

COURT OF APPEAL FOR ONTARIO

CITATION: Business Development Bank of Canada v. Aventura II Properties  
Inc., 2016 ONCA 408  
DATE: 20160526  
DOCKET: M46447 (C61854)

Feldman, Rouleau and Huscroft J.J.A.

BETWEEN

Business Development Bank of Canada

Applicant

and

Aventura II Properties Inc., Pavilion Sports Clubs Inc. Pavilion Sports Ice Inc.,  
Pavilion Sports Food and Beverage Inc.,  
and Pavilion Aquatic Club Inc.

Respondents

Sean N. Zeitz, for the moving parties, Revital Druckmann and Jean-Jacques  
Myara

Catherine Francis, for the respondent, Duca Financial Services Credit Union Ltd.

Kelli Preston, for the respondent, Receiver, Pollard & Associates Inc.

Heard and released orally: May 17, 2016

ENDORSEMENT

[1] The moving party seeks a review of the order of van Rensburg J.A. dated April 22, 2016, which denied leave to appeal to Ms. Druckmann under s. 193(e) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 and which ordered Mr. Myara to pay security for costs of the appeal. Counsel for the moving parties

advised the court that Mr. Myara relies on the grounds of appeal asserted by Ms. Druckmann.

[2] The first issue is whether this court has jurisdiction to review a decision of a single judge granting or denying leave to appeal under s. 193(e) of the *BIA*.

[3] We agree with the respondents that this court does not have jurisdiction to review the order. We apply the decision of this court in *R. v. Scherba*, 2001 CanLII 4208 (ON CA) where the court held that there is no right of review of a decision of a single judge to grant or deny leave under s. 839(1) of the *Criminal Code of Canada*, R.S.C. 1985, c. C-46. The court based its decision on two grounds: the first was that the *Criminal Appeal Rules*, S.I./93-169, do not provide for such an appeal. The *BIA* also does not provide for such an appeal.

[4] The second ground was that s. 7(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, which gives a panel of the court the authority to review a decision of a single judge, does not apply to a leave motion, which must be decided by a panel. The analysis in the second ground applies equally to this case. We add that having heard full submissions, we would not have granted leave.

[5] The motion for leave is therefore dismissed. Counsel advised that if leave is not granted to Ms. Druckmann, then Mr. Myara does not intend to post security for costs, the motion for review of that order may be dismissed, and the appeal should be quashed. So ordered.

[6] Costs to each of the respondents on the partial indemnity scale: to Duca Financial Services Credit in the amount of \$15,699.44; to the Receiver in the amount of \$13,700.00 in fees, plus \$375.27 in disbursements. The liability for costs will be joint and several to the two moving parties.

*K. Kelly J.A.*

*Paula London J.A.*

*Gregory J. Hunt J.A.*