



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

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

DATE: February 20, 2026

NO. ON LIST: 3

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. 2301402 ONTARIO LIMITED et al  
BEFORE: JUSTICE J. DIETRICH

**PARTICIPANT INFORMATION**

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

Name of Person Appearing	Name of Party	Contact Info
--------------------------	---------------	--------------

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

Name of Person Appearing	Name of Party	Contact Info
--------------------------	---------------	--------------

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Harvey Chaiton	Counsel to the Court-Appointed Receiver, TDB Restructuring Limited	harvey@chaitons.com
Danish Afroz		dafroz@chaitons.com
Malecha Anwar		MAнвар@chaitons.com
Alex Krancevic		
Liam Scanlon ---		
Bryan A. Tannenbaum	Receiver, TDB Restructuring Limited	btannenbajm@tdbadvisory.ca
Nisan Thurairatnam		nthurairatnam@tdbadvisory.ca
Jeffrey Berger		jberger@tdbadvisory.ca
Alexander Soutter	Counsel to the Proposed Purchaser, Dementia Care Holdings Inc.	asoutter@tgf.ca
Stephanie Fernandes		sfernandes@tgf.ca
Jim Elsley		jim.elsley@mckenzielake.com
Steven Groeneveld	Counsel to the Ministry of Finance (Ontario)	steven.groeneveld@ontario.ca

## **ENDORSEMENT OF JUSTICE J. DIETRICH:**

### **Introduction**

[1] TDB Restructuring Limited (“**TDB**”), as court-appointed receiver (the “**Receiver**”) of the assets of 2301402 Ontario Limited (the “**Company**”) and Jake’s House Community Residences (collectively, the “**Debtors**”) seeks two orders.

[2] Defined terms used but not otherwise defined herein have the meaning set out in the factum of the Receiver filed for use on this motion.

[3] First, an approval and reverse vesting order (the “**ARVO**”) is sought:

- a. approving the subscription agreement dated February 10, 2026, (as amended, the “**Subscription Agreement**”) among the Receiver and Dementia Care Holdings Inc. (the “**Purchaser**”), and the transactions contemplated thereby (the “**Transaction**”) by way of reverse vesting transaction;
- b. sealing the Confidential Appendices to the Second Report of the Receiver dated (the “**Second Report**”);
- c. authorizing the Receiver to file an assignment into bankruptcy on behalf of ResidualCo.;
- d. granting certain protections to the first director and officer of ResidualCo.
- e. Second, an ancillary order (the “**Ancillary Order**”) is sought:
- f. approving the Second Report and the activities of the Receiver set out therein, including the interim statement of receipts and disbursements attached thereto;
- g. approving the fees and disbursements of the Receiver and its legal counsel; and
- h. approving an interim distribution of the proceeds of the Transaction as set out in the Second Report.

[4] This motion was originally returnable on February 19, 2026. As set out in my endorsement from that day, the matter was adjourned for one day, until today, to provide the Receiver with an opportunity to file additional material. The Receiver has filed a Supplement to the Second Report of the Receiver dated February 19, 2026 (the “**Supplemental Report**”). The Supplemental Report also contains a confidential appendix, being an unredacted letter from Service Canada for which a sealing order is also now sought. The Receiver also advised that, although in the original motion, they are no longer seeking a discharge and release at this time.

[5] There is no opposition to the relief sought.

### **Background**

[6] TDB was appointed Receiver of the assets of the Debtors, including the Real Properties, by order dated May 14, 2025 (the “**Appointment Order**”).

[7] The Company is the legal and beneficial owner of the real properties municipally known as 133, 135, 139, 141 and 143 Main Street, Lucan, Ontario. A 54-unit rehabilitative healthcare and seniors’ residential facility supporting seniors and individuals on the autism spectrum through various services (the “**Lucan Facility**”) was located on certain of the Real Properties. The Lucan Facility was closed, the employment of the employees of the Company terminated and the residents of the Lucan Facility had been relocated, prior to the Receiver’s appointment.

[8] MarshallZehr Group Inc. (“**MarshallZehr**”), is the senior secured creditor of the Debtors and the sole mortgagee of the Real Properties. The Receiver has obtained a legal opinion from RAR Litigation Lawyers (“**RAR**”) in its capacity as independent legal counsel to the Receiver, opining that, subject to usual assumptions and qualifications, MarshallZehr’s first mortgages constitute valid and enforceable charges against the Real Properties.

