ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-26-00000362-0000

DATE: Aug. 24, 2026

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TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. 2055226 ONTARIO INC. et al

BEFORE: JUSTICE S. DUNPHY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Kyla Mahar Monica Faheim Armando Ranjbar	Counsel for Marshallzehr Group Inc.	kmahar@millerthomson.com mfaheim@millerthomson.com aranjbar@millerthomson.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
D.J Miller Stephanie Fernandes	Counsel for the Respondent, Sam Reisman	djmiller@tgf.ca sfernandes@tgf.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam Nandini Khullar	Counsel for the Proposed Monitor, BDO Canada Ltd.	Jennifer.stam@nortonrosefulbright.com nandini.khullar@nortonrosefulbright.com
Dylan Chochla Julia (Yun Ji) Chung	Counsel for Ducimus Capital Inc.	dchochla@fasken.com jchung@fasken.com
Brendan Bissell	Counsel for Alliance Homes Ltd. and Alliance (Sutton) Inc.	bbissell@reconllp.com
Lauren Tzogas	Counsel for the Interested Party, Lake Scugog Lumber	ltzogas@ln.law

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ENDORSEMENT OF JUSTICE S. DUNPHY

[1] This is in form a creditor-sponsored CCAA application. In substance, it resembles most closely a court-appointed receivership of a real estate development. I make this observation at the outset because there are many aspects of this application, and the "Day 1" order being sought that appear at first blush to be something of a stretch if viewed through the lens of a CCAA application but appear quite ordinary, matter of course when viewed through the lens of receivership. While respect for and compliance with form has its place, considerations of form instruct us primarily along the lines of what *can* be done. Considerations of substance, on the other hand, provide us with guidance about what *ought* to be done. In the present case, I am satisfied that all that I am being asked to do falls in line with what I formally may do. My consideration of the substance of what is proposed is what satisfies me that in these circumstances and on these facts, I ought to do so.

[2] This application concerns a real estate development on the south shore of Lake Simcoe a relatively short drive north of the GTA. The development was conceived of in three phases, the first of which has moved a considerable way towards completion while the latter two have yet to see shovels in the ground. The respondent 2055226 Ontario is the developer and legal owner of the project and is in turn controlled by three investors and governed by a shareholders' agreement. One of those co-owners, Alliance, is also the construction manager of the project. While there are a number of housing units in Phase 1 that are almost fully complete and ready to close and others near completion, the project has been largely dormant for the past few months due to the financial difficulties it faces.

[3] In round numbers, the project has just under \$50 million in secured debt outstanding, a further approximately \$6 million in identified lien claims, approximately \$1 million owed to Canada Revenue Agency and approximately \$10 million in various unsecured claims. The Applicant Marshall Zehr holds the secured debt which includes mortgage security and general security agreement security among others.

[4] I pause here to note that I am not here concerned with the internal management of the decision making process among the beneficial owners of the debt administered by Marshall Zehr. That is a matter of internal management and, as with a corporation's internal decision-making processes, is rarely a matter that the Court needs to consider or become involved in.

[5] There is broad consensus among the stakeholders that there is some urgency in getting work completed on the housing units that are already underway at the very least so as to complete the existing sales agreements for such units thereby generating cash flow needed to keep the project moving forward. Longer term, it appears likely that a sale of the remainder of the project will be envisaged although a recapitalization of the existing structure cannot be definitively ruled out in advance.

[6] Because of the rules governing the internal decision-making process among the co-owners, the order sought today confers additional powers upon the Monitor that are very much akin to receivership powers. The monitor is authorized to step in but is not required to do so. However, where required to advance the restructuring or sales process, the order borrows much of the authority that might be granted to a receiver and bestows them upon the Monitor to be used as and when needed. While it is preferable from a number of perspectives to proceed through the existing co-ownership structure, where that proves an obstacle, the Monitor is able to act.

[7] There were various technical changes sought to the form of initial order proposed sought by Mr. Reisman who has had substantial involvement in this project over the years as a co-owner and also a creditor. By and large these objections were in the nature of clarifications regarding the manner in which the Monitor will exercise its discretionary powers under the order. I stated in court and repeat here – the Monitor is an officer of the Court and appointed by the Court. While I do not find it necessary or desirable to micromanage how the Monitor consults with stakeholders or when, all stakeholders should rest easy knowing that the Monitor has a general obligation to consult broadly and inform itself of the views of stakeholders as it formulates its various reports to the Court or makes determinations about how to exercise its authority on the Court's behalf. The Monitor's door is open to all but the Monitor is beholden to none. If as and when real as opposed to hypothetical issues arise and the parties

are unable to reach a satisfactory understanding with the Monitor, the Court can be consulted about possible variations to the directions given the Monitor. Such applications are generally rare, but should best be considered in light of actual rather than feared circumstances.

[8] The short-term challenge therefore will be with financing and completing construction on the units near completion and proceeding to complete the sales of those units as swiftly as possible while simultaneously preparing the way for a process to sell (or recapitalize) the balance of the project. I am aware that there are lien claimants who will have a keen interest on how their interests are to be protected and dealt with as construction renews to complete those units near completion or to sell those units ready for sale. Those issues can best be dealt with together and I understand that the Monitor intends to address those matters at the next hearing.

[9] I did make one minor alteration to the clean copy of the order in response to a comment I find myself making quite often. A practice has arisen in the Commercial List of routinely making all orders, great and small, nunc pro tunc orders effective as of midnight on the date of the order. I have no objection in principle to doing so where there is an identified reason to request that kind of relief. However, it is not necessary on a routine basis.

Date: [[Hearing Judge]]