

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

**2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
o/a MARIMAN HOMES**

Respondents

**MOTION RECORD
(returnable March 6, 2025)**

March 4, 2025

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak (54100A)
Tel: (416) 218-1161
E-mail: maya@chaitons.com

**Lawyers for KSV Restructuring Inc., in its
capacity as Court-Appointed Receiver**

TO: SERVICE LIST

SERVICE LIST
(as at September 23, 2024)

<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p>Maya Poliak (54100A) Tel: 416-218-1161 Email: maya@chaitons.com</p> <p>Lawyers for the KSV Restructuring Inc, in its capacity as Court-appointed Receiver, and MarshallZehr Group Inc.</p>	<p>KSV RESTRUCTURING INC. 220 Bay Street, 13th Floor Toronto, ON M5J 2W4</p> <p>Mitch Vininsky Email: mvininsky@ksvadvisory.com</p> <p>Ben Luder Email: BLuder@ksvadvisory.com</p> <p>Court-Appointed Receiver</p>
<p>RECONSTRUCT LLP 120 Adelaide St. W. Suite 2500 Toronto, Ontario M5H 1T1</p> <p>Brendan Bissell Tel: 416-613-0066 Email: bbissell@reconllp.com</p> <p>Caitlin Fell Tel: 416-613-8282 Email: cfell@reconllp.com</p> <p>Independent legal counsel for KSV Restructuring Inc, in its capacity as Court-appointed Receiver</p>	<p>DEPARTMENT OF JUSTICE The Exchange Tower 130 King Street West, Suite 3400 Toronto, ON M5X 1K6</p> <p>AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</p> <p>Lawyers for Canada Revenue Agency</p>
<p>RORY McGOVERN P.C. 25 Adelaide Street East, Suite 1910 Toronto, ON M5C 3A1</p> <p>Rory McGovern Tel: (416) 938-7679 Email: rory@rorymcgovernpc.com</p> <p>Lawyers for the Respondents</p>	<p>ONTARIO MINISTRY OF FINANCE - INSOLVENCY UNIT</p> <p>33 King Street West, 6th Floor P.O. Box 627, Station A Oshawa, ON L1H 8H5</p> <p>Leslie Crawford Tel: (905) 433-5657</p> <p>Email: insolvency.unit@ontario.ca</p>

<p>SISKINDS 275 Dundas Street, Unit 1 London, ON N6B 3L1</p> <p>Stephanie Adams Tel: 519.660.7852 Email: stephanie.adams@siskinds.com</p> <p>Daniel MacKeigan Email: dan.mackeigan@siskinds.com</p> <p>Lawyers for VanRooyen Earthmoving Ltd.</p>	<p>SCOTLAND REAL ESTATE VENTURE LIMITED 55 Hyde Park Drive Richmond Hill, ON L4B 1X1</p> <p>Courtesy Copy To: BISCEGLIA & ASSOCIATES 9100 Jane Street, Building A, Suite 200 Toronto, ON L4K 0A4</p> <p>Emilio Bisceglia Tel: (905) 695-5200 Email: ebisceglia@lawtoronto.com</p>
<p>GATESTONE LAW 25 Main Street West, Suite 1702 Hamilton, ON L8P 1H1</p> <p>Philip A. Kuca Tel: (905) 526-0736 Email: pkuca@gatestonelaw.com</p> <p>Lawyers for Morris Wright Mortgage Company and Olympia Trust</p>	<p>HALDIMAND COUNTY 53 Thornburn Street South Cayuga, ON N0A 1E0</p> <p>Municipal Clerk Tel: (905) 318-5932 Email: clerk@haldimandcounty.on.ca</p>
<p>SUMIT TANGRI LAW GROUP 20 Hughson Street South, Suite 500 Hamilton, ON L8N 2A1</p> <p>Sumit Tangri Tel: (905) 577-8294 Email: sumit.tangri@stlaw.ca</p> <p>Lawyers for Ajay Uppal, Mehng Shah and Ronak Shah</p>	<p>INCH HAMMOND P.C. 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p>Andrew Pelletier Tel: (905) 525-4481, Ext. 313 Email: pelletier@inchlaw.com</p> <p>John Hammand Email: hammond@inchlaw.com</p> <p>Lawyers for Charlene Gulka, Christopher Gulka, Patrick Gulka, Michele Lynn Gulka, Guy MacMillan, Kathy MacMillan, Ryszard Tatar and Monika Tomczyk-Tatar</p>

<p>LUIGI DE LISIO Barrister and Solicitor 16-261 Martindale Road St. Catharines, ON L2W 1A2</p> <p>Tel: (905)687-4885 Fax: (905) 687-3311 Email: ld@delisiolaw.ca</p> <p>Lawyer for Jonathan Adams and Nicole Adams</p>	<p>Sam Varghese Kalathiparambil, Email: sampadinjarekara@gmail.com</p> <p>Jerald Thomas Jacob and Darly Jacob Email: gerald.jacob@gmail.com</p> <p>Ratheesh Raju and Jincy John Email: ratheshraju@gmail.com</p>
<p>LOOPSTRA NIXON 130 Adelaide Street West, Suite 2800 Toronto, ON M5H 3P5</p> <p>Julian Papes Tel: (416) 366-3632 Email: jpapes@LN.Law</p> <p>Lawyers for Saif Ur Rahman and Rukhsana Rahman</p>	<p>RONALD FLOM P.C. The Edison Centre 2345 Yonge Street, Suite 712 Toronto, ON M4P 2E3</p> <p>Robert Trifts Tel: (416) 482-2777 Email: ronaldflom@gmail.com</p> <p>Lawyers for Omer Arshed Bhatti</p>
<p>BALDWIN SENNECKE HALMAN LLP 25 Adelaide Street East, Suite 1320 Toronto, Ontario M5C 3A1</p> <p>Evan L. Tingley Tel: (416) 601-1852 Email: ETingley@bashllp.com</p> <p>Lawyers for 2245625 Ontario Ltd., Vibin Joseph, Albin Joseph and Philipose Thomas</p>	<p>NOLAN CIARLO LLP 1 King Street West, Suite 700 Hamilton, ON L8P 1A4</p> <p>Franco Ciarlo Tel: (905) 522-9261 x228 Email: fc@nolanlaw.ca</p> <p>Lawyers for John Bukovac and Sylvia Schenkin</p>
<p>DAN SHEPPARD, P.ENG Email: mepguy99@gmail.com</p> <p>Purchaser for Lot 46</p>	<p>TORYS LLP 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2</p> <p>Adam Slavens Tel: (416) 865-7333 Email: aslavens@torys.com</p> <p>Lawyers for Tarion Warranty Corporation</p>

<p>HIMELFARB PROSZANKSI LLP 480 University Avenue, Suite 1401 Toronto, ON M5G 1V2</p> <p>Edilmer Solijon Tel: (416) 599-8080 Email: esolijon@himprolaw.com</p> <p>Lawyers for Tghambipillai (purchaser of Lot 28, Street A)</p>	<p>COLAUTTI LANDRY PARTNERS 400 Erie Street East, Unit 1 Windsor, ON N9A 3X4</p> <p>Andrew Colautti Tel: (519) 966-1300 x 498 Email: andrew@clplaw.net</p> <p>Lawyers Ana Pereira and Tiago Pereira</p>
<p>NICOLAS YANG and VIVIAN GAI</p> <p>Email: guangwei85@gmail.com Email: jingwei.gai@gmail.com</p>	<p>HOME & CASTLE LAW FIRM 940 The East Mall, Suite 202 Etobicoke, ON M9B 6J7</p> <p>Arlindo Aragao Tel: (416) 247-6000 x 105 Email: arlindo@homeandcastlelawfirm.com</p>
<p>STEBBING BUTCHER P.C. 442 Grey Street, Suite D Brantford, ON N3S 7N3</p> <p>Alan Butcher Tel: (519) 751-7518 Email: alan@stebbingbutcher.com</p> <p>Litigation Counsel for the Respondents</p>	<p>RYANNE STUART and TYLER STUART</p> <p>Email: ryannestuart@gmail.com Email: tstuart@mckeil.com</p>
<p>UNIFOR LEGAL SERVICES PLAN 700 Dorval Drive, Suite 406 Oakville, ON L6K 3V3</p> <p>Peter Kazman Tel: (905) 842-3101 Email: pkazman@uniforlsp.com</p> <p>Lawyers for Jan Srutwa and Helen Srutwa</p>	<p>WEEDON LAW 124 Merton Street, Suite 204 Toronto, ON M4S 2Z2</p> <p>Greg Weedon Tel: (416) 593-6723 Email: greg@weedonlaw.ca</p> <p>Counsel for a purchaser on Mariman Estates</p>

<p>LEON EFRIAM 50 Richmond Street East, Suite 110 Oshawa, ON L1G 7C7</p> <p>Leon Efriam Tel: (905) 576-5666 Email: Leon@thomasefraimllp.com</p> <p>Lawyers for 2441026 Ontario Inc.</p>	<p>WELLENREITER LLP 280 Plains Road West Burlington, ON L7T 1G4</p> <p>Richard Wellenrieter Tel: (905) 529-4520 Email: rwellenreiter@wellenreiterllp.ca</p> <p>Lawyers for 2689918 Ontario Inc.</p>
<p>VITULLI LAW GROUP 69 Hughson Street North Hamilton, ON L8R 1G5</p> <p>John Vitulli Tel: (905) 528-8773 Email: jvitulli@vitullilawgroup.com</p> <p>Lawyer for 2496582 Ontario Inc.</p>	<p>KEYSER MASON BALL 3 Robert Speck Parkway, Suite 900 Mississauga, ON L4Z 2G5</p> <p>Brian M. Jenkins Tel: (9905) 276-9111 Email: bjenkins@kmbllaw.com</p> <p>Lawyers for Anil Besoon et. al.</p>
<p>Bill Sinclair Tel: (905) 844-6664 Email: billsinclair@sympatico.ca</p> <p>Michael Luppino Email: mluppino@gclaw.ca</p> <p>Lawyers for Anna Montemurro et al.</p>	<p>JIM PAULS REAL ESTATE</p> <p>Jim Pauls Email: jim@jimpaulsrealestate.com</p> <p>Sarah Pauls Email: sarah@jimpaulsrealestate.com</p>
<p>HOME CONSTRUCTION REGULATORY AUTHORITY</p> <p>Alex Alton Tel: (647) 217-7279 Email: alex.alton@hcraontario.ca</p>	<p>SIMPSON WEIGLE 1 Hunter Street East, Suite 200 Hamilton, ON L8N 3W1</p> <p>Derek Schmuck Tel: (905) 528-8411 Email: schmuckd@simpsonwagle.com</p> <p>Lawyers for Pollard Windows</p>

DUDZIC, Barristers and Solicitors 105 Main Street East, Suite 1014 Hamilton, ON L8N 1G6 Mark Dudzic Tel: (905) 528-4251 Email: mark@dudziclaw.com Lawyers for Sabatine	JOSEPH SHAJI Email: shajimjoseph@live.com
NENOS ISAK Email: Nenos.isak@gmail.com	TD BANK Noora Grifi Email: Noora.grifi@td.com Hadi Vatan Email: hadi.vatan@td.com Mansi Negi Email: Mansi.negi@td.com

EMAIL:

mvininsky@ksvadvisory.com; Bluder@ksvadvisory.com; bbissell@reconllp.com;
cfell@reconllp.com; insolvency.unit@ontario.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca;
ebisceglia@lawtoronto.com; maya@chaitons.com; laurac@chaitons.com;
stephanie.adams@siskinds.com; dan.mackeigan@siskinds.com; clerk@haldimandcounty.on.ca;
pkuca@gatestonelaw.com; pelletier@inchlaw.com; hammond@inchlaw.com;
sumit.tangri@stlaw.ca; sampadinjarekara@gmail.com; gerald.jacob@gmail.com;
ratheshraju@gmail.com; ld@delisiolaw.ca; rory@rorymcgovernpc.com; jpapes@LN.Law;
ronaldflom@gmail.com; ETingley@bashllp.com; fc@nolanlaw.ca; mepguy99@gmail.com;
aslavens@torys.com; esolijon@himprolaw.com; andrew@clplaw.net; guangwei85@gmail.com;
jingwei.gai@gmail.com; arlindo@homeandcastlelawfirm.com; alan@stebbingbutcher.com;
ryannestuart@gmail.com; tstuart@mckeil.com; pkazman@uniforlsp.com; greg@weedonlaw.ca;
Leon@thomasefraimllp.com; rwellenreiter@wellenreiterllp.ca; jvitulli@vitullilawgroup.com;
bjenkins@kmblaw.com; jim@jimpaulsrealestate.com; sarah@jimpaulsrealestate.com;
schmuckd@simpsonwiggles.com; alex.alton@hcraontario.ca; billsinclair@sympatico.ca;
mluppino@gclaw.ca; mark@dudzielaw.com; shajimjoseph@live.com; Nenos.isak@gmail.com;
Noora.grifi@td.com; hadi.vatan@td.com; Mansi.negi@td.com

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**ONTARIO
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BETWEEN:

MARSHALLZEHR GROUP INC.

