

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL 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

**AIDE MEMOIRE OF BUTTCON LIMITED
(Case Conference March 7, 2025)**

Overview

1. Counsel for MarshallZehr Group Inc. (“**MarshallZehr**”) has requested this Case Conference after advising, on February 28, 2025, that she could not proceed with her client’s motion to determine priority issues. It is unclear as to how MarshallZehr intends to proceed, other than counsel intends to file further motion materials and have cross-examinations.

Background

2. La Pue International Inc. (“**La Pue**”) owns or owned the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (“**Real Property**”).

3. Buttcon Limited (“**Buttcon**”) and La Pue entered into a construction contract dated April 28, 2020 (“**Contract**”) for the construction to take place on the Real Property. The project or improvement was going to be the construction of three mid-rise buildings consisting of one mixed use, one hotel and one residential building.
4. On December 1, 2021, MarshallZehr registered a mortgage against La Pue’s Real Property with respect to a loan advance of approximately \$12.4 million to La Pue. That loan facility went into default.
5. Between February 2023 and May 2023, eight construction liens totaling approximately \$13.6 million were registered against the Real Property. Buttcon has the largest lien in the amount of \$8,205,941.87. La Pue did not segregate any funds for the lien holdback or holdbacks.

Receivership

6. On October 19, 2023, on an application by MarshallZehr, the Court appointed KSV Restructuring Inc. as receiver over the property, assets and undertakings of the La Pue, including the Real Property (“**Receiver**”).
7. On January 7, 2025, La Pue’s Receiver was granted an order approving the sale of the Real Property to a purchaser. That order was subject to an unsuccessful appeal, and a further motion to redeem by La Pue on February 21, 2025. The status of the sale transaction has not been disclosed by the Receiver.

MarshallZehr's Motion

8. On January 6, 2025, the Honourable Justice J. Dietrich scheduled the MarshallZehr's motion for a determination of whether its mortgage constitutes a "prior" mortgage pursuant to section 78(3) of the *Construction Act* and, as a consequence, has priority over the entire amount of the liens registered on title against the Respondent's Real Property. A copy of Her Honour's Endorsement is attached as **Tab "A"**.
9. Earlier, counsel for MarshallZehr advised that its motion "may negate the requirement for the Receiver to conduct a review of the lien claims." Attached at **Tab "B"** is a copy of the Aide Memoire of the Applicant served by Maya Poliak dated January 3, 2025.
10. All the parties did not deliver their motion materials on time.
11. On January 14, 2025, and not January 10, 2025, counsel for MarshallZehr served her motion record. No explanation was provided for the later date.
12. Responding Materials were to be served by February 5, 2025. However, given the late delivery of motion materials, Buttcon was only able to serve its responding motion materials on February 19, 2025.
13. On February 28, 2025, counsel for MarshallZehr wrote that she was not proceeding with the motion on March 7, 2025, and asked that hearing the hearing date be used as a Case Conference. There has been no further communication from MarshallZehr's counsel until receipt of MarshalZehr's Aide de Memoire.

MarshallZehr's Change of Direction

14. MarshallZehr now seeks to alter the relief and substance of the relief that the Court is to consider by seeking to have the issue of priority and the amount of the lien holdback dealt with together.
15. Buttcon opposes such a request as it would involve Buttcon now having to respond to relief different than what was scheduled and which it responded to. The determination of the quantum of the holdback involves a different adjudication process, involving the marshalling and consideration of other and different evidence. It involves the review of the contract price, millions of dollars of the services and materials provided, the review of specifications, change orders, the subcontracts and invoices of numerous subcontractors.
16. The determination of the quantum of the holdback is also not necessary for there to be a determination of the issue of priority. The priority issue involves a consideration of when the first liens arose in relation to when the mortgage was registered, and funds were advanced. It is a far different issue than the determination of the quantum of the holdback, which involves the entire history of the project.
17. Buttcon is also concerned that this change in scope of the motion is being proposed in the context when MarshallZehr and the Receiver have not been transparent as to their intentions with respect to the motion that was to be heard. It was not at all clear that the Receiver had been requesting documents to determine priority issues with MarshallZehr. Attached under **Tab C** is counsel's email chain to counsel for the Receiver on February 27, 2025.

18. In the circumstances, Buttcon asks for an order as follows:

- (a) MarshallZehr serve its reply motion materials, if any, on or by March 14, 2025;
- (b) Cross-examinations to be conducted on or by April 30, 2025; and
- (c) Motion on the issue of priority to be heard in May, 2025 based on the availability of the Court and counsel.



