



SUPERIOR COURT OF JUSTICE

**COUNSEL SLIP**

COURT FILE NO.: CV-22-00691528-00CL DATE: 16 February 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **MARSHALLZEHR GROUP INC. AS ADMINISTRATOR**  
v.  
**12252857 CANADA INC.**

BEFORE JUSTICE: JUSTICE CAVANAGH

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Harvey Chaiton	Receiver RSM Canada Inc.	harvey@chaitons.com
Laura Culleton	Receiver RSM Canada Inc.	laurac@chaitons.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Thomas Gertner	Vector Financial Services	thomas.gertner@gowlings.com
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Mark A. Russell	12252856 Canada Inc.	mr@friedmans.ca
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Nicolas Canizares	Counsel for 5 <sup>th</sup> Mortgagee	eqinoxgroup@bellnet.ca

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Jeff Berger	Receiver RSM Canada Ltd.	jberger@tdbadvisory.ca
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Bill Friedman	Counsel for 1227	wf@friedmans.ca

Steve Graff	MZ Capital Partners (Purchaser)	sgraffff@airdberlis.com
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**ENDORSEMENT OF JUSTICE CAVANAGH:**

On January 8, 2024, following a hearing on January 5, 2024, I released an endorsement that was made on consent of the Receiver, 12252856 Canada Inc. (the “Debtor”), Consortia Equity Capital Limited, the fourth mortgagee, and 12279266 Canada Inc. (“1227 Canada”), the fifth mortgagee.

The Receiver had brought a motion for, among other things, approval of an Asset Purchase Agreement dated October 26, 2023 (the “MZ APA”) entered into between MarshallZehr Capital Partners Inc. (“MZCP”) and the Receiver, and for an order vesting title to the Purchased Assets (as defined in the MZ APA) in MZCP. I granted the Receiver’s motion on terms set out in my endorsement, made on consent of certain parties. No other party opposed.

The endorsement provides that if 1227 Canada pays CAD \$25,000,000 to the Receiver’s solicitors in trust by no later than 5:00 p.m. on February 15, 2024, the Receiver is authorized to enter into the Asset Purchase Agreement dated February 16, 2024 with 1227 Canada and, upon closing of the transaction contemplated by that agreement, the MZ APA shall be terminated. I so ordered.

The January 8, 2024 endorsement states that the Receiver and 1227 Canada shall attend a case conference on February 16, 2024 to advise whether the CAD \$25,000,000 purchase price has been paid.

The endorsement states that in the event the CAD \$25,000,000 purchase price under the 1227 APA is not paid to the Receiver’s solicitors in trust by 5:00 p.m. February 15, 2024, the Receiver shall complete the MZ APA in accordance with its terms and neither 1227 Canada nor any other person shall take any steps to interfere with or delay the completion of the MZ APA.

At the hearing today, counsel for the Receiver reported that the CAD \$25 million purchase price was not paid to his trust account by 5:00 p.m. on February 15, 2024.

At the hearing, counsel representing the Debtor and counsel representing 1227 Canada advised that arrangements are in place to complete the financing needed for the \$25,000,000 payment to be made and that an extension is needed for this payment from February 15, 2024 to, at the latest, March 24, 2024. Counsel requested that my consent endorsement be varied to provide for this extension before the Receiver is able to complete the MZ APA. Counsel submitted that this would benefit stakeholders who, otherwise, will not be paid amounts owed to them.

By entering into the agreement with the Receiver that resulted in the consent endorsement, the Debtor and other consenting parties took the risk that they may be unable to make the \$25,000,000 by the agreed upon date. The Receiver agreed to the terms of the consent endorsement on the condition that, if the required payment was not made when due, no one would take steps to interfere with or delay the completion of the MZ APA. This condition was expressly agreed upon and should be enforced.

My endorsement is a final order that was made on consent. There is no basis for me to conclude that the consent endorsement should be varied or set aside on equitable grounds.

I decline to grant the requested variation of my consent endorsement.