

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

MARSHALLZEHR GROUP INC.

Applicant

- and -

2305992 ONTARIO INC.

Respondent

SECOND REPORT OF THE RECEIVER
March 16, 2020

INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on November 28, 2019 (the “**Receivership Order**”), RSM Canada Limited was appointed receiver and manager (the “**Receiver**”) of the assets, properties and undertakings of 2305992 Ontario Inc. (the “**Debtor**”). A copy of the Receivership Order is attached as **Appendix “A”**.
2. On January 9, 2020, the Court granted an Order (the “**Sale Process Approval Order**”), among other things, approving and authorizing the Receiver to conduct a sale process in accordance with the procedures attached as Schedule “A” to the Sale Process Approval Order (the “**Sale Process**”). A copy of the Sale Process Approval Order, is attached as **Appendix “B”** to this Second Report.

3. In connection with the Sale Process Approval Order, the Receiver filed the First Report of the Receiver dated December 30, 2019 (the “**First Report**”). A copy of the First Report, without appendices, is attached as **Appendix “C”** to this Second Report.
4. The purpose of this report (the “**Second Report**”) is to provide the Court with background and information about:
 - (a) the Receiver’s conduct and activities since the First Report;
 - (b) the results of the Sale Process conducted by the Receiver and the Receiver’s recommendations to the Court with respect to the Successful Transaction and the Back-Up Bid (each as defined below); and
 - (c) certain interim distributions proposed to be made by the Receiver upon closing of a sale transaction for which Court approval is being sought in this Motion.
5. The Receiver brings this motion seeking orders:
 - (a) approving the Successful Transaction and the Back-up Bid in the form of the model approval and vesting order (with necessary modifications) (the “**Approval and Vesting Order**”); and
 - (b) approving the activities and conduct of the Receiver described in this Second Report, authorizing the Receiver to make certain interim distributions as described in this Second Report and sealing the Confidential Appendices to this Second Report (the “**Interim Distribution Order**”).

TERMS OF REFERENCE

6. In preparing this Second Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Second Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the

Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

7. Unless otherwise stated, all monetary amounts contained in the Second Report are expressed in Canadian dollars.

BACKGROUND

8. The Debtor is an Ontario corporation that has its registered office in Woodbridge, Ontario.
9. The Debtor is the registered owner of real property municipally known as 9740, 9750 and 9760 Yonge Street, Richmond Hill, Ontario (the “**Property**”).
10. The Property is currently vacant land that the Debtor intended to develop into a mixed use condominium consisting of residential, office and commercial space.
11. The Receiver understands that the Debtor had made several attempts to market and sell the Property, both privately and through a broker, during the two years prior to these Receivership proceedings. The Receiver further understands that a number of offers were received by the Debtor, but none of the offers were accepted, or if accepted by the Debtor, no transaction was concluded.

ACTIVITIES OF THE RECEIVER

12. In addition to the activities described in detail in this Second Report, the Receiver has conducted the following activities since the date of the First Report:
 - (a) under the Receiver’s Borrowings Charge, issued a Receiver’s Certificate (each as defined in the Receivership Order) to MarshallZehr Group Inc. (“**MZ**”) to borrow \$250,000 to fund these receivership proceedings, payable on demand with interest calculated and compounded monthly at the rate of five percent (5%) above the bank prime rate;

- (b) conducted the Sale Process in accordance with the Sale Process Approval Order, including making amendments to the Sale Process as necessary or desirable;
- (c) communicated with prospective purchasers;
- (d) communicated with stakeholders, including the first mortgagee and Applicant, MZ, on matters related to the Sale Process and the Property;
- (e) arranged for the renewal of the Debtor's insurance coverage; and
- (f) prepared this Second Report.

SALE PROCESS

13. Pursuant to the Sale Process Approval Order, the Court authorized the Receiver to do all things necessary or desirable to give effect to the Sale Process, including making amendments to the process.
14. In accordance with the Sale Process, the Receiver:
 - (a) posted signage at the Property indicating that it was being sold by the Receiver;
 - (b) prepared: (i) a list of known potential buyers, which included approximately 900 industry contacts and influencers; (ii) a form of confidentiality agreement ("CA") to be executed by prospective purchasers; and (iii) a template Agreement of Purchase and Sale.
 - (c) launched a virtual data room, which provided prospective purchasers with access to information related to the Property;
 - (d) contacted the list of known potential buyers by email on December 27, 2019 and January 13, 2020, enclosing a copy of the teaser letter; and
 - (e) published an advertisement in: (i) the *Globe and Mail* (National Edition) on January 9 and 14, 2020 as well as in certain commercial real estate publications; (ii) the *Sing Tao Daily* newspaper, which is a prominent newspaper in the Chinese

community, on January 11 and 18, 2020; and (iii) in the *Novae Res Urbis*, which is a publication focused on communities in the Greater Toronto and Hamilton Area on January 15, 17, 22 and 24, 2020.

