



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

COUNSEL SLIP/ENDORSEMENT

**COURT FILE
NO.:**

CV-23-00699432-00CL

DATE: March 6, 2025

NO. ON LIST: 3

**TITLE OF
PROCEEDING:**

**MARSHALLZEHR GROUP INC. v. 2557386
ONTARIO INC. et al**

**BEFORE
JUSTICE:**

OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Counsel for KSV Restructuring Inc., in its capacity as Court-Appointed Receiver	maya@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Rory McGovern	Counsel for the Respondents	rory@rorymcgovernpc.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Mitch Vininsky Ben Luder	Court-Appointed Receiver	mvininsky@ksvadvisory.com BLuder@ksvadvisory.com

ENDORSEMENT:

1. The Receiver brings this motion on an urgent basis for an order directing TD Canada Trust to continue to freeze any withdrawals from the specified account and to transfer to the Receiver funds from the account up to the amount of the Tax Refund, and for an order directing TD to provide to the Receiver all bank account statements for the account from January 1, 2024 onward together with particulars of transaction information.
2. Finally, the Receiver seeks an order directing Mr. Mike Bettiol (“Bettiol”) and related entities to return the Shortfall.
3. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
4. Given that the motion was ultimately on consent, except for two terms (as further described below), I have not set out here the full background and context for the motion. In short, the Receiver was very recently advised by the Canada Revenue Agency that the CRA inadvertently paid a 2023 HST Refund for one of the companies in receivership to the account that is the subject of this motion. That account is controlled by Mr. Bettiol.
5. At the request of the Receiver, TD froze, albeit temporarily, the account and advised that it has a remaining balance of \$143,833. Given that the refund total \$246,972 the Shortfall is \$103,139.
6. As set out in his responding affidavit, Mr. Bettiol acknowledges that the funds were received, and that they are quite properly Receivership property and should be transferred to the Receiver in the full amount of the total refund.
7. Given the consent, today, to the principal relief sought on the motion, I stood down the matter for approximately two hours in order that the parties could attempt to agree on the form of a consent order.
8. Upon the hearing of the motion resuming, the parties advised that they were in agreement with respect to the form of order in all but two respects in respect of which they required the direction of this Court.
9. First, Mr. Bettiol proposed that the order provide that the Receiver could bring a motion to re-freeze the account, but had only a limited window of four days within which to do so following receipt of the information agreed in order to be provided (i.e., transaction information relating to the account, so the Receiver could determine whether or not it was entitled to additional funds that had not been disclosed). The Receiver opposed such a limitation.
10. In my view, there is no just and equitable reason why the Receiver should be limited to a four-day window, after the expiry of which it could not bring a motion to refreeze the account, even if it discovered additional funds that should be Receivership property. The Receiver is a Court Officer. Rather, the Receiver should be permitted to bring a motion at any time, which can of course be opposed. The Receiver initially proposed that it provide

to Mr. Bettiol a minimum of four days notice, and he requested a longer period of time. In my view, seven days, is appropriate and is not contested by the Receiver.

11. Second, the Receiver sought costs in the all-inclusive amount of \$5000 on the basis that it ought not to have had to bring the motion to deal with matters that ought to have proceeded on consent. Mr. Bettiol opposed any costs award, both on the basis that no relief in the form of costs was sought in the notice of motion, and also that an award was an appropriate in the circumstances.
12. In my view, the fair and equitable result is to defer the issue of costs until the funds, including the balance in the account, and the Shortfall, have been paid over to the Receiver and the additional information about monies going into the account have been provided and disclosed, and the parties can see where things are at.
13. With my direction, in respect of these two issues, which I provided at the conclusion of the hearing submitted a revised form of order to which all had agreed. It is appropriate and I have signed it.
14. The order is effective immediately without the necessity of issuing and entering.



Justice Osborne

Date: March 6, 2025