

Court Motion No. M55745
Court of Appeal File No.: COA-25-CV-0063
Court File No.: CV-23-00700695-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant
(Respondent)

- and -

LA PUE INTERNATIONAL INC.

Respondent
(Appellant)

CROSS-MOTION RECORD OF THE APPELLANT

DATE: February 3, 2025

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Lawyers for the Appellant,
La Pue International Inc.

TO: SERVICE LIST

Court Motion No. M55745
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TAB 1

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant
(Respondent)

- and -

LA PUE INTERNATIONAL INC.

Respondent
(Appellant)

NOTICE OF CROSS-MOTION

THE APPELLANT, La Pue International Inc., will make a cross-motion to a single Judge of the Court of Appeal on February 7, 2025 at 10:00AM or as soon after as the Cross-Motion can be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- by video conference, with Zoom details to be provided by the Court.

THE MOTION IS FOR:

1. If necessary, an order abridging the time for service and filing of this Cross-Motion Record such that the Cross-Motion is properly returnable on February 7, 2025 and dispensing with further service thereof;
2. Directions of this Honourable Court as to whether leave to appeal to the Court of Appeal and stay of the Approval and Vesting Order of Justice Dietrich dated January 7, 2025 (the “**AVO**”), is necessary, in light of the provisions of sections 193 and 195 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”);

3. If leave to appeal is required pursuant to Rule 61.03.1, an Order granting leave to appeal the AVO issued by the Honourable Justice Dietrich on January 7, 2025;
4. If necessary and pursuant to Rule 63.02, a stay of the AVO pending the return of this cross-motion, and should such leave be granted, a stay of the AVO pending the hearing of the appeal;
5. Costs of this motion on a substantial indemnity basis, or to be determined by the panel hearing the Appeal; and
6. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE CROSS-MOTION ARE:

Background

1. By order of Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 19, 2023 (the “**Receivership Order**”), KSV Restructuring Inc. (“**KSV**”) was appointed as receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of La Pue International Inc. (the “**Company**” or the “**Appellant**”), including the real property municipally known as 5528 Ferry Street, Niagara Falls (the “**Property**”).
2. On or about April 4, 2024, the Receiver entered into an Asset Purchase Agreement (the “**Original APA**”) with Lakeshore Luxe Design & Build Group (“**Lakeshore**”) for, among other things, the sale of the Property and the assumption of 359 pre-sale agreements entered into with purchasers (the “**Original Transaction**”).

3. On June 11, 2024, Lakeshore assigned its interest in the Original APA and Property to 100835091 Ontario Inc. (the “**Purchaser**”). The Purchaser paid the Receiver a first deposit of \$500,000.00 (the “**First Deposit**”) but was unable to pay the second deposit.
4. Despite not having paid the second deposit, the Receiver obtained an approval and vesting order on June 21, 2024, to compel the Purchaser to complete the Original Transaction or forfeit the First Deposit.
5. The Original Transaction was scheduled to close on July 2, 2024. The Purchaser failed to pay the balance of the closing funds and the First Deposit was forfeited to the Receiver.
6. On July 12, 2024, the Receiver and Purchaser entered into a Reinstatement and Amending Agreement increasing the purchase price by \$50,000.00, requiring the second deposit to be paid and two additional deposits payable on July 22, 2024 and August 1, 2024. The Purchaser paid the second deposit but failed to pay the two additional deposits, thereby forfeiting the First Deposit and second deposit.
7. On or about October 8, 2024, the Receiver and Purchaser entered into a Second Reinstatement and Amending Agreement with the Purchaser. This transaction was terminated on or about October 24, 2024, once again as a result of the Purchaser’s failure to pay deposits when due. The Property was subsequently relisted for sale.
8. On November 2, 2024, the Company’s principal submitted an offer of \$20,500,000.00 to purchase the Property. Between November 2 and 21, 2024, the Company provided the Receiver with evidence of a firm unconditional commitment letter and proof of funds.
9. On November 22, 2024, the Receiver advised the Company that it had entered into a transaction for the sale of the Property. The Company later learned that the Receiver had

entered into a third Reinstatement and Amending Agreement with the Purchaser, thereby reviving the Original Transaction.

10. On January 6, 2025, the Receiver's AVO motion was heard by the Honourable Justice Dietrich. On January 7, 2025, the AVO was granted.
11. On January 9, 2025, the Receiver advised that the Purchaser sought to amend the AVO for the purposes of assigning its right, title and interest in the Property to a third party.

Grounds for the Directions of this Court

12. On January 20, 2025 the Receiver took the position that the Company required leave to appeal and leave for a stay of the AVO.
13. The Company has brought this Cross-Motion out of an abundance of caution and not because it agrees with the position set out in the Receiver's Motion Record.
14. The Company submits that it does not require leave to appeal. The Company's appeal falls squarely within subsections 193(a) and 193(c) of the *BIA*.
15. The AVO impacts the future rights of several stakeholders, including the Company, the 359 pre-sale purchasers that entered into pre-sale construction agreements with the Company, and the lien claimants with an interest in the Property.
16. The principal of the Company personally guaranteed the indebtedness of the Company to the Applicant, Marshallzehr Group Inc. ("**Marshallzehr**"), and will be liable for any shortfall arising from sale of the Property.
17. The future rights of 359 purchasers that entered into pre-sale construction agreements with the Company are at stake. There is \$31 million dollars in deposits being held in trust plus accrued interest earned thereon on behalf of these pre-sale purchasers, and there is no

certainty as to whether the Purchaser will be assuming these pre-sale construction contracts.

