

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

BETWEEN:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**LA PUE INTERNATIONAL INC.**

Respondent

**FACTUM OF THE RECEIVER**

February 20, 2025

**AIRD & BERLIS LLP**  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Kyle Plunkett** (LSO# 61044N)  
Tel: 416-865-3406  
Email: [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com)

**Miranda Spence** (LSO# 60621M)  
Tel: 416-865-3414  
Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

**Adrienne Ho** (LSO# 68439N)  
Tel: 416-637-7980  
Email: [aho@airdberlis.com](mailto:aho@airdberlis.com)

*Lawyers for the Receiver*

## PART I - OVERVIEW

1. By order of The Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 19, 2023 (the “**Receivership Order**”), which Receivership Order was made on application by MarshallZehr Group Inc. (“**MarshallZehr**” or the “**Applicant**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O 1990, c. C.43, as amended (the “**CJA**”), 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**”), including the real property municipally known as 5528 Ferry Street, Niagara Falls (the “**Real Property**”).
2. The Company has brought a motion to redeem the Real Property. The Receiver requests that the court confirm its obligation to close the Amended Transaction (as defined below), in accordance with the AVO, notwithstanding any appeal as may be filed.

## PART II - SUMMARY OF FACTS

### A. Background

4. The Company is a single purpose entity that owns the Real Property. Pawel Fugiel (“**Fugiel**”) is the sole office and director of the Company.<sup>1</sup>
5. On December 20, 2023, the Court issued an order approving a sale process for the Real Property and certain related assets (the “**SISP Order**”).<sup>2</sup>
6. On April 4, 2024, the Receiver and Lakeshore Luxe Design & Build Group (“**Lakeshore**”) entered into an Asset Purchase Agreement (the “**Original APA**”) which contemplated a transaction (the “**Original Transaction**”) for, among other things, the sale of the Real Property and the assumption of 359 pre-sale agreements entered into with homebuyers (collectively, the “**Purchased Assets**”).<sup>3</sup>

---

<sup>1</sup> Seventh Report of the Receiver dated February 20, 2025 (“**Seventh Report**”), Appendix “A”, [Fourth Report of the Receiver dated December 11, 2024 \(“Fourth Report”\) at para 2.0.1](#), Tab 1 of the Responding Motion Record of the Receiver dated February 20, 2025.

<sup>2</sup> [Fourth Report at para 1.0.4.](#)

<sup>3</sup> [Seventh Report at para 2.0.4.](#)

7. On June 11, 2024, Lakeshore assigned all of its right, title and interest in the Original APA to 1000835091 Ontario Inc. (the “**Purchaser**”), pursuant to an Assignment of Agreement of Purchase and Sale dated June 11, 2024.<sup>4</sup>
8. On June 21, 2024, the Court issued an order approving the Original Transaction.<sup>5</sup>
9. The Purchaser failed to close the Original Transaction, and the Receiver terminated this transaction. The Receiver subsequently entered into several reinstatement agreements with the Purchaser, and the Receiver negotiated terms for an amended transaction (the “**Amended Transaction**”) with the Purchaser pursuant to the terms of the APA.<sup>6</sup>
10. On January 7, 2025, the Receiver obtained the AVO approving the APA and the Amended Transaction.<sup>7</sup>

#### **B. Company’s Appeal of the AVO**

11. On January 16, 2025, the Company served a notice of appeal (the “**Notice of Appeal**”) seeking, among other things, to set aside the AVO.<sup>8</sup>
12. On January 20, 2025, the Receiver filed a Notice of Motion with the Court of Appeal for Ontario (“**Court of Appeal**”) seeking, among other things: (i) a declaration that there is no automatic right of appeal from the AVO pursuant to the provisions of the *Bankruptcy and Insolvency Act*; and (ii) an order declining to grant leave to appeal from the AVO.<sup>9</sup>
13. On February 3, 2025, the Company filed a cross-motion seeking, among other things: (i) directions from the Court of Appeal as to whether leave to appeal and a stay of the AVO is necessary; and (ii) an order granting leave to appeal, if required.<sup>10</sup>

---

<sup>4</sup> [Seventh Report at para 2.0.5.](#)

<sup>5</sup> [Seventh Report at para 2.0.6.](#)

