

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

DUNSIRE (LANDSDOWN) 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.C.43, AS AMENDED***

SUPPLEMENTARY MOTION RECORD

(re approval of sale transaction and other relief)
(returnable May 25, 2018)

May 22, 2018

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Court-appointed Receiver**

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TAB	DOCUMENT
1	Fresh As Amended Notice of Motion
2	Supplement to the First Report of the Receiver dated May 22, 2018

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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B E T W E E N:

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FRESH AS AMENDED NOTICE OF MOTION

(re approval of sale transaction and other relief)
(returnable May 23, 2018)

RSM CANADA LIMITED (“RSM”), in its capacity as Court-appointed receiver (the “**Receiver**”) of the property, assets and undertakings of the Respondent (the “**Property**”), will make a motion to a Judge of the Commercial List on Wednesday May 23, 2018 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

(a) an order:

- (i) approving the sale transaction (the “**Sale Transaction**”) contemplated by the asset purchase agreement between the Receiver and Aquicorp Inc., in trust (the “**Purchaser**”), dated May 1, 2018 (the “**APA**”), and vesting in the Purchaser the Respondent’s right, title and interest in and to the “**Purchased Assets**” described in the APA (the “**Purchased Assets**”) free and clear of claims and encumbrances (other than permitted encumbrances), upon the delivery of a certificate to the Purchaser by the Receiver;
 - (ii) authorizing the Receiver to terminate nine (9) existing agreements of purchase and sale entered into by the Respondent for units to be constructed in the Development (as defined below);
- (b) an order:
- (i) abridging, if necessary, the time for service of this notice of motion and the motion record so that the motion is properly returnable on May 23, 2018;
 - (ii) approving the First Report of the Receiver dated May 14, 2018 (the “**First Report**”) and the conduct and activities of the Receiver as described therein;
 - (iii) approving the fees and disbursements of the Receiver and its counsel, as set out in the First Report and the fee affidavits appended thereto (the “**Fee Affidavits**”);
 - (iv) authorizing the Receiver, following the closing of the Sale Transaction, to make distributions to the Applicant, MarshallZehrGroup Inc. (“**MZG**”), as

first mortgagee of the Real Property (as defined below), from the net sale proceeds of the Real Property, up to the maximum amount of MZG's indebtedness secured by its first mortgage without further Order of this Court, subject to the Receiver maintaining sufficient reserves with respect to any potential priority claims that may exist;

(v) sealing the Confidential Appendices to the First Report pending further Order of the Court or the closing of the Sale Transaction; and

(c) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

1. RSM was appointed as the Receiver pursuant to the Appointment Order dated December 6, 2017 (the "**Appointment Order**").

2. The Appointment Order authorized the Receiver to, among other things, market and sell any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, with the approval of the Court.

3. The Property includes, without limitation, the real property municipally known as Landsdown Drive, Guelph, Ontario and legally described as set out in Schedule "A" of the Appointment Order (the "**Real Property**").

4. The Real Property was acquired by the Respondent to develop it as a residential enclave of 27 single-detached bungalows and bungalofts to be known as White Cedar Estates (the “**Development**”).

5. The Respondent entered into agreements of purchase and sale with individuals (the “**Unit Buyers**”) for 26 of the 27 units (the “**Units**”) to be constructed in the Development. In each agreement, the Unit Buyers agreed that their interest as purchaser under the agreement, and any and all deposits and any purchaser’s lien, was subordinated and postponed to any mortgages and charges registered against title to the Real Property.

Sale Transaction

6. As detailed in the First Report, the Receiver carried on an extensive marketing of the Real Property. As a result of the process, the Receiver has entered into the APA with the Purchaser.

7. As part of the Sale Transaction, the Purchaser has agreed to assume the agreements of purchase and sale for 14 of the Units, as these Unit Buyers agreed to increase the purchase price under their respective agreements.

8. With respect to the remaining twelve (12) Units, the APA provides that the Purchaser will return the deposits to these Unit Buyers, together with a 25% bonus payment, by no later than December 31, 2018. The Purchaser has entered into mutual release and termination agreements with the Unit Buyers of three (3) of the Units. With respect to the remaining nine (9) Units, the Purchaser was unable to reach an agreement with any of the Unit Buyers for these Units, and thus requires the Receiver to obtain an order of the Court authorizing the Receiver to terminate the agreements.

