

COURT OF APPEAL FOR ONTARIO

CITATION: Libfeld v. Libfeld, 2026 ONCA 343  
DATE: 20260511  
DOCKET: M56696, M56697, M56773, M56798  
(COA-25-CV-1593 & COA-25-CV-1597)

Thorburn, Favreau and Wilson JJ.A.

DOCKET: M56696 & M56798 (COA-25-CV-1593)

BETWEEN

Mark Libfeld, 1331081 Ontario Inc., 2091170 Ontario Inc. and Vitanna  
Construction Ltd.

Applicants (Appellants)

and

Sheldon Libfeld, Corey Libfeld, Jay Libfeld, Shelfran Investments Ltd. and  
Viewmark Homes Ltd., and their respective affiliates and subsidiaries as set out  
on Schedule "A" to the Notice of Application

Respondents (Respondents)

AND BETWEEN

Sheldon Libfeld, 1331088 Ontario Inc., Corey Libfeld, 1331078 Ontario Inc., Jay  
Libfeld and 1331091 Ontario Inc.

Applicants (Respondents)

and

Mark Libfeld\*, 1331081 Ontario Inc.\*, Edith Lorraine Libfeld and the Conservatory  
Group Companies (as listed in Schedule A)

Respondents (Appellants\*/Respondents)

DOCKET: M56697 & M56773 (COA-25-CV-1597)

AND BETWEEN

Mark Libfeld, 1331081 Ontario Inc., 2091170 Ontario Inc. and Vitanna  
Construction Ltd.

Applicants (Respondents)

and

Sheldon Libfeld, Corey Libfeld\*, Jay Libfeld, Shelfran Investments Ltd. and  
Viewmark Homes Ltd., and their respective affiliates and subsidiaries as set out  
on Schedule "A" to the Notice of Application

Respondents (Appellants\*/Respondents)

AND BETWEEN

Sheldon Libfeld, 1331088 Ontario Inc., Corey Libfeld\*, 1331078 Ontario Inc.\*,  
Jay Libfeld and 1331091 Ontario Inc.

Applicants (Appellants\*/Respondents)

and

Mark Libfeld\*, 1331081 Ontario Inc.\*, Edith Lorraine Libfeld and the Conservatory  
Group Companies (as listed in Schedule A)

Respondents (Respondents)

Harvey Chaiton and Darren Marr, for the moving party (M56773 and M56798),  
court-appointed Sales Officer, Ernst & Young Inc.

Emilio Bisceglia, Sonja Turajlich and Battista Frino, for the moving parties (M56696  
and M56697), Durban Properties Inc. and Sentinel Land Corporation

Peter H. Griffin and Eli S. Lederman, for the responding parties (M56696, M56697, M56773, M56798), Mark Libfeld, 1331081 Ontario Inc., 2091170 Ontario Inc. and Vitanna Construction Ltd.

Michael Barrack, Junior Sirivar, Liam Kelley, Spencer Livingstone and Julia Schabas, for the responding parties (M56696, M56697, M56773, M56798), Corey Libfeld and 1331078 Ontario Inc.

David Chernos, Adam Zur and Julia D'Silva, for the responding parties (M56696, M56697, M56773, M56798), Sheldon Libfeld and 1331088 Ontario Inc.

Gary Luftspring and Andrea Sanche, for the responding parties (M56696, M56697, M56773, M56798), Jay Libfeld and 1331091 Ontario Inc.

Heard: March 25, 2026

**Thorburn J.A.:**

**A. OVERVIEW**

[1] The moving parties, Durban Properties Inc. and Sentinel Land Corporation (together “DG Group”), and Ernst & Young Inc. (the “Sales Officer”) have brought motions to quash Corey and Mark Libfeld’s appeals of the order of Conway J. dated November 24, 2025 (the “Raki Order”). These motions are supported by Jay and Sheldon Libfeld, who have each submitted supporting responding factums. Together, DG Group, the Sales Officer, and Jay and Sheldon Libfeld are referred to as the “Moving Parties”.

