

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION**

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.C.43, AS AMENDED

**NOTICE OF MOTION**  
(returnable July 7, 2020)

**MARSHALLZEHR GROUP INC.** (“MZG”) will make a motion to a Judge of the Commercial List on Tuesday July 7, 2020 at 11:00 a.m., or as soon after that time as the motion can be heard, by judicial teleconference via Zoom at Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) an order:
  - (i) abridging the time for service of this notice of motion so that the motion is properly returnable on July 7, 2020;

- (ii) authorizing and directing RSM Canada Limited (“**RSM**”), in its capacity as Court-appointed receiver (“**Receiver**”) of Fernwood Developments (Ontario) Corporation (“**Fernwood**”), to file an assignment in bankruptcy in the name of and on behalf of Fernwood; and
  
- (b) such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. On February 12, 2020, RSM was appointed as Receiver over the Fernwood’s property, assets and undertaking pursuant to an Order of this Court (the “Appointment Order”).
  
2. The Appointment Order provides that the Receiver may execute documents for and on behalf of Fernwood.
  
3. MZG is the senior secured creditor of Fernwood.
  
4. The Receiver has identified approximately \$329,000 of Fernwood’s money that was transferred to a bank account jointly owned by the principal of Fernwood and his father on account of management fees allegedly owed to them by Fernwood.
  
5. MZG is requesting that the Court authorize and direct the Receiver to file an assignment in bankruptcy on behalf of Fernwood, so that the transfer may be investigated further and determined whether it is, among other things, a transfer at undervalue, a fraudulent preference or a fraudulent conveyance.

6. The law of Ontario is clear that a secured creditor may take steps to bankrupt a debtor company so that it may benefit from relief only available in bankruptcy.
7. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
8. The inherent jurisdiction of the Court.
9. Such other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The First Report of the Receiver dated June 30, 2020 and the Appendices annexed thereto;  
and
2. such further and other material as counsel may advise and this Honourable Court may permit.

July 6, 2020

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**Lawyers for MarshallZehr Group Inc.**

**TO: THE SERVICE LIST**

MARSHALLZEHR GROUP INC.

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Applicant

Respondent

Court File No. CV-20-00635523-00CL

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PROCEEDING COMMENCED AT  
TORONTO

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