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- and -

**2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
o/a MARIMAN HOMES**

Respondents

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

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

Respondents

NOTICE OF MOTION

KSV RESTRUCTURING INC. (“KSV”), in its capacity as receiver (the “**Receiver**”) of the assets, undertakings, and properties of 2557386 Ontario Inc. (“**2557**”) and 2363823 Ontario Inc. o/a Mariman Homes (“**Mariman**”, and together with 2557, the “**Companies**”) acquired for, or used in relation to a business carried on by the Companies, will make a motion to a judge presiding over the Superior Court of Justice, Commercial List (the “**Court**”) on Thursday, March 7, 2025 at 12:00pm, or as soon after that time as the motion can be heard.

THE PROPOSED METHOD OF HEARING:

- ☐ In writing under subrule 37.12.1 (1) because it is (insert one of on consent, unopposed or made without notice);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ **BY VIDEO CONFERENCE.**

Videoconference link to be posted on the Court’s Caselines portal for this matter.

THE MOTION IS FOR:

1. an order:
 - (a) validating service of this Notice of Motion and the Receiver's Motion Record;
 - (b) directing TD Canada Trust ("**TD**") to continue to freeze any withdrawals from the TD account number 7524-5233452 (the "**Undisclosed Account**") and to wire the funds in the Undisclosed Account to the Receiver up to the amount of the Tax Refund (as defined below);
 - (c) directing TD to provide to the Receiver bank account statements for the Undisclosed Account from January 1, 2024 onward, together with any cancelled cheques, wire transfer information and any other information reasonably required by the Receiver;
 - (d) ordering Mike Bettiol ("**Bettiol**"), the Undisclosed Account holder, or any company owned and/or controlled by Bettiol, directly or indirectly, to: i) return, within five business days, the Shortfall (as defined below); and b) provide an accounting of how the Shortfall was spent together with any documents evidencing these expenditures and the recipients of those funds if the Shortfall is not repaid within five business days; and
2. such further and other relief that the Receiver may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:**Background**

1. Pursuant to an Order of this Court made on January 16, 2024, KSV was appointed Receiver over the Respondents. 2557 was the registered owner of approximately 70 acres of land in Haldimand, Ontario (the “**York Property**”).
2. Mariman is the registered owner of several properties and was the developer of the York Property.
3. The York Property was sold with the approval of the Court. Pursuant to orders dated October 1, 2024 and December 4, 2024, KSV was discharged as Receiver over the Companies’ property, subject to it, among other things, remaining Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership.

HST Refunds

4. Following completion of the transaction for the sale of the York Property, the Receiver filed an HST return for the quarter ended December 31, 2024 (the “**2024 Refund**”). The return was filed under an “02” sales tax account that the Receiver opened following its appointment.
5. On January 29, 2025, during its follow up conversations with CRA representatives regarding the HST return filed by the Receiver, the Receiver was advised by CRA that on February 12, 2025, in addition to the 2024 Refund, which was being processed, a further refund in the amount of \$246,972 for the quarters ended September 30, 2023 and December

31, 2023 was also being processed under Mariman's "01" sales tax account (the "**2023 Refund**").

6. After receiving the 2024 Refund by cheque from CRA, the Receiver followed up with CRA on the status of the 2023 Refund. The Receiver was advised by CRA that it inadvertently paid the 2023 Refund by direct deposit to the Undisclosed Account. The Receiver was not aware of this account. The Receiver also learned from CRA that on the date that the Receivership Order was granted, Bettiol amended the bank account associated with Mariman's "01" sales account to change it to the Undisclosed Account. The Receiver has no information as to who the owner of that account is, other than understanding that it is a company owned and/or controlled by Bettiol.
7. At the Receiver's request, TD has temporarily frozen the Undisclosed Account. TD also advised the Receiver that the Undisclosed Account has a remaining balance of \$143,833. The Receiver has written to Bettiol to, *inter alia*, require the immediate return of the 2023 Refund in its entirety to the Receiver, including, the release of the remaining funds in the Undisclosed Account to the Receiver and the repayment of the shortfall in the amount of \$103,139 (the "**Shortfall**").
8. Despite the fact that the diverted funds are on their face property of Mariman, Mr. Bettiol has not authorized TD to release the remaining funds to the Receiver and has not returned the approximately \$100,000 of these funds that has already been spent or transferred out of the Undisclosed Account.

Relief Sought is Appropriate

9. The relief sought is appropriate in the circumstances for the following reasons:

- i. It is apparent that the diverted funds are Property, as defined in the Receivership Order. These funds along with any other funds that may have been diverted to the Undisclosed Account need to be returned to the estate for the benefit of the Companies' creditors;
- ii. The bank account associated with Mariman was amended by Bettiol on the date of the Receivership Order;
- iii. As previously reported by the Receiver, Bettiol has made other attempts to divert the Companies' properties in contempt of the Receivership Order. On the date that the Receiver was appointed, Bettiol also transferred, or caused to be transferred, title to certain lots owned by Mariman to another company owned and/or controlled by him; and
- iv. Access to the bank accounts for the Undisclosed Account is necessary to enable the Receiver to trace the Shortfall and to ascertain if any additional funds belonging to the Companies have been diverted.

Other

- 10. Rules 2.03, 3.02, 16.01 and 37 of the *Rules of Civil Procedure* (Ontario).
- 11. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- 1. The Fourth Report.
- 2. Such further and other material as counsel may advise and this Honourable Court may permit.

March 4, 2025

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak (54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

**Lawyers for KSV Restructuring Inc., in its
capacity as Court-Appointed Receiver**

TO: SERVICE LIST

TAB 2



**Fourth Report of
KSV Restructuring Inc.
as Receiver of 2557386 Ontario Inc. and
2363823 Ontario Inc. o/a Mariman Homes**

March 4, 2025

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

ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

- AND -

2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
O/A MARIMAN HOMES

RESPONDENT

FOURTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

MARCH 4, 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 properties of 2557386 Ontario Inc. ("2557") and 2363823 Ontario Inc. o/a Mariman Homes ("Mariman", and together with 2557, the "Companies") acquired for, or used in relation to a business carried on by, the Companies.
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on January 16, 2024 (the "Receivership Order"), KSV was appointed Receiver. A copy of the Receivership Order is provided as Appendix "A". The application to appoint the Receiver was brought by MarshallZehr Group Inc. ("MarshallZehr"), the senior secured lender of 2557. As security for its loan to 2557, MarshallZehr received, among other things, a mortgage against the York Property and a guarantee from Mariman secured by a general security agreement against Mariman's personal property.
3. 2557 was the registered owner of approximately 70 acres of land in Haldimand, Ontario (the "York Property"). Pursuant to an Order dated October 1, 2024, the Court approved a transaction for the sale of the York Property by the Receiver to 1000961999 Ontario Inc. and Sunray Estates Limited Partnership, by its general partner, Sunray Estates GP Inc. This transaction was structured as a credit bid by MarshallZehr for a portion of its debt.

4. Mariman is the registered owner of several properties, each with different sets of mortgagees. As described in greater detail in the Receiver's previous reports, the Receiver completed a transaction for the sale of one of the properties and was discharged as Receiver over the remaining properties at the request of the respective mortgagees after ascertaining that there was no equity in those properties beyond the registered mortgages. The Receiver's previous reports also summarize its dealings with Mike Bettiol, the sole officer and director of each of the Companies, who, among other things, transferred certain lots owned by Mariman to related parties upon the Receiver's appointment. The Receiver's Third Report to Court dated September 23, 2024, without appendices, is provided as Appendix "B".
5. Pursuant to Orders dated October 1, 2024 and December 4, 2024 (the "Discharge Orders"), the Receiver was discharged subject to it, among other things, remaining Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership. Copies of the Discharge Orders are provided as Appendix "C".
6. Following completion of the Transaction, the Receiver filed an HST return for Mariman for the quarter ended December 31, 2024 (the "Return"), with a refund claimed of \$91,046 (the "2024 Refund"). The Return was filed under an "02" sales tax account that the Receiver opened following its appointment. On January 29, 2025, the Receiver verbally corresponded with Canada Revenue Agency ("CRA") regarding the Return and was advised that on February 12, 2025, in addition to the 2024 Refund, which was being processed, a further refund in the amount of \$246,972 for the quarters ended September 30, 2023 and December 31, 2023 was also being processed under Mariman's "01" sales tax account (the "2023 Refund").
7. As discussed further below, while CRA paid the 2024 Refund by cheque to the Receiver, CRA paid the 2023 Refund by direct deposit to a bank account at Toronto-Dominion Bank ("TD") that Mr. Bettiol had not disclosed to the Receiver (the "Undisclosed Account"). The Receiver learned from CRA that on the date that the Receivership Order was granted, Mr. Bettiol amended the bank account associated with Mariman's "01" sales tax account to change it to the Undisclosed Account. The Receiver has no information as to the ownership of that account, other than understanding that it is a company owned and/or controlled by Mr. Bettiol.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) summarize the Receiver's correspondence regarding the Undisclosed Account and the 2023 Refund; and
 - b) recommend that this Court issue an Order:
 - directing TD to pay to the Receiver all funds in the Undisclosed Account and to continue the freeze on this account;

- directing TD to provide copies of bank statements for the Undisclosed Account from January 2024, together with copies of cancelled cheques, wire transfers and any other information reasonably required by the Receiver; and
- requiring Mr. Bettiol to pay to the Receiver, within five business days, the shortfall between the 2023 Refund and the balance in the Undisclosed Account, which the Receiver understands to be \$103,139 (the “Shortfall”).

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon information, including financial information, provided by the Companies, TD and CRA. 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 Companies’ financial information should perform its own diligence.

