

COURT OF APPEAL FOR ONTARIO

BEFORE: WILSON J.A.

HEARD: OCTOBER 9, 2025

DISPOSITION OF COURT HEARING:



COURT FILE NO.: M56343 (COA-25-CV-1005)

TITLE OF PROCEEDING: DOSANJH CARE INC. v. THE TORONTO DOMINION BANK

DATE RELEASED: OCTOBER 14, 2025

Alex Hora and Wendy Greenspoon-Soer, for the moving party
Soumya Roop Sanyal and Heena Rohra, for the responding party

The moving party, The Toronto Dominion Bank, brings this motion for directions arising from the receivership order dated June 2, 2025, from which the appellant served a notice of appeal pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3. It is not disputed that the notice of appeal was served June 13, 2025, and that r. 31(1) of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368 requires the appeal to be filed within 10 days of the order being appealed from.

Of greater concern is the fact that when the appellant served its notice of appeal on June 13, 2025, it failed to serve an application for leave to appeal which is required under s. 31(2) of the Rules. Indeed, it has failed to serve such an application at the present time, despite being served with the respondent's motion for directions on September 11, 2025. Counsel for the respondent submits that the appeal should be declared a nullity.

The appellant has filed no materials in response to the respondent's motion for directions. Counsel for the appellant requested an adjournment so that materials could be filed. I declined to grant an adjournment since counsel has had ample notice of today's motion and failed to offer a reasonable explanation for the failure to file materials.

In his submissions, counsel for the appellant argues that the appeal is meritorious because the application judge failed to apply the proper test when she determined it was necessary to appoint a receiver. Counsel wishes to file a cross-motion seeking leave to appeal under the Act and submits that there is no prejudice to the respondent, and it will not delay the bankruptcy proceedings.

It is clear that the appellant was required to serve an application for leave to appeal when he served the notice of appeal of the receivership order. No reasonable explanation has been offered for the failure to do so. The underlying decision demonstrates that the loan agreement that was entered into was dated October 14, 2022. It went into default in June 2024. A Forbearance Agreement was entered

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.

into on August 14, 2024, and expired on February 28, 2025. The property has not operated as a retirement residence since October 2023 when it was closed pursuant to the order of North Bay Parry Sound District Health Unit. While the appellant has maintained the position throughout that he is going to obtain a license to operate a retirement residence, the application judge noted there was no evidence that such license was going to be granted shortly or at all. The same is true today.

There is no automatic right to an appeal of the underlying order: *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, 2022 ONCA 479, 100 C.B.R. (6th) at para. 16. Even if leave to appeal had been sought, the appeal does not raise an issue of general importance to the areas of bankruptcy or insolvency, and it is not *prima facie* meritorious. There has been delay occasioned by the appellant and in my view granting leave to appeal the receivership order would further delay the proceedings: *KingSett Mortgage Corporation*, para. 26.

The appellant was served with this motion a month ago and chose not to file any materials. The interests of justice do not favour granting an extension of time to serve and file the appeal nor granting leave to appeal. The appeal is a nullity.

Disposition

The moving party asks for costs fixed in the sum of \$6,000 all inclusive. The appellant submits that no costs should be awarded. In my view, the successful party should be awarded costs on a partial indemnity basis. However, I see no reason why two counsel needed to attend this motion on behalf of the moving party; it was not a complex matter. Costs awarded to the moving party fixed in the sum of \$3,000 all inclusive.

RA. Wilson G.A.