

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.

)

TUESDAY, THE 1ST

JUSTICE BLACK

)

DAY OF OCTOBER, 2024

)

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

2557386 ONTARIO INC. and 2363823 ONTARIO INC. o/a MARIMAN HOMES

Respondents

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

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of 2557386 Ontario Inc. ("**255**") and 2363823 Ontario Inc. o/a Mariman Homes ("**Mariman**", and collectively, the "**Debtors**");

1. An order approving the sale of the real property owned by 255 located in Haldimand, Ontario (the "**York Property**") pursuant to an agreement of purchase and sale between 1000961999 Ontario Inc. (the "**Purchaser**") and the Receiver

(the “**Transaction**”) and vesting title in and to the York Property in the purchaser (the “**AVO**”); and

2. an order:

- a. approving the activities of the Receiver as set out in the third report of the Receiver dated September 23, 2024 (the “**Third Report**”);
- b. approving the fees and disbursements of the Receiver and its counsel;
- c. approving a distribution to VanRooyen Earthmoving Ltd. (“**VRE**”) of \$171,909 for its holdback claim, and a distribution of the remaining proceeds available in the estate of the Debtor to MarshallZehr Group Inc. (“**MZ**”); and
- d. discharging KSV as Receiver of the undertaking, property and assets of the Debtors (the “**Discharge Order**”),

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report, the Supplement to the Third Report dated September 27, 2024, the Second Supplement to the Third Report dated September 29, 2024, the Affidavit of Mitch Vininsky, sworn September 23, 2024, the Affidavit of Laura Culleton, sworn September 20, 2024 and the Affidavit of Christel Paul, sworn September 23, 2024 (collectively, the “**Fee Affidavits**”), and

ON HEARING the submissions of independent counsel for the Receiver, MZ, the Debtors and such other parties as appear on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Christel Paul sworn September 24, 2024 filed:

SERVICE

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

AVO SHALL NOT TAKE IMMEDIATE EFFECT

2. **THIS COURT ORDERS** that the AVO shall take effect on November 13, 2024 unless the Receiver files a certificate that the entirety of the amounts owing by the Debtors to the Applicant, together with all amounts owing having priority over the Applicants' mortgage, were paid in full to the Receiver by the Debtors by 5:00 pm on November 12, 2024.

DISTRIBUTION

3. **THIS COURT ORDERS** that, in the event the Debtors do not pay the amounts set out in paragraph 2 hereof, by 5:00 pm on November 12, 2024, the Receiver be and hereby is authorized to pay \$171,909.00 of the Transaction proceeds to VanRooyen Earthmoving Ltd. on account of its priority holdback claim against proceeds from the York Property.

APPROVALS

4. **THIS COURT ORDERS** that the Third Report, and the actions, 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 approval.

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the Report and the Fee Affidavits, as well as a further amount of up to \$125,000 plus HST to address matters arising after this motion and up to discharge of the Receiver, be and are hereby approved.

DISCHARGE AND RELEASE OTHER THAN FOR THE YORK PROPERTY

6. **THIS COURT ORDERS** that KSV be and hereby is immediately discharged as Receiver over all the undertaking, property and assets of the Debtors, including the real property listed in Schedule "A" hereto (collectively the "**Mariman Properties**"), but excluding the real property as described in Schedule "B," (the "**York Property**") provided that, notwithstanding its discharge herein, the Receiver shall continue to have the benefit of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver.

7. **THIS COURT ORDERS AND DECLARES** that KSV is hereby released and discharged from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as Receiver over the Mariman Properties, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings relating to the Mariman Properties, save and except for any gross negligence or wilful misconduct on the Receiver's part.

DISCHARGE AND RELEASE FOR THE YORK PROPERTY

8. **THIS COURT ORDERS** that upon either:

- a) payment of the amount set out in paragraph 2 hereof and upon the Receiver filing a certificate certifying that it has completed the Transaction contemplated in the AVO and the other activities described in the Third Report, or

b) the Receiver filing a certificate that the Debtors have fully paid the amounts set out in paragraph 2 hereof by 5:00 pm on November 12, 2024,

KSV shall be discharged as Receiver of the York Property as described in Schedule "B," provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver.

9. **THIS COURT ORDERS AND DECLARES** that KSV is hereby released and discharged from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as Receiver over the York Property herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings as pertaining to the York Property, save and except for any gross negligence or wilful misconduct on the Receiver's part.

GENERAL

10. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order.



Schedule A

1. Real property municipally known as 178 Moores Road, York, Ontario and legally described as PIN: 38147-0005 (LT)

Legal Description: PT LT 19 CON 4 SE STONEY CREEK RD SENECA AS IN HC68736; HALDIMAND COUNTY

2. Real property municipally known as 38-46, 48, 53 and 55 Augustus Street, Scotland Ontario and legally described as:

32015-0218 (LT)	LT 9, PL 1759 ; S/T A454071,A454072,A454073 BURFORD
32015-0219 (LT)	LT 10, PL 1759 ; BURFORD; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1, 2, 3 AND 4 ON PLAN 2R8156 AS IN BC333417
32015-0220 (LT)	LT 11, PL 1759 ; BURFORD
32015-0221 (LT)	LT 12, PL 1759 ; BURFORD
32015-0225 (LT)	LT 16, PL 1759 ; S/T A454071,A454072,A454073 BURFORD; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1, 2, 3 AND 4 ON PLAN 2R8156 AS IN BC333417
32015-0226 (LT)	LT 17, PL 1759 ; BURFORD; S/T A21389
32015-0233 (LT)	LT 21, PL 1759 ; S/T A453281 BURFORD
32015-0234 (LT)	LT 22, PL 1759; S/T A453281 ; BURFORD
32015-0235 (LT)	LT 23, PL 1759 ; BURFORD
32015-0236 (LT)	LT 24, PL 1759 ; BURFORD
32015-0237 (LT)	LT 25, PL 1759 ; BURFORD
32015-0238 (LT)	LT 26, PL 1759 ; S/T EASEMENT IN GROSS AS IN BC146999; BURFORD

3. Any interest of 2363823 Ontario Inc. o/a Mariman ("**Mariman**") in the the real properties owned or formerly owned by Mariman, located in in Pelham, Ontario and marketed as "Mariman Estates Project".

Schedule B

PIN 38148-0128 (LT) PART WARNER NELLES TRACT DESIGNATED AS PART 1, 18R-7058;
SAVE & EXCEPT PART 1, 18R-7281; T/W EASEMENT OVER PART 2, 18R-7058 AS IN
HC252899; TOWNSHIP OF SENECA; HALDIMAND COUNTY

MARSHALLZEHR GROUP INC.

and

**2557386 ONTARIO INC. and 2363823 ONTARIO
INC. O/A MARIMAN HOMES**

Applicant

Respondents

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

Proceedings commenced at Toronto

DISTRIBUTION AND DISCHARGE ORDER

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