2.0 2023 Refund

1. As set out above, the Receiver learned of the 2023 Refund from its discussions with CRA regarding the Return. The Receiver has not filed any returns on behalf of Mariman under the “01” sales tax account. All returns filed by the Receiver were done under the “02” sales tax account opened by the Receiver.
2. In a follow up discussion between the Receiver and CRA after the cheque for the 2024 Refund was deposited, CRA advised the Receiver that, inadvertently, the payment for the 2023 Refund was made by direct deposit on February 12, 2025 to the Undisclosed Account.
3. Upon learning of the payment to the Undisclosed Account, the Receiver immediately contacted TD and requested that the funds be remitted to it. TD advised the Receiver that this account was not in the name of Mariman and that the remaining balance in the account was \$143,833. TD agreed to freeze the Undisclosed Account at the Receiver’s request.
4. On February 28, 2025, the Receiver corresponded with Mr. Bettiol and demanded that the 2023 Refund be paid to it. On the same day, the Receiver also advised TD that it had made demand to Mr. Bettiol and confirmed that the Undisclosed Account should remain frozen pending a resolution of this matter. Copies of the Receiver’s correspondence in this regard are provided as Appendix “D”.

5. Despite the fact that the diverted funds are on their face property of Mariman, Mr. Bettiol has not authorized TD to release the remaining funds to the Receiver and has not returned the Shortfall. Attached hereto collectively as Appendix “E” are copies of the email correspondence between the Receiver, its counsel and Mr. Bettiol’s counsel.
6. The Receiver seeks an order ordering and directing:
 - a) TD to continue to freeze the funds in the Undisclosed Account;
 - b) TD to remit the remaining funds in the Undisclosed Account to the Receiver;
 - c) TD to provide the Receiver with bank statements for the Undisclosed Account commencing January 2024 to February 2025, together with copies of any cancelled cheques, wire transfer and any other information reasonably required by the Receiver for it to review whether any other Property was deposited into the Undisclosed Account; and
 - d) Mr. Bettiol, the Undisclosed Account holder, or any company owned and/or controlled by Mr. Bettiol, directly or indirectly, to: i) return, within five business days, the Shortfall; and b) provide an accounting of how the Shortfall was spent together with any documents evidencing these expenditures and the recipients of those funds if the Shortfall is not repaid within five business days, failing which the Receiver may seek an order finding Mr. Bettiol in contempt.
7. In the Receiver’s view, the Order sought is appropriate in the circumstances for the following reasons:
 - a) It is apparent that the diverted funds are Property, as defined in the Receivership Order. These funds along with any other funds that may have been diverted to the Undisclosed Account need to be returned to the estate for the benefit of the Companies’ creditors;
 - b) The bank account associated with CRA’s “01” sales tax account was amended by Mr. Bettiol on the date of the Receivership Order;
 - c) As previously reported by the Receiver, Mr. Bettiol has made other attempts to divert Property (as defined in the Receivership Order). On the date that the Receiver was appointed, Mr. Bettiol also transferred certain lots owned by Mariman to 2753904 Ontario Inc., a company owned and/or controlled by him; and
 - d) The Receiver seeks access to the bank accounts for the Undisclosed Account to enable to it ascertain if any additional funds belonging to the Companies have been diverted.

3.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
O/A MARIMAN HOMES
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

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

THE HONOURABLE MR.)	WEDNESDAY, THE 16 TH
)	
JUSTICE OSBORNE)	DAY OF JANUARY, 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

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

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of 2557386 Ontario Inc. and 2363823 Ontario Inc., o/a Mariman Homes (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via videoconference.

ON READING the affidavit of Cecil Hayes sworn May 15, 2023 and the Exhibits thereto, the affidavit of Cecil Hayes sworn January 16, 2024 and on reading the consent of KSV Restructuring Inc. to act as the Receiver and the consent of the Respondents to this Order,

APPOINTMENT

1. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

RECEIVER'S POWERS

2. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking

of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

4. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege

attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

6. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon

application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information

provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order

shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider

necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

RETENTION OF COUNSEL

24. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL “<https://www.ksvadvisory.com/experience/case/grand-York-estates>”.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier,

personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

27. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

28. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

30. **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.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Applicant from the Debtors' estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing, provided that any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.

SCHEDULE “A”

Property owned by 2557386 Ontario Inc.

Municipal Address: 30 Front Street, Haldimand, Ontario

PIN: 38148-0128 (LT)

Property Description: 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

Property owned by 2363823 Ontario Inc.

Municipal Address: 178 Moores Road, Haldimand, Ontario

PIN: 38147-0005 (LT)

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

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of 2557386 Ontario Inc. and 2363823 Ontario Inc. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ● day of May, 2023 (the "**Order**") made in an application having Court file number CV-23-00699432-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 202__.

KSV RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

MARSHALLZEHR GROUP INC.
Applicant

-and-

2557386 ONTARIO INC., et al.
Respondents

Court File No. CV- 23-00699432-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Appointing Receiver)

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (54100A)
Tel: (416) 218-1161
E-mail: maya@chaitons.com

Lawyers for the Applicant

Appendix “B”



**Third Report of
KSV Restructuring Inc.
as Receiver of 2557386 Ontario Inc. and
2363823 Ontario Inc. o/a Mariman Homes**

September 23, 2024

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

- AND -

2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
O/A MARIMAN HOMES

RESPONDENT

THIRD REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

SEPTEMBER 23, 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 properties of 2557386 Ontario Inc. ("2557") and 2363823 Ontario Inc. o/a Mariman Homes ("Mariman", and together with 2557, the "Companies") acquired for, or used in relation to a business carried on by, the Companies.
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on January 16, 2024 (the "Receivership Order"), KSV was appointed Receiver. A copy of the Receivership Order is provided as Appendix "A". The application to appoint the Receiver was brought by MarshallZehr Group Inc. ("MarshallZehr"), the senior secured lender of 2557.
3. 2557 is the registered owner of approximately 70 acres of land in Haldimand, Ontario (the "York Property").
4. Mariman is the registered owner of several properties, as more fully discussed below, including real property with a house under construction located at 2051 Vickery Drive, Oakville, Ontario (the "Vickery Property") which the Receiver has now sold with the approval of the Court.
5. As security for its loan to 2557, MarshallZehr received, among other things, a mortgage against the York Property and a guarantee from Mariman secured by a general security agreement against Mariman's personal property.
6. The purpose of this receivership proceeding is to take control over and realize on the Companies' assets under Court supervision for the benefit of all stakeholders.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) update the Court on the status of this receivership proceeding and the properties owned by the Companies;
 - b) summarize the results of the sale process for the York Property;
 - c) summarize a recommended sale (the “Transaction”) by the Receiver to 1000961999 Ontario Inc. (the “Nominee”) and Sunray Estates Limited Partnership, by its general partner, Sunray Estates GP Inc. (the “LP”, and together with the Nominee, the “Purchaser”), an affiliate of MarshallZehr, for the York Property pursuant to an agreement of purchase and sale dated August 6, 2024 (the “APS”);
 - d) provide the Receiver’s views on the relative priority of MarshallZehr’s mortgage and the construction lien registered by VanRooyen Earthmoving Ltd. (“VanRooyen”) against the York Property;
 - e) update the Court on the completion of the sale of the Vickery Property;
 - f) summarize the Receiver’s activities since its Second Report to Court dated July 16, 2024 (the “Second Report”);
 - g) summarize the fees of the Receiver, Chaitons LLP (“Chaitons”), the Receiver’s counsel, and Reconstruct LLP (“Reconstruct”), the Receiver’s independent counsel, as set out in Section 7;
 - h) recommend that this Court issue the following Orders:
 - i. an Approval and Vesting Order (the “AVO”):
 - approving the APS and authorizing the Receiver to complete the Transaction;
 - vesting the Property (as defined in the AVO) in the Purchaser, free and clear of all liens, claims and encumbrances, including any claims of existing pre-construction purchasers upon execution and delivery of a certificate by the Receiver confirming completion of the Transaction;
 - declaring that the existing pre-construction agreements of purchase and sale related to the York Property (the “Pre-construction APSs”) are terminated, or directing the Receiver to repudiate such agreements, following closing of the Transaction;

- ii. a Discharge Order (the “Discharge Order”):
 - approving a distribution of \$171,909 to VanRooyen, representing the 10% holdback of the amount of its lien registered on title to the York Property;
 - approving this Report and the Receiver’s activities, as set out in this Report;
 - approving the fees of the Receiver, Chaitons and Reconstruct plus an accrual of \$100,000 (plus disbursements and HST) up to the Receiver’s discharge (the “Fee Accrual”); and
 - assuming the AVO is issued and the Transaction closes, discharging the Receiver upon the filing of a certificate confirming that it has completed the remaining matters for administration of the estates of the Companies as described below.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon information, including financial information, provided by the Companies and MarshallZehr and discussions with the Companies and MarshallZehr. 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 Companies’ financial information should perform its own diligence.

2.0 Background

1. The Receiver understands that 2557 is a single purpose entity that owns the York Property whereas Mariman has operated as a custom home builder.
2. Mike Bettiol is the sole officer and director of each of the Companies.
3. The Receiver understands from Mr. Bettiol that the Companies were developing several properties, as discussed further in this Report and previous reports to the Court, and that deposits were paid by home buyers in connection with the development properties. Mr. Bettiol has provided limited information to the Receiver regarding the development properties including, among other things, the treatment and use of these deposits.

4. As of the date of the Receivership Order, the Companies had under \$4,000 in their bank accounts. Accordingly, all funding for the Receiver's fees and expenses has been provided by MarshallZehr pursuant to a Receiver's certificate.
5. Additional background information regarding this proceeding and the reasons that MarshallZehr sought the appointment of the Receiver are provided in the affidavit of Cecil Hayes, President of MarshallZehr, sworn on January 16, 2024 (the "Hayes Affidavit") and the Receiver's First Report to Court dated March 20, 2024 (the "First Report"). A copy of the First Report, without appendices, is provided as Appendix "B". The Hayes Affidavit and other Court materials filed in this proceeding are available on the Receiver's website at: <https://www.ksvadvisory.com/experience/case/grand-York-estates>.

3.0 York Property

1. The Receiver understands that 2557 acquired the York Property in 2021 to build 66 detached custom estate homes for a project known as "Grand York Estates", of which 54 lots are subject to agreements of purchase and sale that pre-date the Receiver's appointment (the "York Project").
2. As described in the Receiver's previous reports to this Court, Mr. Bettiol advised the Receiver that the deposits of approximately \$10 million provided by the purchasers of these lots (the "York Purchasers") were spent prior to commencement of this proceeding.
3. The Receiver notified the York Purchasers of this proceeding shortly after it was commenced and, as discussed below, also advised them that the Transaction does not provide for an assumption of their sale agreements.

3.1 Registrations on Title

1. The York Property is subject to the following charges/instruments registered against title (excluding the super-priority Court-ordered charges granted by the Receivership Order):
 - a) a first-ranking charge in favour of MarshallZehr in the principal amount of \$35 million (the "MZ Mortgage"); and
 - b) a construction lien in favour of VanRooyen in respect of the supply of topsoil and grading services, in the amount of approximately \$1.7 million.
2. A copy of the parcel search for the York Property is attached as Appendix "C".
3. Reconstruct¹ provided an opinion that, subject to the standard assumptions and qualifications contained therein, the real property security granted by 2557 to MarshallZehr, including the MZ Mortgage, is valid and enforceable².

¹ Chaitons represented MarshallZehr when it applied for the appointment of a Receiver. Accordingly, the Receiver retained Reconstruct as independent counsel to provide an opinion on MarshallZehr's security and to act for the Receiver in connection with the proposed Transaction.

² A copy of this opinion can be provided to the Court on request.