Dated: March 6, 2025.

Fernando Souza,
Counsel for Buttcon Limited

TAB A



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00700695-00CL DATE: January 6, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: **MARSHALLZEHR GROUP INC. v. LA PUE
INTERNATIONAL INC.**

BEFORE JUSTICE: **Justice J. Dietrich**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Moving Party	maya@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Howard F. Manis Daniel Litsos	Lawyers for the Respondent, La Pue International Inc.	hmanis@manislaw.ca dlitsos@manislaw.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Andrew Beney	Lawyers for HC Matcon Inc.	beney@paveylaw.com
Dylan Dilks	Lawyers for Kada Group Inc.	ddilks@weirfoulds.com
James Maclellan	Lawyers for The Sovereign General Insurance Company	jmaclellan@blg.com
Murtaza Tallat	Court-Appointed Receiver	mtallat@ksvadvisory.com

Noah Goldstein		ngoldstein@ksvadvisory.com
Adrienne Ho Brian Chung Miranda Spence	Lawyers for the Receiver, KSV Restructuring Inc.	aho@airdberlis.com bchung@airdberlis.com mspence@airdberlis.com
Fernando Souza	Counsel for Buttcon Limited	fsouza@lawtoronto.com
Jason Wadden	Counsel for the Purchaser	jwadden@tyrllp.com

ENDORSEMENT:

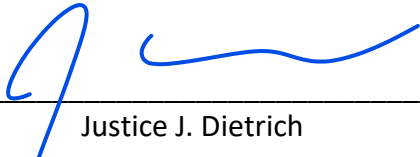
MarshallZehr Group Inc. (the "Applicant") seeks to schedule a motion for a determination of whether its mortgage constitutes a prior mortgage pursuant to section 78 (3) of the Construction Act and as a consequence, has priority over the entire amount of the liens registered on title against the relevant real property.

Counsel for a number of the construction lien claimants, including Buttcon Limited, HC Matcon Inc. and Kada Group Inc. attended today.

The motion is scheduled for 90 minutes on March 7, 2025 in accordance with the following timetable:

- 1. The Applicant shall deliver its motion material on or before January 10, 2025**
- 2. Any responding motion material to be delivered on or before February 5, 2025**
- 3. Cross examinations, if any on or before February 14, 2025**
- 4. Factum of the Applicant to be delivered on or before February 21, 2025**
- 5. Any responding facta to be delivered on or before February 28, 2025**

All material to be posted in case center no later than 3 days prior to the hearing.


Justice J. Dietrich

Date: January 6, 2025

TAB B

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL 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

**AIDE MEMOIRE OF THE APPLICANT
(Case Conference January 6, 2025)**

1. This case conference was scheduled by Justice Steele on December 18, 2024 at the request of MarshallZehr Group Inc. (“MZ”). A copy of Her Honour’s Endorsement is attached as **Exhibit “A”**.

2. MZ seeks to schedule a motion for determination of the issue of whether its mortgage constitutes a prior mortgage pursuant to section 78(3) of the *Construction Act*¹ and, as a consequence, has priority over the entire amount of the liens registered on title against the Real Property (as defined below).

¹ R.S.O. 1990, c. C.30 (the “*Act*”)

Background

3. La Pue International Inc. (the “**Debtor**”) is a single purpose entity that owns the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”).

4. Pursuant to a commitment letter dated November 15, 2021, as amended, made a loan to the Debtor in the principal amount of approximately \$12.4 million to the Debtor for the purpose of refinancing an existing loan (the “**Prior Mortgage**”). The entirety of the funds advanced by MZ to the Debtor was used for that purpose.

5. As security for its loan, MZ obtained, among other things, a first ranking mortgage which was registered against the Real Property on December 1, 2024. As at December 2024, the Debtor is indebted to MZ in the amount of approximately \$20.4 million.

6. Between February 2023 and May 2023, eight construction liens totaling approximately \$13.6 million were registered against the Real Property. The Debtor did not segregate any funds for the lien holdback. A copy of the parcel search is attached as **Exhibit “B”**.

Receivership Proceeding

7. The Debtor defaulted on its loan obligations to MZ. On October 19, 2023, on an application by MZ, the Court appointed KSV Restructuring Inc. as receiver over the property, assets and undertakings of the Debtor, including the Real Property.

