In the Court of Appeal of Alberta

Citation: Servus Credit Union Ltd v 1109079 Alberta Inc, 2026 ABCA 315

Date: 20261002
Docket: 2603-0200AC;
2603-0201AC
Registry: Edmonton

Docket: 2603-0200AC

Between:

Servus Credit Union

Respondent

- and -

MNP Ltd, in its capacity as receiver of the properties, assets and undertakings of 1109079 Alberta Inc

Respondent/Applicant

- and -

1109079 Alberta Inc and Jarnail Singh Sihota

Applicants/Respondents

Docket: 2603-0201AC

And Between:

Servus Credit Union

Respondent

- and -

MNP Ltd, in its capacity as receiver of the properties, assets and undertakings of 1043569 Alberta Ltd

Respondent/Applicant

- and -

1043569 Alberta Ltd and Jarnail Singh Sihota

Applicants/Respondents

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Corrected judgment: A corrigendum was issued on October 2,2026; the corrections have been made to the text and the corrigendum is appended to this judgment.

Reasons for Decision of
The Honourable Justice Kevin Feth

Applications to Strike Appeal

Applications for Permission to Appeal

Applications to Extend Time to Appeal

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Reasons for Decision of
The Honourable Justice Kevin Feth

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Overview

[1] MNP Ltd, in its capacity as the receiver for 1109079 Alberta Inc ("110 Alberta") and 1043569 Alberta Ltd ("104 Alberta"), applies on an urgent basis to strike these appeals because the appellants did not obtain leave to appeal. The appellants deny leave was required and cross-apply for a determination that their appeals may proceed as of right. Alternatively, if leave is required, they apply for leave and an extension of time to seek leave.

[2] The appeals are from Sale Approval and Vesting Orders (SAVOs) approving the sales of two commercial properties. The appellants contend the sales transactions are improvident because the properties are being sold at less than fair market value. Specifically, they assert appraisals and competing offers demonstrate the offers accepted by MNP, and approved by the court below, result in substantial losses to the appellants.

[3] I conclude leave to appeal was not required. The applications to strike are dismissed. The remaining applications need not be considered.

Background

[4] Jarnail Singh Sihota is the sole director and shareholder of 110 Alberta and one of three directors and shareholders of 104 Alberta.

[5] 110 Alberta owns a commercial property known as the Thorncliffe Shopping Centre (the "Thorncliffe Property"). 104 Alberta owns a commercial property known as the Sprucewood Plaza (the "Sprucewood Property").

[6] Servus Credit Union provided financing to 110 Alberta and 104 Alberta. The financing was secured by mortgages against these commercial properties and a personal guarantee provided by Mr Sihota.

[7] Both companies defaulted in repaying their financing. On January 23, 2026, Servus obtained receivership orders appointing MNP Ltd to act as receiver and manager of the properties. The orders authorized MNP "to market any or all the Property, including advertising and soliciting offers in respect of the Property or any parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate". MNP then took steps to market and sell the properties.

[8] On March 18, 2026, MNP listed the properties for sale at $5,250,200 and $12,125,000 respectively. No sales and investment solicitation process was approved by the court and no outside date for the completion of the sales process was communicated to prospective buyers or the appellants.

[9] On June 2, 2026, MNP entered into separate agreements with 2760305 Alberta Ltd to purchase the Sprucewood Property and the Thorncliffe Property (the "Purchase Agreements").

[10] On July 20, 2026, MNP obtained the SAVOs approving the transactions in the Purchase Agreements.

[11] The appellants complain the purchase prices in the approved transactions are much below the properties' appraised values and list prices. They contend MNP accepted offers at "unrealistically low values and without notice to other parties engaged in the process" and refused to consider higher value offers arising after the offers were accepted. They assert the sale "process was unfair, and the transactions are improvident".

[12] Mr Sihota deposes that after the SAVOs were granted, he was made aware of two higher alternative offers made to MNP by Yasser Khan and Sukwinder Shah, respectively. Both offers were made before the SAVOs were granted.

[13] Mr Khan and Mr Shah have provided affidavits addressing their offers. Mr Khan deposes that on June 4, 2026 (2 days after the Purchase Agreement was signed), he submitted an offer to MNP of $4,000,000 for the Sprucewood Property, which remains open. Further, he had communicated his interest in the property and his intention to make an offer well before the Purchase Agreement was signed. Specifically, on May 21, 2026, he communicated to MNP, through a real estate agent, his intention to submit an offer. He had arranged the necessary financing for the transaction. Moreover, beginning on April 23, 2026, Mr Khan's agent communicated on numerous occasions with MNP's agent about the property and MNP's agent acknowledged "lots of interest" in the property.

