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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

-and-

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

FACTUM OF THE RECEIVER

(Motion Returnable November 27, 2020)

November 24, 2020

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)
Tel: 416.646.7488
elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver,
RSM Canada Limited

PART I. – NATURE OF THE MOTION

1. This is a motion brought by RSM Canada Limited ("RSM"), in its capacity as court-appointed receiver (the "Receiver") of all of the assets, undertakings and properties of Fernwood Developments (Ontario) Corporation ("Fernwood") and in its capacity as Trustee in Bankruptcy of the Estate of Fernwood for an Order:

(a) declaring that the Condo Corporation (defined below) has no right to collect any monthly rent from the tenants occupying the units owned by Fernwood (the "Fernwood Tenants") from the date of the receivership forward;

(b) directing the Condo Corporation to disgorge and pay over to the Receiver all rents collected from the Fernwood Tenants from November 1, 2020 forward and to provide the Receiver with an accounting of the rents collected from November 1, 2020 forward;

(c) awarding the Receiver's costs of this motion on a substantial indemnity basis; and,

(d) such further relief as this Honourable Court deems just.

PART II. – OVERVIEW

2. RSM was appointed as Receiver over all of Fernwood's property, including the 26 residential condominium units owned by Fernwood (the "Fernwood Units") and proceeds arising from these units.

3. The Fernwood Units are rented out to 60 tenants who pay monthly rent to the Receiver. As of the date of the receivership (and subsequent bankruptcy), Fernwood owed Simcoe Standard Condominium Corporation No. 420 (the "Condo Corporation") arrears of common area fees for the 26 Fernwood Units.

4. The Condo Corporation attempted to unilaterally satisfy this pre-bankruptcy claim by collecting rent from Fernwood's tenants directly. RSM demanded that the Condo Corporation stop these improper collection efforts, but the Condo Corporation refused, asserting that it is entitled under the *Condominium Act, 1998*[1], a provincial statute, to satisfy its claim against Fernwood out of the monthly rental payments.

5. There are two stays in place which bar the Condo Corporation's collection efforts. The Condo Corporation's actions violate both stays.

6. First, Fernwood's bankruptcy carries an automatic stay under the *Bankruptcy and Insolvency Act*[2] of all remedies against Fernwood or Fernwood's property (including the Fernwood Units). The automatic stay is a vital component of the bankruptcy scheme and the Condo Corporation's collection efforts are precisely what the automatic stay was designed to prevent.

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[1] S.O. 1998, c. 19 (the "*Condominium Act*").
[2] R.S.C., 1985, c. B-3 (the "*BIA*"); Second Report of the Receiver, Motion Record of the Receiver ("MR") Tab 2, p. 14.

7. Second, the initial order appointing RSM as Receiver also provides for a stay of any exercise of rights or remedies against Fernwood or its property, including the rental payments.[3]

8. If the Condo Corporation's interpretation of the *Condominium Act* is correct and the statutory collection remedy is not stayed (which the Receiver denies), then the doctrine of federal paramountcy is engaged. Specifically, the remedy under the *Condominium Act* would be in operational conflict with, and frustrate, the bankruptcy scheme under the federal *BIA.* As a result, the provincial remedy must be read down or struck in favour of the *BIA*.

9. Finally, in the face of RSM's motion, the Condo Corporation has suddenly brought its own motion to lift the stays of proceedings in the event that the Court concludes that its actions violate the existing stays. The Condo Corporation has failed to establish that the stay has created material prejudice that is different from the prejudice suffered by Fernwood's other unsecured creditors. Accordingly, it is not appropriate to lift the stay in these circumstances.

