

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

2301402 ONTARIO LIMITED and JAKE'S HOUSE COMMUNITY RESIDENCES

Respondents

APPLICATION UNDER SECTION 243 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43

FACTUM OF THE RECEIVER
(Motion returnable September 24, 2025)

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**Lawyers for TDB Restructuring Limited,
in its capacity as Court-Appointed
Receiver**

TO: SERVICE LIST

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FACTUM OF THE RECEIVER

PART I – OVERVIEW¹

1. This factum is filed by TDB Restructuring Limited (“**TDB**”), in its capacity as court-appointed receiver and manager (the “**Receiver**”) without security, of all of the assets, undertakings and properties of 2301402 Ontario Limited and Jake’s House Community Residences (collectively, the “**Debtors**”), for an order:
 - a) approving the First Report of the Receiver dated September 19, 2025 and the appendices thereto (the “**First Report**”) and the conduct and activities of the Receiver described therein;

¹ Capitalized terms not defined herein have the meaning defined in the First Report of the Receiver dated September 19, 2025 (the “**First Report**”), Tab 2, Motion Record of the Receiver (“**MR**”).

- b) approving an increase in the amount the Receiver is authorized to borrow and the related Receiver's Borrowing Charge (as defined below) from \$250,000 to \$1,000,000;
- c) approving the Receiver's interim statement of receipts and disbursements as at September 16, 2025 (the "**Interim R&D**");
- d) approving the fees and disbursements of the Receiver and its counsel, Chaitons LLP ("Chaitons"); and
- e) such further and other relief that the Receiver may request and this Honourable Court may consider just.

PART II – FACTS

- 2. The Debtors are companies incorporated pursuant to laws of the Province of Ontario.²
- 3. 2301402 Ontario Limited (the "**Borrower**") is a privately held corporation that owns the real properties municipally known as 133, 135, 139, 141 and 143 Main Street, Lucan, Ontario (collectively, the "**Real Properties**").³
- 4. The Real Properties consist of a 54-unit rehabilitative healthcare and seniors' residential facility (the "**Lucan Facility**") and abutting lands intended to expand the Lucan Facility. The Lucan Facility has been closed and the residents of the Lucan Facility had been relocated prior to the Receiver's appointment.⁴
- 5. The applicant in this matter, MarshallZehr Group Inc. ("**MZ**") is a secured creditor of the

² First Report at para 9, MR, Tab 2.

³ First Report at para 10, MR, Tab 2.

⁴ First Report at paras 10-11, MR, Tab 2.

Debtors. MZ advanced credit facilities to the Borrower pursuant to multiple loan agreements (the “**Loans**”). The Debtors defaulted on their obligations under the Loans.⁵

6. Pursuant to an Order of this Court made on May 14, 2025 (the “**Receivership Date**”), TDB was appointed Receiver over the Real Properties (the “**Appointment Order**”).⁶

Increase of the Borrowing Charge

7. Pursuant to paragraph 21 of the Appointment Order, the Receiver is empowered to borrow such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (the “**Receiver’s Borrowing Charge**”).⁷

8. Since the commencement of these proceedings, the Receiver has borrowed from MZ the amount of \$250,000, which has been used to pay insurance premiums, utilities, landscaping, ongoing professional fees, and other expenses.⁸

9. The Receiver continues to accrue costs relating to the maintenance and preservation of the Real Properties and the administration of these receivership proceedings.⁹

10. Given the uncertainty surrounding the time it will take to sell the Real Properties, as well as the significant carrying costs as set out in the Interim R&D, the Receiver respectfully requests that this Court authorize an increase in the amount the Receiver may borrow to \$1,000,000 and a corresponding increase of the Receiver’s Borrowing Charge, in order to ensure that the Receiver

⁵ First Report at paras 12-14, MR, Tab 2.

⁶ First Report at para 15, MR, Tab 2.