8. The Receiver brings a motion, returnable on January 6, 2025, for an order, among other things, approving the sale of the Real Property and distributing net sale proceeds, less the maximum deficiency in holdback amount of approximately \$1.4 million. The Receiver seeks to establish a holdback reserve of approximately \$1.4 million pending its review of the lien claims.

9. Counsel for the Receiver wrote to counsel for the lien claimants in December 2024 and requested that the lien claimants provide supporting information by January 10, 2025.

Prior Mortgage

10. Section 78(3) of the *Act* governs priorities between lien claimants and prior mortgages. Section 78(3) provides as follows:

(3) Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,

- (a) the actual value of the premises at the time when the first lien arose; and
- (b) the total of all amounts that prior to that time were,
 - (i) advanced in the case of a mortgage, and
 - (ii) advanced or secured in the case of a conveyance or other agreement.

11. MZ submits that its mortgage constitutes a prior mortgage under section 78(3) and, as a consequence, has full priority of the lien claims, for the following reasons:

- a. the entirety of the funds advanced by MZ and secured by its mortgage was used to refinance the Prior Mortgage;
- b. courts have previously found that a mortgagee that pays off prior encumbrances is entitled to be subrogated to the payee's priority position²; and
- c. the Prior Mortgage was registered on February 25, 2020 well before any lien arose.

12. A finding that MZ's mortgage constitutes a prior mortgage under section 78(3) of the Act may negate the requirement for the Receiver to conduct a review of the lien claims. Accordingly, MZ seeks to schedule the motion for the determination of this threshold issue.



January 3, 2025

Maya Poliak
Chaitons LLP

² [Ontario Wealth Management Corp. v. 1713515 Ontario Ltd., 2013 ONSC 6503 \(Ont. S.C.J.\)](#)

EXHIBIT A



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00700695-00CL

DATE: December 18, 2024

NO. ON LIST: #5

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. LA PUE INTERNATIONAL INC.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For the Applicant:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Counsel for the Applicant, Marshallzehr Group Inc.	maya@chaitons.com

For the Respondent:

Name of Person Appearing	Name of Party	Contact Info
Daniel Litsos	Counsel for the Respondent, La Pue International Inc.	dlitsos@manislaw.ca

For Others:

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence	Counsel for the Court Appointed Receiver, KSV Restructuring Inc.	mspence@airdberlis.com
Fernando Souza	Counsel for Buttcon Ltd.	fsouza@lawtoronto.com

ENDORSEMENT OF JUSTICE STEELE:

- [1] The Receiver's motion that was scheduled for today for, among other things, an approval and vesting order is adjourned on consent to **January 6, 2025 at 10 am (90 minutes) via Zoom.**
- [2] The applicant seeks to schedule an additional motion; however all the lien claimants were not present today. Accordingly, a scheduling appointment is booked for **January 6, 2025 at 9:30 am (15 minutes) via Zoom.**


A handwritten signature in blue ink, appearing to be "J. Lee", is centered on the page.

EXHIBIT B

LAND
REGISTRY
OFFICE #59

64349-0257 (LT)

PREPARED FOR DePinto1
ON 2023/05/24 AT 09:39:13

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273; VILLAGE OF NIAGARA FALLS; NIAGARA FALLS;PART LOTS 43, 44, 45, PLAN 273; VILLAGE OF NIAGARA FALLS; AS IN RO712797, NIAGARA FALLS;LOTS 48, 49,& 50, PLAN 273, & PART LOT 47, PLAN 273; NIAGARA FALLS, SURFACE ONLY AS IN RO718049; NIAGARA FALLS.

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:

CONSOLIDATION FROM 64349-0181, 64349-0200, 64349-0202, 64349-0203, 64349-0204, 64349-0205, 64349-0214, 64349-0215

PIN CREATION DATE:

2020/01/14

OWNERS' NAMES

LA PUE INTERNATIONAL INC.

