

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

BETWEEN:

**MARSHALLZEHR GROUP INC.**

Applicant

**-and-**

**FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION**

Respondent

**BOOK OF AUTHORITIES OF THE RECEIVER  
(Motion Returnable November 27, 2020)**

November 24, 2020

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RSM Canada Limited

Court File No. CV-20-00635523-00CL

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1. Frank Bennett, *Bennett on Receiverships*, 2<sup>nd</sup> Ed., Carswell, 1999

The court also referred to *Re Jarvis Construction Co.*,<sup>149</sup> where similar propositions authorizing the liquidator to file an assignment were set out. However, the liquidator in that case was appointed by the shareholders voluntarily and the authority of the liquidator to assign the debtor into bankruptcy was limited.

In Ontario, the court-appointed receiver can assign the debtor into bankruptcy.<sup>150</sup> In British Columbia, however, a court held that a court-appointed receiver did not have the authority to assign a debtor into bankruptcy.<sup>151</sup> Once the debtor is placed into bankruptcy, the bankruptcy does not terminate the court-appointed receivership, but rather the two administrations may continue to co-exist in the absence of conflict of interest and conflict of jurisdiction.<sup>152</sup>

It is questionable in the author's view whether a court-appointed receiver should be given authority to file an assignment in bankruptcy on its own volition, or consent to a receiving order without leave of the court. The right to file an assignment is contradictory to the rights of the officers and directors of the debtor company to file an assignment or defend a petition. The receivership does no more than suspend the rights of officers and directors with respect to the management and control of the assets during the receivership. On the other hand, if the debtor is in liquidation, the liquidator replaces the directors in the management of the business and would have authority to assign the company into bankruptcy. In a receivership, the officers retain certain powers, including the power to defend the action brought by the security holder in which the receiver was appointed. Logically, the officers should also retain the power to assign the debtor into bankruptcy. If that is the case, it would be inconsistent to grant that power to the receiver.<sup>153</sup>

149 (1972), 16 C.B.R. (N.S.) 193, [1972] 1 W.W.R. 308, 22 D.L.R. (3d) 372 (B.C. S.C.).

150 *First Treasury Financial Inc. v. Congo Petroleums Inc.* (1991), 3 C.B.R. (3d) 232, 78 D.L.R. (4th) 585 (Ont. Gen. Div.), where the court gave the receiver power to make a voluntary assignment into bankruptcy; *Bargain Harold's Discount Ltd. v. Paribas Bank of Canada* (1992), 7 O.R. (3d) 362, 10 C.B.R. (3d) 23 (Ont. Gen. Div.); *Royal Bank v. Sun Squeeze Juices Inc.* (1994), 24 C.B.R. (3d) 302 (Ont. Gen. Div.), appeal dismissed (1994), 28 C.B.R. (3d) 201 (Ont. C.A.) where the court stated that in exceptional cases, the court-appointed receiver has authority to consent to a receiving order even though the debtor has filed a notice of dispute. In this case, the court thought that there was no possibility of the dispute succeeding and it was in the interests of all parties that the receiving order be issued.

151 *Everex Systems Inc. v. Pride Computer Distribution Ltd.* (1988), 68 C.B.R. (3d) 24 (B.C. S.C.).

152 *Canadian Imperial Bank of Commerce v. King Truck Engineering Canada Ltd.* (1987), 63 C.B.R. (N.S.) 1 (Ont. C.A.). But see *Prairie Palace Motel Ltd. v. Carlson*; *Eston Dodge-Chrysler Ltd. v. Carlson et al.*; *Carlson v. Big Bud Tractor of Canada Ltd.*, above, note 143, where the court held that the bankruptcy terminated the receiver's authority to act.

153 But see *Mahood v. High Country Holdings Inc.* (1996), 43 C.B.R. (3d) 267 (B.C. S.C.) where the court annulled assignments into bankruptcy of companies in receivership. Here, the director was engaged in family litigation and in order to thwart the receiver's sale, assigned his companies into bankruptcy. The court held that the director was replaced by the court-appointed receiver and under section 110 of the *Company Act.*, R.S.B.C. 1979, c. 59, now section 98, R.S.B.C. 1996, c. 62.

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