18. The AVO will also impact the future rights of lien claimants by having all security registrations discharged from title.
19. The future rights of all stakeholders will be preserved and protected if the Company exercises its right to redeem.
20. The Company relies upon subsection 193(c) of the BIA, which provides an automatic right of appeal where the property involved exceeds a value of \$10,000.00.
21. The overriding effect of the AVO, if not set aside, will undoubtedly result in a loss in excess of \$10,000.00 for the Company, its principal and lien claimants with claims registered against title to the Property.
22. Any shortfall suffered by Marshallzehr will become a liability incurred by the Company's principal. Any such shortfall will far exceed \$10,000.00.
23. Similarly, the AVO will discharge the lien claimants' security registered against title to the Property, which collectively exceed \$10,000,000.00.
24. The Company relies on section 195 of the *BIA* as the basis for an automatic stay pending appeal.
25. The Company has asserted that the learned Motion Judge erred in law, exercised discretion based on erroneous considerations and failed to give any or sufficient weight to the principles set out in *Royal Bank of Canada v Soundair Corp.*, which sets out the criteria to guide the exercise of judicial discretion when a Receiver makes a recommendation to sell a debtor's property.

26. The Company submits that the learned Motion Judge erred in denying the Company's right to exercise its right of redemption. By issuing the AVO and denying the Company's right to redemption, the learned Motion Judge's decision resulted in a lower financial recovery for all stakeholders involved. Conversely, if the Company redeems its mortgage indebtedness, all stakeholder's interests will be preserved and no creditor will suffer a shortfall.
27. The Company's appeal raises legitimate and important concerns about fairness and propriety of the Original Transaction and the Reinstatement and Amending Agreements approved by the AVO.

Receiver's Motion for Directions

28. The Receiver asserts that the Company's pending appeal creates uncertainty, causes prejudice to stakeholders and prevents the closing of the transaction on January 27, 2025. However, the Receiver has failed to establish that the appeal creates uncertainty or prejudice sufficient to dismiss the Company's appeal or prevent the appeal from proceeding.
29. On January 9, 2025, the Receiver sought an amendment to the AVO to permit the Purchaser to assign its right, title and interest in the Original Transaction to a third party. As of the date hereof, no such amendment to the AVO has been made and it is unclear if and when the transaction would even close as that motion is currently scheduled for February 21, 2025.
30. The Receiver states that interest is accruing at a rate of \$14,181.37 per day and eroding the recovery for creditors. However, interest accrual is a standard consequence of any delay, which could be easily rectified should the Company be permitted to exercise its right of

redemption. Conversely, if the AVO is not set aside, the Company's principal will be the one liable for the costs of this interest accrual by virtue of his personal guarantee.

31. The Receiver alleges that prolonged delays risk further frustration to pre-sale homebuyers.

This assertion has no merit given that the Purchaser has not obtained Home Construction Regulatory Authority approval and is thereby precluded at this time from assuming pre-sale contracts and the fact that the Receiver has advised that no pre-sale homebuyer has sought to cancel its agreements to purchase units in the subject development.

32. The Receiver's assertion about physical deterioration and maintenance costs are overstated given that maintenance costs of \$500,000.00 incurred to date suggest that measures have been put in place to safeguard the Property.

33. The Receiver's assertion of rising professional costs is inherent in any receivership proceeding and is not an adequate consideration to deny the Company's statutory right to appeal and stay the AVO.

34. Sections 193, 195 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c. B-3.

35. Rule 31 of the Bankruptcy and Insolvency General Rules (C.R.C., c. 368).

36. Rule 1.04., 2.01, 2.03, 3.02, 37, 61.03.3, 61.16, 63.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

37. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. This Cross-Motion Record;
2. Such further and other material as counsel may advise and this Honourable Court may permit.

February 3, 2025

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Applicant (Respondent on Appeal)

- and -

LA PUE INTERNATIONAL INC.
Respondent (Appellant)

Court Motion No. M55745
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COURT OF APPEAL FOR ONTARIO

Proceedings Commenced at TORONTO

**APPELLANT'S NOTICE OF CROSS-
MOTION**

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La Pue International Inc.

TAB 2

Court Motion No. M55745
Court of Appeal File No.: COA-25-CV-0063
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COURT OF APPEAL FOR ONTARIO

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(Respondent)

- and -

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Respondent
(Appellant)

CERTIFICATE OF TIME

LA PUE INTERNATIONAL INC. will require 1 hour for oral argument, pursuant to Rule 61.16(3.2).



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MARSHALLZEHR GROUP INC.
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La Pue International Inc.

