

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

BETWEEN:

MARSHALLZEHR GROUP INC., AS ADMINISTRATOR

Applicant

- and -

12252856 CANADA INC.

Respondent

**FURTHER SUPPLEMENTARY MOTION RECORD
(Motion returnable July 27, 2023)**

July 7, 2023

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

Harvey Chaiton (LSO #21592F)
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**Lawyers for the Court-appointed
Receiver, RSM Canada Limited**

TO: SERVICE LIST

SERVICE LIST

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Lawyers for the purported Purchaser

**ONTARIO
SUPERIOR COURT OF JUSTICE
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A	MLS Listing dated June 21, 2023

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC., AS ADMINISTRATOR

Applicant

- and -

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SECOND REPORT OF THE RECEIVER
July 7, 2023

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A	MLS Listing dated June 21, 2023

INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on February 28, 2023 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**”) was appointed receiver (the “**Receiver**”) of all of the assets, undertakings and Property of 12252856 Canada Inc. (“**122**” or the “**Debtor**”). A copy of the Appointment Order was attached to the First Report. The Debtor is a single purpose corporation that owns the real property municipally known as 0, 227 and 235 King Road, Richmond Hill, Ontario (the “**Property**”).
2. The Appointment Order authorizes the Receiver to, inter alia, market and sell the Property with the approval of the Court.
3. On June 15, 2023, the Court heard a motion regarding approval of the Receiver’s proposed Sale Process (as defined in the First Report). At that hearing, the Debtor sought an adjournment or dismissal of the Receiver’s motion on the basis that, among other things, there was a pre-existing agreement of purchase and sale dated February 1, 2023, as amended, entered into by the Debtor in respect of the Property, in respect of which conditions were waived on February 28, 2023 (the “**APS**”).
4. The Applicant and the Receiver challenged the validity of the APS and requested that the Court authorize the Receiver to proceed with the Sale Process.

PURPOSE OF REPORT

5. The purpose of this report (the “**Second Report**”) is to provide the Court with information in respect of certain matters that have arisen subsequent to the June 15, 2023 hearing, which the Receiver would like to bring to the attention of the Court in connection with the motion scheduled for July 27, 2023.

BACKGROUND

6. On June 16, 2023, the Court issued an order (the “**Sale Process Order**”), which, among other things:

- (a) Approved the Receiver's Sale Process (as defined in the First Report), including entering into the Listing Agreement with Avison Young, as amended; and
 - (b) Directed Mr. Prem Kumar G. Yachamanani, as sole officer and director of the Debtor, to immediately comply with the Receiver's request for information, and provide or cause to be provided, all of the requested books and records of the Debtor in his possession or control.
7. In the Endorsement that accompanied the Sale Process Order (the "**June 16 Endorsement**") Justice Kimmel scheduled a hearing on July 27, 2023 to determine whether or not the APS is valid and binding on the Receiver.
8. Pursuant to the June 16 Endorsement, the Purchaser was required to file "further affidavit evidence in support of its claim which shall include, among other things, (i) any relationship the purchaser may have to the Debtor or its principal; (ii) who prepared the APS; (iii) when the APS was signed by the purchaser; (iv) when the purchaser first became aware of the receivership of the Debtor; (v) whether the deposits contemplated by the APS were paid, and if paid, provide clear proof of payment". The Purchaser was allowed until June 30, 2023 to file its affidavit and any other evidence in support of the APS. As of the date of this Second Report, the Purchaser did not provide the further affidavit evidence ordered by the Court relating to the APS.

THE SALE PROCESS

9. On June 21, 2023, the Receiver executed the Listing Agreement with Avison Young, as contemplated by the Sale Process Order.
10. Shortly after the Listing Agreement was finalized on June 21, 2023, Avison Young wrote to the Receiver to advise that the Property appeared to be listed on MLS already. A copy of the MLS listing printed on June 21, 2023 (the "**MLS Listing**") noted that the contract date for the listing was June 14, 2023, the bid submission deadline was set for July 15, 2023, and the seller was identified as Consortia Equity Capital Limited ("**Consortia**"). A partially redacted copy of the MLS Listing is attached as **Appendix "A"** to this report. The

asking price on the MLS Listing was redacted in order to preserve the integrity of the Sale Process.

