

Estate No. 31-2590450
Court File No. 31-2590450

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
BARRYMORE FURNITURE CO. LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

BOOK OF AUTHORITIES
(Motion returnable January 21, 2020)

January 20, 2020

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its capacity as the trustee in bankruptcy
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Ltd.**

TO: Service List

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INDEX

1. *National Capital Region, Ottawa Rough Riders Professional Football Club Ltd., Re*, (1995) 31 C.B.R. (3d) 136 (Ont. Bkcty.) (WL).
2. Houlden & Morawetz Bankruptcy and Insolvency Analysis, C§54(2) (WL).

TAB 1

1995 CarswellOnt 56
Ontario Court of Justice (General Division), In Bankruptcy

National Capital Region, Ottawa Rough Riders Professional Football Club Ltd., Re

1995 CarswellOnt 56, 31 C.B.R. (3d) 136

Re BANKRUPTCY OF THE NATIONAL CAPITAL REGION OTTAWA ROUGH RIDERS PROFESSIONAL FOOTBALL CLUB LIMITED, A BODY CORPORATE, HAVING ITS HEAD OFFICE IN THE CITY OF OTTAWA IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, PROVINCE OF ONTARIO

Chadwick Sr. J.

Judgment: March 15, 1995
Docket: Doc. Ottawa 33-077195

Counsel: *P. Kane* , for Ottawa Rough Riders Football Club Ltd.
M. Halpin , for International Travel Agency.
P. Rimer , for H. Chen (in trust).

Related Abridgment Classifications

Bankruptcy and insolvency

XIV Administration of estate

XIV.6 Sale of assets

XIV.6.a Sales of asset subject to charge, mortgage, or hypothec

Headnote

Bankruptcy --- Administration of estate — Sale of assets — Sales of asset subject to charge, mortgage, or hypothec

When proposed sale compared with liquidation, sale being in best interests of unsecured creditors and making good business sense.

A professional football club made an assignment in bankruptcy in March 1995. Before the first meeting of creditors, the trustee brought a motion seeking court approval of the sale of the assets of the club. Because of various commitments related to television and radio coverage, team schedules, staff and personnel, players' contracts and division schedules the motion was brought on short notice. The proposed purchaser had indicated that if the sale did not proceed by a certain date, he would not complete it. Only one unsecured creditor, a travel agency owed more than \$200,000, opposed the proposed sale.

Held:

The motion was granted.

The opposing creditor did not put forth a different proposal. All it was doing was attacking the trustee's proposal; the only alternative to that proposal was a total liquidation of the club. Liquidation would significantly decrease the value of the assets. When compared with the prospect of liquidation, the proposed sale made good business sense and was found to be in the best interest of the unsecured creditors.

Table of Authorities

Cases considered:

Katz, Re (1991), 6 C.B.R. (3d) 211 (Ont. Bkcty.) — referred to

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 —

s. 18

s. 19

Chadwick Sr. J. (orally):

1 Deloitte and Touche are the trustees of the estate of the Nation Capital Region, Ottawa Rough Riders Professional Football Club Limited. The company hereinafter referred to as the Ottawa Rough Riders made an assignment in bankruptcy on the 10th day of March, 1995.

2 The first meeting of creditors is scheduled for March 31st, 1995.

3 The trustee has brought this motion on short notice seeking an order of the Court approving the sale of the assets of the Ottawa Rough Riders to a company to be incorporated by Horn Chen, an American businessman.

4 In support of the application are filed the affidavits of David J. Boddy, Senior Vice-President of Deloitte Touche and Larry W. Smith, Commissioner of the Canadian Football League.

5 At the request of one of the unsecured creditors, International Travel Agency Limited, I allowed Mr. Boddy and Mr. Smith to be cross-examined on their affidavits, by way of viva voce evidence, yesterday.

6 From the statement of affairs filed and based upon the evidence before me, it appears the creditors are owed in excess of \$4,000,000.

7 The assets of the Ottawa Rough Riders have been appraised and are shown as a low of \$153,000 to a high of \$251,000. It has been suggested by the trustee that the purpose of this application and completion of the sale assets should be valued at the averaged price of \$235,000. This appears to be reasonable under all of the circumstances.