TAB 3

30/Jan/2025

REGISTRAR / GREFFIER
COUR D'APPEL DE L'ONTARIO

Court of Appeal File No.: COA-25-CV-0063
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B E T W E E N:

MARSHALLZEHR GROUP INC.

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(Respondent)

- and -

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**IN THE MATTER OF AN 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**

NOTICE OF APPEAL

THE APPELLANT, La Pue International Inc. (“**La Pue**” or the “**Appellant**”), appeals to the Court of Appeal for Ontario from the Endorsement and Order of the Honourable Justice Jane Dietrich (the “**Motion Judge**”) dated January 7, 2025, made at Toronto, Ontario whereby the learned Motion Judge granted an Order (the “**Order**”) approving the asset purchase agreement dated April 4, 2024, as amended thereafter (the “**APA**”), entered into between Lakeshore Luxe Design & Build Group (“**Lakeshore**”) and KSV Restructuring Inc. (the “**Receiver**”), in its capacity as receiver over all the assets, undertakings and properties of La Pue, and vesting in 100835091 Ontario Inc. (the “**Purchaser**”) as assignee of Lakeshore, La Pue’s right title and interest in and to the purchased assets, including the real property municipally known as 5528 Ferry Street, Niagara Falls (the “**Real Property**”).

THE APPELLANT ASKS that the Order be set aside and an Order be granted as follows:

- a) An Order permitting and directing La Pue to exercise its right of redemption and payout the indebtedness owed to the Applicant/Respondent on Appeal, Marshallzehr Group Inc.;

THE GROUNDS OF APPEAL are as follows:

- b) The learned Motion Judge erred in law and fact by failing to consider, or properly consider, the interests of all parties, as required pursuant to the governing principles set out in case law and applicable to the Court's approval of sales transactions.
- c) The learned Motion Judge failed to consider the interests of La Pue, the claimants with liens registered against title to the Real Property and the 359 pre-sale purchasers that entered into preconstruction agreements (the "**Preconstruction Agreements**") with La Pue for the purchase of condominium units.
- d) The learned Motion Judge erred in law and fact by approving the Order and vesting in the Purchaser title in the Real Property, as the Purchaser is not registered with the Home Construction Regulatory Authority and thereby precluded from assuming the Preconstruction Agreements and resulting in a termination thereof.
- e) The Learned Motion Judge failed to consider, or properly consider, the Purchaser's failure to pay deposits to the Receiver on three separate occasions and the corresponding financial ability of the Purchaser to complete the sales transaction.
- f) The learned Motion Judge erred in law and fact by preferring the interests of the Purchaser over the interests of La Pue and its right to redeem and payout the indebtedness owed to Applicant/Respondent on Appeal, Marshallzehr Group Inc.
- g) The learned Motion Judge failed to consider evidence supporting La Pue's financial ability to exercise its right of redemption, including but not limited to, the lender's

letter dated November 21, 2024 evidencing proof of funds and an email from La Pue's lender sent on December 16, 2024 confirming that the funds are available.

- h) The learned Motion Judge erred in fact by finding that the purchase price submitted by the Purchaser is superior to the offer submitted by La Pue's principal.
- i) La Pue's right to redeem and payout the indebtedness owed to the Applicant/Respondent on Appeal, Marshallzehr Group Inc. would create a more satisfactory result for all interested stakeholders insofar as there would be no shortfall or deficit on the indebtedness, the Preconstruction Agreements would remain in place and the lien claimants security would not vest in the purchase price and be discharged from title to the Real Property.
- j) The learned Motion Judge erred in fact by finding that there are no unusual or exceptional circumstances that exist to support granting La Pue's right to redeem.
- k) By denying La Pue's request to exercise its right of redemption, the learned Motion Judge erred in law.
- l) If required or necessary, a stay of the Order appealed from pending the hearing of this appeal by this Honourable Court and directing the Receiver not to close the sale transaction with the Purchaser pending the hearing of the within Appeal.
- m) Such further and other grounds as counsel may advise and this Honourable Court may permit

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- n) Rule 61.04 of the *Rules of Civil Procedure*.
- o) Sections 6(1)(b) and 134(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

- p) Sections 193(b), 193(c), 195 of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3.
- q) Rule 31 of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368.
- r) Leave to appeal the Order is not required.
- s) Such further and other statutes/rules as counsel may advise and this Honourable Court may permit.

DATE: January 16, 2025

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Lawyers for the Appellant,
La Pue International Inc.

TO: SERVICE LIST

MARSHALLZEHR GROUP INC.
Applicant (Respondent on Appeal)

- and -

LA PUE INTERNATIONAL INC.
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Court File No. CV-23-00700695-00CL
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Lawyers for the Appellant,
La Pue International Inc.

