

Court File No.

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N:**

**MORRISON FINANCIAL MORTGAGE CORPORATION**

Applicant/Respondent on Appeal

- and -

**AG (1000 & 1024 DUNDAS ST. E.) GP INC., AG (1000 & 1024 DUNDAS ST. E.)  
LP and AG (1000 & 1024 DUNDAS ST. E.) INC.**

Respondents/Appellants on Appeal

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**NOTICE OF APPEAL**

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**THE APPELLANTS, AG (1000 & 1024 DUNDAS ST. E.) GP INC., AG (1000 & 1024 DUNDAS ST. E.) LP and AG (1000 & 1024 DUNDAS ST. E.) INC., APPEAL** to the Court of Appeal for Ontario at 130 Queen Street West, Toronto, Ontario M5H 2N5 from the Order of Justice Dunphy of the Superior Court of Justice (Commercial List), dated April 1, 2026 (the “Order”).

**THE APPELLANTS ASK** that the Order be set aside and that judgment be granted:

1. Allowing the appeal, setting aside the Order and hearing the matter *de novo*;
2. In the alternative, an order allowing the appeal, setting aside the Order, and remitting the matter to a different judge at the Ontario Superior Court of Justice (Commercial List).

3. Costs.

**THE GROUNDS FOR THE APPEAL are as follows:**

1. The learned judge made errors of law, mixed fact and law, and permitted procedural unfairness in rendering an Order approving the multi-million dollar sale process of the Receiver, with disbursement of \$100,000 to CBRE, a matter that was contested by the Appellants.
2. The learned judge denied the Appellants natural justice and procedural fairness, including by:
  - (a) refusing their request for an adjournment of the April 1 motion;
  - (b) failing to rule on the sealing order requested by the Respondents;
  - (c) ruling on the motion despite the Appellants having been served with the Factum of the Respondent 23 hours before the hearing in violation of the *Rules of Civil Procedure* and only after the Appellants advised that a factum was required for a long motion under the Commercial List Practice Direction;
  - (d) ruling on the motion despite the Appellants being served with a Supplementary First Report approximately 40 hours before the scheduled hearing;

- (e) failing to consider that short service made it impossible for the Appellants to properly review, file responding material and request leave for cross-examinations, especially given that their counsel had been called to Trial;
  
- (f) approving the Receiver's sale process and concluding without reasons, at paragraph 20 of his Endorsement that the Appellants' responding record "contains nothing which substantively impacts the assessment of the marketing process." The Appellants had raised significant concerns regarding, *inter alia*, the sales process, environmental assessments, confidentiality constraints from a settlement with a neighbouring industrial landowner, potential leasing opportunities presented to the Receiver and poor management and maintenance of the subject properties by the Receiver that resulted in gas shutoff during sub-zero temperatures; and,
  
- (g) finding at paragraph [9] that the broker fees were reasonable and at paragraph [13] that the sale process "should be approved" was made on a one-sided evidentiary record: only the secured creditor had the information necessary to make submissions on reasonableness. The Appellants were then criticized at paragraph [20] for failing to substantively challenge a process whose terms were hidden from them. This is a denial of the *audi alteram partem* principle and renders the matter procedurally unfair.

3. In denying the adjournment request, the learned judge erred in law and/or made errors of mixed fact and law and/or made errors of principle by giving no or insufficient weight to relevant considerations related to the adjournment request, including:

- (a) A day before the hearing at the Commercial List, Appellants' counsel was called to a multi-day trial in the Milton Superior Court of Justice beginning March 31, 2026. Effectively, the scheduling conflict arose a day before the April 1 motion date and constituted "extenuating and exceptional" circumstances within the meaning of the Toronto Region Practice Direction;
- (b) The principal and guarantor of the Appellants (the "Principal") was unable to represent the corporate Appellants as he is not a lawyer and is not equipped to argue a complicated receivership matter at the Commercial List. The learned judge made an error in his finding at paragraph 17 of his Endorsement dated April 1, 2026, that the Principal "did not wish to" represent the corporation (when he communicated a legal incapacity and not a personal unwillingness);
- (c) In addition, the Principal was unable to be heard due to technical difficulties during the Zoom videoconference hearing, leaving the Appellants without any representation on the merits of a multi-million dollar sale process approval;

- (d) The learned judge found at paragraph 15 of the Endorsement that Appellants' counsel failed to disclose a trial conflict on March 17, 2026, when that conflict had not yet materialized at that time and that the adjournment grounds were not raised on March 17, 2026, when the issues with respect to late service of material arose after the fact (i.e. the Supplementary Motion Record served March 30 and the Receiver's Factum served March 31);
- (e) The April 1, 2026 motion date was not made peremptory on the Appellants, despite the Receiver's specific requests at previous attendances, and ought to have been adjourned in the circumstances; and,
- (f) The learned judge ought to have granted the Appellants an adjournment to permit: a responding Supplementary Affidavit, the request for cross-examination after late service of material and exchange of facta, in compliance with the *Rules*, by all parties.

4. The motions judge erred in law and denied the Appellants procedural fairness by approving a sale process on the basis of material evidence that was sealed from the equity holders but shared with the secured creditor. The Confidential Appendix to the Receiver's First Report contains the broker proposals, the commercial terms of CBRE's engagement, the competing proposals from other brokers, and the fee structure, the very information required to assess whether the sale process was reasonable. Morrison Financial was consulted on all material decisions regarding the sale process, including broker selection and process terms, while the

Appellants, who hold almost \$20 million of acknowledged equity, were denied access to the same information, even under a confidentiality undertaking.

5. The learned judge further erred in law by approving a sale process that fails the applicable four-factor test:

(g) the Receiver suppressed an institutional lease producing annual net operating income of nearly three times Morrison's own contractual minimum without requesting the tenant's identity, lease terms, or financial impact;

(h) Equity holders with almost \$20 million of equity acknowledged in Morrison's own commitment letter were excluded from every material decision by the Receiver while the secured creditor was consulted on all;

(i) the process is undermined by expired environmental reports, an incomplete Phase I ESA, and an NDA restricting data room disclosure; and,

(j) Morrison's counsel applied \$10,056.19 from the Appellants' mortgage payment to its own fees without the Appellants' knowledge or consent, rendering verification of the redemption amount impossible.

**THE BASIS OF THE APPELLANT COURT'S JURISDICTION IS:**

1. Section 6(1)(b) of the *Courts of Justice Act* R.S.O. 1990 c. C.43.
2. Section 193(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
3. The Order appealed from is a final order of the Superior Court of Justice and leave is not required for this appeal.

April 9, 2026

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

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**NOTICE OF APPEAL**

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