8 There is more to the proposed sale than just the sale of the assets. Under the terms of the franchise agreement between the Ottawa Rough Riders and the Constitution of the Canadian Football League, player contracts formerly held by the Ottawa Rough Riders have been re-assigned to the Canadian Football League. It is proposed if the purchase and sale is approved these contracts will be re-assigned to the company incorporated by Horn Chen. If the sale is not approved, then these contracts will be dispersed amongst all of the Canadian Football League teams. I am satisfied on the evidence of Mr. Smith, the player contracts have very little value in that whoever takes over the contracts, will have the obligation of paying the salaries.

9 There are over 300 creditors shown on the statement of affairs. Creditors are in the various classifications with some having statutory priority over others. There are secured creditors but the vast number of creditors are unsecured. Due to the urgency of this situation, the trustee found it impossible to serve all of the unsecured creditors with notice of this application. The trustee served eight of the larger creditors and a number appeared at the original hearing on Monday, March 13th, 1995.

10 This application has received a great deal of media attention. Notwithstanding the media attention, no other unsecured creditors, other than International Travel Agency, have expressed opposition to the proposed sale.

11 International Travel Agency Limited is one of the larger unsecured creditors. Mr. Halpin, counsel for the creditor, filed an affidavit of Joseph Saab, President of the company, in which he states his company is owed over \$200,000 for outstanding travel accounts for the Ottawa Rough Riders. In his affidavit he also described promises that were made by various individuals associated with the Ottawa Rough Riders for payment of this account. I can understand the frustration and anger of Mr. Saab. He has dealt with the Ottawa Rough Riders in good faith and now stands to lose a considerable amount of money.

12 Mr. Halpin, on behalf of the unsecured creditor International Travel Agency Limited has opposed the sale on a number of grounds. Some of these grounds are the technical interpretation of the *Bankruptcy and Insolvency Act* and others relate to the merits of the sale.

13 On the return of the motion on Monday, March 13th, 1995, Mr. Halpin objected to the motion proceeding on such short notice as he did not have an opportunity to consider the affidavit material in detail nor the right to cross-examine the deponents

of the affidavit. As such, I granted Mr. Halpin an adjournment until Tuesday, March 14th, 1995, in order that he could properly consider the material and also cross-examine the deponents by way of viva voce evidence.

14 The trustee, Mr. Boddy and the Commissioner of the Canadian Football League, Larry Smith testified that this application is not being fast tracked in order to avoid the matter being put before the creditors' meeting on March 31st, 1995, but because of an urgent timing problem.

15 Commissioner Smith testified as to the preparation of the schedules for the 1995 football season and what was required in order to meet the commitments. These commitments relate to television and radio coverage, team schedules, staff and personnel, players' contracts and division schedules. In addition, the proposed purchaser Horn Chen has also indicated that if the transaction is not completed by March 16th, 1995, he will not proceed with the purchase. Based upon the Canadian Football League scheduled meeting of March 18th, 1995 and the purchaser's deadline of March the 16th, 1995, I am satisfied this is an urgent situation and must be dealt with at the present time.

16 The normal procedure would be for the creditors to appoint their inspectors at the first meeting of creditors and for the trustee to present the proposed purchase and sale to the creditors and the inspectors for their approval. Unfortunately this cannot be done and the trustee has moved pursuant to ss. 18 and 19 of the *Bankruptcy and Insolvency Act* on the basis that this is an urgent situation and further the property will depreciate rapidly in value if the transaction is not completed.

17 Section 19 of the *Bankruptcy and Insolvency Act* provides that the trustee may prior to the first meeting of creditors obtain such legal advice and take such court proceedings as he may consider necessary for the recovery or protection of the bankrupt.

18 Mr. Halpin challenges the trustee's right to bring this application on the basis that the assets which are part of the bankrupt company are chattels which will not depreciate in value whether this sale proceeds or not.

19 Mr. Halpin also urges the Court to only look at this transaction in relation to the bankrupt company and to put aside the effects that the refusal to approve the sale will have upon the 1995 football season in Ottawa.

20 I agree with Mr. Halpin that the matter for consideration before the Court is the bankrupt company and what the effects of the sale will be upon the creditors of the bankrupt estate. In considering this matter the Court has to determine whether the sale would be in the best interest of all of the creditors of the bankrupt company.

21 There have been major revisions made to the *Bankruptcy and Insolvency Act* in 1992. The *Bankruptcy and Insolvency Act* has been described as a commercial statute and one that should not be subject to a narrow interpretation by courts. It has often been described as the businessman's statute and as such the courts should pay attention to business decisions which make good business sense.