⁷ First Report at paras 30, MR, Tab 2; Order of Justice Dietrich dated May 14, 2025 (the “**Appointment Order**”) at para 21, Appendix “A” to the First Report, MR, Tab 2(A).

⁸ First Report at paras 31-32, MR, Tab 2.

⁹ First Report at para 33, MR, Tab 2.

has the ability to continue its duties without the need to return to Court for the purpose or requesting a further increase.¹⁰

Professional Fees

11. Paragraph 18 of the Appointment Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Receiver and counsel to the Receiver were granted a charge on the Real Properties, as security for such fees and disbursements, both before and after the making of the Appointment Order.¹¹

12. The Receiver's professional fees and disbursements incurred between December 12, 2024 to August 31, 2025 are \$85,686 plus applicable HST of \$11,133, for a total amount of \$96,819, as detailed in the Fee Affidavit of Jeffrey Berger sworn September 17, 2025 appended to the First Report as Appendix "D".¹²

13. The fees of Chaitons for services rendered from May 28, 2025 to August 31, 2025 are \$15,687.50, plus disbursements of \$6.00 and applicable HST of \$2,040.16, for a total of \$17,733.66, as detailed in the Fee Affidavit of Maleeha Anwar sworn September 19, 2025 appended to the First Report as Appendix "E".¹³

14. The Receiver has reviewed Chaitons' accounts and has determined that the services have

¹⁰ First Report at para 34, MR, Tab 2.

¹¹ First Report at para 37, MR, Tab 2; Appointment Order at para 18, Appendix "A" to the First Report, MR, Tab 2(A).

¹² First Report at paras 38, MR, Tab 2; Fee Affidavit of Jeffrey Berger sworn September 17, 2025, Appendix "D" to the First Report, MR, Tab 2(D).

¹³ First Report at paras 39, MR, Tab 2; Fee Affidavit of Maleeha Anwar sworn September 19, 2025, Appendix "E" to the First Report, MR, Tab 2(E).

been duly authorized and duly rendered and that the charges are reasonable given the circumstances.¹⁴

Interim Statement of Receipts and Disbursements

15. The Receiver's Interim R&D for the period from the Receivership Date to September 16, 2025 are summarized in the First Report and detailed in Appendix "C" thereto.¹⁵

16. The Receiver respectfully requests approval of the Interim R&D.

Activities of the Receiver

17. The Receiver's activities since its appointment are described in paragraphs 17 to 29 of the First Report.¹⁶

18. The Receiver respectfully requests approval of its activities

PART III – ISSUES

19. The issues before the Court are:

- a) Should the Court approve the First Report and the conduct and activities of the Receiver described therein?
- b) Should the Court approve the increase in the amount the Receiver is authorized to borrow and related Receiver's Borrowing Charge?

¹⁴ First Report at para 40, MR, Tab 2.

¹⁵ First Report at para 36, MR, Tab 2; Interim Statement of Receipts and Disbursements as at September 16, 2025, Appendix "C", MR, Tab 2(C).

¹⁶ First Report at paras 17-29, MR, Tab 2.

c) Should the Court approve the fees and disbursements of the Receiver and its counsel?

PART IV - LAW AND ARGUMENT

A. Approval of the First Report and the Receiver's Activities

20. The Court has the inherent jurisdiction to review and approve the activities of a Court-appointed receiver as set out in the receiver's reports.¹⁷

21. It is common practice for Court officers to bring motions to seek approval of their reports and the activities set out therein. Court approval, among other things, allows the Court officer to bring its activities before the Court and presents an opportunity to address concerns of stakeholders, while enabling the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner.¹⁸

22. The activities of the Receiver described in the First Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Appointment Order.

23. The Receiver therefore respectfully submits that the First Report and the activities described therein should be approved.