<sup>6</sup> [Seventh Report at para 2.0.7.](#)

<sup>7</sup> [Seventh Report at para 1.0.3](#) and [Appendix “A”, Order and Accompanying Endorsement](#)

<sup>8</sup> [Seventh Report at para 1.1.1](#) and [Appendix “B”, Notice of Appeal](#)

<sup>9</sup> [Seventh Report at para 1.1.2.](#)

<sup>10</sup> [Seventh Report at para 1.1.3.](#)

14. On February 7, 2025, the Court of Appeal heard the Receiver's motion and the Company's cross-motion.<sup>11</sup>
15. On February 19, 2025, the Court of Appeal released an endorsement (the "**Endorsement**") granting the Receiver's motion and dismissing the Company's cross-motion. The Receiver was also awarded costs of \$25,000, inclusive of disbursements and HST.<sup>12</sup>

### **C. Assignment and Redemption**

16. Following the issuance of the AVO, the Purchaser asked the Receiver to amend the AVO to reflect that the Asset Purchase Agreement (the "**APA**") had been assigned by the Purchaser to 1001082540 Ontario Inc. ("**1001082540 Ontario**"). The APA contains an assignment right in favour of the Purchaser.<sup>13</sup>
17. Accordingly, on January 23, 2025, the Receiver filed a motion to amend the AVO to reflect that the Purchased Assets, as defined in the APA, should be vested in 1001082540 Ontario (the "**Assignment Motion**").<sup>14</sup>
18. On January 27, 2025, the Company filed a cross-motion seeking orders: (i) dismissing the Assignment Motion; and (ii) granting the Company leave to redeem the mortgage indebtedness owed by the Company and cover all associated costs of these proceedings (the "**Redemption Motion**").<sup>15</sup>
19. Since that time, the Purchaser has advised the Receiver that it no longer requires the APA to be assigned. Accordingly, the Receiver withdrew the Assignment Motion. The only issue for the Court to consider is the Redemption Motion.<sup>16</sup>

### **D. Fuigel's Offers to Purchase the Real Property**

20. Since the outset of these proceedings, Fuigel has indicated, on numerous occasions, his intention to redeem the MarshallZehr mortgage loan or purchase the Real Property. Indeed,

---

<sup>11</sup> [Seventh Report at para 1.1.4.](#)

<sup>12</sup> [Seventh Report at para 1.1.5](#) and [Appendix "C", Court of Appeal Endorsement](#)

<sup>13</sup> [Seventh Report at para 1.2.1.](#)

<sup>14</sup> [Seventh Report at para 1.2.2.](#)

<sup>15</sup> [Seventh Report at para 1.2.3.](#)

<sup>16</sup> [Seventh Report at para 1.2.4.](#)

on September 20, 2024, Fugiel presented an offer to Colliers to purchase the Real Property.<sup>17</sup>

21. By email correspondence on September 30 and October 28, 2024, the Receiver and its counsel advised Fugiel and his counsel that his offer would not be considered unless evidence be provided with respect to his financial ability to close the transaction.<sup>18</sup>
22. A secondary, and higher, offer was presented by Fugiel to the Receiver on November 2, 2024 and the very next day counsel to Fugiel provided the Receiver with a conditional term sheet from Morris Financial Group (the “**Morris Term Sheet**”), a lender based in New York and Tel Aviv.<sup>19</sup> The Morris Term Sheet was subject to, among other things, due diligence and credit committee approval.<sup>20</sup>
23. In response, on November 3, 2024, the Receiver wrote to Fugiel’s counsel via email, noting prior unfavourable experiences with Morris Financial Group.<sup>21</sup> The Receiver requested that Fugiel’s counsel inform the Receiver if the proposed financing became firm but that it would continue to market the property in the meantime.<sup>22</sup>
24. On November 15, 2024, counsel for Fugiel provided the Receiver with another commitment from another lender for financing of Fugiel’s offer to purchase the Real Property. No explanation was provided as to what happened to the commitment from Morris Financial Group. The new commitment letter had over 20 conditions and provided that the maximum proposed loan amount could not exceed 60% of the appraised value.<sup>23</sup> For this condition to have been met, the Real Property would have to be valued at over \$36 million, which is substantially greater than the offers received in the Sale Process, including the offer from Fugiel.<sup>24</sup>