9. The Receiver is of the view that the APA should be approved by the Court, as:
- (a) the Real Property has been adequately exposed to the market based on the steps taken by the Receiver;
 - (b) the APA represents the only offer received for the Real Property; and
 - (c) the APA represents the best realization for the Real Property for the Debtor's stakeholders.

Distribution to First Mortgagee

10. The Receiver has obtained an independent opinion that the mortgage held by MZG is valid and enforceable against the Real Property and is the registered first mortgage against the Real Property.

11. The Receiver is requesting that, following the closing of the Sale Transaction, it be authorized to make distributions to the MZG, from the net sale proceeds of the Real Property, up to the maximum amount of MZG's indebtedness secured by its first mortgage without further Order of this Court, subject to the Receiver maintaining sufficient reserves with respect to any potential priority claims that may exist

Sealing

12. The Receiver will be requesting that the Court grant an order sealing the Confidential Appendices to the First Report pending further order of the Court or the closing of the Sale Transaction, as the information contained in the documents is commercially sensitive and would negatively impact the Receiver's ability to re-market the Real Property in the event the Sale Transaction does not close.

Approval of Fees and Disbursements

13. The Receiver will also be requesting that the Court approve its fees and disbursements and that of its legal counsel, as detailed in the First Report and the Fee Affidavits.

General

14. The First Report and the Supplement to the First Report of the Receiver to be filed (the “**Supplementary Report**”).

15. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).

16. The *Bankruptcy and Insolvency Act* (Canada) and the *Courts of Justice Act* (Ontario).

17. The inherent and equitable jurisdiction of the Court.

18. 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 and the appendices annexed thereto, including without limitation the Fee Affidavits;
2. The Supplementary Report; and
3. such further and other material as counsel may advise and this Honourable Court may permit.

May 18, 2018

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Court-appointed Receiver**

TO: THE SERVICE LIST

Court File No. CV-17-587118-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FRESH AS AMENDED NOTICE OF MOTION
(re approval of sale transaction and other relief)
(returnable May 23, 2018))

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Lawyers for RSM Canada Limited,
Court-appointed Receiver

TAB 2

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

DUNSIRE (LANDSDOWN) INC.

Respondent

SUPPLEMENT TO THE FIRST REPORT OF THE RECEIVER

MAY 22, 2018

INTRODUCTION

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) dated December 6, 2017, RSM Canada Limited was appointed receiver, without security, of all of the assets, undertakings and properties of Dunsire (Landsdown) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof.
2. This report (the “**Supplemental Report**”) is a supplement to the First Report of the Receiver dated May 11, 2018 (the “**First Report**”), and should be read together with the First Report. Capitalized terms used and not otherwise defined herein have the meanings ascribed to such terms in the First Report.
3. The purpose of this Supplemental Report is to:
 - (a) provide the Court with additional information regarding the treatment under the Sale Transaction of the agreements of purchase and sale that were entered into by the Debtor with respect to dwellings to be constructed on the Real Property (collectively, the “**Unit Purchase Agreements**”); and
 - (b) provide the Court with additional information regarding the Second Mortgage.

UNIT PURCHASE AGREEMENTS

4. As stated in the First Report and the Snedden Affidavit, the Debtor intended to develop 27 single-detailed bungalows and bungalofts on the Real Property.
5. Prior to the Receiver’s appointment, the Debtor had entered into Unit Purchase Agreements with respect to 26 of the 27 units (the “**Units**”) to be constructed in the development.

6. Pursuant to each of the Unit Purchase Agreements, each purchaser (a “**Unit Purchaser**” and collectively, “**Unit Purchasers**”) agreed that their agreement, their interest in the agreement, and any and all deposits and any purchaser’s lien is subordinated and postponed to any mortgages and charges registered against title to the Property.

7. At the time of the appointment of the Receiver, the Debtor had collected \$1,040,000 in deposits from the Unit Purchasers (\$40,000 per unit), which are guaranteed by Tarion Warranty Corporation (“**Tarion**”), and a total of \$581,524.04 of upgrade deposits from the Unit Purchasers, which are not guaranteed by Tarion, totalling \$1,621,524.04. The Debtor used these deposits as a source of funds for the development.