4. Reconstruct also reviewed the Statement of Claim filed by VanRooyen, the contract between VanRooyen and the Companies and the invoices issued by VanRooyen. Reconstruct concluded that, pursuant to section 78 of the *Construction Act* (Ontario), Vanrooyen has priority over the MZ Mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under the *Construction Act* (Ontario).
5. On July 31, 2024, Reconstruct sent an email to counsel for MarshallZehr and VanRooyen where it provided a copy of its draft priorities opinion on the lien and MarshallZehr's mortgage. A copy of this email is provided as Appendix "D".
6. The Receiver and Reconstruct have been advised by counsel for VanRooyen that it may not object to the priorities recommendation or the proposed Transaction but if so will want banking records in the Receiver's possession that may assist in asserting claims for breach of trust under the *Construction Act* against principals of the Companies, for which the Receiver has no objection on direction by the Court. The Receiver and Reconstruct have been advised by MarshallZehr that it is prepared not to object to the priorities recommendation if that fully resolves the priorities issues involving VanRooyen, but otherwise reserves its position on both the priorities and proposed distribution of holdback funds to VanRooyen.

3.2 Sale Process

1. Pursuant to an Order dated March 27, 2024 (the "Sale Process Order"), the Court approved a sale process for the York Property, including the retention of Colliers Macaulay Nicolls Inc. ("Colliers") as listing agent (the "Sale Process"). A copy of the Sale Process Order is provided as Appendix "E"
2. The York Property was marketed for sale by Colliers in accordance with the Sale Process Order. Colliers prepared an offering summary (the "Offering Summary"), a copy of which is provided as Appendix "F". Colliers distributed the Offering Summary on April 4, 2024 to an extensive list of over 3,000 prospective purchasers, including local and national builders, developers and investors.
3. The acquisition opportunity was also listed on the Multiple Listing Service. Colliers also directly contacted parties that it believed would be interested in the opportunity.
4. Attached to the Offering Summary was the form of confidentiality agreement ("CA") that interested parties were required to sign to access a virtual data room (the "VDR"). The VDR included information provided to the Receiver by Mr. Bettiol, MarshallZehr, and representatives of the Companies. The VDR also included a form of asset purchase agreement (a "Template APS").
5. The Receiver recommended that prospective purchasers submit offers in the form of the Template APS, together with a blacklined version of their offer. The form of Template APS allowed the prospective purchasers the opportunity to either assume or exclude existing agreements of purchase and sale.
6. Based on market feedback, Colliers set May 17, 2024 as the date after which bids would be considered rather than a bid deadline. While 11 interested parties signed confidentiality agreements and were given access to the VDR, no offers from arm's length parties have been submitted since the sale process commenced, nor is Colliers aware of any written offers being prepared.

7. Colliers' marketing report regarding its listing of the York Property is provided as Appendix "G". As reflected in Colliers' report, the highest value suggested by an interested party for the York Property was \$11 million; however, that party did not submit an offer.
8. The Receiver and Colliers provided regular updates to MarshallZehr on the sale process. During that time, MarshallZehr began discussions with Sunray Group, a builder and developer in North York, Ontario, to develop the York Project. Those discussions led to the APS and the Transaction, which is described below.

3.3 The Transaction

1. A summary of the APS is as follows³:
 - a) Purchaser: an affiliate of MarshallZehr.
 - b) Property: All of the Receiver's and the Companies' right, title and interest in the York Property and certain contracts and permits specified in the APS.
 - c) Purchase price: \$16.5 million, payable as: i) the Estimated Fees and all amounts secured by the Receiver's Charge; ii) Priority Payables⁴, without duplication; and iii) Receiver's Borrowings; with the balance payable by assumption of the Secured Debt equal to the Purchase Price less the sum of the amounts set out in i), ii) and iii). The purchase price is to be adjusted on closing for adjustments standard for a real estate transaction, including property taxes.
 - d) Deposit: As the APS is a credit bid, no deposit is applicable.
 - a) Title: The Nominee is to become the registered owner of the Lands solely as a nominal title holder for the LP, as beneficial owner, and not for itself.
 - b) Pre-construction APSs: The APS provides that these are not being assumed by the Purchaser. Pursuant to a letter dated September 23, 2024 (the "September 23rd Letter"), the Receiver advised the York Purchasers that it would be seeking Court approval of the Transaction and authorization to repudiate the Pre-construction APSs following closing of the Transaction. A copy of the September 23rd Letter is provided as Appendix "H".
 - c) Closing date: Contemplated to be the first Business Day that is fifteen days after the date that the Court grants the York AVO.
 - d) Material condition: the Receiver shall have obtained the AVO and there shall not be any notice of appeal with respect to the AVO, or any notice of any application, motion or proceedings seeking to set aside or vary the AVO or to enjoin, restrict or prohibit the transaction contemplated by the APS, that in each case has not been finally dismissed by a court of competent jurisdiction or abandoned by the moving party.
2. A copy of the APS is attached as Appendix "I".

³ Capitalized terms not otherwise defined are defined in the APS.

⁴ This includes amounts payable to Colliers as set out in Section 3.5 of this Report.

3.4 Recommendation

1. The Receiver recommends that the Court approve the Transaction for the following reasons:
 - a) in the Receiver's view, the sale process undertaken by the Receiver was commercially reasonable and conducted in accordance with the terms of the Sale Process Order and as set out in the First Report;
 - b) Colliers has extensive experience selling commercial properties in and around the Haldimand area and widely canvassed the market for prospective purchasers for over four months;
 - c) the Receiver and Colliers are of the view the Transaction is the best available in the circumstances;
 - d) the APS maximizes recoveries for this property in the circumstances;
 - e) the Sale Process expressly contemplated that MarshallZehr would have the right to credit bid the debt owing to it at the conclusion of the sale process if the offers received were not sufficient to repay its mortgage in full;
 - f) the Receiver does not believe that further time spent marketing the York Property will result in a superior transaction;
 - g) MarshallZehr has advised that it is not prepared to continue to fund a further sale process; and
 - h) the Transaction is unconditional except for Court approval.

3.5 Proposed Distributions on the York Project

1. Provided that neither VanRooyen nor MarshallZehr raise any issues with the Receiver's assessment of VanRooyen's lien claim priority, upon closing the Transaction, the Receiver recommends that it be authorized and directed to make a distribution of \$171,909 from the Transaction sale proceeds to VanRooyen, representing the 10% holdback amount owing by 2557 which ranks in priority to MarshallZehr. The Receiver will apply the remaining cash balance of the Purchase Price to the fees and costs incurred to date, the Fee Accrual and estimated future expenses.
2. The Receiver is not aware of any other secured creditors or any other claims that rank, or may rank, in priority to the claims of MarshallZehr and VanRooyen, other than:
 - a) property taxes, which will be satisfied on closing of the Transaction;
 - b) a commission of \$200,000 plus HST payable to Colliers pursuant to its listing agreement; and
 - c) the Receiver's Charge.

4.0 Vickery Property

1. As referenced above, the Vickery Property is a residential lot which includes a house under construction, located at 2051 Vickery Drive, Oakville. Construction of the house was partially completed as of the date of the Receivership Order as the exterior was nearly finished and the interior was at the drywall stage.
2. Pursuant to an Order made on July 22, 2024, the Court approved a sale by the Receiver to Arshed Omer Bhatti and Aimen Iqbal (the “Vickery Purchaser”). The transaction closed on July 30, 2024. Prior to closing, the Receiver terminated the previous sale agreement between Mr. Bhatti and Mariman that was executed before the Receiver was appointed (the “Prior Vickery APS”).
3. In the evening of July 30, 2024, counsel for the Vickery Purchaser advised the Receiver of “water damage and the formation of mould” located at the Vickery Property. The Receiver responded that the water damage pre-dated its appointment as Receiver as the building envelope was never sealed. Correspondence between the Vickery Purchaser’s counsel and the Receiver’s counsel in this regard is provided as Appendix “J”. The Receiver has not heard from the Purchaser since this correspondence.
4. On August 7, 2024, a representative of Jim Pauls Real Estate Ltd. (“Pauls”), the listing agent in the Prior Vickery APS, contacted Chaitons regarding the payment of commissions associated with the Prior Vickery APS. Chaitons advised Pauls that the agreement had been terminated and that any claim would be unsecured. Correspondence in this regard is provided as Appendix “K”.

5.0 Mariman Properties

1. At the time that the Receiver was appointed, MarshallZehr and the Receiver were aware that Mariman owned a vacant lot located at 178 Moore's Road, Haldimand, Ontario (the “Moore's Property”). The Moore's Property is subject to a first-ranking charge in favour of Morris Wright Mortgage Company Ltd. (“Morris Wright”) in the principal amount of \$1.5 million. As described in greater detail below, there does not appear to be any equity in this property beyond the first mortgage.
2. As discussed in the First Report, following its appointment, the Receiver learned from:
 - i) Morris Wright that Mariman also owned the Vickery Property; and ii) Home Construction Regulatory Authority (“HCRA”), the regulator of new home builders and vendors in Ontario, that Mariman wholly or partially owned the following development projects and properties in Ontario:
 - a) raw land consisting of 12 lots collectively developed and marketed under the name of “Hunter Estates” and municipally known as 38-46, 48, 53 and 55 Augustus Street, Scotland (collectively, “Hunter Estates”).

- b) raw land consisting of a minimum of 46 lots collectively developed and marketed under the name of “Mariman Estates” located in Pelham, including 39 full lots intended for residential dwellings (“Mariman Estates”). Prior to the date of the Receivership Order, 19 of the Mariman Estates lots were owned by Mariman, with the remaining lots owned by three different Ontario numbered companies, all of which were related to Mariman. On the date of the Receivership Order, the Mariman lots that had been registered to Mariman were transferred by Mariman to 2753904 Ontario Inc., a related company, for nominal consideration of \$2.
- 3. Similar to York Estates, Mariman pre-sold residential homes at both the Hunter Estates and Mariman Estates developments and received deposits for such sales which it did not hold in trust.
- 4. As set out in the sections below:
 - a) Chaitons has reviewed the senior mortgages registered on title to these properties and concluded that they are valid;
 - b) A number of mortgagees have requested that they be permitted to take steps to enforce their security through power of sale proceedings; and
 - c) Colliers has advised the Receiver that there is unlikely to be any equity available to Mariman beyond the registered mortgages.
- 5. Based on the above, and as the Receiver is without funding, the Receiver has not taken steps to monetize these properties, nor has it taken steps to deal with the individual pre-sale agreements other than to direct the purchasers associated with these agreements to Tarion and the mortgagees on title to the respective properties.

5.1 Moore’s Property

- 1. A copy of the parcel search for the Moore’s Property dated August 16, 2024 is provided as Appendix “L”. The search discloses that this property was acquired by Mariman on November 4, 2022 for \$800,000. On the same date, Morris Wright registered a mortgage in the principal amount of \$1.5 million against the Moore’s Property.
- 2. Chaitons was provided by Morris Wright with its loan and security documents, together with evidence that a principal amount of \$725,000 was advanced under its mortgage on November 4, 2022.
- 3. Chaitons provided an opinion that, subject to the standard assumptions and qualifications contained therein, Morris Wright has a validly registered secured mortgage against the Moore’s Property.
- 4. A mortgage statement provided by Morris Wright discloses that, as at October 1, 2024, the amount owing to Morris Wright under its mortgage is \$880,247. A copy of the mortgage statement is provided as Appendix “M”.
- 5. The Receiver discussed the Moore’s Property with Colliers who advised that, based on comparable property transactions and current listings, there is likely little to no equity in the property beyond the amount owing to Morris Wright.