TAB 4

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

THE HONOURABLE MADAM) TUESDAY, THE 7TH
)
JUSTICE JANE DIETRICH) DAY OF JANUARY, 2025

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

**ORDER
(Sale Approval)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets (the “**Property**”) of La Pue International Inc. (the “**Debtor**”) for an order, among other things:

- (a) validating service of the Receiver’s Notice of Motion and Motion Record;
- (b) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement dated April 4, 2024, as amended by the First Reinstatement and Amending Agreement dated July 12, 2024, the Second Reinstatement and Amending Agreement dated October 8, 2024 and the Third Reinstatement and Amending Agreement dated November 18, 2024 (collectively, the “**Sale Agreement**”), between the Receiver and Lakeshore Luxe Design & Build Group (“**Lakeshore**”), appended as Confidential Appendices 1, 2 and 3 respectively, to the Receiver’s Fourth Report to the Court dated December 11, 2024 (the “**Fourth Report**”) and to Appendix A to the Supplemental

Confidential Brief to the Fourth Report and vesting in 1000835091 Ontario Inc. (the “**Purchaser**”), as assignee of Lakeshore, the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), including the lands and premises located at the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario and legally described in **Schedule “A”** hereto (the “**Real Property**”); and

- (c) sealing the Confidential Appendices to the Fourth Report and the Supplemental Confidential Brief to the Fourth Report (collectively, the “**Confidential Appendices**”) pending the closing of the Transaction or a further order of the Court,

was heard this day by judicial videoconference via Zoom.

ON READING the Motion Record of the Receiver dated December 11, 2024 including the Fourth Report, and on hearing the submissions of counsel for the Receiver, counsel to the Applicant, and such other counsel as were present and on the Counsel Slip, no one else appearing although properly served as appears from the Affidavits of Service of Daisy Jin sworn December 12, 2024 and January 2, 2025 and the Affidavit of Service of Cristian Delfino sworn December 13, 2024, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE TRANSACTION AND VESTING ORDER

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed 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.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Certificate**"), the Purchased Assets, including the Real Property, shall vest absolutely in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, taxes, including real property taxes, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated October 19, 2023 (the "**Receivership Order**"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system including those registrations listed on Schedule "E" hereto but only in respect of the Purchased Assets; (iii) any Claims filed in respect of or affecting the Purchased Assets, including Claims in respect of the *Construction Act* (Ontario); and (iv) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Real Property are hereby expunged and discharged as against the Real Property.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Niagara (South) (No. 59) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Encumbrances listed in Schedule "C" hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if

the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that notwithstanding anything else contained herein, the "Property" as defined in the preamble of this Order and the Purchased Assets vesting in the Purchaser shall not include any current or future funds related to deposits held in trust by any law firm acting on behalf of a the Deposit Insurer, Sovereign General Insurance Company or the Debtor with respect to the purchase of a residential unit located on any of the Real Property, including, without limitation, the deposits held by Sullivan Mahoney LLP in trust related to a residential development known as The Stanley District containing 435 residential dwelling units at Ferry Street in the City of Niagara Falls (the "**Deposits**"). Further, nothing in this Order shall, or is intended to, entitle or grant the Purchaser any interest in the Deposits.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that the Confidential Appendices to the Fourth Report be and hereby are sealed pending the completion of the Transaction or a further order of the Court.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. from today's date and is enforceable without the need for entry and filing.



Jane Dietrich J.

Schedule "A" – Real Property

Municipal Address: 5528 Ferry Street, Niagara Falls, Ontario

PIN: 64349-0258 (LT)

Property Description: Firstly: Lots 46, 51, 52, 61, 62, 63, 64 & 65, Plan 273 & Part Lots 43, 44, 45, 47, 48, 49 & 50, Plan 273, Village of Niagara Falls, Parts 1 & 3 Plan 59R17206; Secondly: Surface Rights Only (as in RO718049), Part Lots 47, 48, 49 & 50 Plan 273, Village of Niagara Falls, Part 2 Plan 59R17206; subject to an Easement over Parts 1 & 2 59R17292 in favour of Part Lots 41 & 42 Plan 273 as in RO441658 as in SN754703; City of Niagara Falls

Schedule “B” – Form of Receiver’s Certificate

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

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated October 19, 2023, KSV Restructuring Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of La Pue International Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated January 7, 2025 (“**Approval and Vesting Order**”), the Court approved the asset purchase agreement (as amended, restated, reinstated or otherwise supplement from time to time, the “**Sale Agreement**”) between the Receiver and Lakeshore Luxe Design & Build Group (the “**Purchaser**”) and provided for the vesting in the Purchaser all of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or

waived by the Receiver and the Purchaser; and (iii) the transaction contemplated by the Sale Agreement (the “**Transaction**”) has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser.; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on _____, 2025.

KSV RESTRUCTURING INC., solely in its capacity as Court-Appointed Receiver of La Pue International Inc. and not in its personal capacity

Per: _____

Name:

Title:

Schedule “C” – Encumbrances to be deleted and expunged from title to Real Property.