11. Upon receipt of the MLS Listing, the Receiver contacted the listing broker, Mr. Steve Gabellini of eXp Realty, to inquire about the MLS Listing and who authorized and signed the listing. Mr. Gabellini confirmed the Receiver that his client, Mr. Mir Ali (“**Mr. Ali**”) of Consortia, signed a listing agreement with eXp Realty on June 14, 2023.
12. The Receiver understands that Mr. Ali was involved with the Debtor in some capacity, and dealt with the Applicant on behalf of the Debtor. Per paragraph 23 of the Affidavit of Cecil Hayes sworn December 9, 2022 (a copy of which was included in the Applicant’s application record), “Mir Ali is the indirect majority shareholder of the Debtor, and is, or was, a director of the Debtor”.
13. Mr. Gabellini further advised the Receiver that his team had commenced marketing the Property for sale, including listing the Property on MLS, contacting various prospective purchasers, and placing signage on site at the Property.
14. The Receiver provided Mr. Gabellini with a copy of the Appointment Order and advised Mr. Gabellini that the Receiver is the sole party with the exclusive authority to market and sell the Property pursuant to the terms of the Appointment Order. Accordingly, the Receiver demanded that Mr. Gabellini terminate the MLS Listing immediately and provide the Receiver with confirmation once the listing was terminated.
15. On June 22, 2023, Mr. Gabellini notified the Receiver that he had sent a cancellation agreement to Mr. Ali and requested that Mr. Ali return the agreement on an urgent basis, but Mr. Ali was not willing to comply. At approximately 5:00 p.m. on June 22, 2023, eXp Realty provided confirmation to the Receiver that the MLS Listing had been terminated, though it remains unclear whether or not Mr. Ali cooperated with the request to cancel the listing, or if eXp Realty unilaterally terminated the listing.
16. The listing of the Property for sale is perplexing given that the Debtor advised the Court about the APS, but did not make any mention of the MLS Listing signed on June 14, 2023

when making submissions to the Court on June 15, 2023. If there was truly a bona fide APS, there would be no reason for the Debtor to list the Property for sale.

THE REQUESTED INFORMATION

17. Among other things, the Receiver has requested that the Debtor provide copies of architectural drawings, technical reports, environmental site assessments, and other documents that would greatly assist prospective purchasers in completing their due diligence when evaluating whether or not to make an offer for the Property. The Receiver is concerned that absent this information, the offers received may be contingent upon lengthy due diligence conditions which will adversely affect the creditors of the Debtor.
18. Pursuant to section 3 of the Sale Process Order, Mr. Prem Kumar G. Yachamanani, as sole officer and director of the Debtor, was directed to immediately comply with the Receiver's request for information, and provide or cause to be provided, all of the requested books and records of the Debtor in his possession or control. As of the date of this Second Report, Mr. Yachamanani and the Debtor have not provided any of the requested information to the Receiver, or responded in any manner to the Receiver's requests.

CONCLUSIONS AND RECOMMENDATIONS

19. It is the Receiver's position that the Debtor, its officers and directors have demonstrated a complete disregard for the Appointment Order and the authority of this Court. The Debtor's actions and conduct have (i) frustrated the Receiver's ability to carry out its duties and powers, (ii) interfered with the Receiver's efforts to market and sell the Property, and (iii) unnecessarily increased the cost of this administration, to the detriment of the creditors.

All of which is respectfully submitted this 7th day of July, 2023.

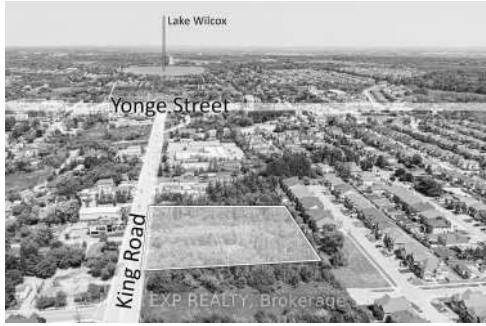
RSM CANADA LIMITED, solely in its capacity as
Court-appointed Receiver of 12252856 Canada Inc.,
and not in its personal or corporate capacity