[2] The Moving Parties claim the Raki Order is interlocutory, and as such, the appeals should not be heard by this court, but rather by the Divisional Court with leave.

[3] Corey and Mark Libfeld oppose the motions to quash.

[4] At the time of the hearing, we advised the parties that the motions were granted and the appeals would be quashed. In our view, the Raki Order is interlocutory and should be appealed to the Divisional Court with leave. The parties were advised that reasons would follow. These are those reasons.

## **B. BACKGROUND**

### **I. The Parties**

[5] These appeals involve a dispute among four brothers: Mark, Corey, Sheldon, and Jay Libfeld. The brothers, or their holding companies, are each beneficial owners of 25% of a complex real estate business called The Conservatory Group (“Conservatory”).

[6] Conservatory’s principal business is residential land development and home building. It is involved in raw land acquisition, land use planning, design, site servicing, home building, and property management.

[7] Conservatory is made up of over 520 distinct entities, including corporations, joint ventures, partnerships, trusts, and co-tenancies. Each of the Libfeld brothers has an effective 25% beneficial ownership interest in the assets of Conservatory (subject to minority and fractional interests in certain assets owned by others, including their mother, Edith Libfeld).

[8] Conservatory's activities include large residential development projects known as the Richview and Raki Projects (the "Projects"). The Projects are among the most valuable assets in Conservatory's portfolio.

[9] Arpeggio Homes Inc. ("Arpeggio") and Hayward Estate Homes Inc. ("Hayward") are corporations which hold Conservatory's 40% interest in the Richview and Raki Projects. Each of Mark, Corey, Jay and Sheldon owns a 25% interest in Arpeggio and Hayward through their holding companies.

[10] DG Group owns the remaining 60% interest in both Projects.

## **II. The Trial Judgment**

[11] A six-week trial was held before McEwen J. to wind up Conservatory in light of a breakdown in the brothers' relationship. In reasons for judgment dated June 30, 2021, the trial judge noted that the brothers have had many personal and professional conflicts. He characterized their relationship as one of "extreme dysfunction" and held that, given the level of animosity among the brothers, "their interests must be separated quickly and cleanly with minimal input from them": *Libfeld v. Libfeld*, 2021 ONSC 4670, at paras. 15, 429, aff'd in part, rev'd in part, 2023 ONCA 128, 166 O.R. (3d) 655, leave to appeal refused, [2023] S.C.C.A No. 162.<sup>1</sup> He further held that, given the "cataclysmic decline" in their relationship, the

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<sup>1</sup> After ordering the wind-up and sale of Conservatory, the trial judge included a certification provision which required the brothers to provide written certification of their compliance with the Judgment and a Data Room Order. This provision was challenged on appeal. This court agreed that the vague certification requirement

“only viable remedy” was for Conservatory to be wound up and sold under the supervision of the court-appointed Sales Officer (the “Sale Process”): at para. 43.

[12] In his judgment dated October 25, 2021 (the “Judgment”), the trial judge ordered that “The Conservatory Group, and all direct and indirect corporate, partnership and other entities that make it up, including the entities listed in Schedule “A” to the Judgment be wound up and sold.” The hundreds of entities listed in Schedule “A” to the judgment included Arpegio and Hayward.

[13] The Libfeld Brothers were permitted to participate and bid in the Sales Process.

[14] In ordering the Sale Process, the trial judge cited s. 207 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the “OBCA”), and s. 35(1)(f) of the *Partnerships Act*, R.S.O. 1990, c. P.5.

[15] The Judgment further provides, at para. 26, that “the Sales Officer may from time to time apply to [the Superior Court] for advice and directions with respect to, without limitation, the expansion and/or discharge of its powers and duties hereunder.”

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risked ongoing contempt disputes in an already acrimonious setting and allowed the appeal solely to strike that provision from the Judgment.

### **III. The Sale Process Order**

[16] On March 16, 2023, McEwen J. approved the Sale Process as described by the Sales Officer in its first report (the “Sale Process Order”). He ordered that “the Sales Officer is hereby authorized and directed to take such steps as it considers necessary to conduct the Sale Process” proposed in the first report. This was done to maximize the value of Conservatory’s assets.