No.	Registration No.	Registration Date	Instrument Type	Amount	Encumbrancers
1.	SN644659	2020/10/02	Charge	\$2,000,000	The Sovereign General Insurance Company
2.	SN658896	2021/01/26	Notice	\$1	The Sovereign General Insurance Company
3.	SN703091	2021/12/01	Charge	\$13,800,000	MarshallZehr Group Inc.
4.	SN703094	2021/12/01	Notice of Assignment of Rents – General		MarshallZehr Group Inc.
5.	SN703098	2021/12/01	Postponement		MarshallZehr Group Inc.
6.	SN703255	2021/12/01	Application to Annex Restrictive Covenants S.118		MarshallZehr Group Inc.
7.	SN743390	2022/09/26	Notice of Change of Address		MarshallZehr Group Inc.
8.	SN758055	2023/02/22	Construction Lien	\$3,673,337	HC Matcon Inc.
9.	SN759949	2023/03/15	Construction Lien	\$841,498	Kada Group Inc.
10.	SN760306	2023/03/17	Construction Lien	\$8,205,941	Buttcon Limited
11.	SN761643	2023/03/31	Construction Lien	\$123,734	Kada Group Inc.
12.	SN764799	2023/05/01	Certificate		HC Matcon Inc.

13.	SN767364	2023/05/26	Construction Lien	\$23,278	TT Galbraith Electric Ltd
14.	SN769190	2023/06/12	Certificate		Buttcon Limited
15.	SN770167	2023/06/21	Certificate		Kada Group Inc.
16.	SN771564	2023/07/04	Construction Lien	\$43,630	HC Matcon Inc.
17.	SN772841	2023/07/14	Certificate		HC Matcon Inc.
18.	SN787037	2023/11/29	Construction Lien	\$254,023	HC Matcon Inc.
19.	SN788992	2023/12/18	Certificate		HC Matcon Inc.

**Schedule “D” – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Any reservations, restrictions, rights of way, easements or covenants that run with the land;
2. Any registered agreements with a municipality, region or supplier of utility service including, without limitations, electricity, water, sewage, gas, telephone or cable television or other telecommunication services;
3. All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Property;
4. Any minor easements for the supply of utility services or other services to the Lands or Buildings, if any, or adjacent properties;
5. Encroachments disclosed by any error or omission in existing surveys of the Lands or neighbouring properties and any title defects, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Lands and survey of the Lands and survey matters generally;
6. The exceptions and qualifications set forth in the *Registry Act* (Ontario) or the *Land Titles Act* (Ontario), or amendments thereto;
7. Any reservation(s) contained in the original grant from Crown;
8. Subsection 44(1) of the *Land Titles Act* (Ontario) except paragraphs 11 and 14.
9. Provincial succession duties and escheats or forfeiture to the Crown;
10. The rights of any person who would, but for the *Land Titles Act* (Ontario) be entitled to the Lands or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention;
11. Any lease to which subsection 70(2) of the *Registry Act* (Ontario) applies; and

12. The following instruments registered on title to the Premises:

No.	Registration No.	Registration Date	Instrument Type	Parties To
1.	SN613492	2019/12/12	Application to Consolidate	
2.	SN629148	2020/05/14	Notice	The Corporation of the City of Niagara Falls
3.	SN642462	2020/09/18	Notice	The Corporation of the City of Niagara Falls
4.	59R16793	2020/10/01	Plan Reference	
5.	SN666113	2021/03/22	Application Bylaw Deeming Plan Not A Plan	The Corporation of the City of Niagara Falls
6.	SN666891	2021/03/26	Notice	The Corporation of the City of Niagara Falls
7.	59R17206	2022/03/11	Plan Reference	
8.	SN716940	2022/03/11	Application Absolute Title	La Pue International Inc.
9.	SN721529	2022/04/12	Application (General)	The Corporation of the City of Niagara Falls
10.	SN721530	2022/04/12	Application (General)	The Corporation of the City of Niagara Falls
11.	SN721531	2022/04/12	Application (General)	The Corporation of the City of Niagara Falls
12.	SN723231	2022/04/26	Notice	The Corporation of the City of Niagara Falls
13.	59R17292	2022/06/13	Plan Reference	
14.	SN754703	2023/01/13	Transfer Easement	Anastasia Georgina Loukas and 2779006 Ontario Inc.
15.	SN754704	2023/01/13	Postponement	Anastasia Georgina Loukas and 2779006 Ontario Inc.
16.	SN754705	2023/01/13	Postponement	Anastasia Georgina Loukas and 2779006 Ontario Inc.
17.	SN754853	2023/01/16	Land Registrar's Order	Land Registrar, Niagara South Land Registry Office
18.	SN763208	2023/04/17	Notice	Anastasia Georgina Loukas and 2779006 Ontario Inc. and La Pue International Inc.