PART III. – FACTS

A. Fernwood's Development

10. Fernwood was the developer of a 94-unit stacked townhouse condominium complex known as Schoolhouse Barrie, located in Barrie, Ontario (the "Development"). Fernwood sold most of the residential units in the Development, however the 26 Fernwood Units have not been sold and are still

[3] Appointment Order, MR Tab 2, Appendix A, p. 36 at para. 10.

owned by Fernwood. These units are currently rented out to tenants. As of the end of October 2020, there were 60 tenants renting these units.[4]

B. Receivership and Bankruptcy

11. MarshallZehr Group Inc. ("MZG") provided Fernwood with a loan of $19.95 million, which matured on September 1, 2019. Fernwood did not repay the loan. As a result, MZG brought an application for the appointment of RSM as Receiver under the *BIA*.

12. On February 12, 2020, this Court made an Order (the "Appointment Order") appointing RSM as Receiver over all of Fernwood's assets, undertakings, and properties, including all proceeds from these assets and properties (collectively, the "Property").[5]

13. The Appointment Order provides that:

> all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court[.][6]

The stay provision in the Appointment Order is a standard term of receivership proceedings. The language is included in the Commercial List of the Superior Court of Justice's Model Receivership Order.[7]

14. The Receiver subsequently sought and received court authorization to file an assignment in bankruptcy on behalf of Fernwood. Fernwood was assigned

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[4] Second Report of the Receiver, MR Tab 2, p. 18 at para. 22.
[5] Appointment Order, MR Tab 2, Appendix A, p. 30 at para. 2.
[6] Appointment Order, MR Tab 2, Appendix A, p. 36 at para. 10.
[7] Model Receivership Order.

into bankruptcy on July 29, 2020. RSM was named Trustee in Bankruptcy of the Fernwood estate. Fernwood is currently subject to both the receivership and bankruptcy schemes.[8]

C. Condo Corporation Seizes Rent in Violation of Stay

15. The Condo Corporation was enacted in 2016, after registration of the Development.[9]

16. When the Receiver was appointed, Fernwood had not paid common area fees to the Condo Corporation since December 2018. The Condo Corporation registered liens against the Fernwood Units for a portion of these arrears. Ultimately, the Receiver and Condo Corporation reached a settlement pursuant to which the Receiver paid all common area fees relating to the liens, plus costs, and those arising after the date of its appointment (i.e., the Receiver paid all post-filing common area fees)[10] and the Condo Corporation discharged its liens, releasing its security.

17. On October 13, 2020, counsel for the Condo Corporation directed the Fernwood Tenants to pay their rent to the Condo Corporation, as opposed to the Receiver, going forward. In letters sent to each tenant, the Condo Corporation's counsel told the Fernwood Tenants they were required to make these payments to the Condo Corporation by law.

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[8] Second Report of the Receiver, MR Tab 2, pp. 13-14 at paras. 5-7.
[9] Second Report of the Receiver, MR Tab 2, p. 19 at para. 23.
[10] Second Report of the Receiver, MR Tab 2, p. 19 at paras. 24-27.

18. That day, after sending the letters demanding the rent, the Condo Corporation's counsel informed the Receiver it had done so. The Condo Corporation claimed it was entitled to collect these rents under s. 87 of the *Condominium Act* on account of its pre-receivership, unsecured claims against Fernwood: common area fee arrears dating from December 2018 through November 2019 for 25 of the units, and through February 2020 for one of the units.[11] The Condo Corporation advised that it would satisfy the debt Fernwood owed by collecting rent from Fernwood's tenants until the common fee arrears were paid in full.[12]

19. The Receiver's counsel immediately responded that this enforcement action violated the clear terms of the Appointment Order and the stay of proceedings under the *BIA*. The Receiver, through its counsel, also pointed out that the Condo Corporation was stayed from exercising any rights or remedies in respect of the Property, and that the steps taken by the Condo Corporation were an improper attempt to upend the existing priorities under the *BIA*. The Receiver required that the Condo Corporation withdraw its demand immediately.[13]

20. The Condo Corporation refused. Instead, its counsel re-asserted its right to collect rent on account of the pre-receivership arrears.[14]

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[11] Second Report of the Receiver, MR Tab 2, pp. 20-21 at para. 33; Hodis Rent Letter, MR Tab 2, Appendix H, pp. 104-107.
[12] Hodis Rent Letter, MR Tab 2, Appendix H, pp. 104-107.
[13] Second Report of the Receiver, MR Tab 2, p. 22 at para. 35; October 15th Letter, MR Tab 2, Appendix I, pp. 109-110.
[14] Second Report of the Receiver, MR Tab 2, p. 22 at para. 36; October 15th Response, MR Tab 2, Appendix J, pp. 112-113.