---

<sup>17</sup> [Fourth Report at para 3.1.2.](#)

<sup>18</sup> [Fourth Report at para 3.1.3.](#)

<sup>19</sup> [Fourth Report at para 3.1.5.](#)

<sup>20</sup> [Fourth Report at para 3.1.5.](#)

<sup>21</sup> [Fourth Report at para 3.1.6.](#)

<sup>22</sup> [Fourth Report at para 3.1.6.](#)

<sup>23</sup> [Fourth Report at para 3.1.8.](#)

<sup>24</sup> [Fourth Report at para 3.1.8.](#)

25. On November 25, 2024, the Receiver’s counsel again advised counsel to Fugiel that it could not accept an offer conditional on financing and that it had entered into another transaction.<sup>25</sup>
26. On December 8, 2024, Fugiel’s counsel advised the Receiver that it intended to oppose the approval of the Amended Transaction.<sup>26</sup> As described above, the Receiver obtained the AV over the Company’s objections, and the company’s appeal of the AVO was dismissed.
27. The Company has now brought this motion to redeem.

### PART III - ISSUES AND LAW

28. The issues on this motion are:
- (a) Whether the Company’s motion for redemption should be granted; and
  - (b) Whether the Receiver’s relief for provisional execution should be granted.

#### **A. The Company’s Redemption Motion should be Dismissed**

29. The right of redemption is a “right of a debtor, upon payment of a debt, to recovery property pledged to a creditor as security for the payment of debt.”<sup>27</sup>
30. As set out by the Court of Appeal in *Rose-Isli Corp. v. Smith*, in considering whether a debtor has a right to redeem, the court is to consider the impact of allowing the exercise of right of redemption would have on the integrity of a court approved sales process. Generally, if the sales process is carried out in a manner consistent with the *Soundair* principles, the court should not permit a redemption attempt to interfere with that process. The court has to consider all affected economic interests, and engage in a balancing of the debtor’s redemption rights with the impact on the integrity of the receivership process.<sup>28</sup>
31. As noted by the Court in *B&M Handelman Investments Limited v. Mass Properties Inc.*, permitting a redemption at a motion for sale approval would make a “mockery” of the procedures

---

<sup>25</sup> [Fourth Report at para 3.1.9.](#)

<sup>26</sup> [Fourth Report at para 3.1.11.](#)

<sup>27</sup> *Rose-Isli Corp. v. Frame-Tech Structures Ltd.* [2023 ONSC 832 at para 71](#), aff’d *Rose-Isli Corp. v. Smith*, [2023 ONCA 548 at para 14](#), citing *Kruger v. Wild Goose Vintners Inc.*, [2021 BCSC 1406 at para 69](#).

<sup>28</sup> *Rose-Isli Corp. v. Smith*, [2023 ONCA 548 at para 9](#).

related to receivership sales. This would be a “potential chill on securing the best offer and be to the overall detriment of stakeholders.”<sup>29</sup> The Receiver has entered into a binding agreement for which it has obtained an approval and vesting order. Permitting a redemption at this stage would indeed be a mockery of the process.

32. In its factum, the Company refers to a few cases in support of its position, all of which are distinguishable. First, it refers to the decision in *Vector Financial Services v. 33 Hawarden Crescent* (“**Hawarden**”), noting that Justice Black had recognized a situation where if the debtor had a cheque in hand at the sale approval motion following a lengthy sales process, there would be an “interesting dilemma between the important equitable right to redeem and the policy considerations about protecting the integrity and predictability of the receivership sale process”.<sup>30</sup> The Company further argues that the circumstances noted by Justice Black are analogous to the facts in this case.<sup>31</sup>

33. The Receiver disagrees. The *Hawarden* decision is distinguishable. In that case, the debtor sought to redeem at the sale approval motion.<sup>32</sup> In contrast, the Company is seeking to redeem not only after the AVO has been granted but also after it has lost its appeal of the AVO.

