CMHA and is actively engaged in negotiations to reinstate the licence.

- j) The learned judge failed to consider that the Property's value is intrinsically linked to its CHO designation. The fair market value of the Property as a functioning CHO facility—calculated on a per-bed basis—far exceeds its value as mere real estate. A forced sale under receivership would severely impair its realizable value, potentially returning less than 25% of its business value.
- k) Given that the Appellant has remained current on all monetary obligations under the Forbearance Agreement, and has been diligently working to restore the CHO licence in order to preserve the full business value of the Property, the imposition of a receivership at this stage is premature and counterproductive to both parties' interests.
- l) Further, the learned judge failed to consider that under the Forbearance Agreement, the Appellant's sole director is personally liable for any shortfall. By appointing a receiver and forcing a sale of the Property at its diminished value, the Order effectively guarantees a deficiency and unjustly exposes the director to personal liability. The Appellant was not provided with a reasonable opportunity to avoid this outcome by restoring the business's full operational status and value.
- m) The learned judge failed to consider whether less intrusive remedies—such as enhanced reporting obligations, supervision, or temporary forbearance—could have addressed the Respondent's concerns while preserving the going-concern value of the Property.

STAY OF THE ORDER

- n) It is in the interests of justice to stay the effect of the Order pending the outcome of the Appellant's appeal, so as to preserve the status quo and avoid rendering the appeal infructuous;
- o) The Order, by appointing a receiver, effectively bars the Appellant from continuing its negotiations with the CMHA – North Bay and from taking steps necessary to reinstate its operational licence, thereby undermining its business recovery efforts.
- p) The Order further restricts the Appellant from actively prosecuting its pending civil action against CMHA – North Bay, from whom the Appellant seeks damages for the unlawful revocation of its CHO licence. The Appellant's ability to litigate its claim is frustrated by the receivership.

- q) There is a reasonable prospect that the appeal will be allowed, as the Order raises important legal questions concerning the appointment of receivers over healthcare-related residential properties, and the proper exercise of discretion where such an appointment may irreversibly affect vulnerable populations and ongoing regulatory disputes.
- r) The appeal raises novel and significant legal issues, including whether the extraordinary remedy of receivership should be granted in circumstances where (i) the alleged defaults are non-monetary, (ii) the Appellant is compliant with its financial obligations, and (iii) the receivership obstructs access to justice by preventing a litigant from prosecuting its legitimate claims in another court.
- s) The Appellant will be irreparably prejudiced by being denied access to the courts in its civil action against CMHA – North Bay. The Appellant's pending Statement of Claim—filed in good faith and seeking damages for the improper revocation of its licence—constitutes a significant potential source of recovery and a material asset. The Order interferes with the Appellant's ability to pursue and control that litigation, contrary to the principles of access to justice and procedural fairness.

THE BASIS OF THE APPELLATE COURTS JURISDICTION IS:

- a) Section 193(c) of the Bankruptcy and Insolvency Act, RSC , 1985, c. B-3;
- b) The Order is final.
- c) Leave to appeal is not required under Section 193(c) of the Bankruptcy and Insolvency Act, RSC , 1985, c. B-3.

June 12, 2025

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