

COURT OF APPEAL FOR ONTARIO

RE: IN THE MATTER OF S. 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O., 1990, c. c.43, AS AMENDED AND IN THE MATTER OF SECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.1985, c. B-3, AS AMENDED

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant
(Respondent in appeal)

- and -

**NORTHERN CAPITAL CITADEL INC., ONE8ONE DAVENPORT INC., and
181 DAVENPORT RETAIL INC.**

Respondent
(Appellant)

NOTICE OF APPEAL

THE APPELLANT, 181 DAVENPORT RETAIL INC., appeals to the Court of Appeal from the order of Chief Justice Morawetz dated January 19, 2023, reported at 2023 ONSC 37.

THE APPEAL WILL BE HEARD:

- In person
- By telephone conference
- By video conference

THE APPELLANT ASKS that the order be set aside and the application for a court-appointed Receiver and Manager of all of the current and future assets of 81 Retail pursuant to

section 243(1) of the *Bankruptcy and Insolvency Act* R.S.C.1985, c. B-3 (*BLA*) and section 101 of the *Courts of Justice Act* be set aside.

THE GROUNDS OF APPEAL are as follows:

1. By Order of the Superior Court dated April 30, 2021, Pricewaterhousecoopers Inc. (“PwC”) was appointed as the Receiver of Bridging Finance Inc. (“BFI”) pursuant to section 129 of the *Securities Act*, upon application by the Ontario Securities Commission.
2. BFI, as agent on behalf of the Bridging Income Fund LP, made available to Northern Capital Citadel Inc. (“NCCI”) a non-revolving term credit facility, in an initial amount of \$16 million to finance a condominium development known as the Davenport Project. The parties entered into a Loan Agreement for that purpose.
3. In 2016, the principal of NCCI approached BFI for financing in relation to a separate project: the development of a mixed-use skyscraper at Bloor and Yonge known as the One Project. The funds were for (a) the improvement of a retail unit within the Davenport Project to be used as a sales office for the One Project; and (b) the purchase by another corporation, 2495159 Ontario Inc. (“249”), of a real property at 14 Dundonald Street to be dedicated to the City of Toronto as parklands in connection with the One Project (the “Bloor-Related Financing”).
4. BFI insisted that to advance funds for the Bloor-Related Financing, it would amend the Loan Agreement related to the Davenport Project. BFI entered into an amending agreement with the Parties to the Loan Agreement, as well as new parties including Mizrahi Inc., 249, and 181 Davenport Inc. under which BFI advanced \$6,556,5000 for

the Bloor Related Financing. BFI obtained security over the 181 Davenport Inc. and the Dundonald Property for the Bloor-Related Financing.

5. In 2020, 249 transferred the Dundonald Property to the City of Toronto. To effect that transfer, 249 and 181 Retail Inc. repaid the outstanding loan relating to the Bloor Related Financing. The security over the Dundonald Property was discharged. However, as a result of the intervening appointment of PwC as the Receiver over BFI, counsel for BFI did not discharge the security over 181 Retail Inc.
6. The Superior Court erred in appointing a Receiver over 181 Retail Inc.
 - a. The Court erred in finding that the Loan Agreement was unambiguous. The Court should have interpreted the Loan Agreement in accordance with the surrounding circumstances, in particular, that the amendments to the Loan Agreement must be interpreted with the purpose underlying the Bloor-Related Financing. The Court erred in concluding that the evidence of Mr. Mizrahi and Mr. Sharpe, as principals of the parties to the Loan Agreement, are not admissible to interpret the terms of the Loan Agreement.
 - b. The Court erred in finding that there was no agreement by BFI to discharge the collateral mortgage upon the repayment of the Bloor-Related Financing. The principals of each of the parties to the Loan Agreement were *ad idem* that the Bloor-Related Financing had been repaid and that the security should have been discharged.

- c. The Court erred in not finding that the security provided by 181 Davenport Inc. should have been discharged and that 181 Davenport Inc. was released as a guarantor.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Sections 183(1.1) and 193 of the *BIA*.
2. Section 6(1)(b) of the *Courts of Justice Act*.

January 30, 2023

HENEIN HUTCHISON ROBITAILLE LLP
235 King Street East
Toronto, ON M5A 1J9

Tel: (416) 368-5000

Scott C. Hutchison (LSO: 29912J)
shutchison@hhllp.ca

Ewa Krajewska (LSO: 57704D)
ekrajewska@hhllp.ca

David Postel (LSO: 78102E)
dpostel@hhllp.ca
Lawyers for the Appellants

TO: Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
3200 - 100 Wellington Street West
Toronto, ON M5K 1K7

Tel: (416) 304-1616

John L. Finnigan (LSO# 24040L)
jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
adriedger@tgf.ca

Lawyers for the Applicants (Respondent in appeal), PricewaterhouseCoopers Inc., in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds

AND TO: PRICEWATERHOUSE COOPERS INC.

18 York Street, Suite 2600
Toronto, ON M5J 0B2

Tel: (416) 687-8200

Greg Prince
gregory.n.prince@pwc.com

Michael McTaggart
michael.mctaggart@pwc.com

Christine Sinclair
christine.l.sinclair@pwc.com

Tyler Ray
tyler.ray@pwc.com

Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds

AND TO: KEB HANA BANK

627 Bloor Street West
Toronto, ON M6G 1K8

Tel: (416) 227-5570

Theo Ikonomou
t.ikonomou@hanafn.com

PPSA registrant with respect to 181 Davenport Retail Inc.

PRICEWATERHOUSECOOPERS INC.
Respondent

-and-

NORTHERN CITADEL CAPITAL INC., et al.
Appellants

Court File No. _____
Superior Court File No. CV-22-00685200-00CL

COURT OF APPEAL FOR ONTARIO
PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPEAL

HENEIN HUTCHISON ROBITAILLE LLP

235 King Street East
Toronto, Ontario M5A 1J9

Tel: (416) 368-5000

Scott C. Hutchison (LSO: 29912J)
shutchison@hhllp.ca

Ewa Krajewska (LSO: 57704D)
ekrajewska@hhllp.ca

David Postel (LSO: 78102E)
dpostel@hhllp.ca

Lawyers for the Appellants