**COURT OF APPEAL FOR ONTARIO**

BEFORE: POMERANCE J.A.

COURT FILE NO.: M57465 (COA-26-CV-0537) & M57466 (COA-26-CV-0940)

HEARD: AUGUST 31, 2026

TITLE OF PROCEEDING: MORRISON FINANCIAL MORTGAGE CORPORATION v. AG (1000 & 1024 DUNDAS ST. E.) GP INC. ET AL.

DISPOSITION OF COURT HEARING:

DATE RELEASED: SEPTEMBER 1, 2026

Dominique Michaud and Anisha Samat, for the moving party, Albert Gelman Inc.
Shahzad Siddiqui, for the Debtors, AG (1000 & 1024 Dundas St. E.) GP Inc., AG (1000 & 1024 Dundas St. E.) LP and AG (1000 & 1024 Dundas St. E.) Inc.
Patrick Di Monte, for Ahmed Asset Management Inc.
Wendy Greenspoon-Soer, for Morrison Financial Mortgage Corporation

The moving party in these matters is Albert Gelman Inc. ("AGI"), acting in its capacity as the court-appointed receiver of all of the assets, undertakings, and property of AG (1000 & 1024 Dundas St. E.) GP Inc., AG (1000 & 1024 Dundas St. E.) LP ("AG LP"), and AG (1000 & 1024 Dundas St. E.) Inc. (collectively the "Debtors"). These assets include the properties municipally known as 1000 Dundas Street East, Mississauga, Ontario ("1000 Dundas") and 1024 Dundas Street East, Mississauga, Ontario ("1024 Dundas", and together with 1000 Dundas, the "Dundas Properties").

The Debtors have purported to launch appeals as of right under s. 193(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"), from two orders: (1) the order of Dunphy J., dated April 1, 2026, approving the receiver's process for the marketing and sale of the Dundas Properties; and (2) the order of Dietrich J., dated July 10, 2026, authorizing the receiver to terminate a related party lease at 1024 Dundas.

The Debtors assert that, because they have launched appeals as of right, the orders are automatically stayed by operation of s. 195 of the *BIA*. Similarly, the tenant of Unit 1, 1024 Dundas, Ahmed Asset Management Inc. ("AAM") has purported to appeal the order of Dietrich J. terminating its lease and asserts the same position.

AGI seeks a declaration that none of the appeals are as of right, that the Debtors and AAM must seek leave to appeal the orders, that leave should not be granted, and that there is no basis for concluding that the orders below are stayed.

AGI filed comprehensive materials, including five motion records setting out the history of this litigation. Neither the Debtors nor AAM filed any material on the motions.

**NO APPEAL AS OF RIGHT**

I am satisfied that the appeals filed by the Debtors and AAM do not fall within the ambit of s. 193(c) of the *BIA*, and accordingly, are not appeals as of right.

Section 193 of the *BIA* provides:

> **193** Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:
>
> > (a) if the point at issue involves future rights;
> >
> > (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
> >
> > (c) if the property involved in the appeal exceeds in value ten thousand dollars;
> >
> > (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
> >
> > (e) in any other case by leave of a judge of the Court of Appeal.

In 2403177 *Ontario Inc. v. Bending Lake Iron Group Limited*, 2016 ONCA 225, 369 D.L.R. (4th) 635, this court held that s. 193(c) does not apply to (a) orders that are procedural in nature, including decisions or orders that concern the methods by which receivers or trustees realize on an estate's assets; (b) orders that do not bring into play the value of the debtor's property; and (c) orders that do not result in a direct loss exceeding $10,000.

In this case, both the Sale Process Approval Order issued by Dunphy J. and the Lease Termination Order of Dietrich J. are procedural in nature, do not finally determine the value of the Dundas Properties, and have not given rise to a direct loss of over $10,000.

Counsel for the Debtors argues that the Debtors face a potential loss exceeding $10,000 because the terms of the listing agreement provide for a fee payable to CBRE Limited, the broker selected by the receiver to list the property, in the amount of $50,000 in the event of a credit bid or refinancing transaction within the first 30 days of the listing period, and thereafter in the amount of $100,000.