[17] DG Group participated on the motion for approval of the Sale Process. It sought to lift the stay of proceedings to determine whether there had been a default that would allow them to exercise their rights under their agreements with Conservatory. McEwen J. dismissed DG Group’s objections as premature, though he held that “the dismissal of their objections is without prejudice to their ability to raise them again at a later date.”

[18] Sheldon and Jay sought to appeal the Sale Process Order to this court. This court quashed the appeal finding that the Sale Process Order was interlocutory and therefore appealable to the Divisional Court, with leave: *Libfeld v. Libfeld*, 2023 ONCA 442, at paras. 3-4.

### **IV. Discussions Regarding the Raki Lands Owned by DG Group and Conservatory**

[19] The Libfeld brothers and DG Group could not agree on a path forward to develop and sell the Project lands.

[20] In light of the Projects' ownership structure, the Projects could only be marketed as Conservatory's minority interests, which was unlikely to maximize value. In 2022, the Sales Officer (on behalf of Conservatory) began discussions with DG Group regarding a process to partition the lots and separate DG Group's 60% interest and Conservatory's 40% interest in the Projects. After several years of negotiations, they agreed to convert the developable land into saleable lots pursuant to their joint proposal (the "First Proposal"). The First Proposal seeks to convert the assets to be sold in the Sale Process as interests in the land rather than minority interests in a limited partnership and co-tenancy.

[21] On October 1, 2025, the Sales Officer and DG Group reached an agreement in principle in respect of the Raki and Richview lands. The terms were soon finalized in a series of formal agreements (the "Raki First Agreements").

[22] DG Group brought a motion to the Superior Court seeking the approval of the Raki First Agreements and requiring the parties to take all necessary steps to implement the First Proposal. This motion, which resulted in the Raki Order, received support from the Sales Officer, Sheldon, and Jay.

[23] Mark and Corey objected to the proposed Raki Order on the basis that the First Proposal amends the terms of existing agreements and that the Sales Officer did not have the authority to impose new agreements on the brothers' holding companies.

## V. The Order Under Appeal

[24] On November 24, 2025, Conway J. granted the motion and issued the Raki Order. She allowed the Sales Officer's request for an order authorizing and directing it to enter into the Raki First Agreements on behalf of Arpegio and Hayward and to take "all necessary steps" to complete the First Proposal. The motion judge held that the Judgment and the Sale Process Order gave her jurisdiction to issue the Raki Order as the mechanism is "integrally related to the [Sale Process] so that [Conservatory] can obtain the lots to market and sell in that process".

[25] The motion judge noted that the Judgment and the Sale Process Order are broadly worded and contemplate further orders of the court regarding the Sale Process. She cited paragraphs 4, 8(m) and 26 of the Judgment, which read as follows:

4. THIS COURT ORDERS that [the Sales Officer] is hereby appointed sales officer as an officer of the Court ... for the purpose of winding up [Conservatory's] businesses and affairs and selling the Property (as defined below) and distributing the net proceeds subject to further Order of the Court.

...

8(m). THIS COURT ORDERS that the Sales Officer is hereby authorized and empowered to: [...] perform such other duties as are required to carry out the terms of this Order or as may be required by this Court from time to time.

...

26. THIS COURT ORDERS that the Sales Officer may from time to time apply to this Court for advice and directions with respect to, without limitation, the expansion and/or discharge of its powers and duties hereunder.

[26] She also held that the Superior Court's original jurisdiction stemmed from s. 207 of the *OBCA* and s. 35 of the *Partnerships Act*. She reasoned as follows:

Mark and Corey argue that this court's jurisdiction to make further orders under s. 207(2) [of the *OBCA*] was spent once Justice McEwen issued the Judgment following the trial of the underlying applications. I disagree. Paragraph 26 of the Judgment expressly reserves the ability of the Sales Officer to seek further orders from the court, either to expand its powers and/or to discharge its powers and duties on the wind-up. The Judgment acknowledges that the sale process will be an ongoing one and that further court orders will be required during that process. It preserves the jurisdiction of this court under s. 207(2) to make further orders as it sees fit to carry out the wind-up of [Conservatory].

