

Court file no. C

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC.

BETWEEN:

AYERSWOOD DEVELOPMENT CORPORATION

Respondent
(APPELLANT)

and

BDO CANADA LIMITED,
as Trustee for the Estate of SIRIUS CONCRETE INC.

Applicant
(RESPONDENT)

NOTICE OF APPEAL

AYERSWOOD DEVELOPMENT CORPORATION APPEALS to the Court of Appeal from the order of The Honourable Justice Jonathon C. George dated 14 December 2020 made at London, Ontario.

THE APPELLANT ASKS that the order be set aside and an order be granted providing directions for the trial of an issue, or proceeding by application, to determine the following issues:

- (a) A determination whether the sum of \$381,578.40 held by the Trustee, which was received by the Trustee in or about the first to the fourth days of March 2019 by way of a cheque issued by Ayerswood Development Corporation (“Ayerswood”), is held by the Trustee in trust in favour of Ayerswood and does not form “property” of the bankrupt Sirius Concrete Inc. pursuant to the *Bankruptcy and Insolvency Act*;
- (b) A determination that to the extent the amount received by the Trustee from Ayerswood for holdback under the *Construction Act* included holdback attributable to the said \$381,578.40 amount, such attributable amount should be repaid by the Trustee to Ayerswood;

THE GROUNDS OF APPEAL are as follows:

- (a) The learned Judge erred by proceeding to decide disputed substantive issues on a motion for directions brought by the Trustee under s. 34(1) of the *Bankruptcy and Insolvency Act*;
- (b) The learned Judge erred by basing his determination on facts not in evidence and generalised assumptions or conclusions unsupported or insufficiently supported by evidence;

- (c) The learned Judge erred in proceeding to determine disputed substantive issues in the absence of an adequate evidentiary record and without affording the opportunity to both Ayerswood and the Trustee to adduce such evidentiary record;
- (d) The learned judge erred in his public policy analysis and analysis of how the *Bankruptcy and Insolvency Act* regime” is supposed to work”.
- (e) The learned judge erred in holding that a trust has not and cannot be established by Ayerswood.

THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS: section 193(c) of the *Bankruptcy and Insolvency Act* as the appeal is from an order in which the property involved in the appeal exceeds in value ten thousand dollars. Leave to appeal is not required.

Dated this 24th day of December 2020.

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CONCRETE INC.

AYERSWOOD DEVELOPMENT CORPORATION
RESPONDENT (APPELLANT)

and

BDO CANADA LIMITED et al
APPLICANT (RESPONDENT)
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COURT OF APPEAL FOR ONTARIO
Proceeding commenced at Toronto

In the Matter of the Bankruptcy of Sirius
Concrete Inc.

NOTICE OF APPEAL

*Name, address, telephone and fax numbers of lawyer or party
(Law Society registration number of lawyer):*

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