15. The bid deadline was February 13, 2020 (the “**Bid Deadline**”). In response to the Receiver’s marketing efforts, the Receiver received 85 requests for a copy of the CA. Of those 85 requests, the Receiver received 63 executed CAs.
16. All of the prospective purchasers who executed a CA received access to the data room.
17. A total of ten (10) offers were submitted before the Bid Deadline.
18. On February 25, 2020, the Receiver wrote to the three (3) top bidders and provided an opportunity for them to resubmit improved offers by 5:00 p.m. on Thursday, February 27, 2020. Three (3) offers were submitted.
19. Out of the three (3) resubmitted offers, the Receiver determined that the two (2) highest offers were virtually indistinguishable. By email dated March 2, 2020, the Receiver advised the top two (2) bidders that:
 - (a) each bidder would have a final opportunity to re-submit a further improved offer before the Receiver decides which offer to accept; and
 - (b) under Section 25(a) of the Sale Process, the Receiver is authorized to amend the Sale Process as considered necessary or desirable by the Receiver, and accordingly, the Receiver amended the Sale Process to authorize the Receiver to select as the “Back-Up Bid” the non-successful offer of the two (2) final offers received.
20. The Receiver set a deadline of 4:00 p.m. EST on March 3, 2020 for the two (2) top bidders to submit their final offers. Both remaining bidders submitted further revised offers in response to the Receiver’s email.
21. After reviewing the two (2) final offers, the Receiver selected the offer from 2510300 Ontario Inc., which will be assigned to 9750 Yonge Limited (the “**Purchaser**”) as the

successful bid (the “**Successful Bid**”) and selected the offer from 2132849 Ontario Inc. or its assignee (the “**Back-Up Purchaser**”) as the back-up bid (the “**Back-Up Bid**”).

22. In this Second Report, the transaction to be concluded under the Successful Bid from the Purchaser is referred to as the “**Successful Transaction**” and the transaction to be concluded under the Back-Up Bid is referred to as the “**Back-Up Transaction**”.
23. A summary of the offers received in the three rounds of bidding is being filed with the Court as **Confidential Appendix “1”** to this Second Report.
24. The material terms of the both the Successful Transaction and the Back-Up Transaction are summarized as follows:

	Successful Transaction	Back-Up Transaction
Purchased Assets	The Property	
Purchase Price and Deposit	The Receiver is seeking an order of the Court which will allow it to maintain the purchase price and Deposit as confidential until the transaction contemplated under the Successful Transaction or Back-Up Transaction, as applicable, has closed.	
Satisfaction of Purchase Price	Cash	Unless the Back-Up Purchaser elects to pay the Purchase Price in all cash, the Purchase Price will be satisfied, by the Deposit and by the assumption of the Debtor’s indebtedness owing to MZ and secured by the first mortgage in favour of MZ registered against title to the Property.
Closing Date	The closing date is the later of 14 days following the issuance of an approval and vesting order approving the Successful Transaction or March 31, 2020.	The closing date is 5 business days following delivery by the Receiver of a written notice (the “ Transaction Notice ”) to the Back-Up Purchaser confirming, among other things, that the Successful Transaction failed to close and that the Receiver will proceed to consummate the Back-Up