21. The Receiver's counsel responded, again demanding that the Condo Corporation stop interfering with the stay of proceedings under the receivership and bankruptcy.[15]

PART IV. – ISSUES

22. There are two issues on this motion:

(a) Is the Condo Corporation stayed from taking steps to collect rent from the Fernwood Units?

(b) If the collection is not stayed, are the provincial provisions the Condo Corporation relies upon rendered inoperative by federal paramountcy?

23. The only issue on the Condo Corporation's motion is whether it is entitled to lift the stay of proceedings to collect rent on the Fernwood Units.

PART V. – LAW AND ARGUMENT

A. The Condo Corporation is Violating the Stay of Proceedings under the Receivership and Bankruptcy

24. Fernwood is subject to both bankruptcy proceedings and a receivership over the Property. The two administrations coexist.[16]

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[15] Second Report of the Receiver, MR Tab 2, p. 23 at para. 37; October 16th Letter, MR Tab 2, Appendix K, pp. 115-116.

[16] Frank Bennett, *Bennett on Receiverships*, 2nd Ed., Carswell, 1999 at p. 520, Book of Authorities of the Receiver, Tab 1; *Canadian Imperial Bank of Commerce v. King Truck Engineering Canada Ltd*., 1987 CarswellOnt 155 (Ont. C.A.) at para. 1.

25. As a result, the Condo Corporation's collection efforts are stayed by both the automatic stay under the *BIA* upon bankruptcy and the stay imposed under the terms of the Appointment Order. Each of these stays is described below.

1. The Condo Corporation is violating the automatic stay under bankruptcy

26. The *BIA* provides that creditors are stayed from pursuing remedies for the recovery of a claim against the debtor or its property upon the assignment in bankruptcy:

> 69.3 (1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.[17] [emphasis added]

The automatic stay clearly bars the Condo Corporation's attempts to collect on its claims against Fernwood, and renders any past attempts to collect a nullity.

(a) The common fee arrears are a "claim provable in bankruptcy"

27. Pursuant to s. 121 of the *BIA*, "claims provable" in bankruptcy include all debts and liabilities the bankrupt is subject to on the day it is assigned into bankruptcy.

28. "Claims provable" is intended to be construed as broadly as possible: the purpose of s. 121 is to capture every kind of claim to enable the bankrupt to

[17] *BIA*, s. 69.3(1).

make a fresh start, free of claims it was subject to before its bankruptcy, upon discharge.[18]

29. The common area fees, if successfully proven, are clearly claims provable in bankruptcy.

30. First, there is no doubt that the common area fee arrears are amounts that Fernwood owed to the Condo Corporation; indeed, the Condo Corporation's counsel consistently refers to these amounts as arrears owed by Fernwood to her client.[19]

31. Second, the common area fees at issue all accrued from December 2018 through February 2020, well prior to Fernwood's assignment in bankruptcy on July 29, 2020.

(b) The rent is the debtor's property

32. The rent payable to the Receiver is the debtor's (Fernwood's) property within the meaning of s. 69.3. The term "property" under s. 69.3 of the *BIA* refers to all property of a bankrupt, and has an even wider meaning than the word "property" elsewhere in the *BIA*, including property that is not ultimately available for distribution to a bankrupt's creditors.[20]

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[18] L.W. Houlden, Geoffrey B. Morawetz and Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada,* 4th Ed., Carswell, 2009, G§36 – Claims Provable ["Houlden and Morawetz"].
[19] Hodis Rent Letter, MR Tab 2, Appendix H, pp. 104-107; October 15th Response, MR Tab 2, Appendix J, pp. 112-113.
[20] Houlden and Morawetz, F§114 – Stay of Proceedings: Unsecured Creditors.

