



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00716277-00CL

DATE: MAY 31 2024

NO. ON LIST: 1- HALF DAY

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. 2174542 ONTARIO INC. et al

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Marshallzehr Group Inc	Tel:(416) 218-1161 Email: maya@chaitons.com
Laura Culleton		Tel: (416) 218-1128 Email: laurac@chaitons.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
	2174542 Ontario Inc Safe Harbour Developments Inc Safe Harbour Homes Inc	

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Bryan Tannenbaum	Propose Receiver from TDB Restructuring Limited	btannenbaum@tdbadvisory.ca
Jeff Berger		jberger@tdbadvisory.ca

ENDORSEMENT OF JUSTICE J. STEELE:

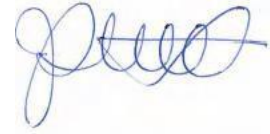
- [1] Marshallzehr Group Inc. seeks the appointment of TBD Restructuring Limited as receiver of all the assets and properties of the debtors.
- [2] The debtors own certain real property that was being developed into a community that was to include 103 townhomes and single detached homes, office and retail commercial space, a self-storage facility, and retirement residences. Construction and development on the project has been stalled for over a year due to the debtors running out of money.
- [3] No one opposes the relief sought by Marshallzehr.
- [4] The proposed order sought is based on the Commercial List Model Order in all material respects.

Is it just or convenient to appoint a receiver?

- [5] Under section 243(1) of the *Bankruptcy and Insolvency Act* on application by a secured creditor, the Court may appoint a receiver where it is “just or convenient” to do so. Similarly, under section 101 of the *Courts of Justice Act* the Court may appoint a receiver where such an appointment is “just or convenient.”
- [6] In deciding whether it is “just and convenient” to appoint a receiver, the Court must consider all of the circumstances of the case, and, in particular, the nature of the property and the rights and interests of all parties in relation to the property: *Bank of Nova Scotia v. Freure Village of Clair Creek*, [1996] OJ No. 5088, at para. 10.
- [7] I am satisfied that it is just or convenient in the circumstances for the Court to appoint a receiver for the following reasons:
 - a. Under the two loans, the debtors owe Marshallzehr over \$52 million. The debtors have defaulted on the loans. No payments, including payments in respect of interest, have been made on the loans since April 2022. The loans also have both matured and not been repaid.
 - b. The relevant loan and security documents authorize Marshallzehr to appoint a receiver on default. Where the security documents provide this right, the burden on the applicant seeking to appoint the receiver is lessened: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866, at para. 27.
 - c. Construction and development have stalled for over a year on the project.

d. Although the debtors had tried to sell the real property in or en bloc, such attempts have not been successful. In addition, the debtors have not demonstrated any ability to secure new financing.

[8] Order attached.

A handwritten signature in blue ink, appearing to be "J. Lee" or similar, written in a cursive style.