34. Second, the Company also references passages from *BCIMC Construction Fund Corporation et al v. The Clover Yonge Inc.* (“**BCIMC**”) as support of the debtor’s equitable right of redemption.<sup>33</sup> The *BCIMC* decision is again distinguishable. In that case, the debtor sought a right of redemption during an approval of the sales process, not after the sales process has run its course.<sup>34</sup>

35. Third, the Company references passages from both *First Source Financial Management v. Chacon Strawberry Fields Inc.* as well as *Kruger v. Wild Goose Vintners Inc.*<sup>35</sup> In both those cases,

---

<sup>29</sup> *B&M Handelman Investments Limited v. Mass Properties*, 2009 CanLII 37930 at para 22.

<sup>30</sup> Factum of La Pue International Inc. dated February 19, 2025 (“**Factum of the Company**”) at [para 28](#); *Vector Financial Services v. 33 Hawarden Crescent*, 2024 ONSC 1635 at paras 83-85 and paras 100-102.

<sup>31</sup> Factum of the Company at [para 29](#).

<sup>32</sup> *Vector Financial Services v. 33 Hawarden Crescent*, 2024 ONSC 1635 at para 1.

<sup>33</sup> Factum of the Company at [para 30](#).

<sup>34</sup> *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 3659 at para 2.

<sup>35</sup> Factum of the Company at para [32](#) and [37](#); *Kruger v. Wild Goose Vintners Inc.*, 2021 BCSC 1406 and *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229.

the debtor sought to redeem the mortgage at the sale approval motion.<sup>36</sup> The Company’s materials, however, omit to mention that in both cases, the court denied the debtor’s right of the redemption and the sale was approved.<sup>37</sup>

36. Finally, the Company relies on the *Peahill Capital* proceedings in support of its redemption motion.<sup>38</sup> The circumstances in *Peahill Capital* were, as described by Justice Sutherland, “unusual and exceptional”.<sup>39</sup> There, the debtor’s redemption motion was heard contemporaneously with the sale approval motion. All of the creditors, guarantors and tenants supported the sale approval motion.<sup>40</sup> In these circumstances, the court found that, balancing all the interests, the factors favoured granting redemption rights.<sup>41</sup> The debtor committed to making the successful bidder in the sale process whole, by paying the break fee, legal costs and disbursements.<sup>42</sup>

37. A balancing of interests here would not result in the same outcome:

- (a) In *Peahill*, the debtor’s redemption motion was brought at the sale approval motion. Here, the AVO was granted more than a month ago. The Amended Transaction would have already closed, but for the Company’s unsuccessful attempt to appeal the AVO. As the Court acknowledged in *Peahill*, the lateness of the debtor’s request may be fatal in the balancing analysis.<sup>43</sup> In *B&M Handelman*, the Court was critical of redemption motions brought at the sale approval hearing.<sup>44</sup> To permit a redemption motion after the AVO has been granted and an appeal of the AVO disposed of would, as Justice Pepall noted, make a mockery of the process.<sup>45</sup> The integrity of receivership sales requires finality, for the protection of stakeholders.

---

<sup>36</sup> *Kruger v. Wild Goose Vintners Inc.*, [2021 BCSC 1406 at para 5](#) and *First Source Financial Management v. Chacon Strawberry Fields Inc.*, [2024 ONSC 7229 at para 1](#).

<sup>37</sup> *Kruger v. Wild Goose Vintners Inc.*, [2021 BCSC 1406 at paras 80-81](#) and *First Source Financial Management v. Chacon Strawberry Fields Inc.*, [2024 ONSC 7229 at para 42](#).

<sup>38</sup> Factum of the Company at [paras 30-39](#).

<sup>39</sup> *Peahill Capital Inc. v. 1000093910 Ontario Inc.*, 2024 ONSC 4000 at [para 35](#).

<sup>40</sup> *Peahill Capital Inc. v. 1000093910 Ontario Inc.*, 2024 ONSC 4000 at [paras 34-35](#).

<sup>41</sup> *Peahill Capital Inc. v. 1000093910 Ontario Inc.*, 2024 ONSC 4000 at [paras 34-35](#).

<sup>42</sup> *Peahill Capital Inc. v. 1000093910 Ontario Inc.*, [2024 ONCA 584](#) at [paras 18-20](#).

<sup>43</sup> *Peahill Capital Inc. v. 1000093910 Ontario Inc.*, 2024 ONSC 4000 at [para 22](#).

<sup>44</sup> *B&M Handelman Investments Limited v. Mass Properties*, [2009 CanLII 37930 at para 22](#).