...

I do not accept Mark and Corey's submission that in negotiating the Raki First Proposal, the Sales Officer engaged in management or tax planning of the business contrary to the Judgment. Rather, the steps taken by the Sales Officer are integrally related to the sale process so that [Conservatory] can obtain the lots to market and sell in that process. This is distinguishable from the decision of Justice Steele dated June 19, 2024 dismissing Sheldon's motion to implement a tax plan for [Conservatory] that was unrelated to the sale process. In that case, and unlike here, the Sales Officer did not take

a position or make any recommendation on the motion.  
[Emphasis added]

[27] The motion judge approved the Raki Order finding that the Sales Officer acted within its mandate:

[T]he Sales Officer has acted squarely within its mandate in negotiating the Raki First Proposal. This court appointed the Sales Officer to wind-up and sell the assets of [Conservatory], including those of Arpegio and Hayward. The Sales Officer's role is to market the assets and maximize the realization of those assets for the benefit of the Libfeld brothers. The Sales Officer must preserve the integrity of the sales process. The Sales Officer must do all of this with minimal involvement from the Libfeld brothers.

[28] In sum, she held that “[t]he Judgment and the Sales Process Order empower the Sales Officer to implement the Raki First Proposal so that the lots in both projects can be obtained by [Conservatory] and marketed in the sale process”. Should the existing powers prove insufficient, the motion judge expanded the powers of the Sales Officer to do so pursuant to s. 207(2) of the *OBCA*. She expressly made “any such order pursuant to court’s statutory jurisdiction under the *OBCA*, not the court’s inherent jurisdiction”.

[29] On December 1 and 8, 2025, the responding parties, Corey and Mark Libfeld and their holding corporations, appealed the motion judge’s Raki Order to this court.

### **C. THE POSITIONS OF THE PARTIES**

[30] The Moving Parties seek to quash Corey and Mark's appeals to this court. The Moving Parties take the position that (i) the Raki Order is interlocutory and therefore appealable to the Divisional Court with leave and, in the alternative, (ii) the Raki Order was made pursuant to s. 207 of the *OBCA* and is therefore appealable to the Divisional Court under s. 255 of the *OBCA*.

[31] The Moving Parties rely on this court's 2023 ruling that the Sale Process Order was "clearly interlocutory" as it was the mechanism by which the remedies ordered by the trial judge are to be implemented. Therefore, according to the Moving Parties, the Raki Order must also be interlocutory because it is the means by which Conservatory and DG Group will separate and each receive marketable title to the Projects in the Sale Process.

[32] The responding parties submit that their appeals are appeals of a final order which should be brought before this court, not the Divisional Court. They claim that the motion judge, recognizing that she had no inherent jurisdiction to make the order sought, relied upon the Judgment and the Sale Process Order to authorize the Sales Officer to effectively restructure existing agreements with third parties, something which neither the Judgment nor the Sale Process Order embraced. According to the responding parties, the Judgment provides no grounds to approve the restructuring of a limited partnership and co-tenancy under the *OBCA* as they are not corporations. Here, DG Group, a non-party, moved to seek the

determination of substantive rights to obtain relief that never could have occurred in the proceedings between the brothers, such that the Raki Order is final.

[33] The responding parties further claim that s. 255 of the *OBCA*, which directs appeals from orders made under the Act to the Divisional Court, does not apply. The responding parties maintain that the Raki Order was not made pursuant to the *OBCA* because the motion judge exceeded her jurisdiction in relying on s. 207 of the Act.

## **D. ANALYSIS**

### **I. The Raki Order Is Interlocutory**

[34] This court's jurisdiction to hear appeals from a final order of a judge of the Superior Court is set out in ss. 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Interlocutory orders, by contrast, are appealed to the Divisional Court.

[35] In *Hendrickson v. Kallio*, [1932] O.R. 675 (C.A.), at p. 678, this court defined an interlocutory order as follows:

[A]n order which does not determine the real matter in dispute between the parties – the very subject matter of the litigation, but only some matter collateral. It may be final in the sense that it determines the very question raised by the applications, but it is interlocutory if the merits of the case remain to be determined.