8. Prior to the appointment of the Receiver, the Debtor negotiated amendments to the existing Unit Purchase Agreements with respect to 14 of the Units, such that these Unit Purchasers agreed to increase the purchase price under their respective Unit Purchase Agreements. Additionally, with respect to 3 of the Units, the Debtor entered into a mutual release and termination agreement with each of the purchasers, that provided that the Debtor would return all deposit funds it received, together with a premium of 25% of the respective deposit amounts.

9. As noted in the First Report, the president of the Purchaser is Mr. Shawn Keeper, who was the president of the Debtor. As part of the Sale Transaction, the Purchaser is assuming the Unit Purchase Agreements for the 14 Units referred to above, and has assumed the Debtor’s obligation to repay the deposits plus the 25% premium to the Unit Purchasers of the 3 Units.

10. With respect to the remaining 9 Units, counsel to the Purchaser has confirmed that Mr. Keeper had discussions with the Unit Purchasers regarding an increase in purchase prices or agreed termination, but that no agreement was reached with any of these Unit Purchasers.

11. Pursuant to the terms of the APS, the Receiver has agreed to request that the Court grant an order authorizing it, in the name of the Debtor, to terminate the Unit Purchase Agreements for the 9 Units. As part of the Sale Transaction, the Purchaser will be returning the deposits paid by the Unit Purchasers of the 9 Units, together with the 25% premium.

12. Given that the Unit Purchasers of the 9 Units agreed in their Unit Purchase Agreements that their rights are subordinate to the rights of MZG, and given that the development has not progressed beyond site servicing and curbing, and that the Unit Purchasers will be receiving their deposits back plus a 25% premium from the Purchaser, the Receiver is of the view that the termination of the Unit Purchase Agreements for the 9 Units is fair and equitable in the circumstances.

SECOND MORTGAGE

13. As noted in the First Report and the Snedden Affidavit, the mortgagee under the Second Mortgage was originally Sorrenti Law Professional Corporation (“**Sorrenti**”). The Receiver has been informed by Chaitons that the Second Mortgage stated that “Sorrenti Law Professional Corporation holds this mortgage in trust as bare trustee”.

14. Following the registration of the Second Mortgage, a number of transfers of charge were registered on title of the Property. The most recently filed transfer of charge was registered on November 24, 2017, indicating that Sorrenti has transferred its interest in the Second Mortgage, which constituted 39.41% of the Second Mortgage, to Building & Development Mortgages Canada Inc. (“**BDMCI**”). The remaining 60.59% of the Second Mortgage was in the name of Olympia Trust Company.

15. In paragraph 26 of the First Report, the Receiver indicated that “[t]he Second Mortgage is held by the mortgagee in trust for Fortress Real Developments Inc.” This statement was made based on information provided by counsel to Fortress that it was connected to BDMCI. Additionally, as noted in the Snedden Affidavit, Fortress was involved with the development, the principals of Fortress had provided personal guarantees relating to the Debtor’s registration with Tarion, and the Second Mortgage represented a syndicated mortgage with many individual investors, and the mortgagee of the Second Mortgage was related to Fortress.

16. Following service of the First Report, the Receiver and its counsel were contacted by counsel to FAAN Mortgage Administrators Inc., who had been appointed as trustee of BDMCI (the “**Trustee**”) pursuant to Court order dated April 20, 2018.


17. Counsel to the Trustee requested that the Receiver and Chaitons provide any documentary support regarding the statements that BDMCI held the Second Mortgage in trust for Fortress. Chaitons has informed counsel to the Trustee that the Receiver does not have any documentation that confirms the statement, and that such statement was based on an incorrect inference drawn concerning the relationship between Fortress, Sorrenti and BDMCI and appears to have been made in error.

All of which is respectfully submitted to this Court as of this 22nd day of May, 2018.

RSM CANADA LIMITED

in its capacity as Court Appointed Receiver of
Dunsire (Landsdown) Inc. and not in its personal capacity

Per:



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

MARSHALLZEHR GROUP INC.
Applicant

-and-

DUNSIRE (LANDSDOWN) INC.
Respondent
Court File No. CV-17-587118-00CL

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