

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

CASE CONFERENCE BRIEF OF THE RECEIVER

March 31, 2025

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TO: SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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MARSHALLZEHR GROUP INC.

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- and -

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Respondent

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**Eighth Report of
KSV Restructuring Inc.
as Receiver of
La Pue International Inc.**

March 31, 2025

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COURT FILE NO.: CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

- AND -

LA PUE INTERNATIONAL INC.

RESPONDENT

EIGHTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

MARCH 31, 2025

1.0 Introduction

1. This report ("**Report**") is filed by KSV Restructuring Inc. ("**KSV**"), in its capacity as receiver (the "**Receiver**") of the assets, undertakings and property of La Pue International Inc. (the "**Company**") acquired for or used in relation to a business carried on by the Company.
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on October 19, 2023, on the application of MarshallZehr Group Inc. ("**MarshallZehr**"), the principal secured creditor of the Company, KSV was appointed Receiver.

1.1 Purposes of this Report¹

1. The purposes of this Report are to:
 - a. provide an update on the completion of the sale transaction of the Real Property;
 - b. provide the Court with an update on the status of its review of the Lien Claims and to provide an overview of the priority dispute concerning the Holdback Reserve, each as referenced in the Endorsement of Justice Steele dated March 7, 2025; and

¹ Capitalized terms used in this section have the meanings ascribed to them below.

- c. discuss next steps in the proceedings, including the intention of the Receiver to (i) make an interim distribution to MarshallZehr in accordance with the Interim Distribution Order and (ii) establish a procedure for completing the assessment of the validity of the Lien Claims and the final determination of the Holdback Claims.

1.2 Currency

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon information, including financial information provided by MarshallZehr and limited information delivered by the Company's principal. The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own diligence.

2.0 Sale Transaction

1. The Company's principal asset is the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the "**Real Property**"), and Pawel Fugiel is its sole officer and director. Prior to the receivership, the Real Property was to be used to develop and sell buildings consisting of one mixed-use development.
2. The principal purpose of the receivership proceeding is to market the Real Property for sale in a Court-supervised process.
3. On December 20, 2023, the Court issued an order approving a sale process for the Real Property and certain related assets.
4. On April 4, 2024, the Receiver and Lakeshore Luxe Design & Build Group ("**Lakeshore**") entered into an Asset Purchase Agreement (the "**Original APA**") which contemplated a transaction (the "**Original Transaction**") for, among other things, the sale of the Real Property and the assumption of 359 pre-sale agreements entered into with homebuyers (collectively, the "**Purchased Assets**").
5. On June 11, 2024, Lakeshore assigned all of its right, title and interest in the Original APA to 1000835091 Ontario Inc. ("**1000835091 Ontario**") pursuant to an Assignment of Agreement of Purchase and Sale dated June 11, 2024.
6. On June 21, 2024, the Court issued an order approving the Original Transaction.

7. 1000835091 Ontario failed to close the Original Transaction, and the Receiver terminated this transaction. The Receiver subsequently entered into several reinstatement agreements with 1000835091 Ontario, and the Receiver negotiated terms with 1000835091 Ontario for an amended transaction (the **"APA"**).
8. On January 7, 2025, the Receiver obtained an approval and vesting order (the **"AVO"**) approving the APA and the related transaction (the **"Transaction"**) as well as an interim distribution order (which is further described below). Copies of the AVO, interim distribution order, and endorsement are attached as **Appendix "A"**.
9. On January 16, 2025, the Company served a notice of appeal (the **"Notice of Appeal"**) seeking, among other things, to set aside the AVO. A copy of the Notice of Appeal is attached as **Appendix "B"**.
10. On January 20, 2025, the Receiver filed a Notice of Motion with the Court of Appeal for Ontario (**"Court of Appeal"**) seeking, among other things: (i) a declaration that there is no automatic right of appeal from the AVO pursuant to the provisions of the *Bankruptcy and Insolvency Act*; and (ii) an order declining to grant leave to appeal from the AVO.
11. On February 3, 2025, the Company filed a cross-motion seeking, among other things: (i) directions from the Court of Appeal as to whether leave to appeal and a stay of the AVO is necessary; and (ii) an order granting leave to appeal, if required.
12. On February 7, 2025, the Court of Appeal heard the Receiver's motion and the Company's cross-motion.
13. On February 19, 2025, the Court of Appeal released an endorsement (the **"Endorsement"**) granting the Receiver's motion and dismissing the Company's cross-motion. The Receiver was also awarded costs of \$25,000, inclusive of disbursements and HST. A copy of the Endorsement is attached as **Appendix "C"**.
14. Further, on January 23, 2025, the Receiver filed a motion to amend the AVO to reflect that the Purchased Assets, as defined in the APA, should be vested in 1001082540 Ontario Inc. (the **"Assignment Motion"**).
15. On January 27, 2025, the Company filed a cross-motion seeking orders: (i) dismissing the Assignment Motion; and (ii) granting the Company leave to redeem the mortgage indebtedness owed by the Company and cover all associated costs of these proceedings (the **"Redemption Motion"**).
16. Subsequently, 1000835091 Ontario advised the Receiver that it no longer required the APA to be assigned, such that the Assignment Motion was no longer required.
17. On February 21, 2025, this Court issued an endorsement, dismissing the Company's Redemption Motion. A copy of the Endorsement is attached as **Appendix "D"**.
18. The Receiver completed the Transaction on March 19, 2025. A copy of the Receiver's Certificate is attached as **Appendix "E"**.

19. On March 28, 2025, the Receiver emailed a notice to all homebuyers for which it has contact information, advising that the Transaction had been completed and providing homebuyers with information regarding next steps. The notice is also available on the Receiver's Case Website at the following link: [Notice to Homer Buyers dated March 28, 2025](#).
20. As of the date hereof, and following completion of the Transaction, MarshallZehr is still owed approximately \$4 million on account of its secured claims (the "**Mortgage Debt**").
21. Further details regarding the background of these proceedings and the events leading up to the completion of the Transaction are summarized in the Receiver's prior reports filed with the Court, all of which can be found on the Case Website maintained by the Receiver in these proceedings: <https://www.ksvadvisory.com/experience/case/lapue>

3.0 Summary of Lien Claims

1. The following parties (collectively, the "**Lien Claimants**" and each a "**Lien Claimant**") have registered construction liens on title to the Real Property. These are further discussed below. The Receiver is in the process of reviewing whether these lien claims were properly preserved and perfected. Certain Lien Claimants filed multiple liens. The table below shows the aggregate amounts of the liens filed by each Lien Claimant.

Lien Claimant	Amount (\$000s)
Buttcon Limited	8,206
HC Matcon Inc.	3,971
Kada Group Inc.	965
Astro Excavating Inc.	495
TT Galbraith Electric Ltd.	23
Total	13,660

2. As further set out below, the Receiver intends to conduct a fulsome assessment of the validity of each of these lien claims solely for the purpose of determining each Lien Claimant's respective entitlement to a *pro rata* share of the Holdback Reserve (as defined below).
3. As noted in prior reports, the Company only completed shoring and excavation work on the Real Property prior to the receivership. No other phases of construction were commenced.
4. The Receiver understands that disputes may exist between Buttcon Limited, the construction manager ("**Buttcon**"), and the other Lien Claimants, being the various subtrades, regarding amounts owing to the subtrades.

4.0 Holdback Reserve

1. In conjunction with the Receiver's motion to obtain approval of the Transaction, the Receiver also sought an interim distribution order. Copies of the interim distribution order ("**Interim Distribution Order**") and the related endorsement are attached as part of **Appendix "A"**.
2. As set out in the Receiver's Fourth Report dated December 11, 2024 (the "**Fourth Report**"), a copy of which is attached (without appendices) as **Appendix "F"**, and as summarized above, there are eight construction liens registered against the Real Property in the aggregate amount of approximately \$13.6 million (collectively, the "**Lien Claims**").
3. The proceeds from the Transaction are insufficient to repay both the Mortgage Debt and the Lien Claims. The *Construction Act* sets out the priorities as between mortgagees and lien claimants.
4. As further set out in the Fourth Report, the Company did not segregate any funds for holdback in accordance with the requirements of the *Construction Act*. Accordingly, pursuant to the *Construction Act*, the Lien Claimants may only claim priority over MarshallZehr to the extent of any deficiency in the statutory holdback (the "**Holdback Claims**"). The Holdback Claims represent the maximum amount to which the Lien Claimants may be entitled from the sale proceeds.
5. By contrast, as previously noted and as further discussed below, MarshallZehr asserts that its Mortgage Debt has priority over any Holdback Claims, regardless of their quantum, on the basis that its mortgage security is considered a "prior mortgage" under the *Construction Act*.
6. In anticipation of receiving the sale proceeds and making an interim distribution to MarshallZehr, the Receiver sought to establish a reserve sufficient to address any potential Holdback Claims (the "**Holdback Reserve**").
7. On December 9, 2024, the Receiver wrote to the Lien Claimants requesting additional information regarding their Lien Claims, with a deadline to respond by January 10, 2025.
8. Based on the registered Lien Claims totaling approximately \$13.6 million, the Receiver requested that the Holdback Reserve be set at \$1.4 million, representing more than 10% of the total amount of Lien Claims. This percentage is consistent with the statutory holdback requirement under the *Construction Act*, which mandates that owners retain an amount equal to 10% of the value of the services and materials supplied under a contract or subcontract.

9. On January 7, 2025, the Receiver obtained the Interim Distribution Order, which provides for the following:

THIS COURT ORDERS that the Receiver is authorized and directed to establish, hold and maintain a reserve from the net sale proceeds of the Amended Transaction in the amount of \$1,400,000.00 (the “**Holdback Reserve**”) on account of the estimated maximum amount in respect of any construction lien claims (collectively, the “**Lien Claims**” and each a “**Lien Claim**”) that could have priority over the security interest of MarshallZehr against the real property located at 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”) pursuant to section 78(5) of the Construction Act, R.S.O. 1990, c. C.30 (the “**Construction Act**”), and the Receiver is authorized and directed to pay from time to time from the Holdback Reserve any amounts in respect of Lien Claims (in aggregate up to the remaining amount held in the Holdback Reserve and in each case in full and final satisfaction of the priority portion of such claim) according to:

(a) any such amounts that the Receiver determines, with the consent of MarshallZehr and the consent of the holders of the Lien Claims listed in Schedule “A”, to have priority over the security interest of MarshallZehr against the Real Property pursuant to section 78(5) of the Construction Act; or

(b) further order of this Court.

10. The Interim Distribution Order further provides that, subject to the Receiver maintaining the Holdback Reserve and any other amounts for professional fees, the Receiver is authorized to distribute to MarshallZehr the net sale proceeds from the Transaction in respect of its Mortgage Debt.
11. The Interim Distribution Order was made on notice to the Lien Claimants, the majority of whom attended the motion. As noted in the Endorsement of Madam Justice Dietrich dated January 7, 2025, no party objected to the Receiver’s proposed distributions, subject to the maximum holdbacks established by the Receiver, as reflected in the Interim Distribution Order.
12. No party appealed the Interim Distribution Order. The notice of appeal filed by La Pue, attached as **Appendix “B”**, only appealed the approval and vesting order. As set out above, that appeal was dismissed on February 19, 2025.
13. The Receiver has not received any other objection to the terms of the Interim Distribution Order, including any objections to the method of establishment or the amount of the Holdback Reserve.

5.0 Priority Dispute over Holdback Reserve

1. The Lien Claimants' entitlement to any portion of the Holdback Reserve, as set out in the Interim Distribution Order, is governed by section 78(5) of the *Construction Act*. This section, reproduced below, provides:

Special priority against subsequent mortgages

(5) Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV. R.S.O. 1990, c. C.30, s. 78 (5); 2017, c. 24, s. 70.

