



Court File No. CV-22-00674747-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

THE HONOURABLE MR.)
JUSTICE OSBORNE)
)
)

MONDAY, THE 3rd
DAY OF OCTOBER 2022

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

AREACOR INC.

Respondent

APPLICATION UNDER SUBSECTION 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.43, AS AMENDED

DISCHARGE ORDER

THIS MOTION, made by RSM Canada Limited, in its capacity as the Court-appointed receiver (the "**Receiver**"), without security, of all of the undertakings, properties and assets of Areacor Inc. (the "**Debtor**"), including but not limited to the real property known municipally as 11 and 15 Cannon Steet West, Hamilton, Ontario and registered in Land Titles under PIN 17586-0153 (LT) (the "**Real Property**"), for an order, *inter alia*:

1. approving the activities of the Receiver as set out in the first report of the Receiver dated September 2, 2022 (the "**First Report**"), the second report of the Receiver dated September 8, 2022 (the "**Second Report**"; and, together with the First Report, the "**Reports**") and the confidential appendices to the Second Report (the "**Confidential Appendices**");

2. approving the fees and disbursements of the Receiver and its counsel;
3. authorizing and directing the Receiver to administer the Lien Holdback (as defined herein) in accordance with the terms hereof;
4. sealing the Confidential Appendices;
5. discharging RSM Canada Limited as Receiver of the undertakings, properties and assets of the Debtor; and
6. releasing RSM Canada Limited. from any and all liability, as set out in paragraph 10 of this Order,

was heard this day by judicial videoconference at the Courthouse at 330 University Avenue, Toronto, Ontario.

ON READING the Reports, the Confidential Appendices, the affidavits of the Receiver and its counsel as to fees appended to the Second Report (collectively, the “**Fee Affidavits**”), the Affidavit of Roni Gilyana sworn September 26, 2022, the Supplement to the Second Report dated September 28, 2022, the Affidavit of Brendan Bowles sworn September 29, 2022, and the Affidavit of Amanda Adamo sworn October 1, 2022, and on hearing the submissions of counsel for the Receiver, the Debtor, Fusioncorp Developments Inc. and such other counsel and parties as listed on the Counsel Slip, on hearing the submissions of counsel for the Receiver, the Debtor, and such other counsel and parties listed on the Counsel Slip, no one else appearing although served as appears from the affidavits of service, filed;

APPROVAL OF ACTIVITIES AND FEES

1. **THIS COURT ORDERS** that the activities of the Receiver as set out in the Reports and the Confidential Appendices, including the interim statement of receipts and disbursements appended to the Second Report, are hereby approved.
2. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, including the Fee Accruals (as defined in the Second Report) and as set out in the Second Report and the Fee Affidavits (collectively the “**Approved Administrative Fees**”), are hereby approved.

LIEN HOLDBACK

3. **THIS COURT ORDERS** that upon closing of the Court-approved transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated August 26, 2022 between the Receiver, as vendor, and Marbelle Estates Inc., as purchaser, the Receiver be and his hereby authorized and directed to deposit and hold the amount of \$347,404.36, out of the closing proceeds (the “**Lien Holdback**”).

4. **THIS COURT ORDERS** that any MarshallZehr Group Inc. (“**MarshallZehr**”) or those parties having registered liens against the Real Property (the “**Lien Claimants**”) shall be entitled to make a motion to the Court in these proceedings, on notice to all such parties and the Receiver, for the purposes of establishing entitlement to the Lien Holdback; and, for greater certainty, as necessary, the stay in this proceedings is lifted for the limited purpose of allow any such party to make such motions.

5. **THIS COURT ORDERS** that, notwithstanding that it is entitled to notice of any motion as above, the Receiver shall not be a party to any such motion and shall not be required to produce a report or any documentation, nor sit for examinations, nor participate in any such motion in any manner other than as an observer and in no event shall costs be sought or awarded against the Receiver in connection with the same.

6. **THIS COURT ORDERS** that the Receiver shall hold the Lien Holdback in a non-interest-bearing account, to be distributed by the Receiver pursuant to further order(s) of the Court or on the express agreement and consent of MarshallZehr and the Lien Claimants.

7. **THIS COURT ORDERS** that once the Receiver made all distributions out of the Lien Holdback pursuant to paragraph 6 hereof, the Receiver shall refund the balance of the Lien Holdback, if any, to MarshallZehr.

SEALING

8. **THIS COURT ORDERS** that the Confidential Appendices be and are hereby sealed and shall not form part of the public record pending closing of the Transaction or further order of this Court.

DISCHARGE

9. **THIS COURT ORDERS** that upon payment of the Approved Administrative Fees and amounts contemplated by paragraph 7 hereof and upon the Receiver filing a certificate (the “**Discharge Certificate**”) certifying that it has completed the Remaining Duties (as defined in the Second Report), the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of RSM Canada Limited, in its capacity as Receiver.

10. **THIS COURT ORDERS AND DECLARES** that, upon the filing of the Discharge Certificate, RSM Canada Limited is hereby released and discharged from any and all liability that RSM Canada Limited now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of RSM Canada Limited while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, RSM Canada Limited is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

EFFECTIVENESS

11. **THIS COURT ORDERS** that this order is effective from today's date and is enforceable without the need for entry and filing.

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Osborne, J. 11:59:49
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Proceedings commenced at Toronto

DISCHARGE ORDER

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