

Court File No.: CL-26-00000362-0000

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

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC. 1985, C.
C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2055226
ONTARIO INC., ALLIANCE (SUTTON) INC., BERKSTAR DEVELOPMENT INC. AND ROSE
OPERATING I GP INC.**

MARSHALLZEHR GROUP INC.

Applicant

- AND -

**2055226 ONTARIO INC., ALLIANCE (SUTTON) INC., BERKSTAR DEVELOPMENT INC.,
ROSE SUTTON LIMITED PARTNERSHIP AND ROSE OPERATING I GP INC.**

Respondents

**FACTUM OF BDO CANADA LIMITED
IN ITS CAPACITY AS MONITOR
(Priority Claims Procedure)
returnable September 18, 2026**

September 14, 2026

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto, ON M5K 1E7

Jennifer Stam LSO#: 46735J
Tel: 416. 202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for BDO Canada Limited, in its
capacity as Monitor

TO: THE SERVICE LIST

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TABLE OF CONTENTS

PART I - INTRODUCTION.....	1
PART II - SUMMARY OF FACTS	2
PART III - ISSUES, LAW & ANALYSIS	4
PART IV - ORDER REQUESTED	6
Schedule "A"	7
Schedule "B"	8

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PART I - INTRODUCTION

1. BDO Canada Limited, in its capacity as monitor (in such capacity, the "**Monitor**") in the *Companies' Creditors Arrangement Act* ("**CCAA**") proceedings (the "**CCAA Proceedings**"), brings this motion requesting an order (the "**Priority Claims Procedure Order**") establishing a process for the calling and determination of a priority claims procedure (the "**Priority Claims Procedure**").

2. The facts with respect to this motion are more fully set out in the Second Report of the Monitor dated September 11, 2026¹ (the “**Second Report**”). Capitalized terms used herein but otherwise undefined have the respective meanings given to them in the Second Report. Dollar amounts referred to herein are in Canadian dollars.

PART II - SUMMARY OF FACTS

Background

3. Pursuant to an Order of the Court made on August 24, 2026 (as amended and restated on August 28, 2026, the “**Initial Order**”), each of the Respondents (as well as Rose Sutton Limited Partnership, and collectively, the “**CCAA Parties**”) obtained protections pursuant to the CCAA. BDO Canada Limited was appointed Monitor in the CCAA Proceedings.²

4. The CCAA Proceedings were commenced pursuant to an application of MarshallZehr Group Inc., the senior secured lender and mortgage administrator in respect of outstanding secured credit facilities owing by and/or guaranteed by the CCAA Parties (the “**Secured Loan**”). As of the date of the Initial Order, the balance of the Secured Loan was approximately \$42.9 million.³

The Priority Claims Procedure

5. The Monitor is seeking approval of a proposed Priority Claims Procedure to establish a process for the calling of, determination and resolution of certain pre-filing claims which may, in whole or in part, have priority over the Secured Loan.

¹ Second Report of BDO Canada Limited in its capacity as Monitor dated September 11, 2026, Motion Record of BDO Canada Limited in its Capacity as Monitor (Priority Claims Procedure) (“**MR**”), Tab 2, p. 7

² Second Report at paras. 3 and 5; Amended and Restated Initial Order dated August 28, 2026, attached as Appendix “A” to the Second Report, MR, Tab 2, pp. 9-10, p.15

³ Second Report at paras. 1-3, MR, Tab 2, p.9

6. The proposed Priority Claims Procedure contemplates the following:⁴
- (a) The proposed Priority Claims Procedure Order seeks to call pre-filing Priority Claims only. Claims that are not required to be filed include: i) claims in respect of the Secured Loan; (ii) claims secured by charges set out in the Initial Order; (iii) claims for deposits paid pursuant to home purchase agreements; (iv) unsecured or subordinate claims to the Secured Loan; and (v) post-filing claims.
 - (b) The Monitor will: (i) post the Priority Claims Procedure Order on the Monitor's Website within 2 Business Days of the granting of the Claims Procedure Order; (ii) post an ad in the Globe and Mail (National Edition) and mail or email Claims Packages to those creditors who appear on the Respondents' books and records (the "**Books and Records**") as having outstanding construction trade payables (including all parties who have filed liens on title to the Property) by no later than September 29, 2026.
 - (c) Creditors who believe they have a Priority Claim are required to file a Proof of Claim by no later than 5pm (Toronto Time) on October 26, 2026 (the "**Claims Bar Date**").
 - (d) The Monitor shall review all Proofs of Claim that are filed on or before the Claims Bar Date. The Monitor shall be entitled to rely on the Books and Records and may accept, revise or disallow (in whole or in part) the amount and/or status of any Priority Claim set out in a Proof of Claim.

⁴ Second Report at para. 18. The information set out herein is for informational purposes only. Readers and potential claimants are encouraged to review the full terms of the Priority Claims Procedure Order. To the extent there is any inconsistency with this summary and the Priority Claims Procedure Order, the terms of the Priority Claims Procedure Order shall prevail. Capitalized terms used in this section and not otherwise defined have the meaning given to them in the Priority Claims Procedure Order, MR, Tab 2, pp. 12-13

- (e) In the event that the Monitor sends a Notice of Revision or Disallowance to a Priority Creditor and such Priority Creditor wishes to dispute such Revision or Disallowance, it will have 10 days after delivery of the Notice of Revision or Disallowance to file a Notice of Dispute.
- (f) In resolving disputed Priority Claims, the Monitor may attempt to resolve such Priority Claims, appoint a Claims Officer and/or seek direction from the Court.