2. MarshallZehr initially scheduled a motion to be heard on March 7, 2025, to determine entitlement to the Holdback Reserve. If the Court determined that MarshallZehr had priority over the Holdback Claims, no further steps would be required to assess the quantum or validity of each of the Lien Claims, given that there are disputes between the Lien Claimants themselves.
3. Following delays in the service of materials for the priority motion, the March 7, 2025 hearing was converted to a case conference.
4. At the case conference, the Court ordered, among other things, that:
 - a. Buttcon and any other Lien Claimants who had not yet delivered their supporting lien documents shall file their materials with the Receiver by March 14, 2025, and advise the Receiver if their Lien Claims are included in Buttcon's Lien Claim;
 - b. The Receiver shall provide a report by March 31, 2025; and
 - c. The case conference is adjourned to April 4, 2025.

A copy of the endorsement is attached hereto as **Appendix "G"**.

6.0 Current Status of Receiver's Assessment of the Lien Claims

6.1 Current Assessment

1. Since the case conference, the Receiver has received documentation from the two remaining Lien Claimants, with the last such documentation having been provided on March 27, 2025.
2. On March 28, 2025, the Receiver wrote to each of the subtrade Lien Claimants requesting additional information about their Holdback Claims. Specifically, the Receiver requested clarification regarding:
 - (i) whether they had received early payment of holdback amounts;
 - (ii) a summary of invoicing; and

(iii) whether any work was performed for a party other than Buttcon.

Reponses were requested by April 3, 2025.

3. Concurrently, the Receiver has also conducted its initial review of the maximum holdback entitlement of each Lien Claimant.
4. Based on its initial review of the information received from Lien Claimants to date, the Receiver notes the following amounts appear to be claimed as holdbacks by each of the Lien Claimants. As reflected in the table below, portions of the Holdback Claim of each of HC Matcon Inc. ("**HC Matcon**"), Kada Group Inc. ("**Kada**"), and TT Galbraith Electric Ltd. ("**Galbraith**") are already contained within Buttcon's Holdback Claim, as each of these Lien Claimants provided services to Buttcon.

Unaudited; \$000s	A	B	C=A-B	D = C *1.13
Lien Claimant	Priority Holdback Amount	Less: Priority Holdback Amount in Buttcon's Priority Holdback Amount	Priority Holdback Amount, net of duplication	Priority Holdback Amount, including HST
Buttcon Limited	1,083	-	1,083	1,224
HC Matcon Inc.	505	466	38	43
Kada Group Inc.	247	201	46	52
Astro Excavating Inc.	59	-	59	67
TT Galbraith Electric Inc.	2	2	-	-
	1,896	669	1,226	1,386

5. The table above reflects:
 - a) Column "A" – To determine these amounts, the Receiver reviewed invoice summaries, progress billings, and contracts to calculate the maximum Holdback Claim that may be claimed by each Lien Claimant before accounting for duplication.
 - b) Column "B" – To determine these amounts, the Receiver identified which subtrade invoices were already reflected in Buttcon's progress billings. Where a subtrade's invoice is captured within Buttcon's billing to the Company, the corresponding holdback amount is already included in Buttcon's Holdback Claim.
 - c) Column "C" – This column reflects the Receiver's calculation of the incremental pre-HST holdback amounts potentially claimable by each subtrade, i.e., the portion not already included in Buttcon's Holdback Claim.
 - d) Column "D" – This column reflects the Receiver's determination of the maximum Holdback Claim claimable by each Lien Claimant, inclusive of HST.
6. Based on these calculations, the Holdback Reserve of \$1.4 million is sufficient to pay any Holdback Claims, should MarshallZehr be unsuccessful on its priority motion.

7. The Receiver continues to review the documentation submitted by the Lien Claimants, and has not yet come to a final determination of its views of the quantum and validity of each of the Lien Claims.
8. As such, each Lien Claimant's Holdback Claim may be further reduced. The reasons for a further reduction could include:
 - a. the Receiver determining that holdback claimable on a particular invoice; or
 - b. the Receiver determining that the value of work actually performed is less than the amount of work billed. This step is particularly relevant given MarshallZehr's position that the Lien Claimants have billed for work that was not fully completed.
9. Given the limited cooperation received from the Company's principal during these proceedings to date, the Receiver is uncertain if the Company will be of assistance in validating the work claimed to have been performed. Accordingly, the Receiver is assessing whether a costs consultant may need to be retained to assist in its review.

6.2 Next Steps of Assessment

1. The Receiver continues its review of the Holdback Claims. The following steps are required before a final recommendation regarding the quantum and validity of the Holdback Claims can be made:
 - a. receipt and review of the outstanding documentation requested from the Lien Claimants; and
 - b. a determination as to whether the work performed is commensurate with the work billed, which may require the assistance of a cost consultant.
2. Assuming prompt cooperation from the Lien Claimants, the Receiver anticipates that it will be able to make its final determination by May 31, 2025.
3. Once the Receiver determines the quantum and validity of the Holdback Claims, a case conference should be arranged to schedule the next steps.

7.0 Interim Distribution

1. As set out above, the Transaction has been completed. The Transaction was structured as a partial assumption of MarshallZehr's existing Mortgage Debt. Accordingly, the Receiver is currently holding sale proceeds totaling \$1.7 million, net of a professional fee reserve. No amounts have yet been distributed from these proceeds.
2. From the sale proceeds of \$1.7 million, the Receiver intends to make an interim distribution in the sum of \$339,000 to MarshallZehr on April 7, 2025, in accordance with the Interim Distribution Order.

3. The Receiver will continue to maintain the \$1.4 million Holdback Reserve until the Court has made a determination with the respect to (a) the actual quantum of the Holdback Claims, and (b) the priority of the Holdback Claims vis-à-vis MarshallZehr's secured claim.

8.0 Receiver's Recommendations

1. Based on the foregoing, the Receiver recommends:
 - a. The Receiver proceed with the interim distribution to MarshallZehr in the amount of \$339,000, as discussed above, pursuant to the Interim Distribution Order, on April 7, 2025;
 - b. It complete its assessment of the Holdback Claims by May 31, 2025, and report its findings and recommendations to the Court upon completion; and
 - c. The Court schedule a single hearing to address the quantum and validity of the Holdback Claims alongside the priority dispute between MarshallZehr and the Lien Claimants.

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
LA PUE INTERNATIONAL INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

63888166.13

APPENDIX A



Court File No. CV-23-00700695-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM

)

TUESDAY, THE 7TH

JUSTICE JANE DIETRICH

)

DAY OF JANUARY, 2025

)

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

**ORDER
(Sale Approval)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets (the “**Property**”) of La Pue International Inc. (the “**Debtor**”) for an order, among other things:

- (a) validating service of the Receiver’s Notice of Motion and Motion Record;
- (b) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement dated April 4, 2024, as amended by the First Reinstatement and Amending Agreement dated July 12, 2024, the Second Reinstatement and Amending Agreement dated October 8, 2024 and the Third Reinstatement and Amending Agreement dated November 18, 2024 (collectively, the “**Sale Agreement**”), between the Receiver and Lakeshore Luxe Design & Build Group (“**Lakeshore**”), appended as Confidential Appendices 1, 2 and 3 respectively, to the Receiver’s Fourth Report to the Court dated December 11, 2024 (the “**Fourth Report**”) and to Appendix A to the Supplemental

Confidential Brief to the Fourth Report and vesting in 1000835091 Ontario Inc. (the “**Purchaser**”), as assignee of Lakeshore, the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), including the lands and premises located at the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario and legally described in **Schedule “A”** hereto (the “**Real Property**”); and

(c) sealing the Confidential Appendices to the Fourth Report and the Supplemental Confidential Brief to the Fourth Report (collectively, the “**Confidential Appendices**”) pending the closing of the Transaction or a further order of the Court,

was heard this day by judicial videoconference via Zoom.

ON READING the Motion Record of the Receiver dated December 11, 2024 including the Fourth Report, and on hearing the submissions of counsel for the Receiver, counsel to the Applicant, and such other counsel as were present and on the Counsel Slip, no one else appearing although properly served as appears from the Affidavits of Service of Daisy Jin sworn December 12, 2024 and January 2, 2025 and the Affidavit of Service of Cristian Delfino sworn December 13, 2024, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE TRANSACTION AND VESTING ORDER

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Certificate**"), the Purchased Assets, including the Real Property, shall vest absolutely in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, taxes, including real property taxes, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated October 19, 2023 (the "**Receivership Order**"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system including those registrations listed on Schedule "E" hereto but only in respect of the Purchased Assets; (iii) any Claims filed in respect of or affecting the Purchased Assets, including Claims in respect of the *Construction Act* (Ontario); and (iv) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Real Property are hereby expunged and discharged as against the Real Property.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Niagara (South) (No. 59) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Encumbrances listed in Schedule "C" hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if

the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that notwithstanding anything else contained herein, the "Property" as defined in the preamble of this Order and the Purchased Assets vesting in the Purchaser shall not include any current or future funds related to deposits held in trust by any law firm acting on behalf of a the Deposit Insurer, Sovereign General Insurance Company or the Debtor with respect to the purchase of a residential unit located on any of the Real Property, including, without limitation, the deposits held by Sullivan Mahoney LLP in trust related to a residential development known as The Stanley District containing 435 residential dwelling units at Ferry Street in the City of Niagara Falls (the "**Deposits**"). Further, nothing in this Order shall, or is intended to, entitle or grant the Purchaser any interest in the Deposits.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that the Confidential Appendices to the Fourth Report be and hereby are sealed pending the completion of the Transaction or a further order of the Court.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. from today's date and is enforceable without the need for entry and filing.



Jane Dietrich J.

Schedule “A” – Real Property

Municipal Address: 5528 Ferry Street, Niagara Falls, Ontario

PIN: 64349-0258 (LT)

Property Description: Firstly: Lots 46, 51, 52, 61, 62, 63, 64 & 65, Plan 273 & Part Lots 43, 44, 45, 47, 48, 49 & 50, Plan 273, Village of Niagara Falls, Parts 1 & 3 Plan 59R17206; Secondly: Surface Rights Only (as in RO718049), Part Lots 47, 48, 49 & 50 Plan 273, Village of Niagara Falls, Part 2 Plan 59R17206; subject to an Easement over Parts 1 & 2 59R17292 in favour of Part Lots 41 & 42 Plan 273 as in RO441658 as in SN754703; City of Niagara Falls

Schedule “B” – Form of Receiver’s Certificate

Court File No. CV-23-00700695-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated October 19, 2023, KSV Restructuring Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of La Pue International Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated January 7, 2025 (“**Approval and Vesting Order**”), the Court approved the asset purchase agreement (as amended, restated, reinstated or otherwise supplement from time to time, the “**Sale Agreement**”) between the Receiver and Lakeshore Luxe Design & Build Group (the “**Purchaser**”) and provided for the vesting in the Purchaser all of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or

waived by the Receiver and the Purchaser; and (iii) the transaction contemplated by the Sale Agreement (the “**Transaction**”) has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser.; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on _____, 2025.

KSV RESTRUCTURING INC., solely in its capacity as Court-Appointed Receiver of La Pue International Inc. and not in its personal capacity

Per: _____

Name:

Title:

Schedule “C” – Encumbrances to be deleted and expunged from title to Real Property.

No.	Registration No.	Registration Date	Instrument Type	Amount	Encumbrancers
1.	SN644659	2020/10/02	Charge	\$2,000,000	The Sovereign General Insurance Company
2.	SN658896	2021/01/26	Notice	\$1	The Sovereign General Insurance Company
3.	SN703091	2021/12/01	Charge	\$13,800,000	MarshallZehr Group Inc.
4.	SN703094	2021/12/01	Notice of Assignment of Rents – General		MarshallZehr Group Inc.
5.	SN703098	2021/12/01	Postponement		MarshallZehr Group Inc.
6.	SN703255	2021/12/01	Application to Annex Restrictive Covenants S.118		MarshallZehr Group Inc.
7.	SN743390	2022/09/26	Notice of Change of Address		MarshallZehr Group Inc.
8.	SN758055	2023/02/22	Construction Lien	\$3,673,337	HC Matcon Inc.
9.	SN759949	2023/03/15	Construction Lien	\$841,498	Kada Group Inc.
10.	SN760306	2023/03/17	Construction Lien	\$8,205,941	Buttcon Limited
11.	SN761643	2023/03/31	Construction Lien	\$123,734	Kada Group Inc.
12.	SN764799	2023/05/01	Certificate		HC Matcon Inc.