(c) Collecting Rent is a "Remedy"

33. Collecting rent that is properly payable to the Receiver (for the benefit of all Fernwood's creditors) is clearly a remedy within the meaning of the provision.

34. Courts have consistently interpreted "remedy" broadly and purposively to include any attempt to obtain payment of a claim provable in the bankruptcy outside the bankruptcy process.

35. In the leading case on the interpretation of "remedy", the Supreme Court held:

> […] in my opinion the courts were right to give, expressly or by implication, a broad meaning to the stay of proceedings imposed by s. 49(1) [now s. 69] of the *Bankruptcy Act*. This broad meaning is confirmed by the fact that the legislator took the trouble to exclude actions against either the creditor or his property.
>
> As Houlden and Morawetz wrote in Bankruptcy Law of Canada (1984), vol. 1, p. F-70, under s. 49 of the *Bankruptcy Act*:
>
> > An ordinary unsecured creditor with a claim provable in bankruptcy can only obtain payment of that claim subject to and in accordance with the terms of the Bankruptcy Act. The procedure laid down by that Act completely excludes any other remedy or procedure.
>
> The *Bankruptcy Act* governs bankruptcy in all its aspects. It is therefore understandable that the legislator wished to suspend all proceedings, administrative or judicial, so that all the objectives of the Act could be attained.[21]

36. This broad interpretation is consistent with the overarching purpose of the *BIA*: the fair and equitable distribution of the debtor's assets. This fair and equitable distribution is achieved through the single proceeding model—creditors

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[21] *Vachon v. Canada Employment and Immigration Commission*, 1985 CanLII 12 (SCC) at paras. 28-30; see also *Canada (Superintendent of Bankruptcy) v. 407 ETR Concession Company Limited*, 2013 ONCA 769, aff'd 2015 SCC 52, at para. 35.

who want to enforce claims against the bankrupt have to participate in the bankruptcy proceedings (and cannot take unilateral action). The single proceeding ensures that the debtor's assets will be distributed amongst its creditors fairly, in accordance with the priority scheme established by Parliament.[22]

37. The Supreme Court has repeatedly emphasized the importance of the model:

> The single proceeding model avoids the inefficiency and chaos that would attend insolvency if each creditor initiated proceedings to recover its debt. Grouping all possible actions against the debtor into a single proceeding controlled in a single forum facilitates negotiation with creditors because it places them all on an equal footing, rather than exposing them to the risk that a more aggressive creditor will realize its claims against the debtor's limited assets while the other creditors attempt a compromise.
>
> Avoiding inefficiencies and chaos, and favouring an orderly collective process, maximizes global recovery for all creditors.[23]

38. There is no doubt that this automatic stay includes remedies provided by statute. For instance, the Manitoba Court of Queen's Bench held that the automatic stay barred claimants who were entitled to compensation from a bankrupt pursuant to the *Securities Act* from making a claim under that Act.[24] Similarly, the British Columbia Court of Appeal held that the Crown's statutory right to forfeiture for a bankrupt's non-payment of taxes constituted a remedy under the *BIA*, and was stayed by the automatic stay.[25]

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[22] *Husky Oil Operations Ltd. v. Minister of National Revenue,* 1995 CanLII 69 (SCC) at para. 9; *Alberta (Attorney General) v. Moloney*, 2015 SCC 51 at para. 33 ["*Moloney*"].
[23] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 22, cited in *Moloney* at para. 33.
[24] *Manitoba Securities Commission v. Werbeniuk*, 2009 MBQB 59 at paras. 13-16, 19-22.
[25] *Westline Ranch Ltd., Re*, 1987 CanLII 2772 (BC CA) at para. 11.

39. Accordingly, the fact that the Condo Corporation was exercising a statutory right under the *Condominium Act* against Fernwood and its property is immaterial: the integrity of the single proceeding model and the overall bankruptcy scheme depends on a stay of these rights and the restriction of this behaviour.

