COURT OF APPEAL FOR ONTARIO

CITATION: Toronto-Dominion Bank v. 1871 Berkeley Events Inc., 2026 ONCA 22
DATE: 20260115
DOCKET: COA-25-OM-0479

Paciocco J.A. (Motion Judge)

BETWEEN

The Toronto-Dominion Bank

Applicant
(Responding Party)

and

1871 Berkeley Events Inc., 1175484 Ontario Inc., 111 Kings Street East Inc., 504 Jarvis Inc. And Southline Holdings Inc.

Respondents
(Moving Parties)

Douglas Wheler, acting in person for the moving parties[1]

Timothy C. Hogan & Victoria Adams, for the responding party msi Spergel Inc., in its Capacity as Receiver of 1871 Berkeley Events Inc., 1175484 Ontario Inc., 111 King Street East Inc., 504 Jarvis Inc. and Southline Holdings Inc.

No one appearing for the responding party Toronto-Dominion Bank

Heard: in writing

[1] Mr. Wheler, a non-lawyer, was granted leave to represent the moving party corporations pursuant to r. 15.01(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, in the receivership proceedings before the Superior Court by Conway J. on October 8, 2025. I grant him leave to do the same before this Court.

REASONS FOR DECISION

OVERVIEW

[1] On July 31, 2023, the moving parties were placed under the control of a receiver, the responding party msi Spergel Inc. (the “Receiver”). Mr. Wheler, a non-lawyer, has been granted leave to represent the moving party corporations in the receivership proceedings, and he has made his submissions in writing on the two motions now before me. I note that all litigants, including those who are self-represented, have an obligation to familiarize themselves with the procedures relevant to their case: *Carpenter v. Carpenter*, 2016 ONCA 313, at para. 16.

[2] At the time they were placed in Receivership, the moving parties owned and operated an events centre (the “Property”).

[3] On January 16, 2024, an unopposed order was made authorizing the Receiver to sell the property. On August 13, 2025, after the property had been on the market for close to two years, the Receiver entered into an agreement of purchase and sale with an interested buyer (the “APS”). It then brought a motion seeking an approval and vesting order to close this sale (the “AVO”). Appropriately, prior to the motion the Receiver disclosed confidential and commercially sensitive details relating to the proposed sale to the moving parties, who unfortunately, included them in their public filings in the motion.

[4] On October 28, 2025, Myers J. granted the Receiver's motion. In granting the AVO the motion judge deferred to the Receiver's judgment to accept the APS, as he was required to do under the "Soundair principles" established in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1, at para. 14 (C.A.). He rejected the submission of the moving parties that the Receiver was acting improvidently, finding that it was reasonable for the Receiver to accept this offer, which was an unconditional offer within a narrow range of the other three offers made. The motion judge found the offer to have been obtained after responsible efforts to sell had been undertaken in the absence of bad faith. He also found that the offers received were a better indication of current market value than appraisals that had earlier been obtained, and which anticipated a higher valuation. The moving parties now seek to appeal the October 28, 2025 order.

[5] By way of background, it is in the interests of justice to discourage delay in the receivership process. Accordingly, the period for appealing orders made pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 ("*BIA*"), is ten days: *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368 ("*BIA Rules*"), r. 31(1). It is not contested that the moving parties attempted to initiate an appeal of Myers J.'s October 28, 2025 order by November 1, 2025, within the appeal period. However, it appears from the record that they erroneously brought the appeal to the Divisional Court and were advised by counsel for the Receiver on November 3, 2025 that the proper appeal route was to this Court. It also appears

that the moving parties eventually sent an updated motion for leave to appeal to this Court on December 4, 2025, but that motion for leave to appeal was rejected by the Registrar for having “too many deficiencies with the materials for the court to allow additional changes to fix, serve and refile the materials”.

[6] In the circumstances, the Registrar directed Mr. Wheler to bring a motion for an extension of time, which he ultimately did on December 23, 2025, along with a motion for a stay of the AVO. Both motions are now before me, and for the following reasons, I would dismiss them both.

MOTION 1: EXTENSION OF TIME TO FILE A MOTION FOR LEAVE TO APPEAL

[7] An extension of the ten day timeline in r. 31(1) of the *BIA Rules* may be granted if the presiding judge is satisfied that the justice of the case requires it, after considering relevant factors, including: (1) a *bona fide* intention to appeal during the appeal period; (2) the length and explanation for the delay; (3) prejudice to the responding party; and (4) the merits of the proposed appeal: *Shaver-Kudell Manufacturing Inc. v. Knight Manufacturing Inc.*, 2021 ONCA 202, 88 C.B.R. (6th) 1, at para. 11. I am not satisfied that the moving parties have met their onus of establishing that the justice of the case requires the extension.