6. Morris Wright advised the Receiver that it intends to sell this property under power of sale and requested that this property be excluded from this receivership proceeding.

5.2 Hunter Estates

1. As described above, Hunter Estates consists of 12 lots. A sample parcel search for the Hunter Estates dated September 13, 2024 is provided as Appendix "N". The Receiver is advised by Chaitons that the parcel searches for the balance of the Hunter Estates lots appear to be substantially similar.
2. The sample parcel search for the Hunter Estates discloses that the lots were purchased by Mariman in December 2014 for \$710,000.
3. The following is a summary of charges/mortgages against each of the Hunter Estates lots:

Creditor Name	Date of Registration	Instrument Number	Principal Amount	Postponements
2441026 Ontario Inc. ("244 Ont")	December 16, 2014	BC267839	\$1,300,000	Postponed to the 249 Charge (as defined below) in BC313338 and BC325589 Postponed to the OTC Charge (as defined below) in BC325586
244 Ont	December 16, 2014	BC267840	\$1,900,000	Postponed to the 249 Charge (as defined below) in BC313338 and BC325589 Postponed to the OTC Charge (as defined below) in BC325586
2496582 Ontario Inc.	March 28, 2017	BC313337	\$4,313,267 (the "249 Charge")	This charge was originally in the principal amount of \$7,000,000, decreased to \$4,313,267 in BC337788 Postponed to the OTC Charge in BC325588

Olympia Trust Company ("Olympia Trust")	September 29, 2017	BC325584	\$2,686,733 (the "OTC Charge")	This charge was originally in the principal amount of \$2,133,000, but was increased to \$2,686,733 via BC337784
The Corporation of the County of Brant	June 21, 2024	Certificate	\$2,980	

4. Following the Receiver's appointment, counsel for the Receiver was advised by counsel for Olympia Trust that the OTC Charge was in default and that on April 25, 2023, Olympia Trust listed Hunter Estates with CBRE Limited ("CBRE") for a listing price of \$5.8 million. CBRE advised the Receiver that no offers were accepted for this property.
5. On July 9, 2024, counsel for the Receiver received correspondence from counsel for 249 Ont. advising that the 249 Charge is in default, that Notices of Sale were issued in 2022 and that 249 Ont. would like to have this property excluded from the receivership proceeding to allow it to sell Hunter Estates under its power of sale. The Receiver was advised by counsel for Olympia Trust that it is prepared to allow 249 Ont. to sell Hunter Estates under power of sale.
6. Chaitons was provided by counsel for Olympia Trust with its loan and security documents. Chaitons provided an opinion that, subject to the standard assumptions and qualifications contained therein, Olympia Trust has a validly registered mortgage against Hunter Estates.
7. A copy of Olympia Trust's discharge statement that discloses that, as at October 1, 2024, Mariman will be indebted to Olympia Trust under the OTC Charge in the amount of approximately \$1.9 million is provided as Appendix "O".
8. Chaitons was also provided by counsel for 249 Ont. with its loan and security documents.
9. Chaitons provided an opinion that, subject to the standard assumptions and qualifications contained therein, 249 Ont. has a validly registered mortgage against Hunter Estates.
10. A copy of 249 Ont.'s discharge statement that discloses that, as at July 31, 2022, Mariman continues to be indebted to 249 Ont. Inc. under the 249 Charge in the amount of approximately \$6.3 million is provided as Appendix "P". The Receiver is advised by counsel for 249 Ont. that there have been no payments under the 249 Mortgage since July 2022 when it issued its Notices of Sale and the amount owing continues to accrue with interest.

11. Based on the listing price of the Hunter Property (\$5.8 million, which did not result in any acceptable offers despite CBRE's market canvass), it does not appear that there will be equity in this property sufficient to pay out the first and the second mortgages. Accordingly, the Receiver did not request that counsel perform a security review of the third or fourth mortgage.

5.3 Mariman Estates

1. As described in the First Report, on the date of the Receiver's appointment, Mariman transferred ownership of 19 out of 39 Mariman Estates lots to a related party, without the Receiver's knowledge or consent.
2. Sample parcel searches for 4 of the 19 Mariman Estate lots that previously listed Mariman as the registered owner (the "Mariman Lots") are provided as Appendix "Q". All of the sample searches appear substantially similar.
3. The parcel searches disclose that prior to the transfer of the Mariman Lots, all of the Mariman Estates lots were subject to two mortgages: a first mortgage in the principal amount of \$5.5 million (the "268 Mortgage") in favour of 2689918 Ontario Inc. ("268 Ont."), and a second mortgage (vendor take-back) in the principal amount of \$2.72 million in favour of a number of individuals with the last names Montemurro and Baxter.
4. The parcel searches also disclose that on May 24, 2024, a new mortgage was registered against Mariman Estates lots by Paul Dishke in the principal amount of \$1.725 million. The Receiver understands that Mr. Dishke was Mariman's real estate agent.
5. Chaitons was provided by counsel for 268 Ont. with its loan and security documents. Pursuant to a letter dated July 29, 2024, a copy of which is provided as Appendix "R", the Receiver was advised that, as at July 29, 2024, approximately \$4.4 million was owing to 268 Ont. under its loan.
6. Chaitons provided an opinion that, subject to the standard assumptions and qualifications contained therein, 268 Ont. has a validly registered mortgage against the Mariman Lots.
7. The Receiver asked Colliers to provide an estimate of value for the Mariman Estates property. The Receiver is advised by Colliers that the value of the Mariman Estates property is likely below the amount owing to 268 Ont. and therefore there is no equity for the holders of the subsequent charge holders.
8. The Receiver does not have the funds to proceed with a claim to set aside the transfer of the Mariman Lots and, in light of the estimated value of this property compared to the balance owing to 268 Ont. under its mortgage, it does not appear that there would be any benefit to the estate in the Receiver pursuing that litigation.

6.0 Receiver's Activities

1. The Receiver's activities since the date of the Second Report have included, among other things, the following:
 - a) corresponding with Colliers regarding the York Property;
 - b) corresponding regularly with MarshallZehr regarding all aspects of this mandate;
 - c) corresponding with VanRooyen, its legal counsel and MarshallZehr regarding the construction lien claim;
 - d) corresponding with various counsel for certain existing home purchasers in each of the developments described above;
 - e) completing the sale of the Vickery Property;
 - f) together with its legal counsel, negotiating the APS for the Transaction;
 - g) corresponding with HCRA regarding, among other things, its cancellation of Mariman's builders license;
 - h) dealing with the Companies' insurance broker regarding the Companies' insurance policies;
 - i) responding to inquiries from the Companies' creditors, including home buyers for each of the developments;
 - j) preparing statements of receipts and disbursements, a copy of which as at September 19, 2024 is provided as Appendix "S"; and
 - k) preparing this Report.

7.0 Professional Fees

1. The fees of the Receiver and Chaitons from July 1, 2024 to August 31, 2024 total \$41,740 and \$31,340, respectively, excluding disbursements and HST. The fees of Reconstruct from commencement of this proceeding to August 31, 2024 total \$15,066, excluding disbursements and HST. Fee affidavits and accompanying invoices for the Receiver, Chaitons and Reconstruct are provided as Appendices "T", "U" and "V", respectively.
2. The activities of the Receiver are detailed in the Receiver's invoices, in this Report and in the Second Report.
3. The average hourly rate for the Receiver, Chaitons and Reconstruct for the referenced billing period was \$607, \$553 and \$717, respectively.
4. The Receiver is of the view that the hourly rates of Chaitons and Reconstruct are consistent with the rates charged by other law firms practising in the area of restructuring and insolvency in the Toronto market, and that their fees are reasonable and appropriate in the circumstances.

8.0 Conclusion and Recommendation

1. Following the completion of the Transaction, the Receiver's mandate with respect to the York Property will be completed.
2. As described above, there does not appear to be any equity in the Moore's Property, Hunter Estates and Mariman Estates beyond the amounts owing to the first or second mortgagees.
3. In connection with the Moore's Property and Hunter Estates, the mortgagees request that the Receiver be discharged to enable them to exercise their enforcement rights. In these circumstances, the Receiver is of the view that a discharge is appropriate.
4. The Receiver cannot take any actions with respect to the Mariman Lots without first taking steps to aside the transfer of these lots by Mariman to a related party. In light of the amount owing to the first mortgagee, the estimated value of this property and lack of funding, the Receiver recommends that this property be excluded from this receivership proceeding.
5. The Receiver is not aware of any assets owned by Mariman other than the Moore's Property, Hunter Estates and Mariman Estates. If these properties are excluded from this receivership proceeding, the Receiver's mandate will be completed. Accordingly, the Receiver seeks an order discharging it as Receiver over the Companies' property, assets and undertakings and an order releasing any claims against it, other than claims that arise by virtue of gross negligence.
6. The Receiver understands that Mariman's builders license has been revoked and that Mariman is a party to a number of agreements of purchase and sale in connection with Hunter Estates and Mariman Estates. The Receiver has not taken any steps to terminate the existing agreements of purchase and sale.
7. If the Court grants the discharge order, the Receiver will give notice to all purchasers of its discharge. Purchasers who have already been in touch with the Receiver and their counsel and have requested to be added to the service list were served with the Receiver's Notice of Motion and this Report.
8. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in Section 1.1 (1)(h) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
O/A MARIMAN HOMES
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “C”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.

)

TUESDAY, THE 1ST

JUSTICE BLACK

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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

RECONSTRUCT LLP

Richmond-Adelaide Centre
120 Adelaide Street West, Suite 2500
Toronto, ON M5H 1T1

R. Brendan Bissell LSO No. 40354V
bbissell@reconllp.com
Tel: 416.613.0066

Jasmine Landau LSO No. 74316K
jlandau@reconllp.com
Tel: 416.613.4880

Fax: 416.613.8290

**Independent counsel for KSV
Restructuring Inc.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	TUESDAY, THE 4 TH DAY
)	
JUSTICE W.D. BLACK)	OF NOVEMBER, 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

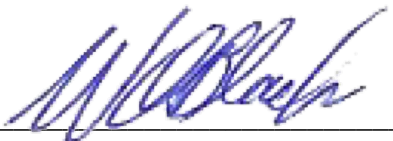
**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED AND SECTION
101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c C. 43, AS AMENDED**

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**") for an order permitting KSV to delete its registration of the Order of Justice Osborne dated January 16, 2024 was heard this day at 330 University Avenue, Toronto, Ontario.

DISCHARGE AGAINST TITLE

1. **THIS COURT ORDERS** that upon the registration of this Discharge Order in the Land Registry Office for the Land Titles Division of Haldimand No. 18 by way of an Application to Register a Judgment or Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to delete and expunge from title to the property described in **Schedule "A"** attached hereto (the "**Moores Property**") the encumbrance referred to in **Schedule "B"** attached hereto (the "**Moores Encumbrance**").
2. **THIS COURT ORDERS** that upon the registration of this Discharge Order in the Land Registry Office for the Land Titles Division of Brant No. 2 by way of an Application to Register a Judgment or Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to delete and expunge from title to the property described in **Schedule "C"** attached hereto (the "**Burford Property**") the encumbrance referred to in **Schedule "D"** attached hereto (the "**Burford Encumbrance**");
3. **THIS COURT ORDERS** that upon deletion of the Moores Encumbrance and the Burford Encumbrance, the Land Registrar is further directed to delete and expunge from title to the Moores Property and the Burford Property the registration of this Order.