<sup>45</sup> *B&M Handelman Investments Limited v. Mass Properties*, [2009 CanLII 37930 at para 22](#).



- (b) The Company has not confirmed that it has funding available to satisfy all of the Purchaser's costs.
- (c) In *Peakhill*, all the stakeholders including the second mortgagee, the guarantors and the tenants (other than the stalking horse bidder), were in agreement that the debtor be granted the right to redeem, resulting the court to find that the situation was "outside what is usual."<sup>46</sup> The Company does not have the support of all the stakeholders here.

38. The Company has also glossed over the nature of the relief granted in *Peakhill*. The debtor in that case was not given an unlimited amount of time to redeem. Rather, as clarified on appeal, the court ordered that if the refinancing transaction did not close within a few days of the hearing, the sale to the stalking horse bidder would be approved.<sup>47</sup>

39. Here, the Receiver has carried out a sales process that met the *Soundair* principles.<sup>48</sup> It has entered into a binding agreement with the Purchaser. That agreement has been approved by the Court, and the Court of Appeal has rejected an appeal. The Receiver must be permitted to close the Amended Transaction forthwith.

## **B. The Amended Transaction Must be Permitted to Close Immediately**

40. The Receiver seeks confirmation that, if the Company's Redemption Motion is dismissed, it may close the Amended Transaction notwithstanding any pending appeal.

41. In the Receiver's view, an appeal of an order dismissing the Redemption Motion (a "Dismissal Order") would not operate to stay the closing of the Amended Transaction pursuant to s. 195 of the BIA.<sup>49</sup> The Amended Transaction was approved by way of the AVO, which is a separate and apart from a Dismissal Order.

42. In the alternative, the Receiver seeks a provisional execution provision to permit it to close the Amended Transaction with the Purchaser.

---

<sup>46</sup> *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*, 2024 ONSC 4000 at [paras 34-35](#).

<sup>47</sup> *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*, [2024 ONCA 584](#) at [para 28](#).

<sup>48</sup> Seventh Report, Appendix "A", [Endorsement of Justice Dietrich at paras 23-32](#).

<sup>49</sup> *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, [s. 195](#). [BIA].

43. Section 195 of the BIA provides that “Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of...” [emphasis added].<sup>50</sup>

44. Further, if there is no automatic right of appeal under section 193 of the BIA, there is no automatic stay under s. 195 of the BIA until the party obtains leave to appeal from the Court of Appeal.<sup>51</sup>

45. Although this is not an issue for this Court, the Receiver is of the view that the Company does not have an automatic right of appeal for any relief granted on its cross-motion. The Court of Appeal has already found that the Company had no automatic right to appeal of the AVO in these proceedings, and further, it denied leave to appeal.

46. The Receiver is concerned that, in light of the history of these proceedings, the Company may attempt to appeal a Dismissal Order. A provisional execution order would not bar the Company from commencing an appeal, but would merely confirm that the closing of the Amended Transaction – which has already been delayed for several weeks due to the Company’s first unsuccessful appeal – may proceed.

47. It is within this Court’s authority to grant provisional execution, including in the case of vesting orders made in the receivership context.<sup>52</sup> This Court has also ordered provisional execution in the context of approving a BIA proposal in *YG Limited Partnership and YSL Residences*.<sup>53</sup> The Court’s rationale for granting such relief included its concerns that any delay would be unjust to the secured creditor.

48. The same situation is analogous here. Any delay in closing the Amended Transaction will prejudice the Company’s creditors and other stakeholders:

- (a) Interest Accrual: As at December 11, 2024, the Company owed MarshallZehr approximately \$20.9 million, and interest continues to accrue at a rate of

---

<sup>50</sup> *BIA, s. 195.*

<sup>51</sup> *Cosa Nova Fashions Ltd. v. The Midas Investment Corporation*, 2021 ONCA 581, at paras. 35 and 45.

<sup>52</sup> *Century Services Inc. v. Brooklin Concrete Products Inc.*, 2005 CanLII 9668 at para 5 (Ont. SC).

<sup>53</sup> *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206 at para 33.