13.	SN767364	2023/05/26	Construction Lien	\$23,278	TT Galbraith Electric Ltd
14.	SN769190	2023/06/12	Certificate		Buttcon Limited
15.	SN770167	2023/06/21	Certificate		Kada Group Inc.
16.	SN771564	2023/07/04	Construction Lien	\$43,630	HC Matcon Inc.
17.	SN772841	2023/07/14	Certificate		HC Matcon Inc.
18.	SN787037	2023/11/29	Construction Lien	\$254,023	HC Matcon Inc.
19.	SN788992	2023/12/18	Certificate		HC Matcon Inc.

**Schedule “D” – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Any reservations, restrictions, rights of way, easements or covenants that run with the land;
2. Any registered agreements with a municipality, region or supplier of utility service including, without limitations, electricity, water, sewage, gas, telephone or cable television or other telecommunication services;
3. All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Property;
4. Any minor easements for the supply of utility services or other services to the Lands or Buildings, if any, or adjacent properties;
5. Encroachments disclosed by any error or omission in existing surveys of the Lands or neighbouring properties and any title defects, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Lands and survey of the Lands and survey matters generally;
6. The exceptions and qualifications set forth in the *Registry Act* (Ontario) or the *Land Titles Act* (Ontario), or amendments thereto;
7. Any reservation(s) contained in the original grant from Crown;
8. Subsection 44(1) of the *Land Titles Act* (Ontario) except paragraphs 11 and 14.
9. Provincial succession duties and escheats or forfeiture to the Crown;
10. The rights of any person who would, but for the *Land Titles Act* (Ontario) be entitled to the Lands or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention;
11. Any lease to which subsection 70(2) of the *Registry Act* (Ontario) applies; and
12. The following instruments registered on title to the Premises:

No.	Registration No.	Registration Date	Instrument Type	Parties To
1.	SN613492	2019/12/12	Application to Consolidate	
2.	SN629148	2020/05/14	Notice	The Corporation of the City of Niagara Falls
3.	SN642462	2020/09/18	Notice	The Corporation of the City of Niagara Falls
4.	59R16793	2020/10/01	Plan Reference	
5.	SN666113	2021/03/22	Application Bylaw Deeming Plan Not A Plan	The Corporation of the City of Niagara Falls
6.	SN666891	2021/03/26	Notice	The Corporation of the City of Niagara Falls
7.	59R17206	2022/03/11	Plan Reference	
8.	SN716940	2022/03/11	Application Absolute Title	La Pue International Inc.
9.	SN721529	2022/04/12	Application (General)	The Corporation of the City of Niagara Falls
10.	SN721530	2022/04/12	Application (General)	The Corporation of the City of Niagara Falls
11.	SN721531	2022/04/12	Application (General)	The Corporation of the City of Niagara Falls
12.	SN723231	2022/04/26	Notice	The Corporation of the City of Niagara Falls
13.	59R17292	2022/06/13	Plan Reference	
14.	SN754703	2023/01/13	Transfer Easement	Anastasia Georgina Loukas and 2779006 Ontario Inc.
15.	SN754704	2023/01/13	Postponement	Anastasia Georgina Loukas and 2779006 Ontario Inc.
16.	SN754705	2023/01/13	Postponement	Anastasia Georgina Loukas and 2779006 Ontario Inc.
17.	SN754853	2023/01/16	Land Registrar's Order	Land Registrar, Niagara South Land Registry Office
18.	SN763208	2023/04/17	Notice	Anastasia Georgina Loukas and 2779006 Ontario Inc. and La Pue International Inc.

Schedule “E” – PPSA Registrations to be Released but only in respect of Purchased Assets

Date of Registration	Secured Party	File Number	Registration Number	Expiry Date
Jun 1, 2022	Newroads Automotive Group Ltd.	783547137	20220601 1259 1210 8587	Jun 1, 2026
Nov. 25, 2021	Marshallzehr Group Inc.	778525902	2021125 1518 1590 6050	Nov. 25, 2026
Nov. 25, 2021	Marshallzehr Group Inc.	778525911	2021125 1519 1590 6051	Nov. 25, 2026
Jan. 26, 2021	The Sovereign General Insurance Company	769461417	20210126 1509 1862 9924	Jan. 26, 2032
Oct. 2, 2020	The Sovereign General Insurance Company	766400931	20201002 1508 1862 2211	Oct. 2, 2031

MARSHALLZEHR GROUP INC.

- and -

LA PUE INTERNATIONAL INC.

Applicant

Respondent

Court File No. CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at TORONTO

APPROVAL AND VESTING ORDER

AIRD & BERLIS LLP

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*Lawyers for the Receiver, KSV Restructuring
Inc.*



Court File No. CV-23-00700695-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	TUESDAY, THE 7TH DAY
)	
JUSTICE JANE DIETRICH)	OF JANUARY, 2025

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondents

ANCILLARY AND INTERIM DISTRIBUTION ORDER

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets (the “**Property**”) of La Pue International Inc. (the “**Debtor**”) for an order, among other things, (i) approving an interim distribution to MarshallZehr Group Inc. (“**MarshallZehr**”); (ii) approving the Fourth Report of the Receiver dated December 11, 2024 (the “**Fourth Report**”) and the conduct and activities of the Receiver defined therein; and (iii) authorizing the Receiver to establish the Holdback Reserve (as defined below), was heard this day by judicial videoconference via Zoom.

ON READING the Motion Record of the Receiver dated December 11, 2024 including the Fourth Report, and on hearing the submissions of counsel for the Receiver, counsel to the Applicant, and such other counsel as were present and on the Counsel Slip, no one else appearing although properly served as appears from the Affidavits of Service of Daisy Jin sworn December 12, 2024 and January 2, 2025 and the Affidavit of Service of Cristian Delfino sworn December 13, 2024, filed.

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Fourth Report.

HOLDBACK RESERVE

2. **THIS COURT ORDERS** that the Receiver is authorized and directed to establish, hold and maintain a reserve from the net sale proceeds of the Amended Transaction in the amount of \$1,400,000.00 (the “**Holdback Reserve**”) on account of the estimated maximum amount in respect of any construction lien claims (collectively, the “**Lien Claims**” and each a “**Lien Claim**”) that could have priority over the security interest of MarshallZehr against the real property located at 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”) pursuant to section 78(5) of the *Construction Act*, R.S.O. 1990, c. C.30 (the “**Construction Act**”), and the Receiver is authorized and directed to pay from time to time from the Holdback Reserve any amounts in respect of Lien Claims (in aggregate up to the remaining amount held in the Holdback Reserve and in each case in full and final satisfaction of the priority portion of such claim) according to:

- (a) any such amounts that the Receiver determines, with the consent of MarshallZehr and the consent of the holders of the Lien Claims listed in Schedule “A”, to have priority over the security interest of MarshallZehr against the Real Property pursuant to section 78(5) of the *Construction Act*; or
- (b) further order of this Court.

INTERIM DISTRIBUTION

3. **THIS COURT ORDERS** that subject to the Receiver maintaining such reserves as the Receiver deems appropriate for the proper administration of the receivership estate, and the payment by the Receiver of the amounts secured under the Receiver's Borrowings Charge (as defined in the Receivership Order), the fees of the Receiver and its legal counsel, Aird & Berlis LLP and Chaitons LLP, and the Holdback Reserve, the Receiver be and is hereby authorized and directed to distribute MarshallZehr, in respect of its secured claim, the net sale proceeds from the

Amended Transaction, but not to exceed the amount of its secured claim (the “**MZ Interim Distribution**”).

4. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings and receivership proceedings in respect of the Debtor;
- (b) any applications for a bankruptcy order issued pursuant to the BIA in respect of the Debtor and any bankruptcy order issued pursuant to any such application;
- (c) any assignment in bankruptcy made in respect of the Debtor; and
- (d) any provisions of any federal or provincial legislation,

any payment or distributions made pursuant to this Order shall be made free and clear of any and all security interests (whether contractual, statutory or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Debtor and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

5. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and distributions pursuant to this Order shall be entitled to deduct and withhold from any such payment or distribution such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

APPROVAL OF FOURTH REPORT

6. **THIS COURT ORDERS** that the Fourth Report and the conduct and activities of the Receiver as set out therein be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize, in any way, such approvals.

GENERAL

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order

8. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. from today's date and is enforceable without the need for entry and filing.



J DIETRICH, J.

Schedule “A”

1. Astro Excavating Inc.
2. Buttcon Limited
3. HC Matcon Inc.
4. Kada Group Inc.
5. TT Galbraith Electric Ltd.

MARSHALLZEHR GROUP INC
Applicant

- and -

LA PUE INTERNATIONAL INC.
Respondent

Court File No. CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

**INTERIM DISTRIBUTION AND
ANCILLARY ORDER**

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Lawyers for the Receiver, KSV Restructuring Inc.



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00700695-00CL

DATE: January 6, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. LA PUE INTERNATIONAL INC.

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Lawyers for MarshallZehr Group Inc.	maya@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Howard F. Manis Daniel Litsos	Lawyers for the Respondent, La Pue International Inc.	hmanis@manislaw.ca dlitsos@manislaw.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Andrew Beney	Lawyers for HC Matcon Inc.	beney@paveylaw.com
Dylan Dilks	Lawyers for Kada Group Inc.	ddilks@weirfoulds.com
James Maclellan	Lawyers for The Sovereign General Insurance Company	jmaclellan@blg.com
Murtaza Tallat	Court-Appointed Receiver	mtallat@ksvadvisory.com

Noah Goldstein		ngoldstein@ksvadvisory.com
Adrienne Ho Brian Chung Miranda Spence	Lawyers for the Receiver, KSV Restructuring Inc.	aho@airdberlis.com bchung@airdberlis.com mspence@airdberlis.com
Fernando Souza	Counsel for Buttcon Limited	fsouza@lawtoronto.com
Jason Wadden	Counsel for the Purchaser	jwadden@tyrllp.com

ENDORSEMENT OF JUSTICE J. DIETRICH :

Overview

- [1] KSV Restructuring Inc. was appointed as receiver (the “Receiver”), of all of the assets, undertakings and properties of La Pue International Inc. (the “Company”), including the real property municipally known as 5528 Ferry Street, Niagara Falls (the “Real Property”).
- [2] The Receiver seeks, among other things, orders:
- a. Approving the asset purchase agreement dated April 4, 2024, as amended by the Reinstatement and Amending Agreement dated July 12, 2024, the Reinstatement and Amending Agreement dated October 8, 2024 and the Third Reinstatement and Amending Agreement dated November 18, 2024, between Lakeshore Luxe Design & Build Group (“Lakeshore”) and the Receiver (collectively, the “Lakeshore APS”) and vesting in 100835091 Ontario Inc. (the “Purchaser”), as assignee of Lakeshore, the Company’s right, title and interest in and to the purchased assets, including the Real Property;
 - b. Approving an interim distribution to MarshallZehr from the proceeds of the sale transaction contemplated by the Lakeshore APS (the “Transaction”);
 - c. Authorizing the Receiver to establish a Holdback Reserve in the amount of \$1.4 million;
 - d. Approving the Fourth Report of the Receiver dated December 11, 2024 (“Fourth Report”) and the conduct and activities of the Receiver as described therein; and
 - e. Sealing the Confidential Appendices to the Fourth Report.
- [3] The main opposition comes from the principal of the Company who takes the position that he was not treated fairly as a bidder during the sale process and the Transaction should not be approved – rather the Receiver should be directed to remarket the Real Property. As a second position, the Company says that it should be entitled to redeem the mortgage of MarshallZehr.