[14] Mr Shah deposes that on July 7, 2026 (36 days after the Purchase Agreement was signed), he submitted an offer to MNP of $5,000,000 for the Sprucewood Property and $12,000,000 for the Thorncliffe Property. Mr Shah did not communicate with MNP before the sale.

[15] Each Notice of Appeal alleges "the accepted Sale Price is so significantly below the appraised Market Value by the Appraisal obtained by the Receiver, and even much more significantly below the Market value obtained by the Guarantors, as to be unreasonable and unfounded and inequitable, leaving significant liability on the Guarantees".

[16] These appeals were filed by the appellants relying on section 193(c) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*], which provides for an appeal as of right "if the property involved in the appeal exceeds in value ten thousand dollars". If section 193(c) is not applicable, the appellants accept that on these facts, leave is required per section 193(e). The characterization of the appeal is therefore crucial to these applications.

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Positions of the parties

[17] MNP argues the SAVOs are procedural orders that simply addressed the manner of the sales, had no impact on the value of the debtors' properties, and did not result in a loss. Section 193(c) is not engaged merely because the value of the property exceeds $10,000. Rather, the subsection is interpreted narrowly and purposively, and cannot be used to appeal procedural orders, including those determining the methods used to monetize an insolvent person's estate.

[18] MNP adds the Shah offers were not credible but does not comment about the credibility of the Khan offer. MNP suggests both the Shah and Khan offers might have been orchestrated by Mr Sihota, and he might have shared details of the accepted offers in the Purchase Agreements with those prospective buyers, in breach of the Restricted Court Access Orders in the court below and executed confidentiality agreements.

[19] Service Credit Union, as the secured creditor, supports MNP's position that the appellants required leave to appeal and the appeals should be struck.

[20] The appellants agree section 193(c) is interpreted narrowly but contend the SAVOs are more than procedural in nature because they have the effect of selling the properties at improvident prices, resulting in a loss to them. MNP accepted the Purchase Agreements without giving notice to prospective buyers that the marketing process was concluding or providing them with a reasonable opportunity to submit offers. No sales and investment solicitation process had been approved by the court below and no final date for the receipt of offers had been communicated to prospective buyers. As a consequence, MNP executed the Purchase Agreements and sought the SAVOs based on commercially improvident values, all to the prejudice of the appellants. The impact of the SAVOs was substantive, not procedural, and the loss of value in each of the properties exceeds $10,000.

Analysis

<u>The interpretation of s 193(c) is evolving</u>

[21] Canadian case law contains some debate about whether section 193(c) is interpreted "narrowly", "broadly", or somewhere in between. Outside of Ontario, many jurisdictions are moving away from a narrow approach. In my view, a review of the jurisprudence shows that the difference between various approaches is less categorical and pronounced than might be thought, particularly with respect to the key considerations analyzed under section 193(c).

[22] As stated in ***Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd***, 2021 ABCA 66 at para 8 [***Athabasca***], section 193(c) is to be interpreted *purposively* to ensure bankruptcy and insolvency proceedings are administered efficiently and expeditiously.

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[23] In Alberta, the $10,000 statutory threshold is generally understood to be supplemented by three other considerations. The appeal must: a) be from a substantive, not a procedural order; b) involve, in substance, the value of the debtor's property; and c) result in a loss to the appellant: ***Athabasca*** at para 13, relying on ***2403177 Ontario Inc v Bending Lake Iron Group Limited***, 2016 ONCA 225 at para 61 [***Bending Lake***]; ***AdvEn Inc (Re)***, 2026 ABCA 310 at para 23.

[24] The "narrow" interpretation of section 193(c) finds particular support in several Ontario decisions, often expressing concern about the impact of the automatic stay of proceedings in section 195 of the *BIA* and interference with the efforts of a receiver or trustee to efficiently and effectively monetize the debtor's estate: see as examples, ***Bending Lake*** at para 64; ***Enroute Imports Inc (Re)***, 2016 ONCA 247 at para 5; ***Romspen Investment Corporation v Courtice Auto Wreckers Limited***, 2017 ONCA 301 at para 22, leave to appeal to SCC refused, 37636 (8 March 2018); ***Hillmount Capital Inc v Pizale***, 2021 ONCA 364 at para 28 [***Hillmount Capital***]; and more recently in ***2615333 Ontario Inc v Central Park Ajax Developments Phase 1 Inc***, 2026 ONCA 544 at para 31 [***2615333 Ontario***]. A preliminary inquiry into the evidence is undertaken to critically assess the debtor's appeal and prevent undue interference with monetization efforts. The mere fact that a higher offer was tendered may not be sufficient, especially if the offer lacks credibility: ***First National Financial GP Corporation v Golden Dragon HO 10 Inc***, 2019 ONCA 873 at para 23 [***First National***]; ***Downing Street Financial Inc v Harmony Village-Sheppard Inc***, 2017 ONCA 611 at paras 27-36 [***Downing Street***]. Orders characterized as "procedural" are excluded from the scope of section 193(c) because they do not substantively affect the value of the estate and do not cause a material loss to the debtor. An appeal as of right and the resulting stay may unduly interfere with the efforts of the receiver or trustee.