2. The Condo Corporation is violating the stay of enforcement under the receivership

40. As described above, the Appointment Order in the receivership proceedings provides for a broad stay of proceedings against the Debtor, the Receiver, or affecting the Property, except with the written consent of the Receiver or leave of this Court.[26] The Appointment Order goes on to list exceptions to this stay, none of which is applicable here.

41. The Condo Corporation's collection efforts are clearly barred by this stay. The rental payments constitute "Property" under the Appointment Order because the payments are proceeds of Fernwood's business and the Fernwood Units and derived from the Development, Fernwood's primary asset.

B. The BIA *is Paramount to the Provincial* Condominium Act

42. The Condo Corporation relies on s. 87(5) of the Ontario *Condominium Act* as its purported justification for collecting rents from the Fernwood Units. This section provides that upon receiving notice that the tenants are required to pay their rent to the condominium corporation under s. 87, the tenant shall make this

[26] Appointment Order, MR Tab 2, Appendix A, p. 36 at para. 10.

payment to the condominium corporation "even if an encumbrancer of the unit has acquired the right of the lessor to receive rent under the lease."[27]

43. The Condo Corporation also cited to the Receiver the decision in *Burton*[28] in which the Court held that a condominium corporation's claim to rent under s. 87 had priority over the claims of construction lien holders. In *Burton,* the construction lien holders were represented by a trustee who was appointed pursuant to a provincial statute.

44. The *Burton* decision is entirely distinguishable from this case. First, there was not any stay of proceedings in *Burton*.

45. Second, while the trustee in *Burton* was appointed under a provincial statute, RSM is a Trustee in Bankruptcy under the federal *BIA*. The principle of federal paramountcy dictates that if there is a conflict between a federal statute such as the *BIA*, and a provincial statute such as the Ontario *Condominium Act*, the federal statute governs.

46. Under the Receiver's interpretation, there is no conflict between the statutes: both the automatic stay under the *BIA* and the stay under the Appointment Order operate to restrict the remedy otherwise granted by the provincial legislation.

47. However, under the Condo Corporation's interpretation, there is a conflict between the *BIA* and the *Condominium Act* in that the Condo Corporation

[27] *Condominium Act*, s. 87(5); October 15th Response, MR Tab 2, Appendix J, pp. 112-113.
[28] *Metropolitan Toronto Condominium Corp. No. 1175 v. Irving A. Burton Ltd.*, 1999 CarswellOnt 1739 (Sup. Ct.).

asserts that its right to the rent ranks senior to both: (i) the Receiver's right to control Fernwood's Property, including the rental payments; and (ii) the Trustee in Bankruptcy's absolute rights in respect of the rental payments.[29]

48. This interpretation creates a conflict between the *BIA* and the *Condominium Act* that engages federal paramountcy. The Supreme Court describes the doctrine as, "where there is an inconsistency between validly enacted but overlapping provincial and federal legislation, the provincial legislation is inoperative to the extent of the inconsistency."[30]

49. Where paramountcy is engaged, the court must determine whether an overlap between the two statutes constitutes either: (i) an operation conflict (e.g., compliance with both statutes is actually impossible); or (ii) a frustration of purpose (e.g., the provincial law actually thwarts the purpose of the federal law).

50. In the present case, the interpretation advanced by the Condo Corporation creates both an operational conflict and a frustration of the *BIA's* purpose.

51. The operational conflicts exists because it is impossible to comply with, or give effect to, both the stay under the *BIA* and the self-help remedy under the provincial *Condominium Act.* Similarly, a conflict exists because the *Condominium Act*, if operative, would allow the Condo Corporation to collects its debt in priority to other similarly situated creditors, contrary to the express priority and distribution scheme set out in the *BIA*.

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[29] These payments, like the rest of Fernwood's Property, vested exclusively and absolutely in the Trustee upon Fernwood's bankruptcy.
[30] *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53 at para. 15.

