

Court of Appeal File No.:
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)

**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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MARSHALLZEHR GROUP INC.
Applicant (Respondent on Appeal)

- and -

LA PUE INTERNATIONAL INC.
Respondent (Appellant)

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Proceedings Commenced at TORONTO

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