[36] This court more recently held that, in determining whether an order is final or interlocutory, “one must examine the terms of the order, the motion judge’s

reasons for the order, the nature of the proceedings giving rise to the order, and other contextual factors that may inform the nature of the order”: *Prescott & Russell (United Counties) v. David S. Laflamme Construction Inc.*, 2018 ONCA 495, 142 O.R. (3d) 317, at para. 7; see also *Paulpillai Estate v. Yusuf*, 2020 ONCA 655, at para 16.

[37] In *Gefen v. Gefen*, 2021 ONSC 6497, 72 E.T.R. (4th) 59, at para. 23, the Divisional Court held that the sale process orders made in that case were interlocutory as:

The Orders do not finally dispose of the issues in the estate proceeding. Because the sale is subject to the approval and supervision of the court, with the distribution of the proceeds to be determined at a later date, the Orders do not affect the substantive rights of the parties to the litigation. The Orders do not affect the Appellants’ claims to the net proceeds of the sale .... As a result, the Orders are interlocutory.

See also *Kauffman v. Fazari*, 2020 ONSC 7358, 70 C.P.C. (8th) 210.

[38] Finally, the Sales Officer relies on this court’s decisions in *Rickwood et al. v. The Town of Aylmer et al.*, [1955] O.R. 470 (C.A.) and *Duffy v. Duffy*, 2025 ONCA 507, 19 R.F.L. (9th) 67, to support its position that such post-judgment orders are interlocutory. In *Duffy*, at para. 9, this court held that:

The mere fact that an order determines “an issue” that is in dispute does not make such an order “final” for purposes of the [*Courts of Justice Act*] ... Moreover, orders that merely resolve issues arising in the

implementation or enforcement of a final order have been deemed to be interlocutory, since they are collateral to the substantive rights of the parties. [Citations omitted.]

[39] The responding parties claim, however, that the Raki Order is final because the issue before the motion judge was “whether new commercial agreements should be imposed on the parties” and “there is no future proceeding in which this will be revisited”. They argue the decisions in *Gefen* and *Kauffman* are distinguishable as they do not involve situations that will affect third parties. They claim that the Raki Order will replace existing contractual rights and obligations freely negotiated between Conservatory and DG Group, despite the objections of 50% of Conservatory’s ownership.

[40] The responding parties rely on *Smerchanski v. Lewis* (1980), 30 O.R. (2d) 370 (C.A.), in which this court found that the underlying decisions quashing subpoenas were final. In that case, third-party witnesses were subpoenaed to give evidence in a trial to which they were not parties.

[41] However, in *Royal Trust Corporation v. Fisherman* (2001), 55 O.R. (3d) 794 (C.A.), at para. 16, this court clarified that *Smerchanski* does not create a general rule that all orders directed to a non-party must be final:

When given its broadest interpretation, the principle in [*Smerchanski*] does not fit comfortably with the general test for determining whether an order is interlocutory or final ... *Smerchanski* was not intended to mean that all orders directed to a non-party must be final, and the principle expressed therein should not be further

expanded in that way. [Emphasis added. Citations omitted.]

[42] Moreover, this case is distinguishable from *P1 v. XYZ School*, 2021 ONCA 901, 160 O.R. (3d) 445, a decision relied on by the responding parties. In that case the court characterized a sealing order as final because of its effects on the third party's right to freedom of the press.

[43] Here, DG Group has been a participant throughout. DG Group has an interest in the assets that are subject to the Sale Process through its partnerships with Conservatory entities included for wind-up and sale in the Judgment at Schedule "A". Indeed, DG Group made submissions before McEwen J. in the proceedings leading to the March 16, 2023 Sale Process Order.

[44] The Raki Order provides for the inclusion of the Raki and Richview Projects in the Sale Process by enabling Conservatory and DG Group to separate their joint venture interests and each receive marketable title to the Projects. In short, the Raki Order is not a final order, but rather a step in implementing the wind-up and sale of Conservatory ordered in the Judgment. The effect of the Raki Order is to solve the issue of how to include the land interests in both Projects in a court-ordered sale.

