



ONTARIO SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**AMENDED COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00741261-00CL

DATE: MAY 14, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. 2301402 ONTARIO LTD. et al

BEFORE: JUSTICE J. DIETRICH

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Harvey Chaiton Danish Afroz	Counsel for Applicant, Marshallzehr Group Ltd.	<a href="mailto:harvey@chaitons.com">harvey@chaitons.com</a> <a href="mailto:dafroz@chaitons.com">dafroz@chaitons.com</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
No Appearance	2301402 Ontario Limited	
No Appearance	Jakes' House Community Residences	

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Bryan A. Tannenbaum	Proposed Receiver, TDB Restructuring Limited	<a href="mailto:btannenbajm@tdbadvisory.ca">btannenbajm@tdbadvisory.ca</a>

**ENDORSEMENT OF JUSTICE J. DIETRICH :**

**Introduction**

- [1] MarshallZehr Group Inc. seeks an order appointing TDB Restructuring Limited (“**TDB**”) as receiver of all of the assets, undertakings and properties of 2301402 Ontario Limited (the “**Borrower**”) and Jake’s House Community Residences (“**JHCR**”) including the real property known municipally as 133, 135, 139, 141, and 143 Main Street, Lucan, Ontario (the “**Real Property**”) pursuant to s. 243 of the *Bankruptcy and Insolvency Act* and s. 101 of the *Courts of Justice Act*.
- [2] There is no opposition to the relief sought by MarshallZehr.
- [3] Defined terms not otherwise defined herein have the meaning provided for in the factum of MarshallZehr filed on this application.

## Background

### The Respondents

- [4] The Borrower is a privately held corporation governed by the *Business Corporations Act* (Ontario), with its registered offices located at 139 Main Street, Lucan, Ontario.
- [5] JHCR, previously 2745859 Ontario Inc. (“**274**”), is a not-for-profit corporation with its registered head office located at 5750 Explorer Drive, Unit 102, Mississauga, Ontario.
- [6] JHCR operated under the umbrella of Jake’s House for Autistic Children, a registered Canadian Charity dedicated to supporting individuals on the autism spectrum and their families through various services.
- [7] The Borrower is the registered owner of the Real Property. A portion of the Real Property (139 and 141 Main Street) is the site of a 54-unit rehabilitative healthcare and seniors’ residential facility completed in 2012 (the “**Lucan Facility**”). The remaining portion of the Real Property are lands abutting the Lucan Facility that were acquired to allow for an expansion of the Lucan Facility.
- [8] Pursuant to a share purchase agreement dated October 19, 2020, 274 (now JHCR) purchased from 2233525 Ontario Inc., a special purpose entity owned and controlled by MarshallZehr, all of the issued and outstanding shares of the Borrower and thereby acquired control of the Lucan Facility.
- [9] As consideration for the purchase of shares, the Borrower and 274 (now JHCR) assumed the Loans and Security and agreed to amendments to, among other things, increase the principal amount of the Loans and add 274 (now JHCR) as a guarantor of the Loans.
- [10] In 2022, JHCR entered into a funding agreement with the Government of Ontario under which the Ministry of Children, Community and Social Services (the “**Ministry**”)

provided approximately \$7,000 for each autistic resident of the Lucan Facility (the “**Transfer Payment Agreement**”).

### The Loans and Security

- [11] MarshallZehr made three loans described in its factum as the MZ 306 Loan, the MZ 307 Loan and the MZ 308 Loan (collectively, the “**Loans**”). In total MarshallZehr is now owed over \$38 million by the Respondents.
- [12] The Loans were originally advanced between 2014 and 2019 with various amendments as late as 2021. Security granted for the Loans included both Charges over the Real Property and general security agreements from the Borrower.
- [13] 274 (now JHCR) executed several guarantees and postponements of claims in favour of MarshallZehr, among other things, guaranteeing payment of all indebtedness and liability of the Borrower under the Loans. As security for its obligations as guarantor, 274 (now JHCR) granted several general security agreements in favour of MarshallZehr.
- [14] Apart from MarshallZehr’s charges, no other charges are registered on title to the Real Property. Other than MarshallZehr and the Bank of Montreal (which registered a financing statement against the Borrower), no other creditors have registered financing statements against the Respondents.
- [15] Each of the Loans matured on July 1, 2022, they have not been repaid, in fact, since the Borrower acquired control of the Lucan Facility pursuant to the Share Purchase Agreement in 2020, no payments on account of principal or interest have been made by the Borrower.