Schedule "A"

PIN: 38147-0005 (LT)

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

Municipal Address: 178 Moores Road, York, Ontario

Schedule "B"

Encumbrance to be deleted and expunged from title to the Moores Property

Registration No.	Registration Date	Instrument Type	PIN
CH131052	January 18, 2024	Application To Register Court Order	38147-0005 (LT)

Schedule “C”

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

PIN	Description
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

Schedule "D"

Encumbrance to be deleted and expunged from title to the Burford Property

Registration No.	Registration Date	Instrument Type	PIN
BC468467	February 27, 2024	Application To Register Court Order	32015-0218 (LT)
			32015-0219 (LT)
			32015-0220 (LT)
			32015-0221 (LT)
			32015-0225 (LT)
			32015-0226 (LT)
			32015-0233 (LT)
			32015-0234 (LT)
			32015-0235 (LT)
			32015-0236 (LT)
			32015-0237 (LT)
			32015-0238 (LT)

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

DISCHARGE ORDER

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

Lawyers for KSV Restructuring Inc.

Appendix “D”

From: bluder@ksvadvisory.com
To: mvininsky@ksvadvisory.com; td.cabankrupt@td.com
Cc: maya@chaitons.com; hadi.vatan@td.com; mansi.negi@td.com;
noora.grifi@td.com
Subject: RE: URGENT RE: Mariman Homes CV-23-00699432-00CL TD_SECURE
Sent: 2025-02-28 13:51:25.0
Attachments: image001.jpg
image002.jpg
image003.jpg
image004.png

Hi,

Please forward our letter dated February 26, 2025 to the accountholder.

We assume that the account where the funds were deposit is owned, directly or indirectly, by Mike Bettiol, the former Director of 2363823 Ontario Inc.. As you know, that company is in receivership and KSV Restructuring Inc. ("KSV") is the court-appointed receiver.

The Receiver has contacted Mr. Bettiol separately to explain the reasons for the account freeze and to demand that the full amount of the deposit be immediately paid to the Receiver. Should he fail to comply, we will be bringing a motion to Court next week to seek relief against Mr. Bettiol, including a direction to TD that the funds in the account be paid to the Receiver. Accordingly, the funds must remain frozen pending the outcome of this matter.

Thanks,

Ben Luder

From:td.cabankrupt@td.com Fri, Feb 28 2025 13:17:56 EST
To:"bluder@ksvadvisory.com" <bluder@ksvadvisory.com>;
"mvininsky@ksvadvisory.com" <mvininsky@ksvadvisory.com>
Cc:"maya@chaitons.com" <maya@chaitons.com>; "Negi, Mansi D"

<Mansi.Negi@td.com>; "Grifi, Noora" <Noora.Grifi@td.com>; "Vatan, Hadi (he/him/his)" <HADI.VATAN@td.com>

Hello Ben,

The business of which the funds had been deposited to would like to who to contact regarding the hold on the funds. As they are not the entity under receivership, we have not responded to their request for copy of receivership/court order/CRA demand letter.

They would like to know who their lawyer should reach out to in CRA or Receivership. What can we disclose for this case, who should they connect with?

Thank you and have a great day.

Pronouns: She/Her/Hers

Aiyana Punsalan | Insolvency Lead Officer | Specialized Customer Assistance, Insolvency and Credit Counselling | TD Canada Trust

Transit #0565 | 3500 Steeles Ave E, Tower 2, Level 4, Markham, Ontario L3R 0X1

T: 1 866 330 0893 | F: 1855 569 1640

[ID: ForeverProud Pride colours][ID: Trans Flag colours]

From: CA Bankrupt, tdbnkrpt

Sent: Friday, February 28, 2025 9:47 AM

To: bluder@ksvadvisory.com; Vatan, Hadi (he/him/his) <HADI.VATAN@td.com>; mvininsky@ksvadvisory.com

Cc: maya@chaitons.com; Negi, Mansi D <Mansi.Negi@td.com>; Grifi, Noora <Noora.Grifi@td.com>

Subject: RE: URGENT RE: Mariman Homes CV-23-00699432-00CL TD_SECURE

Good morning,

We are receiving inquiry as to why the other business's accounts have been on hold. What can branch disclose to this separate business, who else should the business reach out to (CRA? Which officer/file?) regarding the matter?

Thank you and have a great day.

Pronouns: She/Her/Hers

Aiyana Punsalan | Insolvency Lead Officer | Specialized Customer Assistance, Insolvency and Credit Counselling | TD Canada Trust

Transit #0565 | 3500 Steeles Ave E, Tower 2, Level 4, Markham, Ontario L3R 0X1

T: 1 866 330 0893 | F: 1855 569 1640

[ID: ForeverProud Pride colours][ID: Trans Flag colours]

From: Secure Email From bluder@ksvadvisory.com
<mailto:bluder@ksvadvisory.com> via TD Secure Email <noreply@td.com
<mailto:noreply@td.com> >
Sent: Thursday, February 27, 2025 4:45 PM
To: Vatan, Hadi (he/him/his) <HADI.VATAN@td.com <mailto:HADI.VATAN@td.com>
>; mvininsky@ksvadvisory.com <mailto:mvininsky@ksvadvisory.com> ; CA
Bankrupt, tdbnkrpt <TD.CABankrupt@td.com <mailto:TD.CABankrupt@td.com> >
Cc: maya@chaitons.com <mailto:maya@chaitons.com> ; Negi, Mansi D <
Mansi.Negi@td.com <mailto:Mansi.Negi@td.com> >; Grifi, Noora <
Noora.Grifi@td.com <mailto:Noora.Grifi@td.com> >
Subject: RE: URGENT RE: Mariman Homes CV-23-00699432-00CL TD_SECURE

Hi Aiyana,

Thank you for confirming. We will again speak with the CRA tomorrow and get back to you. Please do not lift the hold on the account before discussing with us.

Ben

From:td.cabankrupt@td.com Thu, Feb 27 2025 16:19:28 EST
To:Ben Luder <bluder@ksvadvisory.com <mailto:bluder@ksvadvisory.com> >;
Mitch Vininsky <mvininsky@ksvadvisory.com
<mailto:mvininsky@ksvadvisory.com> >; "Vatan, Hadi (he/him/his)" <
HADI.VATAN@td.com <mailto:HADI.VATAN@td.com> >
Cc:Maya Poliak <Maya@chaitons.com <mailto:Maya@chaitons.com> >; "Grifi,
Noora" <Noora.Grifi@td.com <mailto:Noora.Grifi@td.com> >; "Negi, Mansi D"
<Mansi.Negi@td.com <mailto:Mansi.Negi@td.com> >

Hello Ben,

Thank you for providing the wire details. With the full branch info, we've managed to locate the funds which were deposited into an account belonging to a different business entity.

We've placed a full hold set to deposit-only on the account as of 3:25pm to prevent further transactions from taking place. Of the original funds that was deposited on February 12, 2025, the remaining balance in the account is \$143,833.11.

Thank you and have a great day.

Pronouns: She/Her/Hers

Aiyana Punsalan | Insolvency Lead Officer | Specialized Customer Assistance, Insolvency and Credit Counselling | TD Canada Trust

Transit #0565 | 3500 Steeles Ave E, Tower 2, Level 4, Markham, Ontario L3R 0X1

T: 1 866 330 0893 | F: 1855 569 1640

Follow the TECE Forever Proud Community

<<https://myteam.td.com/teams/TECEForeverProud/SitePages/TECE-Forever-Proud.aspx>>

From: Ben Luder <bluder@ksvadvisory.com <<mailto:bluder@ksvadvisory.com>> >
Sent: Thursday, February 27, 2025 3:00 PM
To: CA Bankrupt, tdbnkrpt <TD.CABankrupt@td.com <<mailto:TD.CABankrupt@td.com>> >; Mitch Vininsky <mvininsky@ksvadvisory.com <<mailto:mvininsky@ksvadvisory.com>> >
Cc: Maya Poliak <Maya@chaitons.com <<mailto:Maya@chaitons.com>> >; Grifi, Noora <Noora.Grifi@td.com <<mailto:Noora.Grifi@td.com>> >; Vatan, Hadi (he/him/his) <HADI.VATAN@td.com <<mailto:HADI.VATAN@td.com>> >; Negi, Mansi D <Mansi.Negi@td.com <<mailto:Mansi.Negi@td.com>> >
Subject: RE: URGENT RE: Mariman Homes
Importance: High

CAUTION: EXTERNAL MAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST

ATTENTION : COURRIEL EXTERNE. NE CLIQUEZ PAS SUR DES LIENS ET N'OUVREZ PAS DE PIÈCES JOINTES AUXQUELS VOUS NE FAITES PAS CONFIANCE

Hi Sherryl,

I discussed this again with the CRA. Here are the specific details on the wire transfer. I believe Institution # 004 is TD. Can you please confirm this account exists in your system? If not, did this account exist at one point and is now closed?

Institution: 004

Branch: 01602

Account: 5233452

Date of direct deposit: Feb 12, 2025

Deposit amount: \$246,971.82

Thank you,

[Image removed by sender. KSV Advisory Logo]

Ben Luder

Manager

T

437.889.9995

M

416.953.9421

W

www.ksvadvisory.com

<https://clicktime.symantec.com/15x87sg1fZYKQWckLzArX?h=rclZ8IFXjtUm2SPWxd0qaPBVPj_3XXnjz2_czoKk9-g=&u=http://www.ksvadvisory.com>

From: CA Bankrupt, tdbnkrpt <TD.CABankrupt@td.com

<<mailto:TD.CABankrupt@td.com>> >

Sent: February 27, 2025 10:25 AM

To: Mitch Vininsky <mvininsky@ksvadvisory.com

<<mailto:mvininsky@ksvadvisory.com>> >; Ben Luder <bluder@ksvadvisory.com

<<mailto:bluder@ksvadvisory.com>> >

Cc: Maya Poliak <Maya@chaitons.com <<mailto:Maya@chaitons.com>> >; Grifi,

Noora <Noora.Grifi@td.com <<mailto:Noora.Grifi@td.com>> >; Vatan, Hadi

(he/him/his) <HADI.VATAN@td.com <mailto:HADI.VATAN@td.com> >; Negi, Mansi
D <Mansi.Negi@td.com <mailto:Mansi.Negi@td.com> >
Subject: RE: URGENT RE: Mariman Homes

Good morning Mitch

The account # 523xxx2/7544 is not on our system. I can provide you with
the statement for 52xxx99 that shows there was no deposit for \$246K

Can you please ask CRA for more details if perhaps the funds went to a
different account or institution

Thank you and have a wonderful day.

Sherryl Adams

Customer Assistance, Insolvency and Credit Counselling – TD BANK GROUP

3500 Steeles Ave, Tower 2 4th Floor Markham, Ontario L3R 0X1

From: Mitch Vininsky <mvininsky@ksvadvisory.com
<mailto:mvininsky@ksvadvisory.com> >
Sent: Thursday, February 27, 2025 9:57 AM
To: Ben Luder <bluder@ksvadvisory.com <mailto:bluder@ksvadvisory.com> >;
CA Bankrupt, tdbnkrupt <TD.CABankrupt@td.com <mailto:TD.CABankrupt@td.com>
>
Cc: Maya Poliak <Maya@chaitons.com <mailto:Maya@chaitons.com> >; Grifi,
Noora <Noora.Grifi@td.com <mailto:Noora.Grifi@td.com> >; Vatan, Hadi
(he/him/his) <HADI.VATAN@td.com <mailto:HADI.VATAN@td.com> >; Negi, Mansi
D <Mansi.Negi@td.com <mailto:Mansi.Negi@td.com> >
Subject: RE: URGENT RE: Mariman Homes

CAUTION: EXTERNAL MAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST

ATTENTION : COURRIEL EXTERNE. NE CLIQUEZ PAS SUR DES LIENS ET N'OUVREZ PAS DE PIÈCES JOINTES AUXQUELS VOUS NE FAITES PAS CONFIANCE

This matter is very urgent. Can we please hear back from you as soon as possible.