[8] As stated, I am satisfied that the moving parties had an intention to appeal within the appeal period. However, both motions they bring are impeded by the fact that Mr. Wheler does not provide affidavit evidence in support of the relevant

factual foundation for either motion, other than an affidavit that was prepared in the proceedings below. As such, the affidavit he provides does not address the factual foundation required to meet the legal tests for an extension or the requested stay of proceedings. The moving parties have therefore failed to provide a persuasive explanation for the delay, which is almost four times longer than the designated appeal period. Instead of providing evidence to justify the delay, Mr. Wheler relies primarily on bald assertions about unspecified errors caused by court staff. This is not a satisfactory explanation.

[9] The delay that has occurred has been prejudicial to the Receiver. This sale could be imperiled because of the delay. Indeed, the APS contains a condition precedent that is breached if an appeal or threatened appeal has been entered that prohibits or restricts the closing. Moreover, the motion judge found that Mr. Wheler's conduct – specifically in making public confidential information about the price the Receiver was prepared to accept and the marketing details about the Property – will prejudice a future bidding process, if the proposed APS does not close and a re-listing becomes necessary. Meanwhile, the Receiver is carrying the ongoing costs of the Property until it is sold. There is ample prejudice caused by the delay.

[10] I also agree with the Receiver that the proposed motion for leave to appeal lacks merit. First, the moving parties would likely require leave to bring this appeal: see *Marshallzehr Group Inc. v. La Pue International Inc.*, 2025 ONCA 124.

Therefore, the test for leave to appeal *BIA* matters is relevant to my consideration of the merits of the appeal, even though I am not deciding a leave motion: see *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at paras. 18-22. Relevant leave considerations include whether the proposed appeal: (1) raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole; (2) is *prima facie* meritorious; and (3) would unduly hinder the progress of the bankruptcy and insolvency proceedings: *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 29.

[11] As is clear from my earlier comments, granting leave would unduly hinder the progress of bankruptcy and insolvency proceedings in this case (consideration #3). In my view, the proposed appeal does not raise issues of general importance in bankruptcy and insolvency law (consideration #1), and it is not meritorious on its face (consideration #2).

[12] The lack of merits in the moving parties' proposed grounds of appeal can best be illustrated by grouping those grounds of appeal into two thematic categories: (a) the unfairness of the process below; and (b) attempts to reargue the motion below by identifying reasons why the sale is not provident, including conflicts of interest affecting the receivership process and irregularities in the valuation and marketing. The category (a) procedural fairness submission focuses primarily on the removal of the moving parties' counsel. The motion record lacks

supporting material or meaningful detail as to why the disqualification of counsel was unfair, which is the material issue. The moving parties also note that this issue is the subject of a separate action, raising concern that this proposed ground of appeal may be duplicative. Meanwhile, the category (b) submissions do not identify any legal errors or palpable and overriding errors of fact and they are not developed with any clarity, despite the moving parties' onus. They simply represent the moving parties' disagreement with the motion judge's conclusions about the providence of the sale, which would be entitled to deference on appeal.

[13] Prejudice to the responding party caused by the delay and lack of merit in the proposed appeal can alone justify dismissing the extension. They do so in this case, in my view, even leaving aside the unsatisfactory explanation for the delay. The motion for an extension is therefore dismissed.

MOTION 2: STAY PENDING APPEAL

[14] It follows that the motion for a stay pending appeal is also dismissed. There is no appeal process before this Court. The jurisdiction of an appeal court to order a stay is provided by r. 63.02(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, and exists where "a motion for leave to appeal has been made" or when "an appeal has been taken". Now that the motion for an extension of time to file the appeal has been dismissed, there is no appeal before this Court (see also r. 63.02(2)).

[15] Even if I had jurisdiction to do so I would have dismissed the motion, as I am not satisfied that this is an appropriate case for ordering a stay. In my view, the moving parties have not raised a serious issue to be decided on appeal. Although the pending sale of the building will put it out of reach, I am not persuaded on this record that this is non-compensable harm. A delay in the sale is prejudicial to the Receiver and creditors, whose loss will not be compensable given the bankrupt estate, therefore the balance of convenience would favor the responding party rather than the moving parties in this case.

[16] The motion for a stay pending appeal is therefore dismissed.

DISPOSITION

[17] Both of the moving parties' motions are dismissed.

[18] Since the Receiver did not request a cost order on the motion, no order will be made.

J.A.