Schedule “E” – PPSA Registrations to be Released but only in respect of Purchased Assets

Date of Registration	Secured Party	File Number	Registration Number	Expiry Date
Jun 1, 2022	Newroads Automotive Group Ltd.	783547137	20220601 1259 1210 8587	Jun 1, 2026
Nov. 25, 2021	Marshallzehr Group Inc.	778525902	2021125 1518 1590 6050	Nov. 25, 2026
Nov. 25, 2021	Marshallzehr Group Inc.	778525911	2021125 1519 1590 6051	Nov. 25, 2026
Jan. 26, 2021	The Sovereign General Insurance Company	769461417	20210126 1509 1862 9924	Jan. 26, 2032
Oct. 2, 2020	The Sovereign General Insurance Company	766400931	20201002 1508 1862 2211	Oct. 2, 2031

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at TORONTO

APPROVAL AND VESTING ORDER

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*Lawyers for the Receiver, KSV Restructuring
Inc.*

TAB 5



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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

DATE: January 6, 2025

NO. ON LIST: 2

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

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Lawyers for MarshallZehr Group Inc.	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
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Jason Wadden	Counsel for the Purchaser	jwadden@tyrllp.com

ENDORSEMENT OF JUSTICE J. DIETRICH :

Overview

- [1] KSV Restructuring Inc. was appointed as receiver (the “Receiver”), 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 (the “Real Property”).
- [2] The Receiver seeks, among other things, orders:
- a. Approving the asset purchase agreement dated April 4, 2024, as amended by the Reinstatement and Amending Agreement dated July 12, 2024, the Reinstatement and Amending Agreement dated October 8, 2024 and the Third Reinstatement and Amending Agreement dated November 18, 2024, between Lakeshore Luxe Design & Build Group (“Lakeshore”) and the Receiver (collectively, the “Lakeshore APS”) and vesting in 100835091 Ontario Inc. (the “Purchaser”), as assignee of Lakeshore, the Company’s right, title and interest in and to the purchased assets, including the Real Property;
 - b. Approving an interim distribution to MarshallZehr from the proceeds of the sale transaction contemplated by the Lakeshore APS (the “Transaction”);
 - c. Authorizing the Receiver to establish a Holdback Reserve in the amount of \$1.4 million;
 - d. Approving the Fourth Report of the Receiver dated December 11, 2024 (“Fourth Report”) and the conduct and activities of the Receiver as described therein; and
 - e. Sealing the Confidential Appendices to the Fourth Report.
- [3] The main opposition comes from the principal of the Company who takes the position that he was not treated fairly as a bidder during the sale process and the Transaction should not be approved – rather the Receiver should be directed to remarket the Real Property. As a second position, the Company says that it should be entitled to redeem the mortgage of MarshallZehr.

- [4] Buttcon Limited and HC Matcon Inc., who are construction lien claimants support the position of the Company – specifically the Company’s request to redeem as that would leave their claims intact.
- [5] MarshallZehr supports the relief requested by the Receiver.
- [6] The Sovereign General Insurance Company, the deposit insurer who holds a second mortgage on the property and Kada Group Inc. (another construction lien claimant) take no position on the motion.

Background

- [7] The Company is a single purpose entity that owns the Real Property. The Company intended to develop and sell three mid-rise buildings consisting of one mixed-use, one hotel and one residential building on the Real Property.
- [8] Prior to the receivership proceedings (i) the Company completed shoring and excavation work although no other phases of construction have commenced; and (ii) the Receiver understands the Company pre-sold 359 units (the “Sale Agreements”) and collected approximately \$31 million of deposits. The deposits are being held in trust with the surety.
- [9] The Receiver was appointed by Order dated October 19, 2023, on an application by MarshallZehr, the Company’s secured creditor who is owed approximately \$20.9 million, including amounts advanced prior to the Receivership Order being granted as well as amounts advanced as Receiver’s borrowings.
- [10] On December 20, 2023, the Court granted an order approving a process for marketing the Real Property. That sales process was detailed in the Receiver’s third report. On June 21, 2024, Justice Penny granted an approval and vesting order in respect of the original sale agreement dated April 4, 2024, as assigned to the Purchaser.
- [11] That transaction failed to close as neither the Second Deposit contemplated by that transaction or the remaining amount of the purchase price was paid to the Receiver. On July 4, 2024, the Receiver formally terminated the original transaction and the First Deposit was forfeited to the Receiver. However, a week later, on July 12, 2024, the Purchaser and the Receiver entered into the First Reinstatement Agreement pursuant to which the Purchaser agreed, among other things, to increase the purchase price by \$50,000 and provide two more deposits in addition to the Second Deposit. The Second Deposit was paid, but the Purchaser failed to pay the additional deposits and at the end of July of 2024, the agreement was terminated by the Receiver.
- [12] In September of 2004, the Receiver learned that the Purchaser was not registered with the Home Construction Regulatory Authority (the “HCRA”) and, accordingly, could not assume the Sale Agreements. Given that the original sales process only resulted in one other offer which was substantially inferior to the Purchaser's offer, discussions between the Purchaser, MarshallZehr and the Receiver continued.
- [13] The Second Reinstatement and Amending Agreement was entered into on October 8, 2024, which included, among other things, an additional deposit and an agreement for the Purchaser to assume the Sale Agreements conditional upon the Purchaser obtaining a vendor and builder license from the HCRA. However, the Purchaser again failed to pay the additional deposit and the Receiver again

terminated the sale agreement on October 24, 2024. At this point the Receiver re-listed the Purchased Assets for sale.