[Image removed by sender. KSV Advisory Logo]

Mitch Vininsky

Managing Director

T

416.932.6013

M

416.254.4912

W

https://clicktime.symantec.com/15xVXRfsc9pZhdmZAv7gF?h=XXMjgR4LE0n2a03w_nwNjA_YMD-wPa-T2nEDEf3mUP8=&u=www.ksvadvisory.com
<https://clicktime.symantec.com/15xVXRfsc9pZhdmZAv7gF?h=XXMjgR4LE0n2a03w_nwNjA_YMD-wPa-T2nEDEf3mUP8=&u=www.ksvadvisory.com>

From: Ben Luder <bluder@ksvadvisory.com <mailto:bluder@ksvadvisory.com> >

Sent: February 26, 2025 2:27 PM

To: CA Bankrupt, tdbnrpt <TD.CABankrupt@td.com
<mailto:TD.CABankrupt@td.com> >

Cc: Maya Poliak <Maya@chaitons.com <mailto:Maya@chaitons.com> >; Grifi,

Noora <Noora.Grifi@td.com <mailto:Noora.Grifi@td.com> >; Vatan, Hadi

(he/him/his) <HADI.VATAN@td.com <mailto:HADI.VATAN@td.com> >; Negi, Mansi

D <Mansi.Negi@td.com <mailto:Mansi.Negi@td.com> >; Mitch Vininsky <mvininsky@ksvadvisory.com <mailto:mvininsky@ksvadvisory.com> >
Subject: URGENT RE: Mariman Homes
Importance: High

Hi,

Please refer to the attached correspondence.

Thanks,

[Image removed by sender. KSV Advisory Logo]

Ben Luder

Manager

T

437.889.9995

M

416.953.9421

W

www.ksvadvisory.com

<https://clicktime.symantec.com/15xVSbUb9Y8yHgwddMiXd?h=O9Btdaainii4uchI9riT_Mapw7YnBqQhxnS1rCtHGjg=&u=http://www.ksvadvisory.com>

From: CA Bankrupt, tdbnkrpt <TD.CABankrupt@td.com>

<mailto:TD.CABankrupt@td.com> >

Sent: February 26, 2025 10:00 AM

To: Ben Luder <bluder@ksvadvisory.com <mailto:bluder@ksvadvisory.com> >

Cc: Grifi, Noora <Noora.Grifi@td.com <mailto:Noora.Grifi@td.com> >; Vatan, Hadi (he/him/his) <HADI.VATAN@td.com <mailto:HADI.VATAN@td.com> >; Negi, Mansi D <Mansi.Negi@td.com <mailto:Mansi.Negi@td.com> >; Mitch Vininsky <mvininsky@ksvadvisory.com <mailto:mvininsky@ksvadvisory.com> >

Subject: RE: Mariman Homes

Good morning Ben

Thanks for contacting us.

Unfortunately there is no deposit of \$246K deposited to this account on Feb 12 and the account was closed yesterday

Thank you and have a wonderful day.

Sherryl Adams

Customer Assistance, Insolvency and Credit Counselling – TD BANK GROUP

3500 Steeles Ave, Tower 2 4th Floor Markham, Ontario L3R 0X1

From: Ben Luder <bluder@ksvadvisory.com <mailto:bluder@ksvadvisory.com> >

Sent: Wednesday, February 26, 2025 9:26 AM

To: CA Bankrupt, tdbnkrpt <TD.CABankrupt@td.com <mailto:TD.CABankrupt@td.com> >

Cc: Grifi, Noora <Noora.Grifi@td.com <mailto:Noora.Grifi@td.com> >; Vatan, Hadi (he/him/his) <HADI.VATAN@td.com <mailto:HADI.VATAN@td.com> >; Negi, Mansi D <Mansi.Negi@td.com <mailto:Mansi.Negi@td.com> >; Mitch Vininsky <mvininsky@ksvadvisory.com <mailto:mvininsky@ksvadvisory.com> >

Subject: RE: Mariman Homes

CAUTION: EXTERNAL MAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST

ATTENTION : COURRIEL EXTERNE. NE CLIQUEZ PAS SUR DES LIENS ET N'OUVREZ PAS DE PIÈCES JOINTES AUXQUELS VOUS NE FAITES PAS CONFIANCE

...and please close the account after the balance has been transferred to KSV.

Thanks,

[Image removed by sender. KSV Advisory Logo]

Ben Luder

Manager

T

437.889.9995

M

416.953.9421

W

www.ksvadvisory.com

<<https://clicktime.symantec.com/15xVSbUFmxntLc1bTyRBL?h=Uut5u1JxYt1uJn7NdXHy9Uer5RW4tT70Z9F8P7sNOmQ=&u=http://www.ksvadvisory.com>>

From: Ben Luder

Sent: February 26, 2025 9:22 AM

To: CA Bankrupt, TD <TD.CABankrupt@td.com <mailto:TD.CABankrupt@td.com> >
Cc: Grifi, Noora <Noora.Grifi@td.com <mailto:Noora.Grifi@td.com> >; Vatan,
Hadi (he/him/his) <HADI.VATAN@td.com <mailto:HADI.VATAN@td.com> >; Negi,
Mansi D <Mansi.Negi@td.com <mailto:Mansi.Negi@td.com> >; Mitch Vininsky <
mvininsky@ksvadvisory.com <mailto:mvininsky@ksvadvisory.com> >
Subject: RE: Mariman Homes

Hi all,

We were advised by CRA that an amount of approximately \$246K was deposited
into account #7524-5218399 on February 12, 2025. I've attached an old bank
statement from this account for reference.

Can you please wire the balance of the account to KSV's estate account? I
have attached our wire information.

Let us know if you have any questions.

Thanks,

[KSV Advisory Logo]

Ben Luder

Manager

T

437.889.9995

M

416.953.9421

W

www.ksvadvisory.com

<<https://clicktime.symantec.com/15xVSbUFmxntLc1bTyRBL?h=Uut5u1JxYt1uJn7NdXHy9Uer5RW4tT70Z9F8P7sNOmQ=&u=http://www.ksvadvisory.com>>

From: Mitch Vininsky <mvininsky@ksvadvisory.com

<<mailto:mvininsky@ksvadvisory.com>> >

Sent: January 18, 2024 11:38 AM

To: CA Bankrupt, TD <TD.CABankrupt@td.com <<mailto:TD.CABankrupt@td.com>> >

Cc: Grifi, Noora <Noora.Grifi@td.com <<mailto:Noora.Grifi@td.com>> >; Vatan,

Hadi (he/him/his) <HADI.VATAN@td.com <<mailto:HADI.VATAN@td.com>> >; Negi,

Mansi D <Mansi.Negi@td.com <<mailto:Mansi.Negi@td.com>> >; Noah Goldstein <

ngoldstein@ksvadvisory.com <<mailto:ngoldstein@ksvadvisory.com>> >; Nisan

Thurairatnam <NThurairatnam@ksvadvisory.com

<<mailto:NThurairatnam@ksvadvisory.com>> >

Subject: Re: Mariman Homes

Thank you!

Please also confirm the cash balance in each account.

Mitch Vininsky

KSV Advisory Inc.

220 Bay Street, Suite 1300

Toronto, ON M5J 2W4

T 416-932-6013

C 416-254-4912

On Jan 18, 2024, at 11:33 AM, CA Bankrupt, TD <TD.CABankrupt@td.com
<mailto:TD.CABankrupt@td.com> > wrote:

Hi Mitch,

This is to confirm the accounts have been frozen.

Thank you and have a wonderful day.

Benilda Kaunds I Customer Assistance, Insolvency and Credit
Counselling I TD Bank Group

3500 Steeles Ave. East, Tower 4 5th Floor, Markham, Ontario, L3R 0X1

Toll Free: 1 866 330 0893 | F: 1 866 280 0056

<image002.jpg>

TD is committed to investing in your well-being and we encourage you
to do the same. Learn more about the resources available to support
your mental well-being below.

Mental Health at TD

<http://w3.td.com/td/intranet/tdweb/home/news/detailview/!ut/p/z1/nZDLDoIwEEW_hS-YUkspywI-iCGVlkaYjWGhhkTRhXHh10vUREwQH7Ob5J55HEAoAJvqXG-rU31oql3bl8hXVFntToMFtSqjRDJ_xKgWREwYLG8BQjzjzSM3kUTRMGczFZB7Af7D8-hXvr_kl_xAAIfHly3wv-OV4GAAAWMVJTGUaRpH2qU-ZZxTwcCsm_YAfOx4VRCap4LeQNdx6Ar8dMbx721trjkm1qPM-k4V-Q-zBo!/dz/d5/L2dBISEvZ0FBIS9nQSEh/>

Internal

From: Mitch Vininsky <mvininsky@ksvadvisory.com
<mailto:mvininsky@ksvadvisory.com> >
Sent: Thursday, January 18, 2024 11:09 AM
To: Grifi, Noora <Noora.Grifi@td.com <mailto:Noora.Grifi@td.com> >;
Vatan, Hadi (he/him/his) <HADI.VATAN@td.com <mailto:HADI.VATAN@td.com>
>; CA Bankrupt, TD <TD.CABankrupt@td.com <mailto:TD.CABankrupt@td.com>
>; Negi, Mansi D <Mansi.Negi@td.com <mailto:Mansi.Negi@td.com> >
Cc: Noah Goldstein <ngoldstein@ksvadvisory.com
<mailto:ngoldstein@ksvadvisory.com> >; Nisan Thurairatnam <
NThurairatnam@ksvadvisory.com <mailto:NThurairatnam@ksvadvisory.com>
>
Subject: Mariman Homes

CAUTION: EXTERNAL MAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU
DO NOT TRUST
ATTENTION : COURRIEL EXTERNE. NE CLIQUEZ PAS SUR DES LIENS ET N'OUVREZ
PAS DE PIÈCES JOINTES AUXQUELS VOUS NE FAITES PAS CONFIANCE

Good morning,

Please see the attached urgent request to freeze two bank accounts.
Please contact us to confirm this has been done.

Thank you,

<image003.png>

Mitch Vininsky

T

416.932.6013

Managing Director

M

416.254.4912

E

mvininsky@ksvadvisory.com <<mailto:mvininsky@ksvadvisory.com>>

KSV Advisory Inc.

220 Bay Street

Suite 1300, Box 20

Toronto, Ontario, M5J 2W4

T 416.932.6262 | F 416.932.6266 | www.ksvadvisory.com

<https://clicktime.symantec.com/15tpDM9R4dXcwmUrwQxH6?h=5Cm01JUnb_OEJSdFI0pb3T0KuyKskkM8Wg5L90JhroQ=&u=http://www.ksvadvisory.com/>

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| This is a secure reply from TD Secure Email |

Internal

| This is a secure reply from TD Secure Email |

Appendix “E”

Ben Luder

From: Maya Poliak <Maya@chaitons.com>
Sent: March 4, 2025 11:09 AM
To: Rory McGovern
Cc: Ben Luder; Mike Bettiol; Mitch Vininsky
Subject: RE: URGENT: CRA Funds - Re: 2363823 Ontario Inc.

Thank you Rory

We will be serving our materials today.