- [4] Buttcon Limited and HC Matcon Inc., who are construction lien claimants support the position of the Company – specifically the Company’s request to redeem as that would leave their claims intact.
- [5] MarshallZehr supports the relief requested by the Receiver.
- [6] The Sovereign General Insurance Company, the deposit insurer who holds a second mortgage on the property and Kada Group Inc. (another construction lien claimant) take no position on the motion.

Background

- [7] The Company is a single purpose entity that owns the Real Property. The Company intended to develop and sell three mid-rise buildings consisting of one mixed-use, one hotel and one residential building on the Real Property.
- [8] Prior to the receivership proceedings (i) the Company completed shoring and excavation work although no other phases of construction have commenced; and (ii) the Receiver understands the Company pre-sold 359 units (the “Sale Agreements”) and collected approximately \$31 million of deposits. The deposits are being held in trust with the surety.
- [9] The Receiver was appointed by Order dated October 19, 2023, on an application by MarshallZehr, the Company’s secured creditor who is owed approximately \$20.9 million, including amounts advanced prior to the Receivership Order being granted as well as amounts advanced as Receiver’s borrowings.
- [10] On December 20, 2023, the Court granted an order approving a process for marketing the Real Property. That sales process was detailed in the Receiver’s third report. On June 21, 2024, Justice Penny granted an approval and vesting order in respect of the original sale agreement dated April 4, 2024, as assigned to the Purchaser.
- [11] That transaction failed to close as neither the Second Deposit contemplated by that transaction or the remaining amount of the purchase price was paid to the Receiver. On July 4, 2024, the Receiver formally terminated the original transaction and the First Deposit was forfeited to the Receiver. However, a week later, on July 12, 2024, the Purchaser and the Receiver entered into the First Reinstatement Agreement pursuant to which the Purchaser agreed, among other things, to increase the purchase price by \$50,000 and provide two more deposits in addition to the Second Deposit. The Second Deposit was paid, but the Purchaser failed to pay the additional deposits and at the end of July of 2024, the agreement was terminated by the Receiver.
- [12] In September of 2004, the Receiver learned that the Purchaser was not registered with the Home Construction Regulatory Authority (the “HCRA”) and, accordingly, could not assume the Sale Agreements. Given that the original sales process only resulted in one other offer which was substantially inferior to the Purchaser's offer, discussions between the Purchaser, MarshallZehr and the Receiver continued.
- [13] The Second Reinstatement and Amending Agreement was entered into on October 8, 2024, which included, among other things, an additional deposit and an agreement for the Purchaser to assume the Sale Agreements conditional upon the Purchaser obtaining a vendor and builder license from the HCRA. However, the Purchaser again failed to pay the additional deposit and the Receiver again

terminated the sale agreement on October 24, 2024. At this point the Receiver re-listed the Purchased Assets for sale.

- [14] However, in November of 2024, the Purchaser advised the Receiver it now had access to another additional deposit. MarshallZehr also advised the Receiver that it was prepared to finance the balance of the purchase price. Before considering a further re-instatement agreement the Receiver advised the Purchaser that it required the additional deposit to be placed in the trust account of the Purchaser's counsel. Accordingly, on November 18, 2024, the Purchaser confirmed the entirety of the additional deposit was placed in trust with their counsel and the Receiver entered to the Third Reinstatement Agreement on that day.
- [15] As a result, the Transaction for which approval is now sought is substantially similar to that approved on June 21, 2024 with the following exceptions – the purchase price has been increased by \$50,000, the deposit in the aggregate amount of 18% of the purchase price has been paid to the Receiver or the Purchaser's counsel in trust, and the Purchaser will only assume the Sale Agreements if it obtains the HRCA licenses within 90 days of closing.
- [16] As noted, MarshallZehr has agreed to finance the remaining amount of the purchase price and has advised the Receiver that other than standard financing conditions requiring court-approval of the transaction and registration of security, all other financing conditions have been waived.
- [17] As well, the Receiver advised during the hearing that communications with purchasers under the Sale Agreements have occurred via the Receiver's website – and in particular correspondence summarizing the motion was posted on the Receiver's website on December 20, 2024. Although certain purchasers under the Sale Agreements have asked questions of the Receiver, no purchaser has objected to the Transaction. As the deposits are held in trust, should those Sale Agreements not be assumed by the Purchaser, the Receiver advises the deposits will be returned to the purchasers under the Sale Agreements.
- [18] Throughout the proceedings, Mr. Fugiel, the principal of the Company, advised the Receiver that he intended to purchase the Real Property or redeem the MarshallZehr loan. This included an offer submitted by Mr. Fugiel in trust for a corporation to be incorporated, on September 20, 2024. In response, the Receiver indicated that the proof Mr. Fugiel's financial ability to close the transaction would be required for the offer to be considered. No evidence was provided at that time.
- [19] Again, on November 2, 2024, Mr. Fugiel submitted another offer in trust for a corporation to be incorporated. A conditional financing term sheet was submitted on November 3, 2024. The Receiver expressed concerns regarding the identity of the lender and the conditionality of the term sheet to Mr. Fugiel. A further financing commitment letter was provided by counsel to Mr. Fugiel on November 15, 2024, however, the financing was again conditional on, among other things, satisfactory environmental reports, budgets and an appraisal.
- [20] It appears that an updated commitment was provided to the Receiver on November 21, 2024, but by that time the Receiver had entered into the Third Reinstatement Agreement (which was dated November 18, 2024).

[21] The Company has also requested payout statements from MarshallZehr which were provided in December of 2024.

Issues

[22] The issues to be determined are:

- a. Should the Transaction be approved;
- b. Should the Company be granted a further time period to redeem the MarshallZehr mortgage loan;
- c. Should an interim distribution to MarshallZehr from the proceeds of the Transaction be approved;
- d. Should the Receiver be authorized to establish a Holdback Reserve in the amount of \$1.4 million;
- e. Should the Fourth Report and the conduct and activities of the Receiver as described therein be approved; and
- f. Should the Confidential Appendices to the Fourth Report be sealed?

Analysis

Approval of the Transaction

- [23] The parties agree that the principles governing court-approval of the Transaction are set out in *Royal Bank v Soundair Corp.* 1991 CanLII 2727 (ONCA) [*Soundair*] where the Court of Appeal stated that the following factors must be considered when considering the approval of a proposed sale: (i) whether the receiver has made sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and (iv) the interest of all parties.
- [24] The Company submits it and its principal have not been treated fairly in the sale process and was not provided a commercially reasonable opportunity to submit offers. Specifically, when offers were submitted, the Receiver requested proof of financing on what the Company says are tight and unreasonable timelines.
- [25] The Company also says that Lakeshore previously entered into a joint venture agreement with the Company, and their participation as a bidder in the sale process violates that agreement. However, the parties agree that issue is not before me today and whether Lakeshore violated any contractual agreements with the Company or Mr. Fugiel is for another day.
- [26] This receivership proceeding has been ongoing for more than fourteen months. The Company or Mr. Fugiel did not submit a bid in the original sale process approved in December of 2023. The bids that were submitted in September and November of 2024 by Mr. Fugiel were not accompanied by proof of financing and included various conditions. That a firm commitment for financing from a purchaser in

an insolvency proceeding should be expected is not a surprise. I do not see this as unfairness in the working out of the process.

- [27] I am mindful that the Transaction may result in the Sale Agreements not being assumed by the Purchaser if the Purchaser cannot obtain the HCRA approvals. However, the purchasers under the Sale Agreements will have recourse to their deposits of \$31 million that are being held in trust should that occur.
- [28] As well, the purchase price under the Transaction is superior to that submitted by Mr. Fugiel in his offers. In this respect, Company's counsel indicated during the hearing that he had instructions to match the purchase price and should be given an opportunity to do so. Counsel to the Company also argued that if one accounts for the portion of the deposit that should already be forfeited to the Receiver based on the previously failed transactions, that the purchase price under the Transaction would not be superior to Mr. Fugiel's offers. Given the request for a sealing order for the redacted Transaction documents it is not clear how counsel to the Company has the required information to make those statements. It is also not appropriate for a Receiver, in this context, to be disclosing bids as suggested by the Company.
- [29] Rather what should be considered is the information available to the Receiver at the time it made a decision to proceed with the Transaction. At that time, the Transaction represented the best offer in terms of purchase price that it had received. The argument by counsel to the Company that the purchase price of Mr. Fugiel's offer is superior when one accounts for the forfeited deposits is not necessarily true. Contrary to the submissions by the Company, is not clear what portion of the deposit would be forfeited if the Transaction is not approved – counsel to the Purchaser argues that the deposit should be returned to his client based on the terms of the various reinstatement agreements.
- [30] As set out by the Ontario Court of Appeal in *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.* 2021 ONCA 375 at para 15, courts will generally defer to a court appointed receiver's business expertise in reviewing a sale and will not second guess their recommendation absent exceptional circumstances.
- [31] A similar statement was made in *Bank of Montreal v Dedicated National Pharmacies Inc. et al* 2011 ONSAC 4634 in addressing objections to a sale approval at paragraph 43: "Provided a receiver has acted reasonably, prudently and not arbitrarily, as is the case here, a court should not sit as in appeal from a receiver's decision or review in every detail every element of the procedure by which the receiver made its decision. To do so would be futile and duplicative. It would emasculate the role of the receiver.
- [32] Accordingly, I would approve the Transaction.

Redemption of the MarshallZehr mortgage loan

- [33] The Company also submits that it should be given a further time period to redeem the MarshallZehr loan. In this respect, the Company relies on the recent Court of Appeal decision in *Peakhill Capital Inc. v. 1000093910 Ontario Inc.* 2024 ONCA 584 [*Peakhill*]. The Court of Appeal in para 9 of *Peakhill* noted that the motion judge in the lower court in *Peakhill* correctly recognized that paras 9 and 10 of *Rose-*

Isli Corp. v. Smith, 2023 ONCA 548 [*Rose-Isli*] set out the governing principles that guided his decision. In *Rose-Isli* the Court of Appeal stated:

[9] We see no error in the motions judge applying the following principles to guide her consideration of whether, in the specific circumstances, 273 Ontario should be granted leave to redeem:

- In considering a request by an encumbrancer to redeem a mortgage on property in receivership, a court should consider the impact that allowing the encumbrancer to exercise its right of redemption would have on the integrity of a court-approved sales process;
- Usually, if a court-approved sales process has been carried out in a manner consistent with the principles set out in *Royal Bank of Canada v. Soundair Corp.*, (1991), 1991 CanLII 2727 (ON CA), 4 O.R. (3d) 1 (C.A.), a court should not permit a latter attempt to redeem to interfere with the completion of the sales process. In our view, the reason the *Soundair* principles apply to circumstances where an encumbrancer seeks to redeem a mortgage is that once the court's process has been invoked to supervise the sale of assets under receivership, the process must take into consideration all affected economic interests in the properties in question, not just those of one creditor; and
- In dealing with the matter, a court should engage in a balancing analysis of the right to redeem against the impact on the integrity of the court-approved receivership process.

[10] We adopt the rationale for those guiding principles articulated in *B&M Handelman Investments Limited v. Mass Properties Inc.* (2009), 2009 CanLII 37930 (ON SC), 55 C.B.R. (5th) 271 (Ont. S.C.), where the court stated, at para. 22:

A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and for the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders.

[34] In *Peakhill*, the motions judge found that in the extraordinary circumstances of that case, including that all creditors were being paid in full and allowing the respondent to redeem would not have a significant impact on the integrity of the system in that particular case.

[35] Unlike in *Peakhill*, in the circumstances before me, providing additional time for the Company to redeem would not be appropriate. As noted, the receivership proceeding has been ongoing for over fourteen months, the Company is not coming with a cheque in hand to pay out all creditors. Rather, Mr. Fugiel has been attempting to participate as a bidder for the Real Property and is only raising the possibility of redemption (and requesting more time to put together the necessary funds) as an alternative option to delay sale approval. Unlike in *Peakhill*, there are no unusual and exceptional circumstances that exist to support granting the Company's right to redeem at this time.