CAPACITY SHARE

ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2020/01/14 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 1999/09/20 **						
NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY						
NOTE: THIS PROPERTY WAS RETIRED ON 2022/03/11. THIS PROPERTY IS NOW RE-ENTERED INTO THE FOLLOWING PROPERTY: 64349-0258						
SN549654	2018/04/20	TRANSFER	\$2,100,000	MALMER HOLDINGS LTD.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN549655	2018/04/20	TRANSFER	\$250,000	NIACAN LTD.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN549656	2018/04/20	TRANSFER	\$2,000,000	2075790 ONTARIO INC.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN586064	2019/04/17	CHARGE		*** DELETED AGAINST THIS PROPERTY *** LA PUE INTERNATIONAL INC.	HILLMOUNT CAPITAL INC.	
SN586065	2019/04/17	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** LA PUE INTERNATIONAL INC.	HILLMOUNT CAPITAL INC.	
REMARKS: SN586064.						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND
REGISTRY
OFFICE #59

64349-0257 (LT)

PREPARED FOR DePinto1
ON 2023/05/24 AT 09:39:13

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SN590165	2019/05/30	CHARGE		*** DELETED AGAINST THIS PROPERTY *** LA PUE INTERNATIONAL INC.	CTG SOLUTIONS INC.	
SN613492	2019/12/12	APL CONSOLIDATE		LA PUE INTERNATIONAL INC.		C
SN616664	2020/01/15	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** HILLMOUNT CAPITAL INC.	HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.	
		<i>REMARKS: SN586064</i>				
SN619980	2020/02/14	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** HILLMOUNT CAPITAL INC.	HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.	
		<i>REMARKS: SN586064.</i>				
SN620981	2020/02/25	CHARGE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	MAPLE CORP INVESTMENTS RIVERSIDE HUMBER CORP. FREEMAC TILE & GRANITE INCORPORATED ROSSI, FREDY 1620375 ONTARIO LIMITED 2205633 ONTARIO LIMITED CBB HOLDINGS INC. 672510 ONTARIO LIMITED SERICCHI, DOMINIC	
SN620982	2020/02/25	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	MAPLE CORP INVESTMENTS RIVERSIDE HUMBER CORP. FREEMAC TILE & GRANITE INCORPORATED ROSSI, FREDY 1620375 ONTARIO LIMITED 2205633 ONTARIO LIMITED CBB HOLDINGS INC. 672510 ONTARIO LIMITED SERICCHI, DOMINIC	
		<i>REMARKS: SN620981.</i>				
SN621017	2020/02/25	DISCH OF CHARGE		*** COMPLETELY DELETED *** HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.		
		<i>REMARKS: SN586064.</i>				
SN621028	2020/02/25	DISCH OF CHARGE		*** COMPLETELY DELETED *** CTG SOLUTIONS INC.		

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ON 2023/05/24 AT 09:39:13

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		REMARKS: SN590165.				
SN625230	2020/04/02	NO APL ABSOLUTE		LA PUE INTERNATIONAL INC.		C
SN629148	2020/05/14	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
		REMARKS: AGREEMENT				
SN629238	2020/05/14	POSTPONEMENT		*** COMPLETELY DELETED *** MAPLE CORP INVESTMENTS RIVERSIDE HUMBER CORP. FREEMAC TILE & GRANITE INCORPORATED ROSSI, FREDY 1620375 ONTARIO LIMITED 2205633 ONTARIO LIMITED CBB HOLDINGS INC. 672510 ONTARIO LIMITED SERICCHI, DOMINIC	THE CORPORATION OF THE CITY OF NIAGARA FALLS	
		REMARKS: SN620981 TO SN629148				
SN642462	2020/09/18	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
		REMARKS: SITE PLAN AGREEMENT				
SN643628	2020/09/28	APL DEPOSIT PLAN		*** COMPLETELY DELETED ***		
59R16793	2020/10/01	PLAN REFERENCE				C
		REMARKS: SN643628.				
SN644351	2020/10/01	CHARGE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	C.P.M.C. MARQUEZ HOLDINGS INC.	
SN644352	2020/10/01	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	C.P.M.C. MARQUEZ HOLDINGS INC.	
		REMARKS: SN644351.				
SN644659	2020/10/02	CHARGE	\$2,000,000	LA PUE INTERNATIONAL INC.	THE SOVEREIGN GENERAL INSURANCE COMPANY	C
SN658896	2021/01/26	NOTICE	\$1	LA PUE INTERNATIONAL INC.	THE SOVEREIGN GENERAL INSURANCE COMPANY	C
		REMARKS: SN644659				
SN664157	2021/03/05	NOTICE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	MAPLE CORP INVESTMENTS RIVERSIDE HUMBER CORP.	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
					FREEMAC TILE & GRANITE INCORPORATED ROSSI, FREDY 1620375 ONTARIO LIMITED 2205633 ONTARIO LIMITED CBB HOLDINGS INC. 672510 ONTARIO LIMITED SERICCHI, DOMINIC	
SN664158	2021/03/05	NOTICE		*** COMPLETELY DELETED *** LA PUE INTERNATIONAL INC.	C.P.M.C MARQUEZ HOLDINGS INC.	
SN666113	2021/03/22	BYLAW DEEM PLNP		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
SN666891	2021/03/26	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
SN703091	2021/12/01	CHARGE	\$13,800,000	LA PUE INTERNATIONAL INC.	MARSHALLZEHR GROUP INC.	C
SN703094	2021/12/01	NO ASSGN RENT GEN		LA PUE INTERNATIONAL INC.	MARSHALLZEHR GROUP INC.	C
SN703098	2021/12/01	POSTPONEMENT		THE SOVEREIGN GENERAL INSURANCE COMPANY	MARSHALLZEHR GROUP INC.	C
SN703200	2021/12/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** MAPLE CORP INVESTMENTS RIVERSIDE HUMBER CORP. FREEMAC TILE & GRANITE INCORPORATED ROSSI, FREDY 1620375 ONTARIO LIMITED 2205633 ONTARIO LIMITED CBB HOLDINGS INC. 672510 ONTARIO LIMITED SERICCHI, DOMINIC		
SN703201	2021/12/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** C.P.M.C. MARQUEZ HOLDINGS INC.		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SN703255	2021/12/01	RESTRICTION-LAND <i>REMARKS: PROHIBITING ANY FURTHER CHARGE OF SUCH LANDS</i>		LA PUE INTERNATIONAL INC. <i>WITHOUT THE CONSENT OF MARSHALLZEHRGROUP INC.</i>		C
59R17206	2022/03/11	PLAN REFERENCE				C
SN716940	2022/03/11	APL ABSOLUTE TITLE <i>REMARKS: SN625230</i>		LA PUE INTERNATIONAL INC.	LA PUE INTERNATIONAL INC.	C