B. Increase in Borrowings and Related Borrowing Charge

24. Subsection 243(1) of the *Bankruptcy and Insolvency Act* allows a court to appoint a

¹⁷ [Bank of America Canada v Willann Investments Ltd \(1996\), 1996 CanLII 2782 \(Ont\)](#)

¹⁸ [Target Canada Co \(Re\), 2015 ONSC 7574](#) at para 2 and 23; [Triple-I Capital Partners Limited v 12411300 Canada Inc, 2023 ONSC 3400](#) at paras 65-66

receiver to, among other things, “take any action that the court considers advisable.”¹⁹

25. The Appointment Order authorized the Receiver to borrow up to \$250,000 and granted a related Receiver’s Borrowing Charge in such amount, as security for repayment of the borrowings. The \$250,000 has been fully utilized to pay insurance premiums, utilities, landscaping, ongoing professional fees, and other expenses. \$250,000 is insufficient as the Receiver continues to accrue costs relating to the maintenance and preservation of the Real Properties and the administration of these receivership proceedings.²⁰

26. The Receiver requests this Court’s approval to increase the amount the Receiver is authorized to borrow and related Receiver’s Borrowing Charge from \$250,000 to \$1,000,000. An increase to \$1,000,000 will ensure that the Receiver has the ability to continue its duties without the need to return to Court for the purpose of requesting a further increase.²¹

27. Accordingly, the Receiver respectfully submits that this relief should be approved.

C. Approval of the Fees and Disbursements of TDB and its Counsel

28. TDB is seeking approval of its professional fees and disbursements incurred by it as Receiver and those of its legal counsel, Chaitons.

29. The Appointment Order provides that TDB and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.²²

¹⁹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, [S. 243\(1\)](#).

²⁰ First Report at paras 31-34, MR, Tab 2.

²¹ First Report at para 34, MR, Tab 2.

²² Appointment Order, Appendix “1” to the Second Report, MR, Tab 2(1) at paras. 18 to 20.

30. In determining whether to approve the accounts of a Court-appointed receiver and its counsel, the Court will consider the overall value contributed, taking into account the following factors: a) the nature, extent and value of the assets; b) the complications encountered; c) the degree of assistance provided by the debtor; d) the time spent; e) the receiver's knowledge, experience and skill; f) the diligence and thoroughness displayed; g) the responsibilities assumed; h) the results of the receiver's efforts; and i) the cost of comparable services when performed in a prudent and economical manner.²³

31. The Receiver has reviewed Chaitons' accounts and has determined that the charges are reasonable given the circumstances.²⁴

32. MZ, the senior secured creditor of the Debtors, has no objection to the fees charges.

33. The Receiver respectfully submits that it is appropriate to approve the fees and disbursements of TDB and its counsel in the circumstances.

PART V – RELIEF SOUGHT

34. The Receiver respectfully recommends and requests that the Court grant the relief sought on this motion.

I certify the authenticity of every authority cited in the factum.

²³ [Bank of Nova Scotia v Diemer, 2014 ONCA 851](#) at para 33

²⁴ First Report at para. 40, MR, Tab 2.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of September, 2025.



CHAITONS LLP

*Lawyers for the Court-appointed Receiver,
TDB Restructuring Limited*

SCHEDULE “A”

LIST OF AUTHORITIES

Tab	Title	Pinpoints
1	<u><i>Bank of America Canada v Willann Investments Ltd (1996), 1996 CanLII 2782 (Ont)</i></u>	
2	<u><i>Target Canada Co (Re), 2015 ONSC 7574</i></u>	2, 23
3	<u><i>Triple-I Capital Partners Limited v 12411300 Canada Inc, 2023 ONSC 3400</i></u>	65, 66
4	<u><i>Bank of Nova Scotia v Diemer, 2014 ONCA 851</i></u>	33

SCHEDULE “B”

STATUTORY AUTHORITIES

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

MARSHALLZEHR GROUP INC.

- and -

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COMMUNITY RESIDENCES**

Respondents

Court File No. CV-25-00741261-00CL

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FACTUM

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