[9] The Receiver received listing proposals for the Real Properties from three brokerages and ultimately selected Colliers Macaulay Nicolls Inc. (“**Colliers**”), in consultation with MarshallZehr.

[10] Colliers received four (4) offers for the Real Properties, and one (1) offer for the shares of the Company. The offer for the purchase of the Company’s shares was significantly superior, in terms of consideration, to the offers received for only the Real Properties.

[11] The Receiver and the Purchaser have entered into the Subscription Agreement, subject to Court approval, which contemplates a reverse vesting order transaction. The aggregate purchase price for the Purchased Shares of the Company is payable as follows: a) by payment of cash consideration, sufficient to pay priority payables (as defined in the Subscription Agreement; and b) the retained portion of the secured indebtedness owing to MarshallZehr.

[12] As set out in the Supplemental Report, the only assumed contracts under the Subscription Agreement are the Commitment Letter dated January 30, 2026 between the Company and MarshallZehr Group Inc. and the Collective Bargaining Agreement between JHCR and Unifor and its Local 27 for the period August 29, 2022 to September 6, 2026.

[13] The Supplemental Report also provides further information regarding the known tax liabilities. In brief, there is no known outstanding HST, an unsecured amount of \$1,654.15 is owing in respect of payroll deductions and an unsecured amount of approximately \$12,000 is owing in respect of corporate taxes. The Receiver has had discussions with CRA representatives who have confirmed that they do not oppose the relief sought, based on certain amendments to the draft order.

[14] As noted above, the Company had terminated the employment of its employees prior to the Receiver's appointment and the Receiver understands that the Company has no employees at this time. The Receiver has previously assisted the former employees in making claims under the Wage Earner Protection Program and the Receiver has received correspondence from Service Canada that payment totaling \$116,982.70 were made to former employees of the Company.

## **Issues**

[15] The issues before the Court are whether, the Court should:

- a. approve the Subscription Agreement and the Transaction and grant the ARVO;
- b. approve the protections for the First Director contemplated in the ARVO;
- c. approve the Second Report and the conduct and activities of the Receiver described therein including the interim statement of receipts and disbursements;
- d. approve the fees and disbursements of the Receiver and its counsel;
- e. approve the proposed distributions; and
- f. grant the requested limited sealing order.

## **Analysis**

[16] The principles to be applied when determining whether to approve a sale transaction in a receivership proceeding were articulated by the Ontario Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 [**Soundair**]: (a) whether the receiver has made sufficient effort to obtain the best price and has not acted improvidently; (b) the efficacy and integrity of the process by which offers have been obtained; (c) whether the interests of all parties have been considered; and (d) whether there has been unfairness in the working out of the process.

[17] The Receiver solicited listing proposals from established commercial real estate brokerages and selected Colliers in consultation with MarshallZehr as first secured creditor. There was an extensive marketing process

undertaken by Colliers, the chosen real estate brokerage, that broadly canvassed the market and ultimately resulted in 72 interested parties executing Confidentiality Agreements and five offers.

[18] The Receiver is of the view that the Transaction implemented through the proposed ARVO represents the most advantageous result available in the circumstances. The Purchaser's offer for the Company's shares is significantly superior to any of the offers received for only the Real Properties. The Receiver is of the view that further marketing or an alternative transaction structure would be unlikely to result in a superior outcome and would only result in increased professional fees, which would be to the detriment of the estate.

[19] I am satisfied that the *Soundair* factors have been satisfied. However, that is not the end of the analysis given the proposed reverse vesting transaction structure.

[20] In *Harte Gold Corp. (Re)* 2022 ONSC 653, Justice Penny held that the following factors should be considered by the Court when determining whether a proposed reverse vesting transaction is appropriate: (i) whether the reverse vesting order is necessary; (ii) whether the reverse vesting transaction structures produces an economic result at least as favourable as any other viable alternative; (iii) whether any stakeholder is worse off under the reverse vesting transaction structure than they would have been under any other viable alternative; and, (iv) whether the consideration being paid for the debtors' business reflects the importance and value of the licenses and permits (or other intangible assets) being preserved under the reverse vesting transaction structure.

[21] Here, there are no licenses or permits which are being preserved. Rather, the Transaction is designed to preserve the Purchaser's ability to maximize the tax attributes of the Company including approximately \$22.5 million in non-capital loss carryforwards. In this respect, based on certain changes made to the requested ARVO, CRA does not raise any opposition.