Per:



Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

Appendix “A”



235 King Rd		List: [REDACTED]
Richmond Hill Ontario L4E 2W2		For Sale
Richmond Hill Oak Ridges York		
SPIS: N	For: Sale	
Taxes: \$39,000.00 / 2022 / Annual	Last Status: New	
Legal: See Schedule C		DOM: 7
Land	Occup: Vacant	Lse Term Mnths: /
Designated	Freestanding: SPIS: N	Holdover: 120
Residential		Franchise:
Com Cndo Fee:		
Dir/Cross St: King Rd & Yonge St		

MLS#: N6152736 **Sellers:** Consortia Equity Capital Limited **Contact After Exp:** N

Possession Remarks: TBD **ARN#:** 193808001245400

Total Area: 3.88 Acres	Survey:	Soil Test: Y
Ofc/Apt Area:	Lot/Bldg/Unit/Dim: 412.34 x 407 Feet	Out Storage:
Indust Area:	Lot	Rail:
Retail Area:	Lot Irreg: 3 Lot Measurements As Per	Crane:
Apx Age:	Geowarehouse	Basement:
Volts:	Bay Size:	Elevator:
Amps:	%Bldg:	UFFI:
Zoning: RM1	Washrooms: 0	Assessment:
Truck Level:	Water: Municipal	Chattels:
Grade Level:	Water Supply:	LLBO:
Drive-In:	Sewers: San+Storm Avail	Days Open:
Double Man:	A/C:	Hours Open:
Clear Height:	Utilities: A	Employees:
Sprinklers:	Garage Type:	Seats:
Heat:	Park Spaces: #Trl Spc:	Area Infl: Major Highway
Phys Hdcp-Eqp:	Energy Cert:	Rec Centre:
	Cert Level:	
	GreenPIS:	

Bus/Bldg Name:	For Year:	Financial Stmt:
Actual/Estimated:		
Taxes:	Heat:	Gross Inc/Sales:
Insur:	Hydro:	EstValueInv At Cost:
Mgmt:	Water:	Com Area Upcharge:
Maint:	Other:	% Rent:
		-Vacancy Allow:
		-Operating Exp:
		=NetIncB4Debt:

Client Remks: Attention Developers Incredible Opportunity To Purchase 3,875 Acres For Medium Density Residential Development In Prime Location In Richmond Hill In The Famous "Oak Ridges Moraine". Located In Established Residential Area With Full Municipal Services, And Backing Onto Small Park To Be Built By Developer In Lieu Of Parkland Fees. Nearby Access To Hwy 404 & 400 With Access To The Subject Property From King Rd. The Proposed Development Is For 178 Stacked Townhome Units With A GFA Of 165,434 SF, The Land Cost In This Triple Prime Location Would Be [REDACTED] Per Unit. As Per Planner's Letter All Further Approvals, Including Zoning And Site Plan Approval, Are Expected To Be Received In Short Order. Opportunity For Joint Venture Offers, With Potential For Equity Financing Or Assistance With Debt Financing To Qualified Buyers.

Extras:

Inclusions:

Exclusions:

Rental Items:

Brkage Remks: Bid Date July 15/23. 3 Lots Sold Together. 24Hr Irr. Incl Sch C W/O Offers To steve.gabellini@exprealty.com. Steve Gabellini, eXp Realty, Brokerage Is Co-list - 613-761-8158. Buyers To Verify Info/Do Own Due Diligence. Do Not Walk Lot W/O Appt.

Mortgage Comments: Treat As Clear

EXP REALTY Ph: 866-530-7737 Fax: 000-000-0000
 4711 Yonge St 10/Flr Ste B Toronto M2N6K8
 JENNIFER JONES, Salesperson 613-761-8158

Contract Date: 6/14/2023 **Condition:** **Ad:** Y
Expiry Date: 8/14/2023 **Cond Expiry:** **Escape:**
Last Update: 6/14/2023 **CB Comm:** 0.5% + Hst **Original:** [REDACTED]

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

**FURTHER SUPPLEMENTARY
MOTION RECORD**

(Motion returnable July 27, 2023)

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