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

NOTICE OF APPEAL

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 APPELLANTS ASK that the Order be set aside and heard *de novo* by the Ontario Court of Appeal or remitted to a different judge at the Ontario Superior Court of Justice (Commercial List).

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, a matter that was contested by the Appellants.

2. The learned judge denied the Appellants natural justice and procedural fairness by refusing their request for an adjournment of the April 1 motion.

3. The learned judge did not rule on the sealing order requested by the Respondents.

4. The learned judge failed to give adequate consideration to the following points raised by the Appellants in their adjournment request:

    a. On March 30, 2026, 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. Replacement counsel was not available on short notice;
    c. 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);

d. 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;

e. The learned judge allowed the April 1 motion to proceed despite the Receiver's late service of motion materials:

    i. On March 30, 2026 at 4:30 p.m., the Receiver served a Supplementary Motion Record, enclosing a Supplementary First Report which contained fresh evidence to respond to the Appellants' responding record. The Appellants, having been served approximately 40 hours before the scheduled hearing, were denied the ability to properly review the new motion material served, provide substantive responses to the new evidence submitted and/or conduct cross-examination of the Receiver on the Supplementary Motion Record; and,

    ii. On March 31, 2026 at 11:16 a.m., the Receiver served its first and only Factum for the April 1 motion. The Receiver's factum was served less than 23 hours before the scheduled hearing in violation of the *Rules of Civil Procedure* and only after the Respondents advised that a factum was required for a long motion under the Commercial List Practice Direction. Short service made it impossible for the Appellants to file a responding Factum, especially given that their counsel was in Trial.

5. The learned judge erred in the exercise of his discretion in denying the adjournment and made two material, factual errors in doing so:

   a. First, finding 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

   b. Second, finding 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).

6. The April 1, 2026 motion date was not made peremptory on the Appellants, despite the Receiver's specific requests, and ought to have been adjourned in the circumstances.

7. The learned judge erred in fact and in law by approving the Receiver's sale process and finding 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.

8. 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 $19,375,138 of acknowledged equity, were denied access to the same information, even under a confidentiality undertaking. The motions judge's 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.

9. The learned judge erred by approving a sale process before the Receiver's own Phase I Environmental Site Assessment was complete. The Receiver disclosed at paragraph 8(d) of its Supplementary First Report that the Phase I was underway but not yet finished, a fact the learned judge acknowledged at paragraph [22] of the Endorsement. Marketing properties with identified environmental issues and

incomplete environmental data foreseeably depresses the price achievable, as prospective purchasers will discount for unknown environmental liability or decline to bid.

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

    a. 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;
    b. Equity holders with $19,375,138 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;
    c. the process is undermined by expired environmental reports, an incomplete Phase I ESA, and an NDA restricting data room disclosure; and,
    d. 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.

11. 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.

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 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. The property involved in the appeal exceeds $10,000.
3. The Order appealed from is a final order of the Superior Court of Justice and leave is not required for this appeal.

April 6, 2026

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Proceeding commenced at Toronto

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