



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00699432-00CL

DATE: November 12, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. 2557386 ONTARIO INC. et al

BEFORE: JUSTICE W.D. BLACK

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

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

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Rory McGovern	Moving Parties (Respondents)	rory@rorymcgovernpc.com
Robert Trifts	Lawyer for Omer Arshed Bhatti	ronaldflo@gmial.com
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**Other:**

Name of Person Appearing	Name of Party	Contact Info
Brendan Bissell	Counsel for the Receiver	bbissell@reconllp.com
Mitch Vininsky	Counsel for KSV Restructuring, Receiver	mvininsky@ksvadvisory.com
Alex Alton	Counsel for the Home Construction Regulatory Authority	alex.alton@hcrontario.ca
Stephanie Adams	Counsel for VanRooyen Earthmoving Ltd.	stephanie.adams@siskinds.com

**ENDORSEMENT OF JUSTICE BLACK:**

- [1] This matter was before me on October 1, 2024. At that time, I made a Distribution and Discharge Order (DDO) and an Approval and Vesting Order (AVO), as sought by the Receiver in its motion of that date.
- [2] However, at the time of that hearing, counsel for the Debtors advised that Mr. Bettiol (the principal of the Debtors) had been working to secure last-minute financing to redeem the Debtors' interest in the subject (York) property.
- [3] The Receiver and the principal creditor, MarshallZehr Group Inc. (MZ) consented that day, on the basis of these representations (and details about the proposed financing), to allow the Debtors until November 12, 2024 to redeem the York Property, with the AVO otherwise to take effect on the following day, November 13, 2024.
- [4] There was no redemption in advance of today's attendance.
- [5] Instead, the Debtors brought a motion seeking to vary my October 1 orders (the DDO and the AVO), and to extend the time for closing of a (different) refinancing transaction to December 30, 2024.
- [6] In their materials, the Debtors allege that their proposed redemption financier (for purposes of the extension they sought and received on October 1), Co-Capital Ltd. (Co-Capital) surprisingly failed to close the proposed refinancing transaction and "likely defrauded [Mr. Bettiol] out of \$100,000."
- [7] As such, the Debtors advise, as of October 25, 2024 the Debtors (and in particular Mr. Bettiol) began searching for another refinancing option to "save the York Estates Project."
- [8] This led to Mr. Francis D'Atri and his company DBNC Group Inc. (DBNC) expressing an interest in providing take-out financing for the project, and also an interest in participating in its construction, a scenario that the Debtors say would result in a substantially better outcome for all stakeholders.
- [9] The Receiver, joined by MZ, opposes the further extension sought by the Debtors, citing a number of factors.
- [10] First, the Receiver and MZ note that the proposed financing by DBNC is conditional on a couple of items, and therefore is not certain. The two conditions of concern are that the financing is conditional on a valuation of the York Property at more than 73% loan to value ratio for the amounts to be loaned, and, second, that the financing by DBNC is contingent on the financing of a separate (unrelated) property owned by DBNC. The Debtors say that the conditions will surely be met, but I do not have evidence to confirm that will be the case, and presumably the conditions are in place for a reason.
- [11] Second, the Receiver notes that the proposed method of arranging for construction appears to be different from what had been promised to homebuyers, and would be prejudicial to them.
- [12] More specifically, the Receiver notes that the Debtors' new refinancing proposal does not contemplate HCRA or Tarion registration. The Debtors' principal, Mr. Bettiol, has had his HCRA license suspended and, rather than seeking reinstatement of that license, the Debtors suggest a "work-around" using a construction management agreement (CMA) to develop the York Property without requiring HCRA licensure. This strategy would result in avoiding the New Home Construction Licensing Act requirements and warranty enrollment from Tarion under the Ontario New Home Warranties Plan Act. While the Receiver acknowledges that this may result in the homes being built, it is concerned about the homebuyers potentially not being eligible for Tarion coverage.

- [13] Lastly, the Receiver points to MZ's opposition to further delay the operation of the October 1 orders, a factor confirmed by MZ's counsel, who echoed the concerns expressed by the Receiver.
- [14] I should note that the Home Construction Regulatory Authority (HCRA) filed an Aide Memoire at the hearing, in which it expressed the concerns that the Receiver had expressed concerning the proposed use of CMAs and the avoidance of licensing and warranty requirements. The HCRA pointed out that this is exactly the kind of scenario that consumer protection legislation like the NHCLA and ONHWP are intended to protect against.
- [15] While the opposition of the HCRA and Tarion (for which counsel was also present) was attenuated in the hearing before me based on further representations by the Debtors about their intention to protect homebuyers, the Receiver and MZ remained firmly opposed to the relief sought.
- [16] On balance, I am not prepared to grant the further extension sought by the Debtors.
- [17] The DDO and the AVO, contemplating an entity related to MZ assuming the project on the basis of a credit bid, has already been substantially delayed on the basis of the Debtors' first request for an extension.
- [18] Although Debtors' counsel argued that there is certainty that the DBNC's financing conditions will be met, I find that there is nonetheless uncertainty about that outcome, and that, in order to find out, the cost would be a further delay of another several weeks.
- [19] Such uncertainty and delay continues to add to costs, and in my view it is time for this matter to be brought to a close. A request for an extension and suspending the operation of orders is a significant ask, and must be supported by clear and compelling evidence, and in my view a second request for an extension calls for all the more cogent evidence. I find that the record before me falls short of the mark.
- [20] Illustrating one of the consequences of delaying the matter to this point, the Receiver has asked that I increase its approved fee accruals from \$125,000 to \$165,000 to account for the increased costs of responding to today's motion. I grant that request; it was reasonable for the Receiver to consider and advance the position that it did.



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**RELEASED: November 12, 2024**