

Court File No.

COURT OF APPEAL FOR ONTARIO

**IN THE MATTER OF AN APPLICATION UNDER SECTION 116(1) 6
OF THE *SOCIAL HOUSING REFORM ACT, 2000, S.O. 2000, c. 27***

AND SECTION 101 OF THE *COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43*

B E T W E E N:

THE REGIONAL MUNICIPALITY OF YORK

Applicant
(Respondent in Appeal)

and

**THORNHILL GREEN CO-OPERATIVE HOMES INC. and
CO-OPERATIVE HOUSING FEDERATION OF CANADA**

Respondents
(Appellants)

NOTICE OF APPEAL

THE APPELLANTS, THORNHILL GREEN CO-OPERATIVE HOMES INC.

(“THORNHILL GREEN CO-OP” or the “CO-OP”) and the CO-OPERATIVE

HOUSING FEDERATION OF CANADA (“CHF CANADA”) APPEAL to the Court

of Appeal from the Order of the Honourable Mr. Justice Morawetz dated July 16, 2009

made at Toronto, Ontario.

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

1. An Order dismissing the motion dated May 15, 2008 brought by the Receiver and Manager of the Co-op, Mintz & Partners Limited, (the “Receiver/Manager”) that sought various relief, including:

- (a) a sale of all of the Co-op’s assets to the Regional Municipality of York’s wholly owned subsidiary, Housing York Inc.; and
- (b) termination of the Co-op members’ various statutory co-operative residency rights and putting in place instead only a landlord/tenant relationship with Housing York Inc. under the *Residential Tenancies Act, 2006*;

(collectively, the “Sale Motion”);

2. The Appellants’ costs of:

- (a) this appeal on a substantial indemnity basis;
- (b) the Sale Motion below on a substantial indemnity basis; and
- (c) the related Divisional Court costs fixed at \$20,000 inclusive of all fees, disbursements, and GST;

together with post-judgment interest thereon pursuant to s. 129 of the *Courts of Justice Act*; and

3. Such further and other relief as counsel may request and that seems just to this Honourable Court.

THE GROUNDS OF APPEAL are as follows:

1. The Moving Parties appeal part of the decision of the Honourable Mr. Justice Morawetz (the “Motions Judge”) dated July 16, 2009.
2. In that decision, the learned Motions Judge granted the Receiver/Manager’s motion to sell all of the assets (including 101 homes) of a non-profit housing co-operative, Thornhill Green Co-op, to Housing York Inc., a wholly owned subsidiary of the Respondent in Appeal, the Regional Municipality of York (the “Region” or the “Service Manager”). The Appellants respectfully submit that the learned Motions Judge made reviewable errors, in law and in the exercise of the Honourable Court’s discretion, in granting the Sale Motion, and the Appellants accordingly appeal to this Honourable Court from this final decision.
3. This appeal is fundamentally about the principles and considerations applicable (in law and in the exercise of discretion) to receiverships in the case of statutorily authorized non-profit housing co-operatives. This is a novel area of law.
4. Thornhill Green Co-op is one of hundreds of “non-profit housing co-operatives” in Ontario, specifically defined and established as a specialized form of

government-assisted housing under the provincial *Co-operative Corporations Act*.¹ Such co-ops provide special democratic and long-term residency rights (as set out in that *Act*) to tens of thousands of co-op members and their families in Ontario (totaling over 100,000 individuals). The value of real estate and housing property owned by such statutory non-profit co-op corporations in Ontario and dedicated to social housing totals in the billions of dollars.

5. The Honourable Motions Judge stated that “[i]t is acknowledged that the circumstances surrounding a potential remedy of sale in the context of a social housing complex, is arguably quite different than a remedy of sale in respect of an operating business ...”, and that “[i]t is clear that certain of the issues involved in this receivership are unique to the fact that this matter involves a rental housing project that is part of the social housing network in the Region.”

6. The Applicants respectfully state that despite the general recognition of the unique situation of this case, the learned Motions Judge erred (in law or in a reviewable exercise of discretion) in approving the sale of all of Thornhill Green Co-op’s assets to the Region/Service Manager:
 - (a) in finding that the Co-op’s net equity in the real estate and housing owned by the Co-op, amounting to millions of dollars, is only “phantom” equity, and erred in failing to apply the provisions of the *Co-operative Corporations Act* which protect the assets owned by a non-profit housing co-operative;

- (b) in finding that the statutory residency rights of the members and families residing in the Co-op under the *Co-operative Corporations Act* were “the same or similar to” the residency rights under *The Residential Tenancies Act, 2006*² which the residents would have after the sale;
- (c) in finding that, in this case, there is a “conflict” between the *Social Housing Reform Act, 2000*³ and the *Co-operative Corporations Act*, or that, in this case, those *Acts* (or their regulations) are “contrary” to each other, rather than finding that the two statutes are compatible in this case (including not needing to resort to the sale of the Co-op’s assets);
- (d) in failing to take into account or give effect to the previous decision of the Divisional Court in this matter, which found that the Region/Service Manager, in its support for, and insistence on, the sale, without any notice to or consultation with the Co-op, had breached its duty of procedural fairness to the Co-op;
- (e) in failing to take into account the Receiver/Manager’s failure to consult with the Co-op, in any way whatsoever, during the Receiver/Manager’s consideration of the issue of sale of the Co-op;

¹ R.S.O. 1990, c. C.35 (as amended).

² S.O. 2006, c. 17 (as amended).

³ S.O. 2000, c. 27 (as amended).

- (f) in failing to take into account the conflict of interest position of the Region/Service Manager, as both the initiator and advocate for the sale, and the beneficiary of the sale;
 - (g) in failing to take into consideration the fact that key financial issues in the past were beyond the control of the Co-op, the present improved financial status of the Co-op, and the managerial solutions available for the future, all of which together eliminate the alleged need for a sale;
 - (h) in failing to take into account that the Receiver/Manager was appointed for management purposes, and there has been no reason to change the fundamental purpose of the receivership from management to sale.
7. For the reference of this Honourable Court, the learned Motions Judge in the same decision also dismissed a motion by the Appellants to remove the Receiver/Manager's power to sell any or all of the Co-op's assets (except in the ordinary course of business). However, given the nature of this part of the decision, any appeal regarding this issue requires leave of the Divisional Court. Accordingly, this Notice of Appeal only focuses on the part of the decision regarding the Sale Motion.
8. The Appellants rely on the *Co-operative Corporations Act* and the *Social Housing Reform Act, 2000*.

9. Such further and other grounds as counsel may submit and this Honourable Court accepts.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 6(1)(b);
2. This appeal is from a final order of a judge of the Superior Court of Justice, and no appeal lies to the Divisional Court from this final order; and
3. Leave to appeal is not required for this appeal.

August 17, 2009

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