Court File No. CL-26-00000362-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,

R.S.C. 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 SAMUEL G. REISMAN
(Returnable August 24, 2026)

August 23, 2026

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TO: THE SERVICE LIST

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PART I - OVERVIEW

1. Samuel G. Reisman ("**Reisman**") brings this motion for an order sealing Confidential Exhibit "A" to his Affidavit sworn August 22, 2026 (the "**Confidential Exhibit**") pursuant to subsection 137(2) of the *Courts of Justice Act*.[1] Reisman also responds to the application brought by MarshallZehr Group Inc. for a creditor-led CCAA proceeding and, specifically, the form of Initial Order it seeks.

2. The Confidential Exhibit contains the highly sensitive financial and pricing terms of a formal commercial offer and agreement of purchase and sale extended in 2024 by The Rose Corporation ("**Rose Corp**") and executed by 2055226 Ontario Inc. ("**205 Ontario**") and all three beneficial co-owners, to acquire Phase 2 of the Hedge Road Project (the "**Project**").[2]

PART II - SUMMARY OF FACTS

3. Reisman has been involved in the real estate development known as the Hedge Road Project (the "**Project**") for over two decades, including in the governance of the joint venture and through various direct and indirect financial interests. The Project is legally owned by 2055226 Ontario Inc. ("**205 Ontario**") on behalf of three equal beneficial co-owners: Alliance (Sutton) Inc., Berkstar Development Inc., and Rose Sutton Limited Partnership ("**Rose LP**"). Reisman serves as a director and officer of 205 Ontario, the sole

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[1] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 137(2); Affidavit of Samuel G. Reisman sworn August 22, 2026 at para. 32 [“**Reisman Affidavit**”].

[2] Reisman Affidavit at para. 32.

director of the general partner of Rose LP, and is a secured lender holding a $2.05 million principal participant share in the first-ranking mortgage over Phases 2 and 3 of the Project.[3]

4. Beginning in early 2024, Reisman sought to advance tangible commercial solutions to develop Phase 2 and avoid value deterioration or insolvency proceedings. As part of these efforts, in April 2024, Reisman, through Rose Corp, presented a comprehensive written purchase offer and agreement of purchase and sale for Phase 2. The formal agreement of purchase and sale was executed by 205 Ontario and all three beneficial co-owners before it was submitted to the mortgage administrator, MarshallZehr Group Inc. ("**MarshallZehr**")[4]

5. Although the 2024 offer was ultimately rejected by MarshallZehr and has since expired, the executed agreement contains proprietary pricing structures, financial metrics, and transaction methodologies relating to Phase 2 that, if disclosed, may impact any future sales and solicitation process for the Property, whether by Monitor (if appointed by the Court) or otherwise.[5]

6. There is no reasonable means of maintaining the confidentiality of the information contained in the 2024 offer other than by a sealing Order. No party will be affected or prejudiced by its sealing at this time.

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[3] Reisman Affidavit at paras 1(a) – 1(b), 1(d), 7, 9, and 12.
[4] Reisman Affidavit at para. 32.
[5] Reisman Affidavit at paras. 32, 33, and 37.

PART III - STATEMENT OF ISSUES

7. The sole issue for the motion brought by Sam Reisman is whether the Confidential Exhibit should be sealed and kept confidential.

8. An issue to be determined by the Court on the main application is whether certain amendments requested by Reisman to the draft form of Initial Order sought by MarshallZehr, as reflected in Exhibit "C" to the Reisman Affidavit, are appropriate in the circumstances of this particular creditor-led CCAA application.

PART IV - LAW & AUTHORITIES

9. To prevent prospective purchasers and market participants from obtaining an unfair commercial advantage in any future court-supervised realization or sale process that may be commenced, Reisman seeks an order sealing the Confidential Exhibit,[6] which contains the terms and pricing details of a proprietary commercial proposal and purchase offer extended by Rose Corp in April 2024 in respect of Phases 2 and 3 of the Hedge Road Project.[7]

10. Pursuant to subsection 137(2) of the *Courts of Justice Act*, this Court has broad discretion to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.[8]

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[6] Reisman Affidavit at para. 32.
[7] Reisman Affidavit at paras. 20–21.
[8] *Courts of Justice Act*, RSO 1990, c C 43, s 137(2).

11. In *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court established that a sealing order is appropriate where: [9]

(a) The order is necessary to prevent a serious risk to an important commercial interest because reasonable alternative measures will not prevent the risk; and

(b) The salutary effects of the order outweigh its deleterious effects on the public interest in open court proceedings.

12. In *Sherman Estate v. Donovan*, the Supreme Court reaffirmed these core principles, confirming that court openness may be limited where it poses serious risk to an important public interest. The Court made clear that this includes the commercial interest in preserving confidential valuation and transaction data, and where the requested order is strictly necessary and proportionate.[10]

13. In insolvency and restructuring proceedings, courts routinely apply *Sierra Club* and *Sherman Estate* to seal sensitive transaction terms, bidding information, and purchase offers. Courts recognize that keeping pricing and bid metrics confidential preserves the integrity of future marketing efforts and prevents prospective buyers from acquiring an unfair negotiating advantage to the detriment of stakeholders.[11]

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[9] *Sierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC 41 (CanLII) at para. 53 [*Sierra Club*].
[10] *Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 38, 43 [*Sherman Estate*].
[11] *Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 2 at paras. 25 – 28