22 In considering ss. 18 and 19, I have attempted to use a common sense approach to the interpretation of these sections. Considering this application by the trustee, I must take into consideration the other transactions involving the Canadian Football League and other creditors who are either secured or have priority interest by statute. These transactions are confirmed in a settlement agreement and the Canadian Football League membership agreement, which were filed as Exhibits. In my view, the transaction cannot be looked at only by a review of the agreement of purchase and sale but all of these other agreements must be taken into consideration in deciding whether the proposal makes good business sense.

23 It has also been argued by Mr. Halpin, on behalf of the unsecured creditor, this matter should be adjourned until March 31st, 1995, in order that all of the unsecured creditors will have an opportunity of voicing their opinions and views relating to the proposed sale. I am satisfied based upon the able cross-examination of Mr. Halpin of Commissioner Smith and Mr. Boddy and Mr. Halpin's submissions, there is very little any other unsecured creditor could add to these proceedings.

24 This is not a situation where the unsecured creditor is putting forward a different proposal from that of the trustee. The unsecured creditor is attacking the proposal put forward by the trustee and the only alternative to the proposed purchase and sale is a total liquidation of the company.

25 The assets of the bankrupt company have value as long as they are sold in conjunction with the settlement agreement and the Canadian Football League membership agreement. If they are sold separately by liquidation then their value will depreciate significantly.

26 I am satisfied the application by the trustee falls within the provisions of ss. 18 and 19 of the *Bankruptcy and Insolvency Act* and that this Court has jurisdiction to proceed with the application.

27 I am also satisfied by the evidence of Commissioner Smith that he, John Torry and Bruce Firestone, the former principal of the bankrupt company, have been attempting since December 1994, to obtain a purchaser for the assets of the bankrupt company and the Ottawa franchise.

28 Mr. Smith went into detail as to the prospective purchasers and the results of their negotiations. Mr. Smith indicated only those purchasers who could write a cheque were considered as viable and potential purchasers. It is Mr. Smith's evidence that there are no other potential purchasers in North America that are going to come forward to purchase this franchise or the assets of the bankrupt company.

29 The unsecured creditors are naive if they think at this late date a potential purchaser is going to ride into Ottawa and rescue this bankrupt company and the franchise by paying all of the unsecured creditors one hundred cents on the dollar, \$3,000,000 for the franchise, which is the normal franchise fee, and provide an operation line of \$7,000,000 U.S.

30 It has been argued on behalf of the unsecured creditors that the trustee, Mr. Boddy, has failed to fulfill his statutory obligations as required under the *Bankruptcy and Insolvency Act*. These duties and responsibilities have been accurately described by Farley J., in *Re Katz* (1991), 6 C.B.R. (3d) 211 (Ont. Bkcty.).

31 Mr. Boddy was cross-examined as to what efforts he has made to obtain a new purchaser. Mr. Boddy has not taken any independent action, but has relied upon Commissioner Smith and his people to seek out any potential purchaser.

32 Commissioner Smith has thoroughly canvassed all potential purchasers. Under these circumstances there is no requirement for the trustee to spend time and money to pursue other imaginary purchasers.

33 I am satisfied the trustee has acted properly.

34 Having concluded that there are only two options namely, the Horn Chen purchase or liquidation, I must then review the transaction and compare it with liquidation to see if it makes good business sense and is in the best interest of the unsecured creditors.

35 The decision would be easier if the proposed distribution to the unsecured creditors was higher than the paltry sum of fourteen cents on the dollar. The comparative distribution by way of liquidation appears to range from zero to 4.5 cents on the dollar. The distribution of course hinges upon amounts in the proof of claims that are filed and the total amounts recovered from the sale of assets.

36 The proposed purchase price offered by Horn Chen is \$1,250,000. The analysis of the sale can be broken down as follows:

37 Com/mit Leasing (Secured Creditor)

\$65,000

City of Ottawa (Frank Clair Stadium)

\$85,000

Tristan (A lien claimant)

\$125,000

Canadian Football League Franchise Fee

\$350,000

Payments under settlement agreement

\$346,000

Purchase price under purchase agreement

\$279,000

Of this amount, the only amount coming into the bankrupt estate at this time is approximately \$279,000.