[22] The Receiver also notes as an incidental benefit is that the structure of the Transaction permits the Purchaser to acquire shares of the Company (which does not attract land transfer taxes) rather than directly acquire the Real Property (which would attract land transfer taxes). In this respect, counsel for the Ontario Ministry of Finance appeared and advised that although they take no position on the relief currently before the Court, they do have concerns with a reverse vesting structure being used solely to avoid land transfer taxes. However, given the circumstances, this is not something I need to address further at this time.

[23] Courts have granted reverse vesting orders where there is, among other things, a potential loss of tax attributes through a traditional approval and vesting order that would affect the purchaser's willingness or ability to complete the transaction: see *Comark Holdings et al.*, (March 21, 2025), Ontario Superior Court of Justice (Commercial List), Court File No. CV-25-00734339-00CL (Endorsement of Justice Cavanagh at para 12 and 13).

[24] To the Receiver's knowledge, there are no further WEPP payments to be received by the former employees of the Company. Although going forward, after closing of the Transaction, the Company will no longer be subject to the Receivership Order, this does not change the fact that there was a receiver appointed in relation to the Company.

[25] I am satisfied the Transaction, with the reverse vesting structure will generate the best economic result possible in the circumstances while also realizing the value of the Company's tax losses, which would not have been possible in an asset sale. Given the evidence before me, including in the Supplemental Report, I am satisfied that no stakeholders will be worse off under the proposed reverse vesting structure than they would be under any other viable alternative. In light of the Company's outstanding obligations to its secured creditors, there will be no recovery for unsecured creditors under this or any alternative structure. Unsecured creditors would likewise not be expected to receive any recovery if the Transaction were completed through an asset sale rather than the ARVO.

[26] A representative of MarshallZehr has agreed to act as the First Director of Residual Co. as required for the incorporation of Residual Co. as part of the Transaction. The First Director has agreed to assume this role

upon certain conditions, including receipt of certain protections pursuant to the ARVO. The Director of the CBCA was served with the motion materials and the Director of the CBCA has confirmed that he does not have comments on the proposed ARVO sought.

[27] I am also satisfied that the proposed distribution of the cash portion of the Transaction proceeds is appropriate in the circumstances.

[28] The limited sealing order being sought in respect of the Confidential appendices to the Second Report is necessary to preserve the Receiver's ability to maximize the value of the Real Properties in the event of the Transaction does not close. I am satisfied that the requested sealing order for the confidential appendices to the Second Report (being a summary of offers received and an unredacted version of the APS) meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 [***Sherman Estate***] at para 38 and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. I am also satisfied that the Confidential Appendix to the Supplemental Report (being an unredacted copy of a letter form Service Canada listing particulars of former employees of the Company along with wage information) also meets the test in *Sherman Estate* in that that publically disclosing employee compensation violates privacy interests of those employees, especially as the employees themselves have not initiated any court proceeding that would require production of the information. The Receiver is directed to follow the applicable guidelines for the filing of sealed material with the court, and to eventually apply, at the appropriate time, for an unsealing order, if necessary.

[29] The request to approve the Second Report is not unusual and there are good policy and practical reasons for doing so: see *Laurentian University of Sudbury*, 2022 ONSC 2927 at paras. 13-14, citing *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras. 2, 12, 22. The observations in those cases while made in the context of a *Companies' Creditors Arrangement Act* proceeding apply to the activities of a court appointed receiver: see *Triple-I Capital Partners Limited v 12411300 Canada Inc*, 2023 ONSC 3400 at para 66. No opposition to the approval of the Second Report has been raised and its approval as well as the approval of the interim statement of receipts and disbursements is appropriate in the circumstances as the Receiver has acted reasonably and in good faith. The draft order provided contains the typical language that only the Receiver is entitled to rely on the approval.

[30] The Receiver also seeks approval of the fees and disbursements of the Receiver and its legal counsel, as set out in the fee affidavits. In this respect, as the Court of Appeal for Ontario held in *Bank of Nova Scotia v Diemer* 2014 ONCA 851 at paras 33 and 45, this Court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the property and liabilities as well as the complexity of the proceeding. In considering these guiding principles, the fees of the Receiver and its counsel are appropriate and are approved, subject to the comments immediately below regarding the proposed fee accruals.

## **Disposition**

[31] Orders to go in the form signed by me this day.



Date: February 20, 2026

Justice J. Dietrich