Interim distribution to MarshallZehr and establishment of the Holdback Reserve

- [36] Should the Transaction close, no party objected to the Receiver's request that the Receiver be authorized to distribute the proceeds, subject to adequate reserves as determined by the Receiver to MarshallZehr.
- [37] The Receiver has obtained an opinion from its independent legal counsel that, subject to standard assumptions and qualifications, pursuant to applicable security documentation, MarshallZehr has a valid security interests or charge, as applicable, against the Real Property.
- [38] The Receiver also seeks to establish a Holdback Reserve of \$1.4 million, which exceeds 10% of the total amount of liens registered against the real property. This permits the Receiver to facilitate an interim distribution while at the same time reviewing the validity of the lien claims. Counsel for the construction lien claimants present did not object to the distribution the size of the proposed Holdback Reserve. There is separately a motion scheduled for March 7, 2025, to address MarshallZehr's position that none of the \$1.4 million has priority over its mortgage.
- [39] In the circumstances, the interim distribution to MarshallZehr and proposed Holdback Reserve, to be dealt with in accordance with the terms of the ancillary order signed by me, are approved.

Approval of Fourth Report and the Receiver's activities

- [40] The activities of the Receiver described in its fourth report were necessary and undertaken in good faith. Given my findings above, the Fourth Report and the activities of the Receiver as set out therein are approved.

Sealing of Confidential Appendices

- [41] The limited sealing order being sought is necessary to preserve the Receiver's ability to maximize the value of the Real Property in the event of the Transaction does not close. I am satisfied that the requested sealing order for the confidential appendices to the Fourth report meets the test in *Sierra Club/Sherman Estates* and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. I direct counsel for the receiver to file a hard copy of the confidential appendices with the Commercial List Office in his sealed envelope with a copy of the approval investing order in this endorsement.

Disposition

- [42] For the forgoing reasons, I grant the relief requested by the Receiver with the minor amendments to the form of draft approval and vesting order and ancillary order discussed during the hearing. Orders to issue in the forms signed by me this day.



APPENDIX B

Court of Appeal File No.:
Court File No.: CV-23-00700695-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant
(Respondent)

- and -

LA PUE INTERNATIONAL INC.

Respondent
(Appellant)

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

NOTICE OF APPEAL

THE APPELLANT, La Pue International Inc. (“La Pue” or the “Appellant”), appeals to the Court of Appeal for Ontario from the Endorsement and Order of the Honourable Justice Jane Dietrich (the “**Motion Judge**”) dated January 7, 2025, made at Toronto, Ontario whereby the learned Motion Judge granted an Order (the “**Order**”) approving the asset purchase agreement dated April 4, 2024, as amended thereafter (the “**APA**”), entered into between Lakeshore Luxe Design & Build Group (“**Lakeshore**”) and KSV Restructuring Inc. (the “**Receiver**”), in its capacity as receiver over all the assets, undertakings and properties of La Pue, and vesting in 100835091 Ontario Inc. (the “**Purchaser**”) as assignee of Lakeshore, La Pue’s right title and interest in and to the purchased assets, including the real property municipally known as 5528 Ferry Street, Niagara Falls (the “**Real Property**”).

THE APPELLANT ASKS that the Order be set aside and an Order be granted as follows:

- a) An Order permitting and directing La Pue to exercise its right of redemption and payout the indebtedness owed to the Applicant/Respondent on Appeal, Marshallzehr Group Inc.;

THE GROUNDS OF APPEAL are as follows:

- b) The learned Motion Judge erred in law and fact by failing to consider, or properly consider, the interests of all parties, as required pursuant to the governing principles set out in case law and applicable to the Court's approval of sales transactions.
- c) The learned Motion Judge failed to consider the interests of La Pue, the claimants with liens registered against title to the Real Property and the 359 pre-sale purchasers that entered into preconstruction agreements (the "**Preconstruction Agreements**") with La Pue for the purchase of condominium units.
- d) The learned Motion Judge erred in law and fact by approving the Order and vesting in the Purchaser title in the Real Property, as the Purchaser is not registered with the Home Construction Regulatory Authority and thereby precluded from assuming the Preconstruction Agreements and resulting in a termination thereof.
- e) The Learned Motion Judge failed to consider, or properly consider, the Purchaser's failure to pay deposits to the Receiver on three separate occasions and the corresponding financial ability of the Purchaser to complete the sales transaction.
- f) The learned Motion Judge erred in law and fact by preferring the interests of the Purchaser over the interests of La Pue and its right to redeem and payout the indebtedness owed to Applicant/Respondent on Appeal, Marshallzehr Group Inc.
- g) The learned Motion Judge failed to consider evidence supporting La Pue's financial ability to exercise its right of redemption, including but not limited to, the lender's

letter dated November 21, 2024 evidencing proof of funds and an email from La Pue's lender sent on December 16, 2024 confirming that the funds are available.

- h) The learned Motion Judge erred in fact by finding that the purchase price submitted by the Purchaser is superior to the offer submitted by La Pue's principal.
- i) La Pue's right to redeem and payout the indebtedness owed to the Applicant/Respondent on Appeal, Marshallzehr Group Inc. would create a more satisfactory result for all interested stakeholders insofar as there would be no shortfall or deficit on the indebtedness, the Preconstruction Agreements would remain in place and the lien claimants security would not vest in the purchase price and be discharged from title to the Real Property.
- j) The learned Motion Judge erred in fact by finding that there are no unusual or exceptional circumstances that exist to support granting La Pue's right to redeem.
- k) By denying La Pue's request to exercise its right of redemption, the learned Motion Judge erred in law.
- l) If required or necessary, a stay of the Order appealed from pending the hearing of this appeal by this Honourable Court and directing the Receiver not to close the sale transaction with the Purchaser pending the hearing of the within Appeal.
- m) Such further and other grounds as counsel may advise and this Honourable Court may permit

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- n) Rule 61.04 of the *Rules of Civil Procedure*.
- o) Sections 6(1)(b) and 134(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

- p) Sections 193(b), 193(c), 195 of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3.
- q) Rule 31 of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368.
- r) Leave to appeal the Order is not required.
- s) Such further and other statutes/rules as counsel may advise and this Honourable Court may permit.

DATE: January 16, 2025

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Lawyers for the Appellant,
La Pue International Inc.

TO: SERVICE LIST

MARSHALLZEHR GROUP INC.
Applicant (Respondent on Appeal)

- and -

LA PUE INTERNATIONAL INC.
Respondent (Appellant)

Court File No. CV-23-00700695-00CL
Court of Appeal File No.

COURT OF APPEAL FOR ONTARIO

Proceedings Commenced at TORONTO

NOTICE OF APPEAL

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Lawyers for the Appellant,
La Pue International Inc.

APPENDIX C

COURT OF APPEAL FOR ONTARIO

CITATION: Marshallzehr Group Inc. v. La Pue International Inc., 2025 ONCA 124

DATE: 20250219

DOCKET: M55745 & M55769 (COA-25-CV-0063)

MacPherson J.A. (Motions Judge)

In the matter of an application under subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

BETWEEN

Marshallzehr Group Inc.

Applicant

(Respondent/Responding Party/Responding Party by way of cross-motion)

and

La Pue International Inc.

Respondent

(Appellant/Responding Party/Moving Party by way of cross-motion)

Miranda Spence and Adrienne Ho, for the respondent/moving party (M55745)/responding party by way of cross-motion (M55769), KSV Restructuring Inc., in its capacity as receiver of La Pue International Inc.

Maya Poliak, for the respondent/responding party (M55745)/responding party by way of cross-motion (M55769), Marshallzehr Group Inc.

Howard F. Manis and Daniel Litsos, for the appellant/responding party (M55745)/moving party by way of cross-motion (M55769), La Pue International Inc.

Mitch Lightowler and Piper Mckerlie, for 1000835091 Ontario Inc.

Fernando Souza, for Buttcon Limited and as agent for counsel for HC Matcon Inc.

Jason Wadden, for Anthony Defrancesco

Heard: February 7, 2025

ENDORSEMENT

[1] KSV Restructuring Inc. (“KSV”), in its capacity as court appointed receiver of all the assets, undertakings and properties of La Pue International Inc., including the real property known as 5528 Ferry Street, Niagara Falls, brings a motion seeking, *inter alia*:

- (a) a declaration that the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the “*BIA*”) governs the appeal by the debtor La Pue International Inc. from the Approval and Vesting Order of Dietrich J. of the Superior Court of Justice dated January 7, 2025 (the “*AVO*”);
- (b) a declaration that there is no automatic right of appeal from the *AVO* pursuant to subsections 193(a)-(d) of the *BIA* and that leave to appeal is required pursuant to subsection 193(e) of the *BIA*;
- (c) an Order declining to grant leave to appeal from the *AVO*; and
- (d) an Order sealing the confidential appendices of the fifth report of the Receiver dated January 20, 2025 (the “*Fifth Report*”).

[2] In response to the receiver’s motion, the debtor La Pue International Inc. brings a cross-motion relating to the same subject matter and issues.

[3] In her decision authorizing the sale by the receiver of the subject property, the motion judge concluded, at paras 29-32:

[W]hat should be considered is the information available to the Receiver at the time it made a decision to proceed with the Transaction. At that time, the Transaction represented the best offer in terms of purchase price that it had received.

...

As set out by the Ontario Court of Appeal in *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375 at para 15, courts will generally defer to a court appointed receiver's business expertise in reviewing a sale and will not second guess their recommendation absent exceptional circumstances.

...

Accordingly, I would approve the Transaction.

[4] The debtor seeks to appeal the motion judge's decision, asserting that she erred by failing to properly consider the interests of all parties and by preferring the interests of the purchaser over the interest of the debtor and its right to redeem.

[5] Appeals under the *BIA* are dealt with in s. 193:

Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

(a) if the point at issue involves future rights;

(b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;

(c) if the property involved in the appeal exceeds in value ten thousand dollars;

(d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and

(e) in any other case by leave of a judge of the Court of Appeal.

[6] The debtor asserts that it has a right to appeal under s. 193(a) of the *BIA*.¹

It says that the AVO affects its future rights as well as those of 359 pre-sale purchasers that entered into pre-sale construction agreements with the debtor and the lien claimants with more than \$12,000,000 in security registered against title to the property.

[7] I do not accept this submission. In *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, 2016 ONCA 225, Brown J.A. said, at paras. 21-23:

Although the category of “future rights” increasingly seems an anachronistic and confusing basis upon which to ground appeal rights, courts have attempted to cloak the term “future rights” with some practical meaning. In *Re Ravelston Corp.*, Doherty J.A. stated, at para. 18:

The meaning of the phrase “future rights” is not obvious. Caselaw holds that it refers to future legal rights and not to procedural rights or commercial advantages or disadvantages that may accrue from the order challenged on appeal ... Rights that presently exist, but may be exercised in the future or altered by the order under appeal are present rights and not future rights ...
[Citations omitted.]

¹ In its notice of appeal, the debtor asserts that it has a right of appeal under s. 193(b) of the *BIA*; however, this submission was not pursued at the hearing of this motion. Instead, the debtor relies on ss. 193(a) and (c) of the *BIA* to submit that it has a right of appeal to this court.

Doherty J.A. went on to adopt, at para. 19, the view expressed in *Elias v. Hutchison*, at paras. 100-101, that s. 193(a) of the *BIA* “must refer to rights which could not at the present time be asserted but which will come into existence at a future time.”

More recently, Blair J.A., in *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, stated, at para. 15:

“Future rights” are future legal rights, not procedural rights or commercial advantages or disadvantages that may accrue from the order challenged on appeal. They do not include rights that presently exist but that may be exercised in the future.

[8] In my view, the debtor cannot bring itself within the definitions set out in these authorities. Its rights that may be in issue in the bankruptcy proceedings may be in issue now, not in the future.