38 It has been suggested on behalf of the unsecured creditor, that if I approve the sale, that I should require the Canadian Football League to pay the franchise fee into court, subject to any claim that may be made against the Canadian Football League by the creditors. I am not prepared to do that, in view of the fact that both the franchise agreement and the settlement agreement, are agreements with independent third parties and do not involve the bankrupt company. As such I do not see these agreements being in contravention or breach of the provisions of the *Bankruptcy and Insolvency Act* .

39 During the 1994 season, the Ottawa Football Club promoted the sale of 1995 season tickets. Approximately \$618,304 was paid to the Ottawa Rough Riders for 1995 season tickets. On cross-examination, Mr. Boddy indicated these moneys are no longer available to creditors as they have been spent by the Ottawa Rough Riders to meet 1994 expenses which is in contravention of the Canadian Football League constitution.

40 There was a second ticket drive to sell 1995 tickets which entitled a drive to save the Ottawa Rough Riders. This was coordinated by the Canadian Football League and in advertisements, it was clearly set out that all moneys collected from the sale of the 1995 tickets would be put in a Canadian Football League trust account managed by the league.

41 As a result of this drive, approximately \$450,000 has been placed in a trust account under the control of the Canadian Football League. In addition, there is another approximately \$8,000 which is being held by the Osler Hoskin law firm, in trust, for some of the 1995 subscribers.

42 Mr. Halpin has requested that I require these moneys to be paid into court subject to a determination by the unsecured creditors as to their rights to these funds.

43 I am satisfied by the evidence of Commissioner Smith that the moneys currently being held by the Canadian Football League in the amount of some \$450,000 are clearly trust moneys, for the purpose of providing those named subscribers with 1995 season tickets. Pursuant to the settlement agreement between the Canadian Football League and Horn Chen, Mr. Chen has an obligation to provide the subscribers with these tickets. Moneys will be held by the Canadian Football League until August 15th, 1995, to make sure that he conforms with his contractual obligations. If the sale is not approved then the moneys will go to each of the individual subscribers. This also holds true for the moneys held by Osler Hoskin. Those season's subscribers who have paid the \$618,000 in the early part of 1994 will only stand to be unsecured creditors if the transaction is not approved. In view of the fairly low distribution, if there is a liquidation, these subscribers would stand to lose just about all their money.

44 Horn Chen under the minutes of settlement has agreed to provide all of these subscribers with season's tickets notwithstanding the \$618,000 having been spent by the bankrupt company.

45 I am satisfied the trust is sufficient to protect the interests of the season's subscribers and that there is no need for these moneys to be paid into court. They are not an asset of the bankrupt company. If during the course of this bankruptcy, there is further development and Mr. Chen is not honouring his contractual obligations pursuant to the settlement agreement, then it is

open to any of the creditors or trustee to make a further application to this Court. Sponsors have also paid approximately \$350,000 to the bankrupt company for their sponsorship of the 1995 season. These moneys have also been dissipated by the Ottawa Rough Riders. Pursuant to the terms of the settlement agreement, Mr. Chen has agreed to honour those sponsors' contracts.

46 The settlement agreement also provides that Bruce Firestone, one of the principal shareholders of the bankrupt company will have no claim against the bankrupt company. This potential claim could amount to some \$951,000 including a secured creditor's claim of \$286,000.

47 The settlement agreement also provides that Revenue Canada and Revenue Ontario receive full payment of the priority claims.

48 The purchaser has also agreed to satisfy the existing liability of the Corporation of the City of Ottawa under a lease at Frank Clair's Stadium to the extent of \$85,000. Settlement of the Tristan Construction Limited lien of \$125,000 has been indicated to be settled for \$40,000.

49 There is a potential asset of the Ogden Entertainment Services and the purchaser has agreed to pursue this claim on behalf of the unsecured creditors and that 75 per cent of any recovery will go to the unsecured creditors and 25 per cent to Horn Chen.

50 All of the matters covered in the settlement agreement could not take place if there was a liquidation. In fact, if there was a liquidation, all of these creditors with the various secured interests and priorities would claim in the bankrupt estate which would dilute the estate further and affect the final distribution to the unsecured creditors.

51 Based upon all the evidence before me, I am satisfied that the proposed sale to Horn Chen is in the best interest of the unsecured creditors. Although I would like to see the unsecured creditors obtain more money by way of distribution, it does not appear to be possible. I am also satisfied there is no better deal to be had, that liquidation would result in very little if any recovery by the unsecured creditors.

52 On that basis, I approve the sale to Horn Chen, or a company to be incorporated on his behalf.

Motion granted.