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MARSHALLZEHR GROUP INC.
Applicant

-and-

LA PUE INTERNATIONAL INC.
Respondent

Court File No. CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AIDE MEMOIRE OF THE APPLICANT

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)
Tel: (416) 218-1161
E-mail: maya@chaitons.com

Lawyers for the Applicant

TAB C

Fernando Souza

From: Fernando Souza
Sent: February 27, 2025 4:16 PM
To: 'Adrienne Ho'; Kyle Plunkett
Cc: Emilio Bisceglia; Cecilia Cece; Miranda Spence; Brian Chung
Subject: RE: La Pue- Claim + Document Request

Adrienne,

My apologies for delay in responding to your email. I have been sick and out of the office this week and probably will only be able to return to the office sometime next week. That being said, I am concerned that your email is not responsive to my email to Kyle. There is a lack of transparency that is of concern. I would thus like to know what the Receiver's intentions are with respect to MarshallZehr's motion. I have not heard from Ms. Poliak, so I would ask that you advise as to your position on its motion, and whether you will be filing motion materials.

In terms of the first question, Buttcon Limited has a contractor's lien pursuant to section 31 (2) of the *Construction Act*, R.S.O. 1990, c. C. 30, so that the last date of supply is not applicable. Buttcon did not and has not received a notice of termination of its contract, and it continued to supply under the contract past the time when its lien was registered. Buttcon's lien does include some, but not all the amounts, claimed by HC Matcon Inc., Kada Group Inc and TT Galbraith Electric. It also includes the amount claimed by Astro Excavating Inc. However, there are contractual issues and disputes between the parties. For example, there are issues with respect to whether some of the supply of Astro and HC Matcon was outside the scope of any subcontracts with Buttcon and was provided directly to La Pue. There was no early release of holdback.

Lastly, can you advise if the sale of the La Pue property has closed?

Fernando Souza
Associate

Bisceglia&Associates
Litigation | Advocacy

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From: Adrienne Ho <aho@airdberlis.com>
Sent: February 24, 2025 5:37 PM
To: Fernando Souza <FSouza@lawtoronto.com>; Kyle Plunkett <kplunkett@airdberlis.com>
Cc: Emilio Bisceglia <EBisceglia@lawtoronto.com>; Cecilia Cece <cecilia@lawtoronto.com>; Miranda Spence <mspence@airdberlis.com>; Brian Chung <bchung@airdberlis.com>
Subject: RE: La Pue- Claim + Document Request

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Hi Fernando,

We ask that your client at least provide us with, as soon as possible:

- a) Evidence that the lien was indeed filed in time (ie proof of last supply)
- b) Confirmation that the following trades are subcontractors of Buttcon:
 - a. Astro Excavating Inc.
 - b. HC Matcon Inc.
 - c. Kada Group Inc.
 - d. TT Galbraith Electric Inc.