		Transaction and negotiate the Back-Up Bidder's deposit cheque.
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25. Redacted copies of the Successful Bid and the Back-Up Bid are attached as **Appendices “D” and “E”**, respectively, to this Second Report. Unredacted copies of the Successful Bid and the Back-Up Bid are being filed with the Court as **Confidential Appendices “2” and “3”**, respectively to this Second Report.
26. The Receiver seeks approval of both the Successful Bid and the Back-Up Bid for efficiency in the event the Successful Transaction fails to close.
27. Based on the Receiver's due diligence to assess the Purchaser's ability to close, the Receiver believes it will be able to consummate the Successful Transaction. However, the Receiver seeks approval of both bids out of an abundance of caution with a view to ensuring that a transaction occurs.
28. The Receiver completed the Sale Process in accordance with the procedures approved by the Court under the Sale Process Approval Order. The Receiver amended the Sale Process as necessary or desirable with a view to maximizing the value of the Property and in accordance with the Sale Process.
29. The Property has been marketed since December 2019 and there were previous attempts by the Debtor to market and sell the Property prior to the commencement of these receivership proceedings.
30. The Sale Process was robust with over 60 executed CAs, and 10 offers submitted.
31. The final bidders participated in multiple rounds of bidding before a Successful Bid and Back-Up Bid were selected.
32. In the Receiver's view, the Property was adequately exposed to the market and the Successful Bid and Back-Up Bid represent the best offers in the circumstances.

33. The first mortgagee, MZ, supports the Successful Transaction and the Back-Up Bid in the event the Successful Transaction fails to close.
34. Accordingly, the Receiver requests that the Court approve the Successful Transaction and the Back-Up Bid.
35. The Receiver seeks an order sealing Confidential Appendices 1, 2 and 3 (the “**Confidential Appendices**”) to this Second Report. The Confidential Appendices contain commercially sensitive information about the bids received and the purchase price obtained for the Property. In the Receiver’s view, this information should remain confidential until such time as either the Successful Transaction or the Back-Up Transaction closes. In the event neither of these transactions close and the Property needs to be remarketed, the disclosure of the commercially sensitive information contained in the Confidential Appendices could be prejudicial to any future sale process that may be required.

INTERIM DISTRIBUTION

36. The Receiver seeks the Court’s approval to distribute the sale proceeds on closing of the Successful Transaction (or the Back-Up Transaction, as the case may be) on account of the following:
 - (a) first, to pay all amounts outstanding that are secured by the Receiver’s Charge (as defined in the Receivership Order);
 - (b) second, to repay MZ for amounts outstanding (including principal and interest) that are secured by the Receiver’s Borrowings Charge, being \$207,026.86 plus accrued interest (as at April 1, 2020). The *per diem* interest from April 1, 2020 is \$65.64;
 - (c) third, amounts outstanding on account of claims that rank in priority to MZ’s secured claims (if any); and
 - (d) fourth, to repay MZ in respect of outstanding principal and accrued interest (excluding fees, costs and “wrap up interest”) owing by the Debtor to MZ that is secured under the First Mortgage.

37. MZ has provided the Receiver with a Discharge Statement as at April 1, 2020, which calculates the MZ Indebtedness to be as follows: principal in the amount of \$19,349,429.01 plus accrued and unpaid interest in the amount of \$7,799,993.60. The *per diem* interest from April 1, 2020 (not including wrap up interest) is \$7,643.89. A copy of the Discharge Statement is attached as **Appendix “F”**.
38. The Receiver has received an opinion from Fogler Rubinoff LLP, its independent legal counsel that, subject to the usual assumptions and qualifications, the First Mortgage and personal property security held by MZ is valid and enforceable.
39. At this time, it is unclear whether there will be sufficient proceeds to repay MZ for the other amounts the Debtor owes it (as set out in the Discharge Statement). This depends on the timing of closing a transaction, the amount of priority claims owing if any and whether the Successful Transaction or the Back-Up Transaction closes.
40. The Receiver intends to return to Court to seek authorization to make a final distribution after the closing of one of the transactions. At that motion, the Receiver also intends to finalize the administration of these receivership proceedings and seek a discharge.

RELIEF REQUESTED

41. Based on the foregoing, the Receiver respectfully requests that the Court grant:
 - (a) the Approval and Vesting Order, and
 - (b) the Interim Distribution Order.

All of which is respectfully submitted to this Court as of this 16th day of March, 2020.

RSM Canada Limited

in its capacity as Court-appointed Receiver and Manager of
2305992 Ontario Inc., and not in its personal or corporate capacity



Per: _____

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

MARSHALLZEHR GROUP INC. 2305992 ONTARIO INC.
Applicant and Respondent

Court File No.: CV-19-00628446-00 CL

ONTARIO
**SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

SECOND REPORT OF THE RECEIVER

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