TAB 2

HMANALY C§54
Houlden & Morawetz Analysis C§54

Bankruptcy and Insolvency Law of Canada, 4th Edition

THE BANKRUPTCY AND INSOLVENCY ACT

Administrative Officials (s. 30)

L.W. Houlden and Geoffrey B. Morawetz

C§54 — Sale of Assets

C§54 — Sale of Assets

See s. [30](#)

For sale of assets to inspectors see *post*, C§67 “Sale of Assets to Inspectors”; and for sale of assets to trustees and to estate solicitors see C§68 “Sale of Assets to Trustee or Estate Solicitor”.

(2) — Approval of Inspectors

The basic rule is that the trustee cannot sell assets without the permission of the inspectors: *Jones v. McClean* (1931), 12 C.B.R. 238, [1931] 1 W.W.R. 315, 39 Man. R. 321, [1931] 2 D.L.R. 244 (C.A.); *Johnstone Fabricators Ltd. v. Canadian Credit Men's Trust Assn.* (1964), 7 C.B.R. (N.S.) 22, 47 W.W.R. 513 (B.C. S.C.); *Re MacKenzie* (1998), 4 C.B.R. (4th) 314, 1998 CarswellAlta 201 (Alta. Q.B.).

Section 30(3) of the *BIA* specifies that in the absence of inspectors, the trustee can act unilaterally so that an estate is not left in limbo when inspectors are not appointed, but the trustee must obtain court approval before selling or disposing of the bankrupt's property to a person who is related to the bankrupt: s. 30(4).

The trustee with the permission of the inspectors can sell the assets in whatever manner it believes will achieve the best result for the bankrupt estate, but the rules and procedure must be clearly defined and disclosed so that the bankrupt, the creditors, potential purchasers, and third parties will know what rules and procedure are being followed in the sale of the assets: *Re Godin* (1993), 26 C.B.R. (3d) 311, 59 Q.A.C. 317, 1993 CarswellQue 48 (C.S. Que.).

Even though the inspectors approve the sale, the trustee must still exercise appropriate skill and demonstrate good faith. It is the trustee who sells and the inspectors who permit the sale; the inspectors cannot require a sale on their terms: *Re Katz* (1991), 6 C.B.R. (3d) 211, 1991 CarswellOnt 192 (Ont. Gen. Div.); *Re Keppoch Development Ltd.* (1992), 15 C.B.R. (3d) 228, 1992 CarswellNS 52 (N.S. T.D.).

Where a trustee obtained the approval of non-conflicted inspectors to put out a call for tenders with respect to sale of interest in an action commenced by the bankrupt before bankruptcy proceedings, the court authorized the sale, finding that the trustee's tendering process was appropriate and the bankrupt did not object to the tender process at the time: *Re Geler* (2005), 2005 CarswellOnt 2094, 12 C.B.R. (5th) 15 (Ont. S.C.J.).

In *Sally Creek*, the court noted that the inspectors were aware that the tender recommended by the trustee was lower than the face value of the objecting tenderer's bid and of other relevant facts prior to approving the sale for the lower amount: *Re Sally Creek Environs Corp.* (2003), 2003 CarswellOnt 2458, 45 C.B.R. (4th) 140 (Ont. S.C.J.).

If it is in the best interests of the bankrupt estate, the court has the power, prior to the first meeting of creditors and the appointment of inspectors, to authorize the sale of assets: *Re Thornton Davidson & Co.* (1920), 1 C.B.R. 380 at 383 (Que. S.C.); *Re Eastern Paper Co.* (1923), 3 C.B.R. 722 (Que. S.C.); *Re Beauty Counsellors of Can. Ltd.* (1986), 58 C.B.R. (N.S.) 235, affirmed (1986), 58 C.B.R. (N.S.) 237 (Ont. S.C.); *Re National Capital Region, Ottawa Rough Riders Professional Football Club Ltd.* (1995), 31 C.B.R. (3d) 136, 1995 CarswellOnt 56 (Ont. Gen. Div.). The court approved a sale prior to the first meeting of creditors where various preferred and secured creditors had agreed to compromise their claims and the sale resulted in employees of the bankrupt maintaining their employment: *Re Near North Health Care Ltd.* (1998), 5 C.B.R. (4th) 249, 1998 CarswellOnt 4146 (Ont. Gen. Div.).

