

Court of Appeal File No.: _____

Court File No. CV-23-00704623-00CL

**ONTARIO
COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

VECTOR FINANCIAL SERVICES LIMITED

Applicant (Respondent)

- and -

33 HAWARDEN CRESCENT INC. and 35 HAWARDEN CRESCENT INC.

Respondents (Appellants)

NOTICE OF APPEAL

THE APPELLANTS APPEAL to the Ontario Court of Appeal from the Order of the Honorable Justice W.D. Black of the Superior Court of Justice (“**Motion Judge**”) made at Toronto, Ontario dated March 19, 2024 (the “**Order**”), together with the Motion Judge’s order denying the Appellants’ request for an adjournment on March 15, 2024 (the “**Adjournment Order**” and together, the Orders).

THE APPELLANTS ASK that the Orders be set aside, and that an Order be granted as follows:

- a) permitting the Appellants to redeem the Vector Mortgage (defined below);
- b) discharging the Receiver;

- c) awarding the Appellants their costs of the appeal and the proceedings below; and
- d) such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF APPEAL:

1. The Appellants, 33 Hawarden Crescent Inc. and 35 Hawarden Crescent Inc. (collectively the “**Companies**”), respectively own the real properties located at 33 Hawarden Crescent and 35 Hawarden Crescent, both in Toronto, Ontario (collectively the “**Real Property**”).
2. The Real Property was encumbered with two mortgages (the “**Mortgages**”), the first in favour of Vector Financial Services Inc. (“**Vector**” and the “**Vector Mortgage**”) and the second in favour of Rupinder Bamra (“**Bamra**” and the “**Bamra Mortgage**”).
3. The Companies had also raised various funds from a group of individual investors (the “**Investor Group**”).
4. The Companies sought to develop the Real Property, including by severing the Real Property into several lots, for the purpose of maximizing its value. To that end, the Companies filed a severance application with the City of Toronto on or about August 31, 2023. A hearing before the Committee of Adjustments was scheduled to take place November 29, 2023.
5. On October 25, 2023, Vector obtained an order (the “**Receivership Order**”) appointing Pollard & Associates Inc. as receiver (in such capacity, the “**Receiver**”) over the Companies’ assets, undertakings and property, including the Real Property.
6. Following its appointment, the Receiver did not take steps to further the severance application, despite the potential that it would increase the value of the Real Property.
7. The Companies repeatedly advised the Receiver of their intention to redeem the Vector

Mortgage. The Companies sought information regarding the sales process, including the outside date of any transaction, for the purpose of ensuring that they could redeem prior to any sale of the Real Property. The Receiver failed to provide this information.

8. The Receiver entered into an agreement of purchase and sale (the “**Gott APA**”) with Gott Upper Canada Inc. (“**Gott**”). At the time it entered into the Gott APA, Gott was aware of the Companies’ outstanding intention and effort to redeem the Vector Mortgage.

9. The transaction contemplated by the Gott APA (the “**Gott Transaction**”) will result in insufficient proceeds to repay the Vector Mortgage, and will result in the Bamra Mortgage being discharged without any repayment whatsoever.

10. While the Receiver was marketing the Real Property for sale, the Companies sought to secure financing to support their efforts to redeem. As of the date of this notice of appeal, they have secured financing of over \$10 million from various lenders. The Companies will bring a motion to introduce fresh evidence as to the current status of their ability to redeem the Vector Mortgage.

11. In addition, the Companies secured Bamra’s consent, as second mortgagee, to the Companies’ proposed refinancing.

12. The Receiver brought a motion for an approval and vesting order in respect of the Gott Transaction. The motion was scheduled to be heard on March 15, 2024, and the Gott Transaction was scheduled to close on March 26, 2024

13. The Companies opposed the Receiver’s motion and brought their own cross-motion to (a) redeem the Vector Mortgage, and (b) discharge the Receiver.

14. Prior to the hearing, the Companies made a “with prejudice” offer to adjourn the hearing. The Receiver did not accept this offer.