I do not agree that this places the appeal within the ambit of s. 193(c). In *AFC Mortgage Administration Inc. v. Sunrise Acquisitions (Elmvale) Inc.*, 2024 ONCA 764, this court observed, at para. 27, that "the mere possibility that a break fee might be payable" does not give rise to an appeal under s. 193(c). As this court noted, "If it did, every order approving a sales process would be appealable as of right if it contemplated, in some circumstances, payment of real estate commissions on a successful sale."

The Debtors also made arguments based on s. 22(3) of the *Mortgages Act*, R.S.O. 1990, c. M.40. However, this is not a mortgage enforcement proceeding. It is an insolvency proceeding and the operative appeal provisions are those set out in the *BIA*.

I am similarly not persuaded that AAM has an appeal as of right. The operative effect of the Lease Termination Order is to facilitate the process by which the receiver is to sell the property located at 1024 Dundas, not to value the Dundas Properties or to crystallize a proven loss.

Neither the Debtors nor AAM have demonstrated an entitlement to an appeal as of right under s. 193(c) or any of the other categories of cases under s. 193.

**LEAVE TO APPEAL**

Having found there to be no appeal as of right, I must determine whether the Debtors ought to be granted leave to appeal. AAM does not seek leave to appeal, relying instead upon its assertion that its appeal is as of right.

The Debtors have not filed an application for leave to appeal. Upon being asked about this, counsel for the Debtors suggested that he be given an opportunity to do so. However, it was abundantly clear from the moving party's materials that it took the position that leave was required and that it should not be granted. If the Debtors were inclined to seek leave to appeal, it was incumbent upon them to file their materials for consideration at today's hearing.

That said, the moving parties were content that I hear arguments regarding leave to appeal, as they wished the matter be fully dealt with today. Counsel for the Debtors accordingly advanced his arguments in the absence of any written materials.

The governing test for leave to appeal, under s. 193(e) of the *BIA*, is whether the proposed appeal (a) raises an issue of general importance to insolvency practice or to the administration of justice as a whole; (b) is *prima facie* meritorious; and (c) would unduly hinder the progress of the insolvency proceeding: *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 29. None of these requirements are satisfied in this case.

There is nothing in the notices of appeal that would implicate issues of general importance to insolvency practice or to the administration of justice as a whole. Rather, the grounds are fundamentally case-specific. The proposed appeal against the order of Dunphy J. challenges the receiver's fact-specific business judgment concerning how and when to market the particular properties. The appeals against the Lease Termination Order challenge Dietrich J.'s fact-specific weighing of the equities between a receiver and a related-party tenant that paid no rent. Neither presents a novel legal question requiring appellate guidance.

Nor am I persuaded that the grounds of appeal are *prima facie* meritorious. The Debtors have failed to demonstrate any clear errors on the part of either Dunphy J. or Dietrich J.

Finally, I am of the view that, to grant leave to appeal, would be to unduly hinder the progress of the insolvency proceeding. The sale process has now produced two agreements of purchase and sale, one of which is scheduled for a court approval hearing on September 21, 2026. It is not in the interests of the Debtors' creditors or the interests of justice to inject any further delay into the process.

Accordingly, I grant the motion brought by AGI and make the following declarations:

a) a Declaration that there is no automatic right of appeal from the Sale Process Approval Order and that leave to appeal is required under s. 193(e) of the BIA;
b) a Declaration that there is no automatic right of appeal from the Lease Termination Order, whether by the Debtors or AAM, and that leave to appeal is required under s. 193(e) of the *BIA*;
c) an Order declining to grant leave to appeal from the Sale Process Approval Order;
d) an Order declining to grant leave to appeal from the Lease Termination Order to the Debtors and/or AAM; and
e) a Declaration that there is no automatic stay of either the Sale Process Approval Order or the Lease Termination Order under s. 195 of the *BIA*.

If the parties cannot agree on costs, I will receive written submissions within ten days of this endorsement, no longer than five pages in length.

R. Pomerance J.A.