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CASE SUMMARY: THE FEDERAL BANKRUPTCY AND INSOLVENCY ACT GOVERNS APPLICATIONS FOR LEAVE TO SUE WHERE A RECEIVER IS APPOINTED UNDER BOTH THAT LEGISLATION AND THE PROVINCIAL COURTS OF JUSTICE ACT

Administrative law – Judicial review – Appeals – Jurisdiction – Standard of review – Correctness

Business Development Bank of Canada v. Astoria Organic Matters Ltd., [2019] O.J. No. 1742, 2019 ONCA 269, Ontario Court of Appeal, April 8, 2019, K.N. Feldman, D. Paciocco and B. Zarnett JJ.A.

Astoria filed for bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”). A receiver was appointed. The receivership order included a “leave to sue” provision, requiring written consent of the receiver or leave of the court to commence or continue proceedings against the receiver.

SunGlobal, who acquired assets in a transaction with the receiver, sought permission to sue the receiver under the terms of the receivership order.

SunGlobal’s application for leave was refused. It sought an appeal of that decision. The notice of appeal was timely under the provincial *Courts of Justice Act*, R.S.O. 1990, c. C. 43 (the “CJA”), which provided for a 30-day time limit, but was late under the BIA, which provided for a 10-day time limit. The issue was the proper appeal route.

The Court of Appeal held the question of the proper appeal route turned on whether the leave to sue provision was included in the receivership order pursuant to jurisdiction flowing from the BIA.

The Court concluded the leave to sue provision was authorized by statutory authority under the BIA. It did not matter that the provision is or could also be grounded in powers under the CJA to appoint a receiver. As long as the BIA is one of the sources that authorizes the leave to sue provision, an appeal from an order made under it necessarily implicates the BIA. As a result, the doctrine of paramountcy will prevent the appellant from resorting to the CJA, as the appeal provisions there are in operational conflict with those under the BIA. For that reason, SunGlobal was required to follow the BIA appeal route.

The appeal was dismissed.

This case was digested by [Joel A. Morris](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Joel A. Morris at jmorris@harpergrey.com.