

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) WEDNESDAY, THE 1  
JUSTICE McEWEN ) DAY OF APRIL, 2020

BETWEEN:



MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the undertaking, property and assets of 2305992 Ontario Inc. (the "**Debtor**") for an order approving, among other things: (i) the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and 9750 Yonge Limited (as assignee of 2510300 Ontario Inc.) (the "**Purchaser**") dated March 3, 2020 and appended to the Second Report of the Receiver dated March 16, 2020 (the "**Second Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard by teleconference due to the COVID-19 crisis.

**ON READING** the Second Report and on hearing the submissions of counsel for the Receiver and other interested parties, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Cindy Foote sworn March 17, 2020, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
2. **THIS COURT ORDERS** that in the event the Transaction contemplated by the Sale Agreement cannot be consummated, the Back-Up Bid (as defined in the Second Report) is approved and the execution of the asset purchase agreement by the Receiver in respect of the Back-Up Bid is authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Back-Up Transaction (as defined in the Second Report) and for the conveyance of the Debtor's right, title and interest in and to the purchase assets described in the Back-Up APS.
3. **THIS COURT ORDERS** that in the event the Transaction cannot be consummated and the Receiver proceeds to consummate the Back-Up Transaction, the Receiver may return to this Court at a 9:30 a.m. chambers appointment (or such other procedure as the Court may direct) to obtain a revised approval and vesting order in respect of the Back-Up Transaction substantially in the form of this Order with such modifications as deemed necessary by the Receiver and approved by this Court.
4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets, including the Real Property (as hereinafter defined), described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual,

statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated November 28, 2019; (ii) any and all interest of any beneficial owners of the Purchased Assets, (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iv) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of York Region (No. 65) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **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.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 01 2020

PER / PAR: *KW*

**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-19-00628446-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**2305992 ONTARIO INC.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (the “**Court**”) dated November 28, 2019, RSM Canada Limited was appointed as the receiver and manager (the “**Receiver**”) of the undertaking, property and assets of 2305992 Ontario Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of March 3, 2020 (the “**Sale Agreement**”) between the Receiver and 2510300 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or

waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE],  
2020

**RSM Canada Limited, in its capacity as  
Receiver of the undertaking, property and  
assets of 2305992 Ontario Inc., and not in its  
personal capacity**

Per: \_\_\_\_\_

Name:

Title:

## Schedule B – Real Property Description

### Firstly:

#### **Property Identifier No. 03156-0317 (LT)**

Parcel 3-2 in the Register for Section 65M-2368, being part of Block 3 on Plan 65M-2368, designated as Part 1 on Reference Plan 65R-10347, City of Richmond Hill, Regional Municipality of York.

**SUBJECT TO** an Easement over Part 2 on Reference Plan 65R-22016, which is more particularly described in Instrument No. LT1488237.

### Secondly:

#### **Property Identifier No. 03156-0552 (LT)**

Block 39 on Plan 65M-2079, save and except Parts 1 and 2 on Expropriation Plan No. YR2257896, City of Richmond Hill, Regional Municipality of York.

**SUBJECT TO** an Easement which is more particularly described in Instrument No. LT74777.

**SUBJECT TO** an Easement which is more particularly described in Instrument No. YR1882796.

**SUBJECT TO** Temporary Easement for a period of 4 years commencing upon registration of this plan over Parts 3 and 4 on Expropriation Plan No. YR2257896, as in YR2257896.

**SUBJECT TO** a Temporary Easement commencing on 2019/02/15 until 2021/04/30 over Parts 1 and 2 on Expropriation Plan No. YR2818461, as in YR2818461.

All registered in the Land Registry Office for the Land Titles Division of York Region (No. 65).

**Schedule C – Claims to be deleted and expunged from title to Real Property**

**1. Instruments on Title to be deleted from the Firstly described lands, as set out in Schedule B.**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
YR2192811	2014/09/26	Charge	\$20,000,000	2305992 Ontario Inc.	MarshallZehr Group Inc.
YR2192812	2014/09/26	No Assgn Rent Gen		2305992 Ontario Inc.	Marshallzehr Group Inc.
YR2513878	2016/07/27	Transfer		YH Richmond Hill	2305992 Ontario Inc.
YR2981230	2019/07/09	Charge	\$5,500,000	2305992 Ontario Inc.	2704553 Ontario Inc.
YR3040602	2019/11/29	Construction Lien	\$20,780	Weston Consulting Group Inc.	
YR3047211	2019/12/16	Application Court Order (Remarks: Appointing Receiver)		Ontario Superior Court of Justice	RSM Canada Limited
YR3054586	2020/01/09	Certificate of Action		Weston Consulting Group Inc.	



**2. Instruments on Title to be deleted from the Secondly described lands, as set out in Schedule B.**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
YR2192811	2014/09/26	Charge	\$20,000,000	2305992 Ontario Inc.	MarshallZehr Group Inc.
YR2192812	2014/09/26	No Assgn Rent Gen		2305992 Ontario Inc.	Marshallzehr Group Inc.
YR2257896	2015/02/20	Expropriation Plan			
YR2513878	2016/07/27	Transfer		YH Richmond Hill	2305992 Ontario Inc.
YR2981230	2019/07/09	Charge	\$5,500,000	2305992 Ontario Inc.	2704553 Ontario Inc.
YR3040602	2019/11/29	Construction Lien	\$20,780	Weston Consulting Group Inc.	
YR3047211	2019/12/16	Application Court Order (Remarks: Appointing Receiver)		Ontario Superior Court of Justice	RSM Canada Limited
YR3054586	2020/01/09	Certificate of Action		Weston Consulting Group Inc.	

**3. Deletion from Thumbnail Description of Property Identifier No. 03156-0552 (LT)**

**SUBJECT TO** Temporary Easement for a period of 4 years commencing upon registration of this plan over Parts 3 and 4 on Expropriation Plan No. YR2257896, as in YR2257896.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

**Permitted Encumbrances registered against title to the Firstly described lands, as set out in  
Schedule B.**

1. Instrument No. LT44126 registered on May 15, 1981 - Notice of Agreement with The Corporation of the Town of Richmond Hill.
2. Instrument No. LT88247 registered on July 19, 1982 - Notice of Agreement with The Corporation of the Town of Richmond Hill.
3. Instrument No. LT1488237 registered on June 12, 2000 – Transfer of Easement in favour of The Corporation of the Town of Richmond Hill.

**Permitted Encumbrances registered against tile to the Secondly described lands, as set out  
in Schedule B.**

1. Instrument No. LT69477 registered on December 17, 1981 - Notice of Subdivision Agreement with The Corporation of the Town of Richmond Hill.
2. Instrument No. LT74777 registered on February 17, 1982 - Transfer of Easement in favour of The Corporation of the Town of Richmond Hill.
3. Instrument No. LT789803 registered on October 3, 1991 - partial Release relating the Easement set out in Instrument No. LT225225.
4. Instrument No. YR1882796 registered on September 10, 2012 - Transfer of Easement in favour of Rogers Communications Inc.
5. Instrument No. YR2802957 registered on March 7, 2018 - Certificate of Approval.
6. Instrument No. YR2818461 registered on April 20, 2018 - Plan Expropriation.

MARSHALLZEHR GROUP INC.  
Applicant

2305992 ONTARIO INC.  
and Respondent

Court File No.: CV-19-00628446-00 CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE -**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

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capacity as Court-appointed Receiver of  
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