[45] For these reasons, I would allow the motion to quash. The decision under review is an interlocutory order made pursuant to the Judgment and the Sale Process Order. It may only be appealed to the Divisional Court, with leave.

## II. The Raki Order Was Made Under the *OBCA*

[46] Given my finding that the Raki Order is interlocutory, it is not necessary to address the Moving Parties' alternative argument. That said, in any event, I see no error in the motion judge's finding that she made the Raki Order pursuant to the *OBCA*.

[47] Section 255 of the *OBCA* provides that "[a]n appeal lies to the Divisional Court from any order made by the court under this Act."

[48] This provision is to be interpreted broadly: *1186708 Ontario Inc. v. Gerstein*, 2016 ONCA 905, at para. 9.

[49] If the power exercised by the motion judge is "sufficiently close" to a legislative source under the *OBCA*, the order must be treated as made under the *OBCA* and will only be appealable to the Divisional Court: *Ontario Securities Commission v. McLaughlin*, 2009 ONCA 280, 248 O.A.C. 54, at para. 16. By contrast, if the source of authority for a final order is the common law or equity, rather than the *OBCA*, the appeal lies to this court: *Buccilli v. Pillitteri*, 2016 ONCA 775, 410 D.L.R. (4th) 480, at para. 19.

[50] In *Gustafson v. Johnson*, 2017 ONCA 581, the judge below had given directions to determine the liabilities of corporations and to liquidate assets. Lauwers J.A., as motions judge, transferred the appeal to the Divisional Court holding that, at its core, the underlying proceeding was a winding up application

under the *OBCA* and the directions were “all ancillary to the winding up order” and thus appealable to the Divisional Court under s. 255 of the *OBCA*: *Gustafson*, at para. 13.

[51] The responding parties, however, rely on *Buccilli*, at para. 22, where this court concluded that, even if part of the order below was grounded in an *OBCA* claim, this court would nonetheless have jurisdiction to hear the entire appeal based on the parts of the order that were not rooted in the *OBCA*.

[52] In this case, by contrast, the Raki Order was entirely rooted in the *OBCA*. The motion judge exercised a power “sufficiently close” to an *OBCA* legislative source to bring the appeals within the jurisdiction of the Divisional Court. Her jurisdiction to make the order was ultimately rooted in the Judgment, which itself was made pursuant to s. 207(2) of the *OBCA* (the winding up provisions) and s. 35(1)(f) of the *Partnerships Act* (dissolution of a partnership by the court). As the motion judge found, the Judgment and the Sale Process Order “are broadly worded and already empower the Sales Officer to implement the Raki First Proposal”. But she also observed that the Judgment “preserves the jurisdiction of [the Superior Court] under s. 207(2) [of the *OBCA*] to make further orders as it sees fit to carry out the wind-up of [Conservatory].”

[53] This provides the basis for this court to conclude that the Raki Order was made pursuant to the *OBCA*. Thus, although I have concluded that the order is

interlocutory, this court would not have jurisdiction to hear the appeals even if the order had been final.

## **CONCLUSION**

[54] For the above reasons, I find that the Raki Order is interlocutory and should be appealed to the Divisional Court with leave. I am also persuaded that the Raki Order was made under the *OBCA* and would thus in any event be appealable to the Divisional Court under s. 255 of the *OBCA*.

[55] As a result, the motions to quash are granted.

[56] In conjunction with their attempts to appeal to this court, both Mark and Corey commenced “precautionary” appeals to the Divisional Court. Accordingly, it is not necessary to consider whether the appeal should be transferred to the Divisional Court.

[57] As agreed among the parties, DG Group is awarded \$15,000, and Jay and Sheldon are jointly awarded \$10,000 costs. The Sales Officer did not seek and is not awarded costs. Costs of the appeals are to be decided by the Divisional Court.

Released: May 11, 2026 “J.A.T.”

“Thorburn J.A.”  
“I agree. L. Favreau J.A.”  
“I agree. D.A. Wilson J.A.”