PART III - ISSUES, LAW & ANALYSIS

7. The only issue to be determined in connection with this motion is whether this Court should grant the proposed Priority Claims Procedure Order.

8. There is no question the Court has the jurisdiction to grant the Priority Claims Procedure Order. Sections 11 and 12 of the CCAA confer broad discretion upon the Court to grant any order it considers appropriate in the circumstances.⁵ The Court often establishes claims procedure orders in the context of CCAA proceedings where the calling for, bar and determination of claims is critical to the proceedings for the purposes of the plan or transactions within such proceedings.⁶

9. Priority claims procedures are often sought in proceedings where, in addition to the principal secured loan/mortgage, there are likely to be claims in priority to such debt which must be established for distribution or other purposes.⁷ Courts have held that it is appropriate to call

⁵ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, [ss 11 and 12](#).

⁶ See, for example, *Re TOYS "R" US (CANADA) LTD.*, 2018 ONSC 609 (CanLII), at [para 8](#); *U.S. Steel Canada Inc. (Re)*, 2017 ONSC 1967 (CanLII) at [paras 5-6](#).

⁷ See, for example: See the [Priority Claims Procedure Order of Justice Dunphy dated January 20, 2026](#), 915643 Ontario Inc. v. 177 Cross Argus Development Inc. and Double Diamond Capital Inc., Superior Court of Justice of Ontario (Commercial List), Toronto, Court File No. CL-25-00753599-0000; and *In The Matter of an Application Under Section 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. (March 11, 2021) Superior Court of Justice of Ontario (Commercial List), Toronto Court File No.: CV-20-00637297-00CL [Priority Claims Procedure Order of Justice McEwen, dated March 11, 2021](#)

for such claims where there is a reasonable requirement for such claims so long as the process is balanced given the circumstances.⁸

10. The proposed Priority Claims Procedure Order should be granted given, among other things:

- (a) **The Claims Bar Date is reasonable** - the establishment of a Claims Bar Date of October 26, 2026, will provide potential creditors approximately six (6) weeks to file Proofs of Claim – the proposed amount of time for the calling of claims is reasonable given it is expected that most or all such Priority Creditors are aware of these CCAA Proceedings and have already filed liens on title to the Property;
- (b) **Notice will be provided to all construction trade creditors** - all construction trade suppliers who have pre-filing claims based on the Books and Records (and not just those that filed liens) will receive copies of the Claims Package;
- (c) **The process of appropriately tailored:** the proposed Priority Claims Procedure is sufficiently narrow and does not unnecessarily include those who have unsecured claims, deposit claims, claims for municipal property tax, or post-filing claims are not required to file claims pursuant to the proposed process as it is tailored and limited to those creditors holding Priority Claims; and
- (d) **The Calling for Claims will Facilitate the CCAA Proceedings:** The calling for and determination of Priority Claims will facilitate these CCAA Proceedings

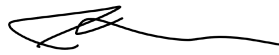
⁸ See, for example: See the [Endorsement of Justice Dunphy dated January 20, 2026](#), 915643 Ontario Inc. v. 177 Cross Argus Development Inc. and Double Diamond Capital Inc., Superior Court of Justice of Ontario (Commercial List), Toronto, Court File No. CL-25-00753599-0000

including for the purposes of distribution to creditors in connection with the sale of the Property.⁹

PART IV - ORDER REQUESTED

11. For these and the other reasons noted above, the Monitor therefore requests an Order substantially in the form of the proposed Order included in the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of September 2026.



Jennifer Stam

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for BDO Canada Limited
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⁹ Second Report at para. 19, MR, Tab 2, p. 13.

SCHEDULE "A"

LIST OF AUTHORITIES

1. 915643 Ontario Inc. v. 177 Cross Argus Development Inc. and Double Diamond Capital Inc., Superior Court of Justice of Ontario (Commercial List), Toronto, Court File No. Court File No. CL-25-00753599-0000 [Endorsement of Justice Dunphy dated January 20, 2026](#)
2. 915643 Ontario Inc. v. 177 Cross Argus Development Inc. and Double Diamond Capital Inc., Superior Court of Justice of Ontario (Commercial List), Toronto, Court File No. Court File No. CL-25-00753599-0000 [Priority Claims Procedure Order of Justice Dunphy dated January 20, 2026](#)
3. In The Matter of an Application Under Section 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. (March 11, 2021) Superior Court of Justice of Ontario (Commercial List), Toronto Court File No.: CV-20-00637297-00CL [Priority Claims Procedure Order of Justice McEwen, dated March 11, 2021](#)
4. [Toys "R" Us \(Canada\) Ltd. \(Re\), 2018 ONSC 609](#)
5. [U.S. Steel Canada Inc. \(Re\), 2017 ONSC 1967](#)

I certify that I am satisfied as to the authenticity of every authority, and I am satisfied that every quotation from an authority that appears in the factum accurately reproduces the text of the authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date September 14, 2026



Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Fixing deadlines

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

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