



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

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

DATE: December 20, 2023

NO. ON LIST: #5

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

BEFORE: JUSTICE STEELE

**PARTICIPANT INFORMATION**

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

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Counsel for the Receiver, KSV Restructuring Inc.	maya@chaitons.com

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

Name of Person Appearing	Name of Party	Contact Info
Mark A. Russell	Counsel for the Respondent, La Pue International Inc.	mr@friedmans.ca

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Anthony Gabriele	Counsel for HC Matcon Inc.	gabriele@paveylaw.com
Fernando Souza	Counsel for Buttcon Limited	fsouza@lawtoronto.com
Jason Dutrizac	Counsel for Sovereign	jdutrizac@blg.com

**ENDORSEMENT OF JUSTICE STEELE:**

- [1] The Receiver seeks an Order approving the Listing Agreement between the Receiver and Colliers Macaulay Nicolls Inc., for the sale of the Real Property and approving the Sale Process described in section 3.2 of the First Report.
- [2] La Pue International Inc. sought an adjournment to the second week of January, which, after hearing submissions, I declined to grant. There is no reason for the Receiver to be delayed from starting the sale process.

- [3] La Pue International raised an issue regarding the language in the Listing Agreement with Collier. Specifically, La Pue was concerned that the agreement contemplated a \$100,000 break fee if the receivership was terminated. The language in the agreement could be clearer. The Receiver clarified the intent that there is no break fee payable if the receivership is terminated. The \$100,000 referred to in paragraph 6 of the Listing Agreement is intended to reduce the real estate fee payable to the broker if the purchaser is a party known to the Receiver, as set out at para. 12(g) of the Receiver's factum. The Receiver indicated that it would email Colliers to clarify this point.

### **Background**

- [4] The Receiver was appointed on October 19, 2023, as receiver of the assets, undertakings, and properties of La Pue International Inc.
- [5] La Pue International's principal asset is the real property municipally known as 5528 Ferry Street, Niagara Falls.


#### *Should the Court approve the Sale Process?*

- [6] The Court has jurisdiction to approve the Sale Process pursuant to s. 243(1)(c) of the *Bankruptcy and Insolvency Act*.
- [7] In *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750 the Court determined that the criteria set out in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 OR (3d) 1 (ONCA) also inform whether the Court should approve a sale process proposed by a court-appointed receiver. The Court is to consider:
- a) The fairness, transparency and integrity of the proposed process;
  - b) The commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
  - c) Whether the sales process will optimize the changes, in the particular circumstances, of securing the best possible price for the assets up for sale.
- [8] The Sale Process and timeline is set out in the First Report in section 3. The marketing and diligence phase is scheduled to commence January 8, 2024 with the bid deadline estimate being 5 weeks from the marketing launch.
- [9] The Receiver recommends that the Court approve the Sale Process and the Listing Agreement with Colliers for the following reasons set out in the Receiver's factum:
- a. Collier's team has extensive experience selling undeveloped residential properties in the Niagara region and offers a commission structure that is consistent with the market;
  - b. MarshallZehr supports the Sale Process and engagement of Colliers;

- c. The Sale Process is designed to be a fair, open and transparent process intended to broadly canvass the market to obtain the highest and best price;
- d. The duration of the Sale Process is sufficient to allow interested persons to perform due diligence and make offers. The Receiver also has the flexibility to extend or amend timelines if the Receiver considers it necessary to do so; and
- e. The Sale Process includes procedures commonly used to sell real estate development projects, including by KSV in other court-supervised real property sale processes.

[10] I am satisfied that the Listing Agreement and the proposed Sale Process should be approved, as recommended by the Receiver.

[11] Order attached.

A handwritten signature in blue ink, appearing to be "J. Lee", is located in the lower right quadrant of the page.