\$14,181.37 per day. Prolonged delays in the closing process will increase the debt burden, eroding the eventual recovery for the Company's creditors;

- (b) Impact on Homebuyers: Prolonged delays risk further frustrating these homebuyers, eroding confidence in the Project, and increasing the likelihood of claims or disputes;
- (c) Deterioration of the Real Property: the Real Property, which is the primary asset of the receivership estate, remains in an incomplete state. Any further delays may result in physical deterioration of the site, which could reduce the value of the Real Property. To date, the Receiver has incurred costs in excess of \$500,000 in connection with maintenance of the Real Property; and
- (d) Rising Costs and Professional Fees: The ongoing receivership incurs significant professional costs, including legal and administrative fees, which are paid from the estate. Delaying the closing of the Amended Transaction will further reduce the net recovery for stakeholders.<sup>54</sup>

#### **PART IV - RELIEF SOUGHT**

49. The Receiver requests that the court confirm its obligation to close the Amended Transaction, in accordance with the AVO, notwithstanding any appeal.

---

<sup>54</sup> Seventh Report at [para 3.1.1](#).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20th day of February 2025.

*Adrienne Ho*

---

**AIRD & BERLIS LLP**

Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Kyle Plunkett (LSO# 61044N)**

Tel: 416-865-3406  
Email: [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com)

**Miranda Spence (LSO# 60621M)**

Tel: 416-865-3414  
Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

**Adrienne Ho (LSO# 68439N)**

Tel: 416-637-7980  
Email: [aho@airdberlis.com](mailto:aho@airdberlis.com)

*Lawyers for the KSV Restructuring Inc., in  
its capacity as Court appointed Receiver*

**SCHEDULE “A”: LIST OF AUTHORITIES**

1. *Rose-Isli Corp. v. Frame-Tech Structures Ltd.* [2023 ONSC 832](#) , aff’d *Rose-Isli Corp. v. Smith*, [2023 ONCA 548](#)
2. *Kruger v. Wild Goose Vintners Inc.*, [2021 BCSC 1406](#).
3. *B&M Handelman Investments Limited v. Mass Properties*, [2009 CanLII 37930](#).
4. *Vector Financial Services v. 33 Hawarden Crescent*, [2024 ONSC 1635](#).
5. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 3659](#).
6. *First Source Financial Management v. Chacon Strawberry Fields Inc.*, [2024 ONSC 7229](#).
7. *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*, [2024 ONCA 584](#)
8. *Cosa Nova Fashions Ltd. v. The Midas Investment Corporation*, [2021 ONCA 581](#).
9. *Century Services Inc. v. Brooklin Concrete Products Inc.*, [2005 CanLII 9668](#)
10. *YG Limited Partnership and YSL Residences (Re)*, [2021 ONSC 5206](#)
11. *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*, [2024 ONSC 4000](#)

**Certificate of Authenticity**

I, Adrienne Ho, am satisfied as to the authenticity of every authority cited in the factum, in accordance with Rule 4.06.1(2.1) of the Rules of Civil Procedure, R.R.O, 1990, Reg. 194.

20 – Feb- 2025

DATE



Adrienne Ho

**SCHEDULE “B”  
TEXT OF STATUTES, REGULATIONS & BY-LAWS**

**Bankruptcy and Insolvency Act, RSC 1985, c B-3**

**PART XI**

**Secured Creditors and Receivers**

**Court may appoint receiver**

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

**Restriction on appointment of receiver**

**(1.1)** In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

**Definition of receiver**

**(2)** Subject to subsections (3) and (4), in this Part, **receiver** means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

**Definition of receiver — subsection 248(2)**

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

**Trustee to be appointed**

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

**Place of filing**

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

**Orders respecting fees and disbursements**

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

**Meaning of disbursements**

(7) In subsection (6), **disbursements** does not include payments made in the operation of a business of the insolvent person or bankrupt.

**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**

---

**FACTUM OF THE RECEIVER**

---

**AIRD & BERLIS LLP**

Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Kyle Plunkett** (LSO# 61044N)

Tel: 416-865-3406

Email: [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com)

**Miranda Spence** (LSO# 60621M)

Tel: 416-865-3414

Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

**Adrienne Ho** (LSO# 68439N)

Tel: 416-637-7980

Email: [aho@airdberlis.com](mailto:aho@airdberlis.com)

*Lawyers for the Receiver*