



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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

DATE: February 21, 2025

NO. ON LIST: 1

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

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Lawyer for Marshallzehr Group Inc	maya@chaitons.com

For Respondent, Responding Party:

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

For Self-Rep, Other Party:

Name of Person Appearing	Name of Party	Contact Info
Mitchell Lightowler	Lawyer for Proposed Purchaser 1000835091 Ontario Inc	mightowler@millerthomson.com
Adrienne Ho Miranda Spence	Lawyers for Receiver, KSV Restructuring Inc.	aho@airdberlis.com mspence@airdberlis.com
Andrew Beney	Lawyer for HC Matcon Inc.	beney@paveylaw.com
Carlos Sayao	Lawyer for Anthony Defrancesco	csayao@tyrllp.com
Fernando Souza	Lawyer for Buttcon Limited	fsouza@lawtoronto.com
Dylan Dilks	Lawyer for Kada Group Inc	ddilks@weirfoulds.com

ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

- [1] KSV Restructuring Inc. was appointed as receiver (the “**Receiver**”) by Order dated October 19, 2023, of all of the assets, undertakings and properties of La Pue International Inc. (the “**Company**”), including the real property municipally known as 5528 Ferry Street, Niagara Falls.
- [2] As described below, on January 7, 2025, over the objection of the Company, I granted an approval and vesting order in this matter (the “**Approval and Vesting Order**”). The Company has now brought a motion seeking an order granting it leave to redeem the mortgage indebtedness owed to the Applicant and payout all associated costs of the receivership proceeding.

Background

- [3] On January 7, 2025, I released an endorsement (the “**January 7, 2025 Endorsement**”) in this matter. Defined terms not otherwise defined herein, have the meaning provided for in the January 7, 2025 Endorsement. Further background is provided in the January 7, 2025 Endorsement and is not repeated here.
- [4] Among other things, in the January 7, 2025 Endorsement, I approved a Transaction as requested by the Receiver, over the objection of the Company. At that time, the Company argued, among other things, that the sale process leading to the Transaction was flawed and that the Company should be granted additional time to redeem the mortgage of MarshallZehr. I denied the Company's request for leave to redeem at that time and the Approval and Vesting Order was granted.
- [5] The Company sought to appeal the Approval and Vesting Order. On February 19, 2025, the Ontario Court of Appeal released a decision finding that the Company required leave to appeal the Approval and Vesting Order and denied leave to do so: see *Marshallzehr Group Inc. v. La Pue International Inc.* 2025 ONCA 124.
- [6] Following the granting of the Approval and Vesting Order, the Receiver filed a motion record seeking to amend that order to reflect an assignment by the Purchaser of its rights under the relevant agreement to 1001082540 Ontario Inc. In response, the Company filed a cross-motion objecting to the requested amendment to reflect the assignment of the Lakeshore APS and again seeking leave to redeem the mortgage of the Applicant.

Issue

- [7] The Receiver has withdrawn its motion seeking an amendment of the Approval and Vesting Order.
- [8] Accordingly, the only issue to be determined at this time is whether the Company should now be granted leave to redeem the Applicant's mortgage and payout all associated costs of the receivership proceeding.

Analysis

- [9] In large part the Company's request to redeem mirrors the relief they sought in objecting to the Receiver's request for approval of the Transaction. There are, however, two main factual differences.
- [10] First, the Company has provided additional evidence that it has funds available. The Receiver notes in the Seventh Report dated February 20, 2025, that it appears the Applicant has approximately \$23.6 million in committed financing – subject only to a condition that 'clear title' to the Property is required. In that regard, counsel to the Company has advised the Receiver that it is in discussions with lien claimants to subordinate their interest to the new lenders. The status of these discussions is not clear, however the construction lien claimants support the Company's request on this motion (as they supported the Company's request at the hearing which led to the January 7, 2025 Endorsement). Counsel to the Company says slightly more funds (approximately \$23.75 million) are held in trust and a new commitment has just been received (dated February 20, 2025) for up to \$26 million. There is a dispute about whether the amount of funding available is sufficient to cover not only the amounts owed to the Applicant, but the various costs of the receivership proceeding including the Purchaser's costs.
- [11] Second, the Approval and Vesting Order exists. The Approval and Vesting Order approves the Transaction and authorizes and directs the Receiver to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser. Counsel to the Company agrees that the Approval and Vesting Order has not been stayed and leave to appeal has been denied. Rather, the Company argues that it is inherent in their request for leave to redeem that the Approval and Vesting Order be set aside. No motion to vary or set aside the Approval and Vesting Order was brought.
- [12] The law relating to a debtor's right to redeem remains as expressed in my January 7, 2025 Endorsement. The Court of Appeal in para 9 of *Peahill Capital Inc. v. 1000093910 Ontario Inc.* 2024 ONCA 584 [*Peahill*] noted that the motion judge in the lower court in *Peahill* correctly recognized that paras 9 and 10 of *Rose-Isli Corp. v. Smith*, 2023 ONCA 548 [*Rose-Isli*] set out the governing principles that guided his decision. In *Rose-Isli* the Court of Appeal stated:

[9] We see no error in the motions judge applying the following principles to guide her consideration of whether, in the specific circumstances, 273 Ontario should be granted leave to redeem:

- In considering a request by an encumbrancer to redeem a mortgage on property in receivership, a court should consider the impact that allowing the encumbrancer to exercise its right of redemption would have on the integrity of a court-approved sales process;
- Usually, if a court-approved sales process has been carried out in a manner consistent with the principles set out in *Royal Bank of Canada v. Soundair Corp.*, (1991), 1991 CanLII 2727 (ON CA), 4 O.R. (3d) 1 (C.A.), a court should not permit a later attempt to redeem to interfere with the completion of the sales process. In our view, the reason the *Soundair* principles apply to circumstances where an encumbrancer seeks to redeem a mortgage is that once the court's process has been invoked to supervise the sale of assets under receivership, the process must take into consideration all affected economic interests in the properties in question, not just those of one creditor; and
- In dealing with the matter, a court should engage in a balancing analysis of the right to redeem against the impact on the integrity of the court-approved receivership process.

[10] We adopt the rationale for those guiding principles articulated in *B&M Handelman Investments Limited v. Mass Properties Inc.* (2009), 2009 CanLII 37930 (ON SC), 55 C.B.R. (5th) 271 (Ont. S.C.), where the court stated, at para. 22:

A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and for the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders.

- [13] The Company argues that allowing it to redeem the Applicant's mortgage at this time is the proper balancing of stakeholder interests and would not significantly impact the integrity of the insolvency system as the purpose of the receivership would be fulfilled - relevant stakeholders will have been made whole. Further, it says in the unusual circumstances of this case, given the 'hair' on the Transaction it is appropriate to grant leave to redeem. In this regard, the Company relies on many of the same arguments regarding the sale process and selection of the Transaction as the winning bid that were raised previously when it objected to approval of the Transaction.

- [14] The Receiver argues that granting leave to redeem to the Company would, at this late stage, make a mockery of the practice and procedures relating to receivership sales. The Receiver also takes the position that, unlike in *Peakhill*, the Company has not confirmed funding necessary to satisfy all of the Purchaser's costs and the Company does not have the support of all of the stakeholders. MarshallZehr supports the Receiver's position. The Purchaser also supports the Receiver's position and has provided evidence that it is ready, willing and able to close the Transaction and is prepared to do so as soon as possible. The Receiver also advises that the only reason the Transaction has not yet closed is because of the Company's effort to appeal the Approval and Vesting Order – which the Court of Appeal dismissed just two days ago.
- [15] I agree with the Receiver that granting leave to redeem after a sale transaction has been approved would, in the present circumstances, as cautioned by the Court of Appeal in *Rose-Isli*, make a mockery of the practice and procedures relating to receivership sales. The Company could not point me to any authority where a debtor has been given leave to redeem following the granting of an approval and vesting order.
- [16] Granting leave to redeem at this stage would be contradictory to the terms of the Approval and Vesting Order. The Approval and Vesting Order authorized and directed the Receiver to take steps to close the Transaction. Permitting the Company to redeem the Applicant's mortgage at this time would, in effect, be an end run around the Approval and Vesting Order.
- [17] As noted above, no motion to vary or set aside the Approval and Vesting Order was brought. The Approval and Vesting Order has not been stayed and leave to appeal has been dismissed.
- [18] For the reasons above, I dismiss the Company's motion seeking leave to redeem the Applicant's mortgage and payout all associated costs of the receivership proceeding.
- [19] The Receiver takes the position that should the Company move to appeal or seek leave to appeal the dismissal of the Company's motion to redeem, that such would not act to stay the Approval and Vesting Order. The Receiver, accordingly, advises that it intends to move forward with closing of the Transaction. In this respect, it is not for me to weigh in on the effect of any hypothetical appeal or leave to appeal proceeding.