15. At the hearing on March 15, 2024, the Companies sought an adjournment to, amongst other things, carry out cross-examinations on the affidavit filed by the principal of Gott. The Companies proposed that the hearing be adjourned until April 12, 2024, or in the alternative until March 26, 2024, the proposed closing date of the Gott Transaction.

16. The Motion Judge denied the Companies’ adjournment request on March 15, 2024.

17. On March 19, 2024, the Motion Judge released an endorsement granting the Order, which approved the Gott Transaction and dismissed the Companies’ cross-motion.

18. His Honour erred in fact and/or law or, alternatively, in the exercise of his discretion, when he denied the Companies’ adjournment request, granted the approval and vesting order and dismissed the Companies’ cross-motion. His Honour committed reviewable errors in that he:

- a. Erred in failing to properly consider the Companies’ adjournment request and failed to give sufficient reasons in denying the Companies’ adjournment request;
- b. Erred in failing to properly consider appellate authority, as laid out in *Rose-Isli Corp. v. Smith*, 2023 ONCA 548, regarding the balancing analysis of the right to redeem against a receiver’s sales process;
- c. Erred in failing to give proper weight to the fact that redemption should always be preferred when there is no prejudice or evidence of prejudice to the integrity of the sale process and the purchaser will suffer no damages;

- d.* Ignored, misapprehended or gave insufficient weight to the Companies' evidence regarding the value of the Real Property;
 - e.* Ignored, misapprehended or gave insufficient weight to the Companies' ability and/or right to redeem the Real Property;
 - f.* Ignored, misapprehended or gave insufficient weight to the Receiver's failure to advise the Companies of the sale milestones, including the potential prejudice caused by such failure to the Companies and Bamra's interest in the Real Property; and
 - g.* Erred in his application of the *Soundair* principles, in particular by failing to properly consider (i) the effect of the Receiver's failure to communicate sale milestones; (ii) whether the Receiver made sufficient efforts to obtain the best price, and (iii) the economic interests of Bamra and the Investor Group;
19. The Companies have a right of appeal pursuant to sections 193(a), (b) and (c) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("*BIA*");
20. In the alternative, the Companies seek leave to appeal pursuant to section 193(e) of the *BIA*. Leave to appeal should be granted in this case because:
- a.* the points raised are of significance to the proceeding itself, in that the Order has denied the Companies' right to redeem the first mortgage on the Real Property thereby preventing the Companies exit from receivership;
 - b.* the points raised are of general importance to the practice of bankruptcy/insolvency;
 - c.* the proposed appeal is *prima facie* meritorious;

- d. the appeal will not unduly hinder the progress of the receivership proceedings; and
- e. the Order appears to be contrary to law or involves an obvious error, which is highly prejudicial to the Companies, and there is no other remedy.

21. The proposed appeal is not *prima facie* frivolous or vexatious, is not likely to unduly delay the proceedings or to be overcome by them and rendered moot, and is not likely to add unduly or disproportionately to the cost of the proceedings.

22. The Companies will also be bringing a motion to introduce fresh evidence. Such evidence is necessary to deal fairly with the issues raised by the Companies.

THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS:

23. Rule 31(1) of the BIA Rules;

24. In the alternative, the Companies seek leave to appeal, pursuant to Rule 31(2) of the BIA Rules;

25. Sections 183(2) and 193 (a), (b), (c) and (e) of the BIA;

26. Rule 61 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;

27. Section 6(1) and 134 of the *Courts of Justice Act*, R.S.O. 1990, c. C.4; and

28. The Order appealed from is a final order of a Judge of the Superior Court of Justice;

March 25, 2024

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**33 HAWARDEN CRESCENT INC. and 35
HAWARDEN CRESCENT INC.**

Appellant

VECTOR FINANCIAL SERVICES LIMITED

Respondents

ONTARIO

COURT OF APPEAL FOR ONTARIO

NOTICE OF APPEAL

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

VECTOR FINANCIAL SERVICES LIMITED

Applicant/Respondent

- and -

33 HAWARDEN CRESCENT INC. and 35 HAWARDEN CRESCENT INC.

Respondents/Appellants

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