



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00699432-00CL DATE: OCTOBER 1, 2024

NO. ON LIST: 2

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

BEFORE JUSTICE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Marshallzehr Group Inc.	Maya@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Rory McGovern	Mariman Receivership Respondents	rory@rorymcgovernpc.com
Brendan Bissell	Receiver	bbissell@reconllp.com
Mitch Vininsky, KSV Restructuring	Receiver	mvininsky@ksvadvisory.com
Robert Trifts Counsel	Omer Arshed Bhatti	ronaldflom@gmail.com
Jasmine Landau	Reconstruct LLP, the Receiver KSV	Jlandau@reconllp.com 416.613.4880

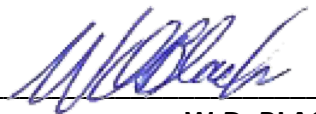
For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Andrew Colautti	Ana Pereira and Tiago Pereira	andrew@cplaw.net 519-966-1300 ext. 498
Darrell Paul	Bobby James Muckadan and Siji Anthony, buyers from Mariman Homes	dpaul5859@yahoo.com 416-559-1249
Paulo Ribeiro and Julie Parkinson	Observe the York Estate Receivership proceedings	(905) 928-1150 - Cell jvestate.pr@gmail.com
Gurminder Kandola	Unsecured Creditor	n/a

ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] The “main” matter before me this morning was the motion by KSV Restructuring Inc. (“KSV”) in its capacity as court-appointed receiver and manager (the “Receiver”) of all of the assets, undertakings, and properties of 2557386 Ontario Inc. (“255”) and 2363823 Ontario Inc. (“236”) operating as Mariman Homes (“Mariman”, and together with 255 and 236 the “Companies”).
- [2] In that capacity, the Receiver carried out a Sale Process for the Grand York Estates property (the “York Property”), the Companies’ largest intended development. Although the Sale Process appears to have been appropriately robust and wide-ranging, it did not result in any bids. As such, the Receiver’s evidence is that the only viable prospect of selling the York Property was through a credit bid by one of the applicant’s affiliates, as set out in an agreement of purchase and sale dated August 6, 2024.
- [3] It is apparent that there are a number of parties with pre-construction agreements, many of whom were in attendance before me today, who assert that their interests supersede that of the applicant’s interest as the registered secured creditor and mortgagee. One or more of those would-be homebuyers also complain about the fact that the only bidder for the York Property is affiliated to the applicant, suggesting that this represents a conflict of interest that should, as I understand it, preclude the proposed transaction from proceeding.
- [4] The position of these would-be homebuyers is no doubt influenced by the fact that, if the proposed transaction proceeds, it would result in the termination of the pre-construction sale agreements. While this would have the benefit, for the homebuyers, of allowing them to begin steps to recover from Tarion (under the Ontario New Home Warranty Plan Act), the evidence indicates that many of the homebuyers have made deposits in excess of the \$100,000 maximum payment potentially available from Tarion.
- [5] While I agree with the Receiver’s observation that these circumstances are unfortunate for the homebuyers, I also agree with the Receiver that the law in this area is settled (see in particular the decision of Morawetz J., as he then was, in *Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd.*, 2012 ONSC 4816). I see no basis on which the homebuyers’ interests would in fact outrank those of the secured lender.
- [6] I am also not persuaded by the suggestion of a conflict of interest. It is not unusual, for example in the setting of a “stalking horse” bid, for a party with affiliation to one of the principals involved in the underlying relationship, to become involved in a subsequent transaction relative to the assets at issue. The applicants have been transparent about the affiliation of the potential buyer, and the Sale Process, which as noted appears to have been robust, wide-ranging and appropriate, yielded no other bidders.
- [7] There was a small ray of hope today for the homebuyers.
- [8] That is, Receiver’s counsel advised that the respondent Debtors (the “Debtors”) remain confident that, if given some additional time, they will be in a position to redeem their debt(s), will pay out the applicant and will pay out the Lien Claimant VanRooyen Earthmoving Ltd. (the lien claim of which, in the amount of \$171,909.00, appears to be accepted by all concerned as fairly representing its priority interest for construction holdback). In that scenario, the Debtors would not terminate the pre-construction agreements.

- [9] The Receiver is prepared to allow until November 12, 2024, as requested by the Debtors, to permit the Debtors to redeem.
- [10] Independent counsel for the Receiver expressed some uncertainty about whether or not the Debtors will in fact be able to redeem, but to the Receiver's credit, it is prepared to allow the opportunity.
- [11] The Receiver's willingness to do so is in part predicated on my making the order sought today, but deferring its effect and operation until November 13, 2024 (i.e. a day following the date by which the Debtors have indicated they will redeem the debt(s)).
- [12] This approach makes sense to me. One of the homebuyers, Mr. Kandola, requested (in an articulate and respectful fashion) that I defer my decision on the Receiver's motion until after November 12, building in an opportunity for a further hearing after November 12 at which point Mr. Kandola and presumably other homebuyers could make further submissions.
- [13] With due respect to Mr. Kandola, I do not see any real utility in doing so. As noted, in my view the law strongly supports the Receiver's position on the merits of this matter. In the circumstances, the Receiver's willingness to wait until November 13 for its relief is reasonable and generous. While all concerned hope that the Debtors will come through and redeem, there is no basis, in the absence of the Debtors doing so, to prolong the matter further.
- [14] Accordingly, on the main motion, I grant the relief sought by the Receiver, but with the additional proviso that that relief will be suspended until November 13, and will take effect that day if the Debtors' effort to redeem does not succeed. Mr. Bissel of independent counsel for the Receiver noted that the proposed form of order that had been uploaded will have to be updated, depending on my decision, to reflect recent developments. I will review the order whenever it is ready for me to do so.
- [15] In addition to the main matter discussed above, there were materials recently uploaded to Case Center concerning a dispute about responsibility for water damage, and the cost of repairs, to a home on Vickery Drive in Oakville (as I understand it in a development not within the York Property).
- [16] It emerged during the discussion of that matter that the Receiver had made a proposal for consideration by the relevant homebuyer (with respect to potential assignment of an insurance claim).
- [17] Counsel for the homebuyer, Mr. Bhatti, advised that he had just received the proposal, and had not had time to review it or to discuss it with his client.
- [18] As such, counsel are to confer, and to report to me by the end of the week concerning the status of the matter, and whether or not a deal has been reached. If not, I will consider how that matter should proceed.



W.D. BLACK J.

DATE: OCTOBER 1, 2024