### Recent Events

- [16] In 2024, MarshallZehr was made aware that the Government of Ontario had raised concerns regarding JHCR and that such concerns were material enough to warrant a Treasury Board audit. Following a Treasury Board audit, MarshallZehr learned that the Government of Ontario had advised JHCR that they were considering terminating the funding for JHCR. By written notice sent in early October 2024, the Ministry terminated the Transfer Payment Agreement with JHCR, effective December 3, 2024, citing ongoing compliance concerns.
- [17] Following the termination of the Transfer Payment Agreement, JHCR lacked the funds to continue to operate the Lucan Facility. Accordingly, on February 12, 2025, the Lucan Facility’s twenty-seven (27) residents with autism and five (5) senior residents were informed that they needed to find alternate housing by the end of that week.

- [18] By letters dated March 5, 2025, MarshallZehr demanded payment of the Loans and sent Notices of Intention to Enforce Security pursuant to section 244 of the BIA. On March 8, 2025, after the Lucan Facility had been vacated, a property manager visited the Lucan Facility on behalf of MarhsallZehr and arranged for the locks to be changed to preserve and protect the property.

## Issue

- [19] There only issue to be determined today, is whether it is just or convenient to appoint a receiver over the assets, properties and undertakings of the Respondents.

## Analysis

- [20] The test for the appointment of a receiver under s. 243 of the BIA or s. 101 of the CJA is whether it is just or convenient.
- [21] In determining whether it is just or convenient to appoint a receiver the court must have regard to all of the circumstances of the case particularly the nature of the property and the rights and interests of all parties in relation to the property: see *Bank of Nova Scotia v Freure Village of Clair Creek*, [1996] OJ No 5088 at para 10. While the appointment of a receiver is generally an extraordinary equitable remedy, where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: see *Bank of Montreal v. Sherco Properties Inc.* 2013 ONSC 7023 at para 41 and 42.
- [22] Although the presence of a contractual entitlement to appoint a receiver is not a determinative factor, here, where the right to appoint a receiver is provided under a mortgage, the remedy becomes less extraordinary see para 44 of *BCIMC Construction Fund Corporation et al. v. The Clover on Young Inc.*, 2020 ONSC 1953.
- [23] As summarized by Justice Osborne in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at para 25, a number of factors have historically been taken into account in the determination of whether it is appropriate to appoint a receiver. The factors are not a checklist, but rather a collection of considerations to be viewed holistically, they include:
- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;

- b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and
- p. the goal of facilitating the duties of the receiver.

[24] In this case, it is just and convenient to appoint a receiver.

[25] The Borrower owes in excess of \$38 million to MarshallZehr.

[26] The Loans matured on July 1, 2022 and were not repaid upon maturity. Under the terms of the Commitment Letters and Security, MarshallZehr is entitled to apply to the Court for the appointment of a receiver upon default.

[27] MarshallZehr has demanded repayment of the total indebtedness and issued the 244 BIA Notices. The notice period under the 244 BIA Notices has since elapsed.

[28] As noted above, the Ministry terminated the Transfer Payment Agreement because of what has been reported in the media as "compliance concerns". Without the funding available through the Transfer Payment Agreement, the Borrower was unable to continue to operate the Lucan Facility and the residents of the Lucan Facility have now vacated the premises.

[29] MarshallZehr has, understandably lost all confidence in the Borrower and its ability to ever repay the Loans.

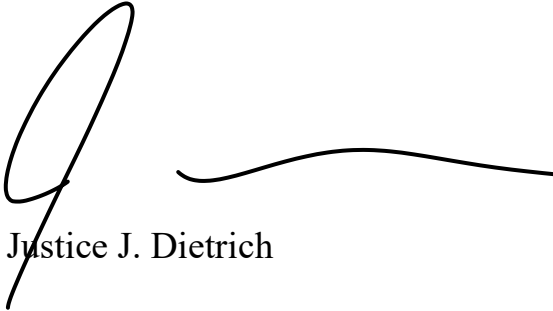
[30] A Court-supervised process will provide best protect the interests of MarshallZehr and other stakeholders, and maximize value for all stakeholders. It will be beneficial to all parties for the Real Property to be sold in an orderly, efficient and transparent process.

[31] TDB is qualified to act as receiver and has consented to do so.

[32] The terms of the proposed receivership order are appropriate and consistent with the Model Order of the Commercial List.

**Disposition**

[33] Accordingly, I grant the receivership order in the form signed by me today.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line that curves slightly upwards at the end.

Justice J. Dietrich

**Amended** as of May 15, 2025 to correct a typo in paragraph 1.