If a sale of assets is made prior to the appointment of inspectors and no court order is obtained, the sale will be void and the trustee will be liable in damages to the purchaser: *Johnstone Fabricators Ltd. v. Canadian Credit Men's Trust Assn.* (1964), 7 C.B.R. (N.S.) 22, 47 W.W.R. 513 (B.C. S.C.).

Prior to the enactment of the 1949 Act, there was considerable doubt about the power of the court to instruct the trustee to sell without the permission of the inspectors, as the power to give directions was limited to directions not inconsistent with the Act: *Re Feldman* (1931), 13 C.B.R. 95, affirmed 13 C.B.R. 313 (Ont. C.A.); *Re AMCA Mines Ltd.* (1938), 20 C.B.R. 1 (Ont. S.C.). The phrase "not inconsistent with the Act" is not in the present s. 34, and by reason of this change and the addition of s. 119(2) to the Act, the court now has the power to instruct the trustee to sell without the permission of the inspectors if it is in the best interests of the bankrupt estate: *Re Alasco Supply Co.* (1965), 8 C.B.R. (N.S.) 188 (Que. S.C.); *Re Tounissidis (Trustee of)* (1985), 61 C.B.R. (N.S.) 273 (Que. S.C.) as noted above.

If the inspectors refuse to approve an offer for the sale of assets, the court will not overrule the decision of the inspectors in the absence of evidence of fraud or bad faith: *Re Rizzo & Rizzo Shoes Ltd.* (1998), 107 O.A.C. 288, 38 O.R. (3d) 280, 4 C.B.R. (4th) 102, 1998 CarswellOnt 528 (C.A.).

Where there were not resources in the estate to conduct the bankrupt's interest in a lawsuit and non-conflicted inspectors approved a tender and sale process, the court held that it will show deference to the business decision of the trustee and the non-conflicted inspectors of the bankrupt's estate to sell the action to the defendant purchasers where: (a) the estate of the bankrupt has no material resources to conduct the litigation and no creditors of the estate are interested in taking an assignment of the action pursuant to s. 38 of the *BIA*; (b) the tender process is conducted in a reasonable and competent manner; (c) the bankrupt did not object to the tender process and participated therein; and (d) the bankrupt had the opportunity to demonstrate to third parties the merits and strengths of the action and seek outside support for a bid. It is not improper for a party that is a defendant

in a lawsuit to bid on the lawsuit as a way of eliminating the lawsuit since it is a legitimate business consideration to resolve a lawsuit for the least cost: *Re Krzysztof Stanislaw Geler* (2005), 12 C.B.R. (5th) 15, 2005 CarswellOnt 2094 (Ont. S.C.J.).

The Nova Scotia Supreme Court [In Chambers] approved the sale of assets of the bankrupt, notwithstanding the pending appeal of the bankruptcy order made by the registrar. There was no statutory stay of the bankruptcy order pending the appeal to the Nova Scotia Supreme Court. The court reviewed the factual background and concluded that the sale was in the best interest of the creditors, both secured and unsecured. The registrar was correct when it determined the proper value of the property and determined that the best return for the unsecured creditors would be attained by the sale: *Royal Bank v. LaHave Equipment Ltd.* (2007), 2007 CarswellINS 518, 2007 NSSC 329, 38 C.B.R. (5th) 32 (N.S. S.C. [In Chambers]).

The Ontario Superior Court of Justice dismissed a motion by a bankrupt's mother for an order setting aside a sale of shares. The court held that while there was no effective resolution from the inspectors approving the sale, given that the approval was sought without a meeting, the trustee did exercise reasonable judgment when selling the assets of the estate. The court exercised its discretion under s. 37 of the *BIA* to confirm the trustee's sale of shares, finding that a majority of the inspectors was prepared to sell the shares; none of the three inspectors who signed the resolution had filed an affidavit indicating a change of mind; and neither of the two inspectors who had failed to sign the resolution approving the sale had filed an affidavit objecting to the sale. On appeal, the Court of Appeal held that it was unnecessary to determine whether a meeting of the inspectors was a prerequisite as the motion judge had a discretion under s. 37 to approve the sale of the shares: *Mimarco Investments Ltd. v. Edgecastle Holdings Inc.* (2009), 2009 CarswellOnt 3664 (Ont. S.C.J.), affirmed (2009), 2009 CarswellOnt 7644 (Ont. C.A.).

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY & INSOLVENCY)
[COMMERCIAL LIST]**

Proceedings commenced at Toronto

**BOOK OF AUTHORITIES OF THE
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