[25] The narrow approach draws on earlier jurisprudence, including decisions of this Court in ***Simonelli v Mackin***, 2003 ABCA 47, ***Elias v Hutchinson***, 1981 ABCA 31, 27 AR 1, and ***Alternative Fuel Systems Inc v EDO (Canada) Limited***, 1997 ABCA 273 [***Alternative Fuel***]. ***Simonelli*** at paragraph 26, for example, concluded that under section 193(c), leave as of right is not available where the "appeal deals with matters that are procedural in nature". More recent decisions of this Court have sometimes referred to the language in section 193(c) being interpreted "narrowly" but without acknowledging any contrary perspective or the precise meaning of that interpretation: ***Athabasca*** at para 8; ***Manitok Energy Inc (Re)***, 2022 ABCA 260 at para 26 [***Manitok***]. One decision of this Court, however, expressed "some doubt" about section 193(c) being "narrowly construed as suggested in several Ontario cases": ***1905393 Alberta Ltd v Servus Credit Union Ltd***, 2019 ABCA 269 at para 26.

[26] Several appellate authorities, including from British Columbia, Saskatchewan, and New Brunswick, have cautioned against an overly narrow approach to section 193(c) or reliance on a categorical approach to the order being appealed: ***Maxfine International Limited v Grant Thornton Limited***, 2024 BCCA 389 at paras 67-68 [***Maxfine***]; ***Crowe Mackay & Company Ltd v 0731431 BC Ltd***, 2022 BCCA 158 at paras 54-55; ***Wong v Luu***, 2013 BCCA 547 at para 23 [***Wong***]; ***MNP Ltd v Wilkes***, 2020 SKCA 66 at paras 45-48, 60-64 [***Wilkes***]; ***Jason Chin Chen***

Liu v Grant Thorton Limited, 2025 NBCA 83 at para 76 [***Jason Chin***]. From this perspective, the right of appeal does not depend on whether the order is characterized as "procedural" or "substantive" in nature but instead, "what was 'at stake' in the appeal as a whole": ***Maxfine*** at para 69. A "broad, generous and wide-reaching" interpretation of the appeal right in section 193(c) is preferred, with the evidentiary bar set low to fall within that section: ***Wong*** at para 23.

[27] The dichotomy in these cases has been called "more illusory than real, more semantic than substantive": ***Hillmount Capital*** at para 45; see also ***Jason Chin*** at para 66. I agree, particularly for what must be assessed under section 193(c).

[28] A purposive interpretation must ensure proceedings are administered efficiently and expeditiously, but the Court's gatekeeping function should not create unnecessary expense, delay, and uncertainty for debtors pursuing appeals. The adverse consequences of an automatic stay can be ameliorated by the receiver or trustee applying to lift or modify the stay based on the debtor's lack of diligence or such other reason as deemed proper, including the best interests of the creditors: *BIA*, s 195(5). Such an application focuses the Court's supervisory function on the merits of the appeal, the relative prejudice to the parties and interested persons, the appellant's litigation conduct, and the interests of justice generally: ***Hillmount Capital*** at para 44. In that way, the inquiry is grounded in evidence and the actual competing interests at stake, rather than a characterization exercise.

A section 193(c) analysis

[29] The real issue under section 193(c) is generally whether "the factual record sufficiently supports the appellants' contention that the value at stake in the appeal, their potential loss if unsuccessful, exceeds $10,000. It is on this point that the two lines of jurisprudence diverge": ***Jason Chin*** at para 35. However, "the practical distinction is particularly limited in circumstances involving a challenge to a receiver's sale of property" because under "both lines of jurisprudence, the focus is on the loss the court approved sale is alleged to have caused the appellants": ***Jason Chin*** at para 38.