[9] The debtor’s second submission is that it has a right of appeal under s. 193(c) of the *BIA*. It says that if the transaction contemplated by the AVO is completed, it is certain that there will be a loss exceeding \$10,000 suffered by the company, its principal and the lien claimants. The debtor points out that in its factum the receiver acknowledges that the debtor’s indebtedness to the applicant continues to accrue interest at \$14,181.37 per day and the underlying debt already exceeds \$20,000,000.

[10] I am not persuaded by this submission. In *Bending Lake Iron Group, supra*, Brown J.A. said, at para. 53:

[C]ontextual factors militate against employing an expansive application of the automatic right of appeal contained in s. 193(c) and, instead, point to the need for an approach which is alive to and satisfies the needs of modern, “real-time” insolvency litigation. I shall employ such an approach in applying the following three principles that have emerged from the jurisprudence: s. 193(c) does not apply to (i) orders that are procedural in nature, (ii) orders that do not bring into play the value of the debtor’s property, or (iii) orders that do not result in a loss.

[11] In my view, the AVO in this case fits precisely into the three parameters set out by Brown J.A. in this passage, and the appeal does not meet the threshold in s. 193(c) of the *BIA*. I agree with the receiver that the AVO is procedural in nature, does not bring into play the value of the debtor’s property, and does not result in a direct loss to any interested party.

[12] The debtor’s third submission is that, if it does not have an automatic right of appeal under either or both s. 193(a) and s. 193(c) of the *BIA*, it should nevertheless be granted leave under the discretionary s. 193(e) of the *BIA*.

[13] The test for leave to appeal under s. 193(e) of the *BIA* is well established. In *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, Blair J.A. said, at para 29:

Beginning with the overriding proposition that the exercise of granting leave to appeal under s. 193(e) is discretionary and must be exercised in a flexible and contextual way, the following are the prevailing considerations in my view. The court will look to whether the proposed appeal,

- (a) raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole, and is one that this Court should therefore consider and address;
- (b) is *prima facie* meritorious, and
- (c) would unduly hinder the progress of the bankruptcy/insolvency proceedings.

[14] The debtor cannot establish any of these factors.

[15] The proposed appeal does not raise an issue of general importance to insolvency practice or to the administration of justice as a whole. I agree with the receiver that the proposed appeal is rooted in the specifics of the dealings among the receiver, the debtor and the potential purchaser.

[16] The proposed appeal is not *prima facie* meritorious. The motion judge's reasons are clear, comprehensive and, in my view, obviously correct.

[17] The proposed appeal would delay and "unduly hinder" the progress of the bankruptcy proceedings. The sooner the receiver can proceed with and finalize its professional steps, the better.

[18] The receiver's motion is granted. The debtor's cross-motion is dismissed.

[19] A sealing Order is granted with respect to Confidential Appendices 1 to 6 of the receiver's Fifth Report to the Court dated January 20, 2025.

[20] The receiver is entitled to its costs of the motion and cross-motion fixed at \$25,000, inclusive of disbursements and HST.

J. G. MacPherson J.A.

APPENDIX D



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00700695-00CL

DATE: February 21, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. LA PUE INTERNATIONAL INC.

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Self-Rep, Other Party:

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Dylan Dilks	Lawyer for Kada Group Inc	ddilks@weirfoulds.com

ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

- [1] KSV Restructuring Inc. was appointed as receiver (the “**Receiver**”) by Order dated October 19, 2023, of all of the assets, undertakings and properties of La Pue International Inc. (the “**Company**”), including the real property municipally known as 5528 Ferry Street, Niagara Falls.
- [2] As described below, on January 7, 2025, over the objection of the Company, I granted an approval and vesting order in this matter (the “**Approval and Vesting Order**”). The Company has now brought a motion seeking an order granting it leave to redeem the mortgage indebtedness owed to the Applicant and payout all associated costs of the receivership proceeding.

Background

- [3] On January 7, 2025, I released an endorsement (the “**January 7, 2025 Endorsement**”) in this matter. Defined terms not otherwise defined herein, have the meaning provided for in the January 7, 2025 Endorsement. Further background is provided in the January 7, 2025 Endorsement and is not repeated here.
- [4] Among other things, in the January 7, 2025 Endorsement, I approved a Transaction as requested by the Receiver, over the objection of the Company. At that time, the Company argued, among other things, that the sale process leading to the Transaction was flawed and that the Company should be granted additional time to redeem the mortgage of MarshallZehr. I denied the Company's request for leave to redeem at that time and the Approval and Vesting Order was granted.
- [5] The Company sought to appeal the Approval and Vesting Order. On February 19, 2025, the Ontario Court of Appeal released a decision finding that the Company required leave to appeal the Approval and Vesting Order and denied leave to do so: see *Marshallzehr Group Inc. v. La Pue International Inc.* 2025 ONCA 124.
- [6] Following the granting of the Approval and Vesting Order, the Receiver filed a motion record seeking to amend that order to reflect an assignment by the Purchaser of its rights under the relevant agreement to 1001082540 Ontario Inc. In response, the Company filed a cross-motion objecting to the requested amendment to reflect the assignment of the Lakeshore APS and again seeking leave to redeem the mortgage of the Applicant.

Issue

- [7] The Receiver has withdrawn its motion seeking an amendment of the Approval and Vesting Order.
- [8] Accordingly, the only issue to be determined at this time is whether the Company should now be granted leave to redeem the Applicant's mortgage and payout all associated costs of the receivership proceeding.

Analysis

- [9] In large part the Company's request to redeem mirrors the relief they sought in objecting to the Receiver's request for approval of the Transaction. There are, however, two main factual differences.
- [10] First, the Company has provided additional evidence that it has funds available. The Receiver notes in the Seventh Report dated February 20, 2025, that it appears the Applicant has approximately \$23.6 million in committed financing – subject only to a condition that 'clear title' to the Property is required. In that regard, counsel to the Company has advised the Receiver that it is in discussions with lien claimants to subordinate their interest to the new lenders. The status of these discussions is not clear, however the construction lien claimants support the Company's request on this motion (as they supported the Company's request at the hearing which led to the January 7, 2025 Endorsement). Counsel to the Company says slightly more funds (approximately \$23.75 million) are held in trust and a new commitment has just been received (dated February 20, 2025) for up to \$26 million. There is a dispute about whether the amount of funding available is sufficient to cover not only the amounts owed to the Applicant, but the various costs of the receivership proceeding including the Purchaser's costs.
- [11] Second, the Approval and Vesting Order exists. The Approval and Vesting Order approves the Transaction and authorizes and directs the Receiver to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser. Counsel to the Company agrees that the Approval and Vesting Order has not been stayed and leave to appeal has been denied. Rather, the Company argues that it is inherent in their request for leave to redeem that the Approval and Vesting Order be set aside. No motion to vary or set aside the Approval and Vesting Order was brought.
- [12] The law relating to a debtor's right to redeem remains as expressed in my January 7, 2025 Endorsement. The Court of Appeal in para 9 of *Peakhill Capital Inc. v. 1000093910 Ontario Inc.* 2024 ONCA 584 [*Peakhill*] noted that the motion judge in the lower court in *Peakhill* correctly recognized that paras 9 and 10 of *Rose-Isli Corp. v. Smith*, 2023 ONCA 548 [*Rose-Isli*] set out the governing principles that guided his decision. In *Rose-Isli* the Court of Appeal stated:

[9] We see no error in the motions judge applying the following principles to guide her consideration of whether, in the specific circumstances, 273 Ontario should be granted leave to redeem:

- In considering a request by an encumbrancer to redeem a mortgage on property in receivership, a court should consider the impact that allowing the encumbrancer to exercise its right of redemption would have on the integrity of a court-approved sales process;
- Usually, if a court-approved sales process has been carried out in a manner consistent with the principles set out in *Royal Bank of Canada v. Soundair Corp.*, (1991), 1991 CanLII 2727 (ON CA), 4 O.R. (3d) 1 (C.A.), a court should not permit a later attempt to redeem to interfere with the completion of the sales process. In our view, the reason the *Soundair* principles apply to circumstances where an encumbrancer seeks to redeem a mortgage is that once the court's process has been invoked to supervise the sale of assets under receivership, the process must take into consideration all affected economic interests in the properties in question, not just those of one creditor; and
- In dealing with the matter, a court should engage in a balancing analysis of the right to redeem against the impact on the integrity of the court-approved receivership process.

[10] We adopt the rationale for those guiding principles articulated in *B&M Handelman Investments Limited v. Mass Properties Inc.* (2009), 2009 CanLII 37930 (ON SC), 55 C.B.R. (5th) 271 (Ont. S.C.), where the court stated, at para. 22:

A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and for the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders.

- [13] The Company argues that allowing it to redeem the Applicant's mortgage at this time is the proper balancing of stakeholder interests and would not significantly impact the integrity of the insolvency system as the purpose of the receivership would be fulfilled - relevant stakeholders will have been made whole. Further, it says in the unusual circumstances of this case, given the 'hair' on the Transaction it is appropriate to grant leave to redeem. In this regard, the Company relies on many of the same arguments regarding the sale process and selection of the Transaction as the winning bid that were raised previously when it objected to approval of the Transaction.

- [14] The Receiver argues that granting leave to redeem to the Company would, at this late stage, make a mockery of the practice and procedures relating to receivership sales. The Receiver also takes the position that, unlike in *Peakhill*, the Company has not confirmed funding necessary to satisfy all of the Purchaser's costs and the Company does not have the support of all of the stakeholders. MarshallZehr supports the Receiver's position. The Purchaser also supports the Receiver's position and has provided evidence that it is ready, willing and able to close the Transaction and is prepared to do so as soon as possible. The Receiver also advises that the only reason the Transaction has not yet closed is because of the Company's effort to appeal the Approval and Vesting Order – which the Court of Appeal dismissed just two days ago.
- [15] I agree with the Receiver that granting leave to redeem after a sale transaction has been approved would, in the present circumstances, as cautioned by the Court of Appeal in *Rose-Isli*, make a mockery of the practice and procedures relating to receivership sales. The Company could not point me to any authority where a debtor has been given leave to redeem following the granting of an approval and vesting order.
- [16] Granting leave to redeem at this stage would be contradictory to the terms of the Approval and Vesting Order. The Approval and Vesting Order authorized and directed the Receiver to take steps to close the Transaction. Permitting the Company to redeem the Applicant's mortgage at this time would, in effect, be an end run around the Approval and Vesting Order.
- [17] As noted above, no motion to vary or set aside the Approval and Vesting Order was brought. The Approval and Vesting Order has not been stayed and leave to appeal has been dismissed.
- [18] For the reasons above, I dismiss the Company's motion seeking leave to redeem the Applicant's mortgage and payout all associated costs of the receivership proceeding.
- [19] The Receiver takes the position that should the Company move to appeal or seek leave to appeal the dismissal of the Company's motion to redeem, that such would not act to stay the Approval and Vesting Order. The Receiver, accordingly, advises that it intends to move forward with closing of the Transaction. In this respect, it is not for me to weigh in on the effect of any hypothetical appeal or leave to appeal proceeding.

APPENDIX E

Court File No. CV-23-00700695-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated October 19, 2023, KSV Restructuring Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of La Pue International Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated January 7, 2025 (“**Approval and Vesting Order**”), the Court approved the asset purchase agreement (as amended, restated, reinstated or otherwise supplement from time to time, the “**Sale Agreement**”) between the Receiver and Lakeshore Luxe Design & Build Group (the “**Original Purchaser**”) and assigned by the Original Purchaser to 1000835091 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser all of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by

the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction contemplated by the Sale Agreement (the “**Transaction**”) has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at 2:20 p.m. on March 19, 2025.

KSV RESTRUCTURING INC., solely in its capacity as Court-Appointed Receiver of La Pue International Inc. and not in its personal capacity

Per: 
Name: Noah Goldstein
Title: Managing Director

I have authority to bind the Receiver

MARSHALLZEHR GROUP INC

Applicant

- and LA PUE INTERNATIONAL INC.