52. There is also a frustration of federal purpose: as set out above, the fair and equitable distribution of the debtor's assets through a single proceeding is the bedrock purpose of the *BIA*. Allowing one creditor to execute on its claim outside that process, thus gaining an advantage over other, similarly-situated creditors, fundamentally conflicts with this purpose.

53. The doctrine of federal paramountcy requires that the provincial legislation be read down to remedy the conflict (for an operational conflict), or struck in its entirety (for frustration of purpose).

54. As a result, if the bankruptcy and receivership stays do not operate to prevent the Condo Corporation's collection under the *Condominium Act*, s. 87 of the *Condominium Act* must be struck.

C. It is not Appropriate to Lift the Stay of Proceedings to Allow the Condo Corporation to Collect its Claim

55. The Condo Corporation has applied to lift the stays imposed by the bankruptcy and receivership. As the Ontario Court of Appeal held, "lifting the automatic stay is far from a routine matter".[31] The onus is on the party seeking to lift the stay to establish that there are "sound reasons, consistent with the scheme of the *Bankruptcy and Insolvency Act*, to relieve against the automatic stay."[32]

56. The Condo Corporation must establish that it is likely to be materially prejudiced by the continued operation of the stay. Courts have consistently held

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[31] *Ma v. Toronto-Dominion Bank,* 2001 CanLII 24076 (Ont. C.A.) at para. 3 ["*Ma*"].
[32] *Ma* at para. 3.

that in order to make out "material prejudice", the creditor must show that it will suffer specific prejudice that is different from the prejudice experienced by all similarly situated creditors as a result of the stay:

> As to subsection (a), what amounts to material prejudice depends on the circumstances in each case. By its nature, a stay creates prejudice for all secured creditors while a reorganization is being contemplated.
>
> What Golden Griddle and Nicholby's must establish is material prejudice to them in the sense that they will be treated differently or some way unfairly, or they would suffer worse harm than other creditors.[33]

57. The Condo Corporation has not established that it will suffer any prejudice that is worse than the prejudice suffered by all of Fernwood's unsecured creditors. When a business goes into insolvency proceedings, its creditors' claims are compromised. Its creditors also lose rights against the business that they would have in the ordinary course. These are commercial realities borne by all creditors of an insolvent entity.

58. In this instance, the Condo Corporation is simply attempting to get paid in full, ahead of other secured and unsecured creditors – as the Condo Corporation itself acknowledges, the rent proceeds would likely go to MZG, a secured creditor with priority to those payments. If the Condo Corporation was permitted to lift the stay and collect the rents, the result would subvert the *BIA* priority scheme, which mandates that all similarly situated creditors are treated *pari passu*.

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[33] *Golden Griddle Corp. v. Fort Erie Truck & Travel Plaza Inc.*, 2005 CanLII 81263 (Ont. Sup. Ct.) at paras. 18-19; see also *Alignvest Private Debt Ltd v. Surefire Industries Ltd*, 2015 ABQB 148, aff'd 2015 ABCA 355, at para. 43.

59. Courts routinely refuse to lift the stay where the result would be "to have this unsecured creditor given an inappropriate leg up on the other unsecured creditors, not to mention a leg up over secured creditors with priority."[34]

60. The Condo Corporation has not met its burden. The financial hardship it will suffer is no different than the hardship suffered by other unsecured creditors, including creditors who have lost rights they would have had in the ordinary course of business. Lifting the stay is not appropriate in this case.

PART VI. – ORDER REQUESTED

61. The Receiver and Trustee in Bankruptcy respectfully requests an Order:

(a) declaring that the Condo Corporation has no right to collect any monthly rent from the Fernwood Tenants from the date of the receivership forward;

(b) directing the Condo Corporation to disgorge and pay over to the Receiver all rents collected from the Fernwood Tenants from November 1, 2020 forward and to provide the Receiver with an accounting of the rents collected from November 1, 2020 forward; and,

(c) awarding the Receiver's costs of this motion on a substantial indemnity basis.