14. The proposed sealing of the Confidential Exhibit satisfies the well-established test articulated by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)* and reaffirmed in *Sherman Estate v. Donovan*:[12]

(a) Important Commercial Interest: The Confidential Exhibit contains confidential financial terms and valuations regarding Phases 2 and 3 of the Project.[13] If publicly disclosed, these figures could effectively establish an artificial ceiling or floor on the value of Real Property in any future Court-Supervised sale or investment solicitation process. This would severely impair the maximum recovery for mortgage participants and creditors.[14]

(b) No Reasonable Alternatives**:** Because the proprietary financial metrics and structure form the core of the document, redaction is ineffective.[15]

(c) Proportionality: The proposed sealing order is narrowly targeted to a single unredacted exhibit in a responding affidavit, leaving the entire substantive record fully accessible to the public.[16]

15. Accordingly, the salutary benefits of protecting asset value and process integrity far outweigh any minimal intrusion into court openness. It is therefore just and appropriate that the Confidential Exhibit be sealed pending further order of this Court.

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[12] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 53; *Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 38, 43
[13] Reisman Affidavit at paras. 20–21
[14] Reisman Affidavit at paras. 4–5, 20–21; *Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 2 at para. 26.
[15] Reisman Affidavit at para. 32.
[16] Reisman Affidavit at paras. 32, 42 – 43.

16. With respect to certain amendments requested by Reisman to the draft Initial Order sought by MarshallZehr (as identified in track changes in Exhibit "C" to the Reisman Affidavit), these are appropriate in view of the existing structure of the Respondents and the nature of this creditor-led CCAA proceeding.

17. While not opposing MarshallZehr's decision to proceed by way of a creditor-led CCAA proceeding, the nature of any CCAA proceeding is still "debtor-in-possession" which distinguishes it from a receivership. It is not to be taken as ordinary course, and there is a very high bar when all decision-making is removed and replaced with a super-Monitor at the outset of a CCAA proceeding, absent evidence that such parties are failing or neglecting to perform their duties.[17] There is no suggestion of that here.

18. The amendments to the Initial Order requested by Reisman reflect the unique governance structure that exists in respect of the Respondents, arising from the existence of three co-owners through a joint venture vehicle. Sam Reisman is not seeking to exert control or influence any decision-making by a super-Monitor, if appointed, although that would not have been a stretch for a director and officer of 205, if he was so inclined. Rather, it is to have recognized visibility, including as a director and officer, as decisions are made within the CCAA proceeding, and an opportunity to be consulted – even if any views that may be offered to the Monitor are not accepted or acted upon. Even in a creditor-led CCAA proceeding, where a senior lender may hold the vast majority of debt, it does not unilaterally override corporate governance checks and balances.[18]

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[17] *Fiera Private Debt Fund v. SaltWire Network Inc.*, 2024 NSSC 89 at para. 15(6). [*Fiera*]
[18] *Fiera* at paras. 27(2)(c), 32(3).

19. While a creditor initiating a creditor-led CCAA proceeding can seek the appointment of a CRO in place of management (or in this case, in place of decision-making under a Co-Owners' Committee or directors and officers of 205) in appropriate cases, there is a high threshold to entirely replace the existing governance of the companies subject to the proceeding, and displacing existing governance is not typical.[19] There is no request for the appointment of a CRO in this case.

20. Reisman is not looking to interfere with or delay the implementation of any enhanced powers that may be granted to the Monitor, if the Initial Order sought by MarshallZehr is granted. However, as a Monitor with enhanced powers that replaces in all practical and legal respects the existing governance of 205, consultation, development of plans for maximizing the value for stakeholders and reporting becomes even more important. Reisman has valuable input and more than 20 years of experience with this Project that can be contributed through, *inter alia*, consultation by the Monitor, that will benefit all stakeholders. The amendments requested to the Initial Order as reflected in Exhibit "C" to the Reisman Affidavit are appropriate in the circumstances of the unique structure of these particular Respondents.

PART V - ORDER REQUESTED

21. For all of the foregoing reasons, Reisman respectfully requests that this Honourable Court (i) grant an Order sealing the Confidential Exhibit, pending a further Order of the Court; and (ii) include the amendments requested by Reisman as outlined in Exhibit "C" to the Reisman Affidavit, in any form of Initial Order that may be granted by the Court.

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[19] *Tacora Resources Inc. (Re)*, 2023 ONSC 6126 at paras. 147 – 148 [*Tacora*].

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of August, 2026.

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SCHEDULE "A"

LIST OF AUTHORITIES

No.	Caselaw
1.	*Sierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC 41 (CanLII)
2.	*Sherman Estate v. Donovan*, 2021 SCC 25
3.	*Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 2
4.	*Fiera Private Debt Fund v. SaltWire Network Inc.*, 2024 NSSC 89
5.	*Tacora Resources Inc. (Re)*, 2023 ONSC 6126

I certify that I am satisfied as to the authenticity of every authority, and 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 August 23, 2026

Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

***Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended**

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.

***Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended**

General Principle
1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Orders on Terms
1.05 When making an order under these rules the court may impose such terms and give such directions as are just.

Sealing of Documents

37.14 (1) A person affected by an order made on motion,
(a) without notice; or
(b) with notice where the moving party failed to appear,
may move to set aside or vary the order, by a notice of motion served within twenty days after the order first comes to the person's notice.

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Proceeding commenced at Toronto

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