- [14] However, in November of 2024, the Purchaser advised the Receiver it now had access to another additional deposit. MarshallZehr also advised the Receiver that it was prepared to finance the balance of the purchase price. Before considering a further re-instatement agreement the Receiver advised the Purchaser that it required the additional deposit to be placed in the trust account of the Purchaser's counsel. Accordingly, on November 18, 2024, the Purchaser confirmed the entirety of the additional deposit was placed in trust with their counsel and the Receiver entered to the Third Reinstatement Agreement on that day.
- [15] As a result, the Transaction for which approval is now sought is substantially similar to that approved on June 21, 2024 with the following exceptions – the purchase price has been increased by \$50,000, the deposit in the aggregate amount of 18% of the purchase price has been paid to the Receiver or the Purchaser's counsel in trust, and the Purchaser will only assume the Sale Agreements if it obtains the HRCA licenses within 90 days of closing.
- [16] As noted, MarshallZehr has agreed to finance the remaining amount of the purchase price and has advised the Receiver that other than standard financing conditions requiring court-approval of the transaction and registration of security, all other financing conditions have been waived.
- [17] As well, the Receiver advised during the hearing that communications with purchasers under the Sale Agreements have occurred via the Receiver's website – and in particular correspondence summarizing the motion was posted on the Receiver's website on December 20, 2024. Although certain purchasers under the Sale Agreements have asked questions of the Receiver, no purchaser has objected to the Transaction. As the deposits are held in trust, should those Sale Agreements not be assumed by the Purchaser, the Receiver advises the deposits will be returned to the purchasers under the Sale Agreements.
- [18] Throughout the proceedings, Mr. Fugiel, the principal of the Company, advised the Receiver that he intended to purchase the Real Property or redeem the MarshallZehr loan. This included an offer submitted by Mr. Fugiel in trust for a corporation to be incorporated, on September 20, 2024. In response, the Receiver indicated that the proof Mr. Fugiel's financial ability to close the transaction would be required for the offer to be considered. No evidence was provided at that time.
- [19] Again, on November 2, 2024, Mr. Fugiel submitted another offer in trust for a corporation to be incorporated. A conditional financing term sheet was submitted on November 3, 2024. The Receiver expressed concerns regarding the identity of the lender and the conditionality of the term sheet to Mr. Fugiel. A further financing commitment letter was provided by counsel to Mr. Fugiel on November 15, 2024, however, the financing was again conditional on, among other things, satisfactory environmental reports, budgets and an appraisal.
- [20] It appears that an updated commitment was provided to the Receiver on November 21, 2024, but by that time the Receiver had entered into the Third Reinstatement Agreement (which was dated November 18, 2024).

[21] The Company has also requested payout statements from MarshallZehr which were provided in December of 2024.

Issues

[22] The issues to be determined are:

- a. Should the Transaction be approved;
- b. Should the Company be granted a further time period to redeem the MarshallZehr mortgage loan;
- c. Should an interim distribution to MarshallZehr from the proceeds of the Transaction be approved;
- d. Should the Receiver be authorized to establish a Holdback Reserve in the amount of \$1.4 million;
- e. Should the Fourth Report and the conduct and activities of the Receiver as described therein be approved; and
- f. Should the Confidential Appendices to the Fourth Report be sealed?

Analysis

Approval of the Transaction

- [23] The parties agree that the principles governing court-approval of the Transaction are set out in *Royal Bank v Soundair Corp.* 1991 CanLII 2727 (ONCA) [*Soundair*] where the Court of Appeal stated that the following factors must be considered when considering the approval of a proposed sale: (i) whether the receiver has made sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and (iv) the interest of all parties.
- [24] The Company submits it and its principal have not been treated fairly in the sale process and was not provided a commercially reasonable opportunity to submit offers. Specifically, when offers were submitted, the Receiver requested proof of financing on what the Company says are tight and unreasonable timelines.
- [25] The Company also says that Lakeshore previously entered into a joint venture agreement with the Company, and their participation as a bidder in the sale process violates that agreement. However, the parties agree that issue is not before me today and whether Lakeshore violated any contractual agreements with the Company or Mr. Fugiel is for another day.
- [26] This receivership proceeding has been ongoing for more than fourteen months. The Company or Mr. Fugiel did not submit a bid in the original sale process approved in December of 2023. The bids that were submitted in September and November of 2024 by Mr. Fugiel were not accompanied by proof of financing and included various conditions. That a firm commitment for financing from a purchaser in

an insolvency proceeding should be expected is not a surprise. I do not see this as unfairness in the working out of the process.