[30] While the distinction in the approaches can influence the assessment of the factual record, the inquiry under either approach remains focused on whether the evidentiary record provides sufficiently credible and arguable evidence of a potential loss such that interference with the receiver's monetization efforts is warranted. At this stage, the appellant need not establish the merits on a balance of probabilities. However, the appeal must be more than speculative. The appellant must show "some basis in the evidentiary record" (***Bending Lake*** at para 64) that the order being appealed involves, in substance, the value of the debtor's property and results in a potential loss to the appellant exceeding $10,000. The categorization exercise of procedural versus substantive, in my view, is just an analytical tool to assist with the core inquiry of whether the value of the property involved is substantively affected by the order and the potential loss is at least $10,000. A rigid application of the categorization step is not required.

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[31] The core inquiry requires the Court to critically review the effect of the appealed order, rather than its form: ***MNP Ltd v Skyview Parking and RV Storage Ltd***, 2026 ABCA 91 at para 7 [***Skyview Parking***]. The order must "in substance" be about the property's value: ***Re Bearcat Exploration Ltd (Bankrupt)***, 2003 ABCA 365 at para 10. It "must contain some element of a final determination of the economic interests of a claimant in the debtor": ***Manitok*** at para 30, referring to ***Bending Lake*** at para 61; ***Mantle Materials Group Ltd v Travelers Capital Corp***, 2023 ABCA 339 at para 6 [***Mantle***]; ***Skyview Parking*** at para 6.

[32] The inquiry is fact-specific and evidence-based, and a "mere bald allegation of improvident sale in a notice of appeal" is not sufficient: ***Bending Lake*** at para 64; ***Jason Chin*** at para 66. The appeal "must relate to a clear difference in value between the order under appeal and evidence in the record that a debtor could have obtained a higher value": ***2615333 Ontario*** at para 34. The loss must have "crystalized", rather than being speculative or a "mere possibility of a future loss": ***Mantle*** at para 7. More than "speculative evidence" is required: ***2615333 Ontario*** at para 43. The loss should be assessed through a "substantive assessment of competing offers" rather than a "mere comparison of formal prices": ***Downing Street*** at para 28. Section 193(c) "requires a court to analyze the economic effect of the order sought to be appealed": ***Hillmount Capital*** at para 41.

[33] Approval of the choice of method by which a receiver or trustee realizes an estate's assets is not, in substance, about the value of a property: ***Skyview Parking*** at paras 7-8; ***Alternative Fuel*** at para 11; ***Bending Lake*** at para 54; ***Re Harmon International Industries Inc***, 2020 SKCA 95 at paras 30-35. A decision that "merely approves a process for the sale of property by a receiver, with any resulting offer/sale still subject to court approval", does not involve property within the meaning of section 193(c): ***Jason Chin*** at para 33. Conversely, an order that is not only about the procedure used to sell an asset, but also whether the asset should have been sold for a specific amount will generally engage section 193(c): ***Wilkes*** at para 72.

[34] With these principles in mind, I turn to the facts in these applications.

Is this an appeal under s 193(c) of the *BIA*?

[35] On the record before me, the distinction between the two approaches (narrow or broad) does not alter the outcome of these applications. My analysis therefore addresses the three considerations described in ***Athabasca*** at para 13.

a) Are the SAVOs strictly procedural in nature?

[36] MNP submits the SAVOs determined the "sale processes" were "fair and appropriate", and that the factors described in ***Royal Bank of Canada v Soundair Corp***, 1991 CanLII 2727 (ON CA) were satisfied. The SAVOs were procedural and did not finally determine economic interests.

[37] I respectfully disagree. An appeal regarding a sale approval and vesting order is not necessarily procedural: ***Manitok*** at para 29. MNP's authority to market and sell the properties was

determined by the receivership orders granted months before the SAVOs were issued. The SAVOs did not determine the choice of the method of sale. The substantive effect of the SAVOs was to approve specific transactions at specific sale prices for each of the properties. As noted earlier, the approval of a sale for a specific amount is generally substantive: ***Wilkes*** at para 72. The SAVOs made a "final determination" of the values at which the properties are monetized.

b) Do the SAVOs, in substance, involve the value of the debtors' property?

[38] The SAVOs are substantively concerned with the values of the debtors' properties. The effect is to determine the realized values of the properties and approve the transfers to the purchaser at those values. While the appellants also complain the "process was unfair", the focus of the appeals is that the transactions approved by the SAVOs are improvident because the realized values of the debtors' properties are significantly below fair market value and each difference exceeds $10,000.

c) Does each SAVO result in a loss to the appellants exceeding $10,000?