That is, to the extent that there is a holdback claim, are all the parties listed above are subsumed within Buttcon's own holdback claim?

Is your client able to at least provide us with the invoices that support the quantum of Buttcon's lien and the amount of the holdback claim? Presumably, these would have been gathered for the purposes of registering the lien. Further, to the extent that there was an early release of holdback to Buttcon (or to any of the trades), please advise.

For greater clarity, nothing in this email is an admission that the Receiver has accepted Buttcon, or any other party's lien claim.

Best Regards,

Adrienne Ho
Associate

T 416.637.7980
E aho@airdberlis.com

Aird & Berlis LLP

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From: Fernando Souza <FSouza@lawtoronto.com>

Sent: February 24, 2025 3:00 PM

To: Kyle Plunkett <kplunkett@airdberlis.com>; Adrienne Ho <aho@airdberlis.com>

Cc: Emilio Bisceglia <EBisceglia@lawtoronto.com>; Cecilia Cece <cecilia@lawtoronto.com>; Miranda Spence <mspence@airdberlis.com>; Brian Chung <bchung@airdberlis.com>

Subject: RE: La Pue- Claim + Document Request

Kyle,

Maya's submissions to the court, in her Aide Memoire of January 3, 2025, were that if MZ mortgage is a "prior mortgage" then there would not be a need for the Receiver to review the lien claims. See attached at paragraph 12. I think the evidence establishes that the MZ mortgage is a subsequent mortgage, but that is the issue that will be determined on the hearing of the motion.

You have MarshallZehr's motion record, and my client's responding materials. Why would that not be enough to deal with the specific issues of the motion for the Receiver? Do you anticipate filing a Receiver's report for the motion?

Fernando Souza
Associate

Bisceglia&Associates

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From: Kyle Plunkett <kplunkett@airdberlis.com>
Sent: February 24, 2025 2:14 PM
To: Fernando Souza <FSouza@lawtoronto.com>; Adrienne Ho <aho@airdberlis.com>
Cc: Emilio Bisceglia <EBisceglia@lawtoronto.com>; Cecilia Cece <cecilia@lawtoronto.com>; Miranda Spence <mspence@airdberlis.com>; Brian Chung <bchung@airdberlis.com>
Subject: RE: La Pue- Claim + Document Request

Thanks, Fernando. Yes, the Receiver will be asked to weigh in and, accordingly, we would like to have full understanding of the documents and facts.

Kyle Plunkett
Partner

T 416.865.3406
E kplunkett@airdberlis.com

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From: Fernando Souza <FSouza@lawtoronto.com>
Sent: February 24, 2025 1:59 PM
To: Adrienne Ho <aho@airdberlis.com>
Cc: Emilio Bisceglia <EBisceglia@lawtoronto.com>; Cecilia Cece <cecilia@lawtoronto.com>; Kyle Plunkett <kplunkett@airdberlis.com>
Subject: RE: La Pue- Claim + Document Request

Adrienne,

My client is working on it, but I understood that the receiver was not going to be reviewing the liens pending the outcome of the MarshallZehr's motion.

In relation to that motion, is the Receiver going to be taking a position?

Fernando Souza

Associate

Bisceglia & Associates

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From: Adrienne Ho <aho@airdberlis.com>

Sent: February 24, 2025 1:54 PM

To: Fernando Souza <FSouza@lawtoronto.com>

Cc: Emilio Bisceglia <EBisceglia@lawtoronto.com>; Cecilia Cece <cecilia@lawtoronto.com>; Kyle Plunkett <kplunkett@airdberlis.com>

Subject: RE: La Pue- Claim + Document Request

Hi Fernando,

Please provide us with your client's documents as soon as possible.

Best Regards,

Adrienne Ho
Associate

T 416.637.7980

E aho@airdberlis.com

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MARSHALLZEHR GROUP INC.
Applicant

– and -

LA PUE INTERNATIONAL INC.
Respondent

Court File No. CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AIDE MEMOIRE OF BUTTCON LIMITED

BISCEGLIA & ASSOCIATES
Professional Corporation

Barristers-at-Law
9100 Jane Street,
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Lawyers for the Lien Claimant,
Buttcon Limited