

# DOMENICO MAGISANO

*Restructuring and Insolvency*

PARTNER

*"I am not just a "litigator" or an "insolvency lawyer", I see my job as being that of a "problem solver". Litigation and insolvency legislation are tools available to me when solving complex commercial issues."*

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## PROFESSIONAL HISTORY

- ◆ Partner, Lerners LLP (2012 to present)
- ◆ Partner, Blaney McMurtry LLP (2009-2012)
- ◆ Associate, Blaney McMurtry LLP (2004-2009)
- ◆ Associate, Blake Cassels & Graydon LLP (2002-2004)

## AREAS OF FOCUS

- ◆ Bankruptcy, Insolvency and Creditor Remedies
- ◆ Corporate Restructuring and Workouts
- ◆ Business and Contractual Disputes
- ◆ Commercial Tenancies and Real Estate Litigation

## REPRESENTATIVE WORK

- ◆ As a corporate restructuring lawyer, Dom represents secured and unsecured lenders, customers, suppliers, debtors, Chief Restructuring Officers, Board of Directors and court appointed trustees and receivers in proceedings commenced under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* and both the *Canada Business Corporations Act* and the *Business Corporations Act (Ontario)*. As a restructuring and insolvency lawyer, Dom regularly appears before the Ontario Superior Court of Justice – Commercial List.
- ◆ While Dom has considerable experience in formal restructuring and insolvency proceedings, he is also retained by companies that embark on informal restructuring and workouts. In this capacity he assists companies in creating a

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restructuring plan and negotiating with stakeholders so that the plan may be implemented.

- ◆ As part of his corporate restructuring practice, Dom regularly advises and negotiates purchase agreements, and loan and security agreements. Historically, Dom has acted on debtor in possession financings, take out financings, debt assignments and various types of purchase agreements, including stalking horse purchase agreements.
- ◆ Dom also maintains a commercial litigation practice, focusing on corporate disputes and real estate matters. Dom is often retained by individuals and companies that are in search of creative and practical solutions to complex commercial disputes. Dom has appeared before all levels of court in Ontario including a number of appearances before the Ontario Court of Appeal.
- ◆ Dom's ability to provide legal guidance to companies while understanding business realities has seen him retained by small and mid-sized companies as an "in house lawyer for hire". These small and mid-sized companies will put Dom on a monthly retainer so that he may be a general resource to their company.

## NOTEWORTHY CASES

- ◆ *PT Holdco Inc. (Re)*, 2016 ONSC 495 (CanLii); Docket: CV-16-11257-00CL; Represented the financial advisors in Primus Telecommunications Canada, Inc. proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.
- ◆ *Target Canada Co. (Re)*, 2015 ONSC 303 (CanLii); Docket: CV-15-10832-00CL; Represent significant supplier in claims dispute with Target Canada Co. and Target Corporation.
- ◆ *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368 (CanLii); Dockets: C57582, C59494, C59496, C59497, C59498; Successful at the Ontario Court of Appeal in overturning receivership over non-debtor third party.
- ◆ *Bennett Estate v. Islamic Republic of Iran*, 2013 CarswellOnt 15994; Co-Counsel to Appellant in successful appeal to obtain leave to intervene as an added party in an action to recognize a foreign judgment.
- ◆ *General Electric Canada Real Estate Financing Holding Co. v. Liberty Assisted Living*, 2011 CarswellOnt 10375; Co-Counsel to secured creditor on motion to have investigative receiver appointed over related companies, who while not debtors of the secured creditor, were involved in transactions with the debtor companies (now bankrupt) that required further investigation.
- ◆ *Thirukumar v. Aravinthan and Gunarajan*, 2011 ONSC 6168; Docket: CV-08-092138-00; Co-counsel to defendant Gunarajan in obtaining dismissal of guarantee action.
- ◆ *Prime Restaurants of Canada Inc. v. 1470568 Ontario Ltd.*, 2011 CarswellOnt 126, 2011 ONCA 9, 73 C.B.R. (5th) 257, Ontario Court of Appeal, January 10, 2011; Docket: CA C51891; Counsel to secured creditor in application to appoint Grant Thornton Limited as Receiver and in appeal by debtor to the Ontario Court of Appeal.
- ◆ *Salex Technical Products Ltd. v. N.S.I. Holdings Inc.*, 2004 CarswellOnt 5428, Ontario Court of Appeal, December 24, 2004; Docket: CA C39643; Co-counsel to the respondent in successfully resisting an appeal from a trial decision awarding damages for failure to pay commissions and breach of contract.
- ◆ *Haultec Trailers Ltd., Re*, 2011 CarswellOnt 2615, 2011 ONSC 2350, 77 C.B.R. (5th) 307, Ontario Superior Court of Justice, April 15, 2011; Docket: BK-09-0-1246572; Counsel to Trustee in Bankruptcy of Haultec Trailers Ltd. seeking direction on issue of whether secured creditor could inflate its claim after making prior representations about the quantum of the debt.
- ◆ *Borden & Elliot v. Temagami First Nation*, 2009 CarswellOnt 2112, [2009] 3 C.N.L.R. 30, 78 C.P.C. (6th) 175, Ontario Superior Court of Justice, April 07, 2009; Docket: 96-CV-106149; Successfully resisted garnishment notice on the basis that the funds in question could not be garnished by virtue of section 89 of the Indian Act R.S.C. 1985 c. 15 as amended
- ◆ *DGR Sales Ltd. v. Ontario*, 2007 CarswellOnt 7337, 161 A.C.W.S. (3d) 702, Ontario Master, October 14, 2007; Docket: 03-CV-024335; Successful motion seeking security for costs where plaintiff claimed impecuniosity and that it would be contrary to the interests of justice to order security for costs.

## ACHIEVEMENTS

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- ◆ Selected by his peers for inclusion in Best Lawyers in Canada for Insolvency and Financial Restructuring Law, 2018 - 2020
- ◆ Recognized as a “Rising Star”, Lexpert Award honouring Canada’s Leading Lawyers Under 40, 2014
- ◆ Recognized as a “Local Litigation Star” in 2014 Benchmark Litigation Ranking – Canada Edition

## SELECTED PRESENTATIONS/PUBLICATIONS

- ◆ Speaker, "Deceased Estates and Redwater Decision", Ontario Association of Insolvency & Restructuring Professionals, April 20, 2019
- ◆ Co-author, “Re: Sino-Forest Corporation – When is an Indemnity Claim Really Just an Equity Claim?”, (with Jason Squire), Class Act, Ontario Bar Association’s Class Actions Law Section Newsletter, May, 2013 ([Read online](#))

## MEMBERSHIPS

- ◆ The Advocates’ Society
- ◆ Ontario Bar Association – Insolvency and Commercial Litigation Sections
- ◆ Executive Member, Canadian Bar Association - National Bankruptcy, Insolvency and Restructuring Section
- ◆ Turnaround Management Association
- ◆ Past Executive Member – Ontario Bar Association – Insolvency Section

## EDUCATION

- ◆ Admitted to Ontario Bar (2002)
- ◆ Masters of Business Administration, York University (2009)
- ◆ Bachelor of Laws, University of Western Ontario (2000)
- ◆ Bachelor of Arts, Geography and Political Science, Wilfrid Laurier University (1997)