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Rory McGovern <rory@rorymcgovernpc.com>
Sent: Tuesday, March 4, 2025 9:10 AM
To: Maya Poliak <Maya@chaitons.com>
Cc: Ben Luder <bluder@ksvadvisory.com>; Mike Bettiol <mikeb@marimanhomes.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>
Subject: Re: URGENT: CRA Funds - Re: 2363823 Ontario Inc.

CAUTION: [External]

Maya,

Further to my note below, please provide copies of the notices of assessment that were sent to your client by the CRA. My client spoke with the CRA on Friday and the agent advised that all of the correspondence for 2024 was with KSV and that KSV did all of the quarterly filings.

My client was not informed of any of KSV's interactions with the CRA and needs to understand same. It appears as though the deposit may have been an error on the part of the CRA as there is also an amount owing to the CRA which should have been set off against this refund. As such, my client needs to understand exactly what is owed to the CRA and what should be remitted to KSV, if any.

In any case, my clients intend to work cooperatively with your client and the CRA to rectify this situation. We do not believe a motion is necessary and in any case, more time for a response will be needed.

To resolve this matter, my client proposes the following:

1. We work together to understand what may be owed to the CRA and what may be properly remitted to KSV;

2. We resolve the matters at issue within 30 days. To the extent that any amounts are due to KSV or the Receiver, my clients will agree to remit any such amounts within 30 days. We are happy to discuss providing security for the obligation.
3. KSV immediately unfreezes the corporate bank account of 272. This account is necessary for the continued operation of this business including to pay employees.

I trust your client will find the above acceptable. We are happy to consider a form of consent order to resolve this.

Regards,

Rory McGovern

RORY MCGOVERN PROFESSIONAL CORPORATION
25 Adelaide St. E, Suite 1910
Toronto, Ontario, M5C 3A1

C 416-938-7679
F 647-559-9694

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From: Rory McGovern <rory@rorymcgovernpc.com>
Sent: Tuesday, March 4, 2025 7:39:08 a.m.
To: Maya Poliak <Maya@chaitons.com>
Cc: Ben Luder <bluder@ksvadvisory.com>; Mike Bettiol <mikeb@marimanhomes.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>
Subject: Re: URGENT: CRA Funds - Re: 2363823 Ontario Inc.

Maya,

I understand that KSV was filing various returns throughout the past year and communicating with the CRA about a variety of issues related to Mariman. If you could provide copies of the filings, it would be helpful.

When will you be serving your materials? My client intends to respond and will need sufficient time to review the receiver's record.

Regards,

Rory McGovern

RORY MCGOVERN PROFESSIONAL CORPORATION
25 Adelaide St. E, Suite 1910
Toronto, Ontario, M5C 3A1

C 416-938-7679
F 647-559-9694

From: Maya Poliak <Maya@chaitons.com>
Sent: Monday, March 3, 2025 9:05:00 PM
To: Rory McGovern <rory@rorymcgovernpc.com>
Cc: Ben Luder <bluder@ksvadvisory.com>; Mike Bettiol <mikeb@marimanhomes.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>
Subject: Re: URGENT: CRA Funds - Re: 2363823 Ontario Inc.

Rory

The Receiver's communications with CRA were verbal. As advised on Friday we will have scheduled a court attendance for noon on Thursday to address these issues.

Sent from my iPhone

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

On Mar 3, 2025, at 6:19 PM, Rory McGovern <rory@rorymcgovernpc.com> wrote:

CAUTION: [External]

Maya,

Further to my note below, I need to see the Receiver's correspondence with the CRA on this matter. If you can provide same to assist me with my investigation, it would be much appreciated.

Yours Truly,

Rory McGovern

RORY MCGOVERN PROFESSIONAL CORPORATION
25 Adelaide St. E, Suite 1910
Toronto, Ontario, M5C 3A1

C 416-938-7679
F 647-559-9694

From: Rory McGovern <rory@rorymcgovernpc.com>
Sent: Monday, March 3, 2025 9:44 AM
To: Maya Poliak <Maya@chaitons.com>; Ben Luder <bluder@ksvadvisory.com>; Mike Bettiol <mikeb@marimanhomes.com>
Cc: Mitch Vininsky <mvininsky@ksvadvisory.com>
Subject: Re: URGENT: CRA Funds - Re: 2363823 Ontario Inc.

Maya,

I am gathering information and will have a response to you by the end of the day (by midnight). In the interim, could you please provide me with the Receiver's correspondence with the CRA on this matter?

Regards,

Rory McGovern

RORY MCGOVERN PROFESSIONAL CORPORATION
25 Adelaide St. E, Suite 1910
Toronto, Ontario, M5C 3A1

C 416-938-7679
F 647-559-9694

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From: Maya Poliak <Maya@chaitons.com>
Sent: Friday, February 28, 2025 2:53:06 p.m.
To: Rory McGovern <rory@rorymcgovernpc.com>; Ben Luder <bluder@ksvadvisory.com>; Mike Bettiol <mikeb@marimanhomes.com>
Cc: Mitch Vininsky <mvininsky@ksvadvisory.com>
Subject: RE: URGENT: CRA Funds - Re: 2363823 Ontario Inc.

Hi Rory

Please see below the link to the Distribution and Discharge Order.

https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/mariman-homes--2557386-ontario/receivership-proceedings/court-orders/distribution-and-discharge-order-dated-october-1-2024.pdf?sfvrsn=fbef794e_3

Please note that pursuant to paragraphs 6 and 8, KSV remained Receiver of the Respondents for the performance of such incidental duties as may be required to complete the administration of the Receivership. The Receiver continues to have the benefit of the provisions of all Orders made in this receivership proceeding, including the Receivership Order.

The incidental duties of the Receiver include filing of returns and collection and distribution of any refunds. Any additional funds received by the estate need to be distributed among the estate's creditors in accordance with their priority.

I note that the redirection of funds by your client was done on the date that the Receivership Order was granted and on its face appears to be an effort by your client to divert the estate funds away from the Receiver and the Respondents' creditors.

We have contacted the Court and requested an urgent motion to be heard next week. Unless your client:

1. pays all of the diverted funds to the Receiver forthwith; and
2. provides the Receiver with copies of bank account statements for the account where the Respondents' funds were diverted from January 2024 to the present,

the Receiver will bring a motion for an order, among other things, requiring your client to do so.

If you would like to have a call, please call me after 5 on my cell phone at 416-820-2505.

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Rory McGovern <rory@rorymcgovernpc.com>
Sent: Friday, February 28, 2025 2:04 PM
To: Ben Luder <bluder@ksvadvisory.com>; Mike Bettiol <mikeb@marimanhomes.com>
Cc: Maya Poliak <Maya@chaitons.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>
Subject: Re: URGENT: CRA Funds - Re: 2363823 Ontario Inc.

CAUTION: [External]

Maya,

I am in court today but this does not make any sense. The Receiver was discharged last year. I am not sure under what authority the Receiver is still dealing with the Property of the Debtors.

Can you speak at 5pm today when I am out of court?

Regards,

Rory McGovern

RORY MCGOVERN PROFESSIONAL CORPORATION
25 Adelaide St. E, Suite 1910
Toronto, Ontario, M5C 3A1

C 416-938-7679
F 647-559-9694

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From: Ben Luder <bluder@ksvadvisory.com>
Sent: Friday, February 28, 2025 1:51:00 p.m.
To: Mike Bettiol <mikeb@marimanhomes.com>
Cc: Maya Poliak <Maya@chaitons.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Rory McGovern <rory@rorymcgovernpc.com>
Subject: URGENT: CRA Funds - Re: 2363823 Ontario Inc.

Mr. Bettiol,

As you know, KSV is the court-appointed receiver (the "Receiver") of 2363823 Ontario Inc. (the "Company").

We understand that on February 12, 2025, CRA deposited \$246,971.82 (the "Deposit") into the following TD Canada Trust ("TD") bank account (the "Account") associated with the Company's business account (BN 82550 7734) with CRA:

TD Bank Account Information:

Institution: 004
Branch: 01602
Account: 5233452

The Deposit is in respect of a HST refund due to the Company for the period prior to commencement of the receivership.

We further understand that on January 16, 2024, the date of the receivership order, you (or another representative of the Company) altered the bank account details with CRA that were associated with this business account to the Account, without notice to or authorization from the Receiver.

The Receiver has informed TD that the Deposit represents Property (as defined in the Receivership Order) and must be remitted to the Receiver. As such, the Account has been frozen. TD has notified the Receiver that only \$143,833.11 remains from the total \$246,971.82.

The Receiver hereby demands that you wire the full amount of \$246,971.82 to the Receiver's account by 5:00pm today. The Receiver's wire information is attached. Should you fail to comply, the Receiver will bring a motion before the Court next week to seek a direction that the Deposit be paid to the Receiver, that you remit any shortfall immediately to the Receiver, and that TD provide bank statements for the last 12 months related to the Account. The Receiver will also seek substantial indemnity costs against you.



Ben Luder	T	437.889.9995
Manager	M	416.953.9421
	E	bluder@ksvadvisory.com

KSV Advisory Inc.
220 Bay Street
Suite 1300, Box 20
Toronto, Ontario, M5J 2W4
T 416.932.6262 | **F** 416.932.6266 | www.ksvadvisory.com

TAB 3

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

THE HONOURABLE MR.

)

THURSDAY, THE 6TH

JUSTICE OSBORNE

)

DAY OF MARCH, 2025

)

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**

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**”) for an order:

- 1) validating service of the Receiver’s Notice of Motion and Motion Record;

- 2) directing TD Canada Trust (“**TD**”) to continue to freeze any withdrawals from the TD account number 7524-5233452 (the “**Account**”) and to wire the funds in the Account to the Receiver up to the amount of \$246,972 (the “**Refund**”);
- 3) directing TD to provide to the Receiver bank account statements for the Account from January 1, 2024 onward, together with any cancelled cheques, wire transfer information and any other information reasonably required by the Receiver; and
- 4) ordering Mike Bettiol (“**Bettiol**”), the Account holder, or any company owned and/or controlled by Bettiol, directly or indirectly, to: i) return, within five business days, the amount of \$103,139 (the “**Shortfall**”); and b) provide an accounting of how the Shortfall was spent together with any documents evidencing these expenditures and the recipients of those funds if the Shortfall is not repaid within five business days,

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

ON READING the Fourth Report to the Court dated March 4, 2025, and upon hearing the submissions of counsel for the Receiver and such other counsel or persons appearing at the motion,

SERVICE

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

TD BANK

2. **THIS COURT ORDERS AND DIRECTS** that TD:

- (a) continue to freeze any withdrawals from the Account;
- (b) wire all funds in the Account to the Receiver up to the amount of the Refund; and
- (c) provide to the Receiver bank account statements for the Account from January 1, 2024 onward, together with copies of any cancelled cheques, wire transfer information and any other information reasonably required by the Receiver.

BETTIOL

3. **THIS COURT ORDERS AND DIRECTS** Bettiol, the Account holder, or any company owned and/or controlled by Bettiol, directly or indirectly, to:

- (a) return, within five business days, the amount of the Shortfall; and
 - (b) if funds are not repaid in accordance with paragraph 3(a) of this Order, to provide an accounting of how the Shortfall was spent together with any documents evidencing these expenditures and the recipients of those funds if the Shortfall.
-

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

ORDER

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

Lawyers for KSV Restructuring Inc.

MARSHALLZEHR GROUP INC.
Applicant

- and -

2557386 ONTARIO INC., et al.
Respondents

Court File No. CV-00699432-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(returnable March 6, 2025)

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

**Lawyers for KSV Restructuring Inc., in its capacity as
Court-Appointed Receiver**