



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

COURT FILE NO.: CV-23-00699432-00CL DATE: January 17, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **MARSHALLZEHR GROUP INC. -v- 2557386 ONTARIO INC. et al**

BEFORE: **JUSTICE OSBORNE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Applicant	maya@chaitons.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jennifer Vrancic	Respondents	jvrancic@shlaw.ca

Other:

Name of Person Appearing	Name of Party	Contact Info

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ENDORSEMENT OF JUSTICE OSBORNE:

[1] The Applicant seeks the appointment of a receiver. The Respondents consent to the relief sought and to the form of order.

[2] The receivership application was originally commenced in May 2023 and was adjourned a few times since the parties entered into a settlement agreement which included a requirement that the debt be fully repaid by October 31, 2023 and a consent to an order appointing the receiver in the event that the debt was not repaid.

[3] The debt was not repaid by October 30, 2023 or at all with the result that the Applicant today seeks the appointment of the Receiver.

[4] The test for the appointment of a receiver pursuant to section 243 of the BIA or section 101 of the CJA is not in dispute. Is it just or convenient to do so?

[5] In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.

[6] Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.

[7] In the circumstances of this case I am satisfied that it is both just and convenient to appoint a receiver. The draft order tracks the model order of this Court and is appropriate in the circumstances.

[8] Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.



Date: January 17, 2024

