

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 5TH
JUSTICE CAVANAGH) DAY OF JANUARY, 2024

B E T W E E N:

MARSHALLZEHR GROUP INC., AS ADMINISTRATOR

Applicant

-and-

12252856 CANADA INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of 12252856 Canada Inc. (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an Asset Purchase Agreement (the “**Sale Agreement**”), between MarshallZehr Capital Partners Inc. dated October 26, 2023 and appended as Appendix “L” to the Third Report of the Receiver dated November 20, 2023 (the “**Third Report**”), and vesting in the Purchaser (as defined in the Sale Agreement) the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), including the lands and premises located at 0, 227 and 235 King Road, Richmond Hill, Ontario and legally described in Schedule “A” hereto (the “**Real Property**”), was heard this day at 330 University Avenue.

ON READING the Notice of Motion, the Third Report, the Confidential Appendix Brief dated December 6, 2023, the Supplement to the Third Report of the Receiver dated December 29, 2023, the affidavits of Mir Ali sworn December 11, 2023 and December 22, 2023 and on hearing the submissions of counsel for the Receiver and such other parties shown on the Participant Information Form filed with the Court:

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 AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "B" hereto (the "**Receiver's Certificate**"), the Purchased Assets 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 Osborne dated February 28, 2023; (ii) 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 (iii) 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 Real Property are hereby expunged and discharged as against the Real Property.

3. **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, or as it may direct, as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Encumbrances listed in Schedule "C" hereto.

4. **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.

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

6. **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.

7. **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.

Schedule "A" – Real Property

<i>PIN</i>	03196 - 0039 LT
<i>Description</i>	PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ; ; CITY OF RICHMOND HILL
<i>Address</i>	201 KING ROAD RICHMOND HILL
<i>PIN</i>	03196 - 0038 LT
<i>Description</i>	LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL
<i>Address</i>	227 KING RD RICHMOND HILL
<i>PIN</i>	03196 - 0037 LT
<i>Description</i>	LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL
<i>Address</i>	235 KING RD RICHMOND HILL

Schedule “B” – Form of Receiver’s Certificate

Court File No. CV-22-00691528-00CL

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-and-

12252856 CANADA INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (the “**Court**”) dated February 28, 2023, RSM Canada Limited was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of 12252856 Canada Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated December ●, 2023 (“**Approval and Vesting Order**”), the Court approved the Asset Purchase Agreement dated October 26, 2023 (the “**Sale Agreement**”) between the Receiver and MarshallZehr Captial Partners Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser, or as it may direct, all 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 Approval and Vesting Order.

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 _____ on • _____, 2023.

**RSM CANADA LIMITED, solely in its
capacity as Court-Appointed Receiver of
12252856 Canada Inc., and not in its personal
capacity**

Per: _____

Name: Bryan Tannenbaum

Title: President

Schedule “C” – Encumbrances to be deleted and expunged from title to Real Property

No.	Registration No.	Registration Date	Instrument Type	Encumbrancers	PIN
1.	YR3157405	2020/10/20	Charge	MarshallZehr Group Inc. and Vector Financial Services Limited	All PINs
2.	YR3157406	2020/10/20	No Assgn Rent Gen	MarshallZehr Group Inc. and Vector Financial Services Limited	All PINs
3.	YR3169142	2020/11/13	Charge	Consortia Equity Capital Limited	All PINs
4.	YR3173773	2020/11/25	Transfer of Charge	MarshallZehr Group Inc. and Olympia Trust Company	All PINs
5.	YR3340352	2021/11/12	Charge	Bridlepath Finance Inc.	All PINs
6.	YR3340353	2021/11/12	Postponement	Bridlepath Finance Inc.	All PINs
7.	YR3451700	2022/07/13	Charge	Marilyn Goldberg	All PINs
8.	YR3451701	2022/07/13	Postponement	Marilyn Goldberg	All PINs
9.	YR3470244	2022/08/26	Charge	12279266 Canada Inc.	All PINs
10.	YR3470704	2022/08/29	Construction Lien	Prime Design Build Corporation	All PINs
11.	YR3480655	2022/09/26	No Chng Addr Inst	MarshallZehr Group Inc.	All PINs
12.	YR3494793	2022/11/07	Certificate	Prime Design Build Corporation	All PINs
13.	YR3529558	2023/03/03	Apl Court Order	RSM Canada Limited	All PINs
14.	YR3567776	2023/06/28	Cau Agr Pur & Sale	Zoran Bakich	All PINs

Reference to ALL PINs means the following PINs:

Municipal Addresses	PINs
201 King Road	03196 - 0039 LT
227 King Road	03196 - 0038 LT
235 King Road	03196 - 0037 LT

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

(unaffected by the Vesting Order)

1. Any reservations, restrictions, rights of way, easements or covenants that run with the land;
2. Any registered agreements with a municipality, region or supplier of utility service including, without limitations, electricity, water, sewage, gas, telephone or cable television or other telecommunication services;
3. All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Property;
4. Any minor easements for the supply of utility services or other services to the Lands or Buildings, if any, or adjacent properties;
5. Encroachments disclosed by any error or omission in existing surveys of the Lands or neighbouring properties and any title defects, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Lands and survey of the Lands and survey matters generally;
6. The exceptions and qualifications set forth in the *Registry Act* (Ontario) or the *Land Titles Act* (Ontario), or amendments thereto;
7. Any reservation(s) contained in the original grant from Crown;
8. Subsection 44(1) of the *Land Titles Act* (Ontario) except paragraphs 11 and 14.
9. Provincial succession duties and escheats or forfeiture to the Crown;
10. The rights of any person who would, but for the *Land Titles Act* (Ontario) be entitled to the Lands or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention;
11. Any lease to which subsection 70(2) of the *Registry Act* (Ontario) applies; and

12. The following instruments registered on title to the Premises:

No.	Registration No.	Registration Date	Instrument Type	Parties To	PIN
1.	IF351	1951/02/19	Bylaw		All PINs
2.	IF367	1952/04/28	Bylaw	The Corporation of the Township of King	All PINs
3.	YR3157404	2020/10/20	APL Vesting Order	12252856 Canada Inc.	All PINs
4.	65R420	1971/01/14	Plan Reference		03196 - 0038 LT

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Court File No. CV-22-00691528-00CL

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(COMMERCIAL LIST)
Proceedings commenced at TORONTO

ORDER
(APPROVAL AND VESTING)

CHAITONS LLP

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

Harvey Chaiton (21592F)

Tel: (416) 218-1129

Email: harvey@chaitons.com

Laura Culleton (82428R)

Tel: (416)-218-1128

Email: laurac@chaitons.com

Lawyers for RSM Canada Limited., Court-
appointed Receiver