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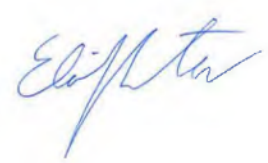
[34] *Ivaco Inc. (Re)*, 2003 CanLII 64275 (Ont. Sup. Ct. [Commercial List]) at para. 7; see also *Alberta Energy Regulator v. Lexin Resources Ltd*, 2019 ABQB 23 at para. 16.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

November 24, 2020



Jeffrey Larry/Elizabeth Rathbone

Paliare Roland Rosenberg Rothstein LLP

Lawyers for RSM Canada Limited

SCHEDULE "A" – LIST OF AUTHORITIES

1. Frank Bennett, *Bennett on Receiverships*, 2nd Ed., Carswell, 1999
2. *Canadian Imperial Bank of Commerce v. King Truck Engineering Canada Ltd*., (1987) 63 C.B.R. (N.S.) 1 (Ont. C.A.)
3. L.W. Houlden, Geoffrey B. Morawetz and Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada,* 4th Ed., Carswell, 2009
4. *Vachon v. Canada Employment and Immigration Commission*, 1985 CanLII 12 (SCC)
5. *Canada (Superintendent of Bankruptcy) v. 407 ETR Concession Company Limited*, 2013 ONCA 769, aff'd 2015 SCC 52
6. *Husky Oil Operations Ltd. v. Minister of National Revenue,* 1995 CanLII 69 (SCC)
7. *Alberta (Attorney General) v. Moloney*, 2015 SCC 51
8. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
9. *Manitoba Securities Commission v. Werbeniuk*, 2009 MBQB 59
10. *Westline Ranch Ltd., Re*, 1987 CanLII 2772 (BC CA)
11. *Metropolitan Toronto Condominium Corp. No. 1175 v. Irving A. Burton Ltd.*, [1999] O.J. No. 2062 (Sup. Ct.)
12. *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53
13. *Ma v. Toronto-Dominion Bank,* 2001 CanLII 24076 (Ont. C.A.)
14. *Golden Griddle Corp. v. Fort Erie Truck & Travel Plaza Inc.*, 2005 CanLII 81263 (Ont. Sup. Ct.)
15. *Alignvest Private Debt Ltd v. Surefire Industries Ltd*, 2015 ABQB 148, aff'd 2015 ABCA 355
16. *Ivaco Inc. (Re)*, 2003 CanLII 64275 (Ont. Sup. Ct. [Commercial List])
17. *Alberta Energy Regulator v. Lexin Resources Ltd*, 2019 ABQB 23

SCHEDULE "B" – STATUTES and REGULATIONS

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

Stays of proceedings — bankruptcies

69.3 (1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

Claims provable

121 (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

Condominium Act, 1998, S.O. 1998, c. 19

Default with respect to leased unit

87 (1) If an owner who has leased a unit defaults in the obligation to contribute to the common expenses payable for the owner's unit, the corporation may, by written notice to the lessee, require the lessee to pay to the corporation the lesser of the amount of the default and the amount of the rent due under the lease.

Service on lessee

(2) The corporation shall give the notice to the lessee by personal service or by sending it by prepaid mail addressed to the lessee at the address of the unit.

Notice to owner

(3) If the corporation gives a notice to a lessee, it shall give a copy of the notice to the owner of the unit that the lessee has leased.

(4) Repealed: 2015, c. 28, Sched. 1, s. 80 (2).

Rent paid to corporation

(5) Upon receiving a notice under subsection (1), the lessee shall make the required payment to the corporation even if an encumbrancer of the unit has acquired the right of the lessor to receive rent under the lease.

No default in lease

(6) The payment to the corporation shall constitute payment towards rent under the lease and the lessee shall not by reason only of the payment to the corporation be considered to be in default of an obligation in the lease.

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

MARSHALLZEHR GROUP INC.	**-and-**	**FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION**
Applicant		**Respondent**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE RECEIVER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Elizabeth Rathbone (LSO# 70331U)
Tel: 416.646.7488
elizabeth.rathbone@paliareroland.com

Lawyers for the Receiver, RSM Canada Limited