- [27] I am mindful that the Transaction may result in the Sale Agreements not being assumed by the Purchaser if the Purchaser cannot obtain the HCRA approvals. However, the purchasers under the Sale Agreements will have recourse to their deposits of \$31 million that are being held in trust should that occur.
- [28] As well, the purchase price under the Transaction is superior to that submitted by Mr. Fugiel in his offers. In this respect, Company's counsel indicated during the hearing that he had instructions to match the purchase price and should be given an opportunity to do so. Counsel to the Company also argued that if one accounts for the portion of the deposit that should already be forfeited to the Receiver based on the previously failed transactions, that the purchase price under the Transaction would not be superior to Mr. Fugiel's offers. Given the request for a sealing order for the redacted Transaction documents it is not clear how counsel to the Company has the required information to make those statements. It is also not appropriate for a Receiver, in this context, to be disclosing bids as suggested by the Company.
- [29] Rather what should be considered is the information available to the Receiver at the time it made a decision to proceed with the Transaction. At that time, the Transaction represented the best offer in terms of purchase price that it had received. The argument by counsel to the Company that the purchase price of Mr. Fugiel's offer is superior when one accounts for the forfeited deposits is not necessarily true. Contrary to the submissions by the Company, is not clear what portion of the deposit would be forfeited if the Transaction is not approved – counsel to the Purchaser argues that the deposit should be returned to his client based on the terms of the various reinstatement agreements.
- [30] As set out by the Ontario Court of Appeal in *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.* 2021 ONCA 375 at para 15, courts will generally defer to a court appointed receiver's business expertise in reviewing a sale and will not second guess their recommendation absent exceptional circumstances.
- [31] A similar statement was made in *Bank of Montreal v Dedicated National Pharmacies Inc. et al* 2011 ONSAC 4634 in addressing objections to a sale approval at paragraph 43: "Provided a receiver has acted reasonably, prudently and not arbitrarily, as is the case here, a court should not sit as in appeal from a receiver's decision or review in every detail every element of the procedure by which the receiver made its decision. To do so would be futile and duplicative. It would emasculate the role of the receiver.
- [32] Accordingly, I would approve the Transaction.

Redemption of the MarshallZehr mortgage loan

- [33] The Company also submits that it should be given a further time period to redeem the MarshallZehr loan. In this respect, the Company relies on the recent Court of Appeal decision in *Peakhill Capital Inc. v. 1000093910 Ontario Inc.* 2024 ONCA 584 [*Peakhill*]. The Court of Appeal in para 9 of *Peakhill* noted that the motion judge in the lower court in *Peakhill* 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 latter 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.

[34] In *Peakhill*, the motions judge found that in the extraordinary circumstances of that case, including that all creditors were being paid in full and allowing the respondent to redeem would not have a significant impact on the integrity of the system in that particular case.

[35] Unlike in *Peakhill*, in the circumstances before me, providing additional time for the Company to redeem would not be appropriate. As noted, the receivership proceeding has been ongoing for over fourteen months, the Company is not coming with a cheque in hand to pay out all creditors. Rather, Mr. Fugiel has been attempting to participate as a bidder for the Real Property and is only raising the possibility of redemption (and requesting more time to put together the necessary funds) as an alternative option to delay sale approval. Unlike in *Peakhill*, there are no unusual and exceptional circumstances that exist to support granting the Company's right to redeem at this time.

Interim distribution to MarshallZehr and establishment of the Holdback Reserve

- [36] Should the Transaction close, no party objected to the Receiver's request that the Receiver be authorized to distribute the proceeds, subject to adequate reserves as determined by the Receiver to MarshallZehr.
- [37] The Receiver has obtained an opinion from its independent legal counsel that, subject to standard assumptions and qualifications, pursuant to applicable security documentation, MarshallZehr has a valid security interests or charge, as applicable, against the Real Property.
- [38] The Receiver also seeks to establish a Holdback Reserve of \$1.4 million, which exceeds 10% of the total amount of liens registered against the real property. This permits the Receiver to facilitate an interim distribution while at the same time reviewing the validity of the lien claims. Counsel for the construction lien claimants present did not object to the distribution the size of the proposed Holdback Reserve. There is separately a motion scheduled for March 7, 2025, to address MarshallZehr's position that none of the \$1.4 million has priority over its mortgage.
- [39] In the circumstances, the interim distribution to MarshallZehr and proposed Holdback Reserve, to be dealt with in accordance with the terms of the ancillary order signed by me, are approved.

Approval of Fourth Report and the Receiver's activities

- [40] The activities of the Receiver described in its fourth report were necessary and undertaken in good faith. Given my findings above, the Fourth Report and the activities of the Receiver as set out therein are approved.

Sealing of Confidential Appendices

- [41] The limited sealing order being sought is necessary to preserve the Receiver's ability to maximize the value of the Real Property in the event of the Transaction does not close. I am satisfied that the requested sealing order for the confidential appendices to the Fourth report meets the test in *Sierra Club/Sherman Estates* 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 direct counsel for the receiver to file a hard copy of the confidential appendices with the Commercial List Office in his sealed envelope with a copy of the approval investing order in this endorsement.

Disposition

- [42] For the forgoing reasons, I grant the relief requested by the Receiver with the minor amendments to the form of draft approval and vesting order and ancillary order discussed during the hearing. Orders to issue in the forms signed by me this day.



MARSHALLZEHR GROUP INC.
Applicant (Respondent on Appeal)

- and -

LA PUE INTERNATIONAL INC.
Respondent (Appellant)

Court Motion No. M55745
Court of Appeal File No.: COA-25-CV-0063
Court File No.: CV-23-00700695-00CL

COURT OF APPEAL FOR ONTARIO

Proceedings Commenced at TORONTO

APPELLANTS CROSS-MOTION RECORD

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