[39] MNP argues the appellants have not demonstrated a loss because the evidentiary record is deficient, the competing offers lack credibility, and the alleged losses are therefore speculative. In particular, MNP contends the appraised value of a property is "not evidence of a loss", relying on comments in ***2615333 Ontario*** at para 35 and ***First National*** at para 18.

[40] I find the potential losses are more than speculative. The combination of the appraisals and the competing offers demonstrate facially credible and arguable losses.

[41] ***2615333 Ontario*** and ***First National*** do not state that an appraisal is never evidence of a loss. However, an appraisal can be viewed as insufficient evidence because an abstract prediction or estimate of fair market value might not reflect the reality of the marketplace. A fact-specific inquiry might demand competing offers.

[42] The appellants have presented evidence of competing offers. A substantive assessment of those offers suggests that much higher realizable values are arguably available.

[43] MNP submits the offers are not credible. For Mr Shah's offers, MNP's counsel argues the deposits are "entirely out of proportion to the purchase price offered", relying on comments in ***First National***. In that case, a downpayment deposit was found to be out of proportion to the tendered purchase price and not credible. That deposit represented a higher percentage of the total purchase price than the deposits in this case. However, in ***First National***, the size of the deposit was only one of multiple factors leading to a finding the offer was not credible. No universal benchmark was suggested for the size of deposits in other cases. Here, MNP's receiver/manager deposes to reviewing the Shah Affidavit, which contains the offers. The receiver/manager does not opine the offers lack credibility or are commercially unsound. No substantive analysis is undertaken to show the Shah offers are not significantly better than the transactions approved by

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the SAVOs. On the available evidence, after examining the contents of the offers, the Shah offers seem to provide much higher realizable values with no materially greater commercial risk.

[44] MNP argues the Shah offers are suspect because Mr Shah and his broker never contacted MNP or presented MNP with those offers. However, Mr Shah deposes he signed his offers on July 7, 2026, and instructed his broker to deliver them to MNP's broker. The appellants maintain the offers were delivered because MNP's broker responded with a text message on July 7th stating the "2 properties have accepted offers in place, but thanks for your interest". Despite that message, Mr Shah delivered a letter of intention to his broker dated July 17, 2026, for delivery to MNP's broker, confirming he remained "willing and able to close the purchase agreements, which were originally signed on July 7, 2026". The appellants assert that if MNP did not receive the offers, the fault does not rest with Mr Shah. Moreover, while MNP speculates Mr Shah did not conduct due diligence, no compelling evidence is before this Court suggesting he did not have the necessary information to prepare his offers or would not attempt to close the contemplated purchases. MNP's arguments do not persuade me the Shah offers are not facially credible.

[45] For Mr Khan's offer, the receiver/manager has reviewed the offer for the Sprucewood Property but provides no substantive analysis to show it is not significantly better than the transaction approved by the SAVO. On the available evidence, this offer seems to contemplate a much higher realizable value with no materially greater commercial risk. The offer is also facially credible.

[46] MNP raises concerns about the possibility the Shah and Khan offers are not credible because Mr Sihota might have improperly shared confidential information with those prospective buyers. However, that argument is largely speculative based on weak circumstantial evidence. The credibility of the offers is not impugned at this stage of these appeals.

[47] MNP also notes the Shah and Khan offers were not before the chambers judge who granted the SAVOs. However, the current inquiry is whether there is "some basis in the evidentiary record" for the appellants' assertion the realized values of the debtors' properties approved by the SAVOs are significantly below fair market value, resulting in potential losses exceeding $10,000. The competing offers provide some evidence of the fair market value, even if not presented to the chambers judge.

[48] Finally, the SAVOs were not interlocutory. They made final determinations of the realized values for the properties and therefore crystalized the potential losses.

[49] I find these appeals are from substantive orders, which in substance involve the value of the debtors' properties and result in potential losses to the appellants exceeding $10,000 for each property. Section 193(c) is engaged and leave is not required.

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Conclusion

[50] The applications to strike the appeals are dismissed. The applications for declarations the appeals engage section 193(c) of the *BIA* are granted, and, accordingly, the remaining applications will not be considered.

[51] The appellants confirmed before me they are prepared to schedule an early date for the hearing of these appeals. The parties are encouraged to do so.

Application heard on September 9, 2026

Reasons filed at Edmonton, Alberta
this 2nd day of October, 2026

Feth J.A.

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Appearances:

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for the Appellants

T. Gusa
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R. Trainer
for the Respondent MNP Ltd.

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Corrigendum of the Reasons for Decision of
The Honourable Justice Kevin Feth

The first sentence of paragraph 50 has been corrected to read: “The applications to strike the appeals are dismissed”.

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