Respondent

Court File No. CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at TORONTO

RECEIVER'S CERTIFICATE

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Lawyers for the Receiver

APPENDIX F



**Fourth Report of
KSV Restructuring Inc.
as Receiver of
La Pue International Inc.**

December 11, 2024

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COURT FILE NO.: CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

- AND -

LA PUE INTERNATIONAL INC.

RESPONDENT

FOURTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

DECEMBER 11, 2024

1.0 Introduction

1. This report ("**Report**") is filed by KSV Restructuring Inc. ("**KSV**"), in its capacity as receiver (the "**Receiver**") of the assets, undertakings, and property of La Pue International Inc. (the "**Company**") acquired for or used in relation to a business carried on by the Company.
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on October 19, 2023, KSV was appointed Receiver.
3. The Company's principal asset is the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the "**Real Property**"). The principal purpose of the receivership proceeding is to market the Real Property for sale in a Court-supervised process.
4. On December 20, 2023, the Court issued an order (the "**Sale Process Order**") approving a sale process for the Real Property and certain related assets (the "**Sale Process**").

5. On April 4, 2024, the Receiver and Lakeshore Luxe Design & Build Group (“**Lakeshore**”) entered into an Asset Purchase Agreement (the “**Original APA**”) which contemplated a transaction (the “**Original Transaction**”) for, among other things, the sale of the Real Property and the assumption of 359 pre-sale agreements entered into with homebuyers (the “**Sale Agreements**”) (collectively, the “**Purchased Assets**”).
6. On June 11, 2024, Lakeshore assigned all of its right, title and interest in the Original APA to 1000835091 Ontario Inc. (the “**Purchaser**”) pursuant to an Assignment of Agreement of Purchase and Sale dated June 11, 2024 (the “**Assignment Agreement**”).
7. On June 17, 2024, the Receiver filed its Third Report to Court (the “**Third Report**”) recommending, among other things, that the Court approve the Original Transaction. A copy of the Third Report (without appendices) is attached as **Appendix “A”**. On June 21, 2024, the Court issued an order (the “**Sale Approval Order**”) approving the Original Transaction. A copy of the Sale Approval Order is attached as **Appendix “B”**.
8. As detailed below, the Purchaser failed to close the Original Transaction, and the Receiver terminated this transaction. The Receiver subsequently entered into several reinstatement agreements with the Purchaser, the details of which are set out below.
9. The Receiver has now negotiated terms with the Purchaser for an amended transaction (the “**Amended Transaction**”), which is unconditional except for Court approval. Approximately 18% of the purchase price under the Amended Transaction has been paid in cash and is held by the Receiver in trust. The balance of the purchase price will be satisfied by financing provided by MarshallZehr to the Purchaser.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide an update on the status of the Real Property;
 - b) summarize the terms of the Amended Transaction;
 - c) summarize the Receiver’s dealings with Mr. Pawel Fugiel, the principal of the Company;
 - d) discuss a proposed distribution from the net sale proceeds of the Amended Transaction (the “**Proceeds**”) to MarshallZehr Group Inc. (“**MarshallZehr**”), the Company’s senior secured creditor and the Applicant in these proceedings;
 - e) discuss a proposed reserve (the “**Holdback Reserve**”) to be held by the Receiver from the cash proceeds of the Transaction pending a determination of the Holdback Claims (as defined below);
 - f) discuss next steps in these proceedings;

- g) recommend that the Court issue orders, among other things:
- i. approving the Amended Transaction;
 - ii. authorizing and directing the Receiver to make an interim distribution to MarshallZehr, on account of its secured indebtedness;
 - iii. authorizing the Receiver to establish the Holdback Reserve, while the Receiver establishes a process for the determination of any entitlement to the Holdback Reserve, and authorizing the Receiver to release funds from the Holdback Reserve in respect of Holdback Claims to the applicable lien claimant, if the Receiver determines any such amounts are payable in priority to MarshallZehr ("**Priority Payables**"), (i) with the consent of MarshallZehr and the applicable claimant, or (ii) further order of the Court;
 - iv. sealing Confidential Appendices "1" to "5" (collectively, the "**Confidential Appendices**") to this Report until the business day following the closing of the Amended Transaction; and
 - v. approving this Fourth Report and the Receiver's conduct and activities described therein;

1.2 Currency

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon information, including financial information provided by MarshallZehr, the principal secured creditor of the Company. The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own diligence.

2.0 Background

1. The Company is a single purpose entity that owns the Real Property. Mr. Fugiel is the sole officer and director of the Company.
2. The Company intended to use the Real Property to develop and sell three mid-rise buildings consisting of one mixed-use, one hotel and one residential building on the Property (the "**Project**"). Prior to the receivership proceedings, the Company completed significant shoring and excavation work on the Project, although no other phases of construction have commenced.

3. Prior to the receivership proceedings, the Company entered into the Sale Agreements and collected approximately \$31 million of deposits. The deposits are being held in trust with the surety.
4. The Receiver was appointed on an application by MarshallZehr. Pursuant to a commitment letter dated November 15, 2021, as amended, MarshallZehr agreed to provide a loan in the maximum principal amount of \$12,375,000 to the Company for the purpose of refinancing an existing loan. The Receiver understands, based on the information provided to it by MarshallZehr, that the entirety of the funds advanced was used to fund the refinancing, interest reserve and service fees related to the refinancing transaction.
5. Pursuant to a letter dated November 30, 2022, MarshallZehr increased the loan amount by \$5,625,000 (the **"Third Advance"**). The Receiver understands that the Third Advance was conditional upon the Company satisfying certain conditions, which were not met. Accordingly, the Third Advance was not made to the Company. As of the date of this Report, MarshallZehr is owed approximately \$20.4 million (the **"MarshallZehr Indebtedness"**).
6. As security for the MarshallZehr Indebtedness, the Company granted MarshallZehr, amongst other things, (i) a first ranking charge in the principal amount of \$13.8 million on the Property, which was registered on December 1, 2021, and (ii) a general security agreement. MarshallZehr registered a financing statement against the Company under the *Personal Property Security Act* (Ontario) (**"PPSA"**).
7. Sovereign General Insurance Company (**"SGIC"**) holds a second ranking charge in the principal amount of \$2 million as security for deposit insurance. SGIC also registered a financing statement against the Company under the PPSA. SGIC and MarshallZehr are also parties to a priority agreement.
8. In addition to a PPSA registration in favour of SGIC and MarshallZehr, eight construction liens totalling approximately \$13.6 million are registered against the Real Property.
9. Following its appointment, on October 23, 2023, the Receiver wrote to Mr. Fugiel to request information regarding, among other things, the Company's creditors. In November 2023, the Receiver also requested during telephone conversations with Mr. Fugiel that he provide, among other things, the Company's books and records. Despite numerous follow up attempts via email and telephone calls, the information requested by the Receiver has not been provided.
10. Due to Mr. Fugiel's lack of cooperation, the Receiver was forced to incur additional costs to obtain the required information and documents, including copies of all existing Agreements of Purchase and Sale. The Receiver reserved its rights to bring a motion in the future to recover these costs from Mr. Fugiel.

2.1 Status of Real Property

1. Since the commencement of these proceedings, the Receiver has had regular monitoring reports completed on the shoring by RWH Engineering Inc. which specializes in excavation work. Earlier this year, the Receiver spent approximately \$350,000 (excluding taxes) to repair the shoring. On November 29, 2024, the Receiver received a quote of \$390,000 (excluding taxes) to prepare the site for winter maintenance, which has been provided to counsel for the Purchaser.

3.0 Transaction

1. A summary of the Sale Process and the Original Transaction is provided in the Third Report, a copy of which, without appendices, is attached as Appendix "A". The purchase price of the Original Transaction was sealed pursuant to a Court order issued on June 21, 2024, although the purchase price was disclosed to the lien claimants who signed non-disclosure agreements.
2. As described in the Third Report, the Purchaser paid the First Deposit of \$500,000. Despite the Second Deposit (as defined in the Original APA) not being paid, the Receiver proceeded to obtain an approval and vesting order and close the transaction. The Receiver informed the Court that this approach was intended to compel the Purchaser to either complete the transaction or forfeit the First Deposit.
3. The Original Transaction was scheduled to close on July 2, 2024. On the scheduled date, the Receiver tendered the closing documents, however the Purchaser failed to pay the balance of the closing funds. On July 4, 2024, the Receiver formally terminated the Transaction and the First Deposit was forfeited to the Receiver. A copy of the termination letter sent by the Receiver's counsel to the Purchaser is attached as **Appendix "C"**.
4. Following discussions with the Purchaser, the Receiver was informed that the Purchaser required until September 2024 to secure the necessary funds to close. Consequently, on July 12, 2024, the Purchaser and the Receiver entered into a Reinstatement and Amending Agreement (the "**First Reinstatement Agreement**") pursuant to which the parties agreed as follows:
 - a) the Purchase Price under the Original APS would be increased by \$50,000;
 - b) the Purchaser would deliver the Second Deposit by July 11, 2024;
 - c) if the Purchaser failed to close the Transaction by the new closing date, the First Deposit and the Second Deposit would be forfeited to the Receiver;
 - d) the Purchaser would provide two additional deposits payable on July 22, 2024, and August 1, 2024; and
 - e) the closing date would be extended to September 6, 2024.
5. A copy of the First Reinstatement Agreement with the purchase price redacted is attached as **Appendix "D"**. An unredacted copy of the First Reinstatement Agreement is attached as **Confidential Appendix "1"**.

6. The Purchaser failed to pay the additional deposits by the prescribed deadline. Accordingly, the transaction was terminated and the First Deposit and the Second Deposit were forfeited. Attached as **Appendix “E”** is a copy of the termination letter.
7. In September 2024, MarshallZehr advised the Receiver that the Purchaser had partnered with a real estate developer based in Toronto known to MZ. The Receiver was advised that the Purchaser was not registered with the Home Construction Regulatory Authority (“**HCRA**”) and, therefore, could not assume the Sale Agreements, even though the Original APS provided for the assumption. Following discussions with the Purchaser, the developer and MarshallZehr, on October 8, 2024, the Receiver entered into a Second Reinstatement and Amending Agreement (the “**Second Reinstatement Agreement**”), which included the following terms:
 - a) an additional deposit payable within one day of executing the agreement; and
 - b) an agreement for the Purchaser to assume the Sale Agreements ninety (90) days after the Closing Date (the “Assumption Date”), with an option for the Purchaser to extend the Assumption Date by an additional ninety (90) days upon prior written notice to the Vendor and the Vendor's Solicitors, or as mutually agreed in writing. This assumption was conditional on the Purchaser obtaining a vendor and builder license from the HCRA.
8. A copy of the Redacted Second Reinstatement Agreement is attached as **Appendix “F”**. A copy of the Unredacted Second Reinstatement Agreement is attached as **Confidential Appendix “2”**.
9. Despite executing the document the day earlier, the Purchaser failed to pay the additional deposit and the Receiver again terminated the transaction on October 24, 2024.
10. The Receiver subsequently re-listed the Purchased Assets for sale.
11. In November 2024, the Purchaser informed the Receiver that it now had access to a further deposit that was cumulatively the same value as the First Deposit and the Second Deposit (the “**Third Deposit**”). Given the Purchaser's prior defaults, the Receiver required the deposit to be placed in the Purchaser's lawyer's trust account before considering a further reinstatement agreement. MarshallZehr also advised the Receiver that it was prepared to finance the balance of the purchase price. On November 18, 2024, the Purchaser's counsel confirmed that the entirety of the Third Deposit was in its trust account. On the same day, the Receiver executed a Third Reinstatement and Amending Agreement (the “**Third Reinstatement Agreement**”), which included the following terms:
 - a) the Purchaser would pay the Third Deposit to counsel for the Receiver in trust within one (1) business day. If the Purchase Agreement was terminated due to the Purchaser's default, the Third Deposit, along with any accrued interest, will be forfeited to the Receiver;

- b) if the financing transaction contemplated by a letter of intent between MarshallZehr and the Purchaser failed due to reasons unrelated to the Purchaser's default, the deposit would be returned to the Purchaser without deductions or interest, upon the Purchaser's request; and
 - c) the terms of the Original APA together with the First Reinstatement Agreement and Second Reinstatement Agreement were reinstated.
- 12. A copy of the redacted Third Reinstatement Agreement is attached as **Appendix "G"**. A copy of the unredacted Third Reinstatement Agreement is attached as **Confidential Appendix "3"**
- 13. MarshallZehr has confirmed that other than standard financing conditions requiring Court approval of the Transaction and registration of security, all of its other financing conditions for the loan to the Purchaser have been waived.

3.1 The Debtor's Attempts to Purchase the Real Property

- 1. Since the outset of these proceedings, Mr. Fugiel has indicated on several occasions his intention to redeem the MarshallZehr mortgage loan or purchase the Real Property.
- 2. On September 20, 2024, Mr. Fugiel presented an offer to Colliers International, the listing broker engaged by the Receiver, to purchase the Real Property. Attached as **Appendix "H"** is a copy of Mr. Fugiel's redacted offer. A copy of his unredacted offer is attached as **Confidential Appendix "4"**.
- 3. By email correspondence dated September 30, 2024 and October 28, 2024, the Receiver and its legal counsel advised Mr. Fugiel and his legal counsel that his offer will not be considered unless he provides evidence that he has the financial ability to close the transaction. No such evidence was provided. Copies of the email correspondence are collectively attached as **Appendix "I"**.
- 4. On November 2, 2024, Mr. Fugiel presented another offer to the Receiver with an increased purchase price (the **"Second Offer"**). A redacted copy of the Second Offer is attached hereto as **Appendix "J"**. An unredacted copy of Mr. Fugiel's Second Offer is attached hereto as **Confidential Appendix "5"**.
- 5. On November 3, 2024, counsel for Mr. Fugiel provided the Receiver a copy of a conditional term sheet from Morris Financial Group (**"Morris"**), a lender based in New York and Tel Aviv (the **"Morris Term Sheet"**). The Morris Term Sheet was, among other things, subject to due diligence and credit committee approval. The Morris Term Sheet also had a confidentiality clause. As a consequence of the confidentiality clause, the Receiver is not attaching this commitment letter to its report. Counsel for Mr. Fugiel advised that this lender needs 14 days to complete its due diligence. A copy of the email from Mr. Fugiel's counsel without the attachment is attached as **Appendix "K"**.

6. On November 3, 2024, the Receiver sent an email to Mr. Fugiel's counsel, noting prior unfavorable experiences with Morris. The Receiver requested that counsel inform them if the financing became firm and advised that the Receiver would continue marketing the property in the meantime. A copy of this correspondence is attached as **Appendix "L"**.
7. On November 12, 2024, counsel for Mr. Fugiel wrote to the Receiver and its counsel to advise that another commitment for financing was coming shortly. Counsel for the Receiver replied to Mr. Fugiel's counsel and again reminded him that his client's offer will not be considered until evidence of financing is provided. Counsel for the Receiver also advised Mr. Fugiel's counsel that the Receiver has received another offer that it is considering. A copy of the email correspondence between counsel is attached as **Appendix "M"**.
8. On November 15, 2024, counsel for Mr. Fugiel provided a commitment letter from Fiducia Ventures Inc. A copy of the commitment letter is attached as **Appendix "N"**. The commitment letter included over 20 conditions, such as requirements for an appraisal, environmental reports, and development budgets. The commitment letter provided that the maximum proposed loan amount could not exceed 60% of the appraised value, which would require the Property to be valued at over \$36 million. The Receiver understands that the Real Property is worth substantially less than this amount.
9. The Receiver again advised counsel to Mr. Fugiel that it could not accept an offer conditional on financing and that it had entered into another transaction. A copy of the correspondence between the Receiver and Mr. Fugiel is attached as **Appendix "O"**.
10. Since then, counsel to Mr. Fugiel has requested a payout statement from MarshallZehr which was provided to Mr. Fugiel on December 5, 2024.
11. On December 8, 2024, counsel to Mr. Fugiel advised the Receiver that Mr. Fugiel intended to oppose approval of the Amended Transaction.

3.2 Recommendation to approve the Amended Transaction

1. The Amended Transaction is substantially similar to the terms approved by the Court in June 2024, subject to the following amendments:
 - a) approximately 18% of the purchase price has now been received by the Receiver by way of deposits;
 - b) the purchase price was increased by \$50,000; and
 - c) the Purchaser will only assume the Sale Agreements once it gets HCRA approval, which it has over 90 days after closing to obtain. If the Purchaser does not obtain HCRA approvals, the deposits under the Sale Agreements will be fully refunded.

2. In addition to the reasons set out in the Third Report, the Receiver recommends the Court issue the proposed Approval and Vesting Order approving the Amended Transaction for the following reasons:
 - a) the process undertaken by the Receiver to market the Real Property was commercially reasonable and conducted in accordance with the terms of the Sale Process Order;
 - b) the Real Property has been listed for over a year, and the Transaction offers a path to conclude the receivership and minimize further professional fees and costs, including significant maintenance costs;
 - c) the Amended Transaction is unconditional, but for Court approval; and
 - d) MarshallZehr supports the Transaction.
3. Mr. Fugiel has had over a year to redeem or submit an offer to purchase the Real Property, and has failed to deliver any concrete offers that are acceptable to the Receiver or that would realistically materialize in a closeable transaction. Any further delays would prejudice the stakeholders and unnecessarily increase the costs of the proceedings.

4.0 MarshallZehr Distribution

1. If the Transaction is approved, the Receiver is seeking authorization and direction to distribute the balance of the proceeds therefrom, after reserving for the closing costs (i.e. broker commissions, property taxes) and the costs of these proceedings (i.e. the fees and costs of the Receiver and its counsel) to: (i) repay the amounts owing under the Receiver's Borrowings Charge (which will be \$523,266.95 as at December 18, 2024); (ii) establish a reserve to fund any holdback deficiencies in respect of any valid construction liens on the Real Property, and (iii) repay a portion of the MarshallZehr Indebtedness.
2. MarshallZehr is the principal secured creditor of the Company. Attached as **Appendix "P"** is the discharge statement provided by MarshallZehr to December 18, 2024 (the "**Discharge Statement**"). The Discharge Statement discloses that MarshallZehr is owed \$20.9 million, of which approximately \$20.4 million is in respect of the MarshallZehr Indebtedness and approximately \$523,000 is in respect of the borrowings under the Receiver's Borrowings Charge.
3. The Receiver requested that Aird & Berlis LLP ("**A&B**"), as independent legal counsel, conduct a review of the security granted by the Company in respect of the MarshallZehr Indebtedness. A&B provided the Receiver with an opinion that, subject to standard assumptions and qualifications, pursuant to applicable security documentation, MarshallZehr has valid security interests or charge, as applicable, against the Property to be sold pursuant to the Amended Transaction.
4. There are eight construction liens totaling approximately \$13.6 million on the Property (collectively the "**Lien Claimants**"). Based on description of services provided in the liens, the claimants all provided services to Buttcon Limited ("**Buttcon**"). Buttcon's own lien is in the amount of approximately \$8.2 million.

5. The Receiver understands that the Company did not segregate any funds for holdback. The Receiver intends to carry out a process to establish whether any of the lien claimants could have a Priority Payable Claim that ranks ahead of MarshallZehr in respect of any deficiency in holdback (the “**Holdback Claims**”). A&B further advised that based on its review of the MarshallZehr loan and security documents, and the information relating to the timing and the nature of the loans, the maximum aggregate potential priority for the holdback claims for liens registered against the Real Property would be limited to the statutory 10% holdback of valid construction liens on the Real Property.
6. The Receiver has written to the Lien Claimants for more information regarding their Lien Claims.
7. To facilitate an interim distribution, while concurrently running this process, the Receiver seeks to establish a Holdback Reserve of approximately \$1.4 million, which exceeds 10% of the total amount of liens registered on the Real Property. Should the Receiver determine there are amounts that are in fact payable in priority to MarshallZehr, following a review of the applicable claims, the Receiver will seek to release funds from the Holdback Reserve with the consent of MarshallZehr and the applicable claimant or a further order of the Court.

5.0 Sealing

1. The Confidential Appendices contain the purchase price under the Amended Transaction and offers from Fugiel. These materials have been filed on a confidential basis as making this information publicly available may affect future offers submitted if the Amended Transaction does not close.
2. Temporarily sealing this information until the Amended Transaction closes is necessary to maximize recoveries in these proceedings and maintain the integrity and confidentiality of key information in the Sale Process. The salutary effects of sealing such information from the public record greatly outweigh any deleterious effects of doing so. The Receiver believes the proposed sealing of the Confidential Appendices is appropriate in these circumstances.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court make the orders granting the relief detailed in Section 1.1 (1)(g) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
LA PUE INTERNATIONAL INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

APPENDIX G



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00700695-00CL DATE: 7 March 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: **MARSHALLZEHR GROUP INC. v LA PUE INTERNATIONAL INC.**

BEFORE: **MADAM JUSTICE STEELE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Receiver:

Name of Person Appearing	Name of Party	Contact Info
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Noah Goldstein	Court Appointed Receiver	ngoldstein@ksvadvisory.com

For Defendant, Respondent, Responding Party, Defence, Lien Claimants, Other:

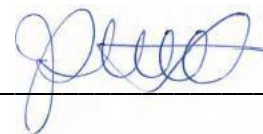
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Andrew Beney	Counsel for Lien Claimant HC Matcom	beney@paveylaw.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE STEELE:

- [1] Case conference held via Zoom on March 7, 2025.
- [2] The applicant had originally scheduled a motion for today on the issue of priorities as between Marshallzehr Group Inc. and certain lien claimants. The applicant's materials were delivered four days late (January 14, 2025, instead of January 10, 2025). The lien claimant responding materials filed by Buttcon Limited were also filed late (February 19, 2025, instead of February 5, 2025). With the schedule that had been timetabled having been thrown off, Marshallzehr requested that the motion be adjourned, and a case conference proceed.
- [3] Buttcon takes the position that Marshallzehr's priority motion should be scheduled and heard. HC Matcom, another lien claimant (which has filed its supporting documents) agrees with Buttcon that the priority motion should proceed first. Marshallzehr is now of the view that it would be more efficient for the priority issue and the quantum of lien claimant holdback issue to be determined together. The Receiver indicated that there were potential risks of inconsistent findings if the two issues were heard separately. In addition, the Receiver agrees with Marshallzehr that it would be more efficient for the two issues to be heard together.
- [4] The Receiver has asked the lien claimants for documents supporting their lien claims, which have not been provided by certain lien claimants. The Receiver is unable to provide its report to the Court without this information.
- [5] Accordingly, the following is ordered:
- a. Buttcon and any other lien claimants who have not yet delivered their supporting lien documents, shall file materials with the Receiver by March 14, 2025, and advise the Receiver if their lien claims are included in Buttcon's lien claim;
 - b. The Receiver shall provide its report by March 31, 2025; and
 - c. The Case Conference is adjourned to **April 4, 2025 at noon before me (30 minutes)**.
- [6] At the return of the Case Conference, with the benefit of the Receiver's report, the court may make procedural directions regarding whether the priority issue shall be determined first, or whether both issues (the priority issue and the quantum of lien holdback issue) shall be heard together.



Justice Steele

DATE: 7 March 2025

MARSHALLZEHR GROUP INC.
Applicant

- and - **LA PUE INTERNATIONAL INC.**
Respondent

Court File No. CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

EIGHTH REPORT OF THE RECEIVER

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TAB 2

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MARSHALLZEHR GROUP INC.
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- and -

LA PUE INTERNATIONAL INC.
Respondent

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