

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

APPLICATION UNDER SECTION 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.C43, AS AMENDED

**RESPONDING MOTION RECORD
(Returnable November 27, 2020)**

November 20, 2020

HODISLAW
62 Camelot Square
Barrie, ON L4M 0C2

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and her agents
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**Lawyers for Simcoe Standard Condominium
Corporation No. 420**

TO: ALL PARTIES ON THE ATTACHED SERVICE LIST

SERVICE LIST

(current as of November 17, 2020)

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TAB 1

**ONTARIO
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APPLICATION UNDER SECTION 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.C43, AS AMENDED

AFFIDAVIT OF DEANNA FUDGE

Sworn November 19, 2020

I, DEANNA FUDGE, of the Town of New Tecumseth, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President of the Board of Directors of Simcoe Standard Condominium Corporation No. 420 (the "Condominium"). The Condominium is a development of stacked townhouses in Barrie, Ontario. The Condominium was developed by the Respondent, Fernwood Developments (Ontario) Corporation ("Fernwood").
2. The Declaration was registered in October 2016. The Condominium was turned over by Fernwood as developer in September 2017.
3. Fernwood was unable to sell, or decided not to sell, many of the units in the Condominium. Fernwood continues to own 26 units (the "Fernwood Units") of the 62 units in the Condominium. The Fernwood Units should collectively pay 42% of the common expenses of the Condominium.

4. Like all condominiums in Ontario, the Condominium has costs and expenses that it must pay. Attached as Exhibit A is a copy of the budget of the Condominium for 2019/2020 which shows the categories of expense incurred by the Condominium. The hydro and water expense in the budget are the expenses for common areas only. All unit owners in the Condominium enjoy the benefit of these expenses. All unit owners are supposed to pay their proportionate share of these "common expenses".
5. Fernwood has failed to pay its share of the common expenses. At one point the arrears in common expenses owed by Fernwood totalled over \$125,000.00 plus costs and interest. The Condominium was able to recover some of the arrears after it registered liens pursuant to s. 85 of the *Condominium Act* (the "*Act*") against the Fernwood Units. However, arrears of \$76,815 plus interest and costs are still owing by Fernwood (the "Fernwood Arrears").
6. The Receiver for Fernwood is currently paying common expenses for the Fernwood Units. The Fernwood Arrears cover the period from December 2018 to November 2019 for 25 of the Fernwood units and from December 2018 to February 2020 for one of Fernwood units.
7. Fernwood has been in arrears of payment of common expenses consistently since January 2017. Arrears would continue to build up and then partial payments would be made. Some of the arrears accumulated when Fernwood controlled the Board of the Condominium and before turnover. At no time since January 2017 has Fernwood not been in arrears, although it did make some payments that reduced the arrears. In March 2019, Marshallzehr Group Inc. made a payment on account of arrears. At the time of payment, \$2,790.00 was owed on each of the Fernwood units. Marshallzehr Group Inc made payment of \$1,830.00 for each unit. As such, \$960 was still owing on each unit owned by Fernwood. The arrears continued to accumulate from March 2019 to July 2020. Then the Receiver made a payment of \$3,289.00 per unit to discharge the liens registered. However, this payment did not pay off the arrears in their entirety. The Release signed by the Condominium and the Receiver clearly preserved the Condominium's right to collect the arrears accumulated prior to December 2019 with respect to 25 units and prior to March 2020 with respect to unit 14-246 Penetanguishene Road.
8. The Fernwood Arrears are \$4,228 for Unit 14-246 Penetanguishene Road and \$3,229 per unit for each of the other twenty-five Fernwood Units. Attached as Exhibits B and C are

copies of the owner ledger for common expenses owing by Unit 14-246 Penetanguishene Road and a copy of a sample owner ledger from one of the other Fernwood Units. These ledgers shown how the arrears accumulated and all payments that have been made.

9. Even though the Fernwood Units have not paid their share of common expenses, they continue to benefit from the services those common expense fees cover. Because of the nature of condominium living and the legal structure of condominiums, it is not possible for the Condominium to deprive the Fernwood Units of the benefit of services paid by common expenses when Fernwood was delinquent in fulfilling its obligation to pay for that benefit.

10. The Condominium is an involuntary creditor of Fernwood. The Condominium had to incur the common expenses whether or not Fernwood paid its share of those expenses as required by the *Act*.

11. Fernwood does not use or occupy any of the Fernwood Units. Most of the Fernwood Units are leased to third parties.

12. The *Act* gives condominiums a right to collect rental payments that would otherwise be due to unit owners when those unit owners fail to pay their share of common expenses (my lawyer advises that this right is contained in s. 87 of the *Act*). A condominium can deliver a letter to the tenant and then have the sums due from the tenant paid to the condominium.

13. Relying on the advice of our condominium lawyer, Sonja Hodis, the Condominium exercised this right. In mid October, letters were sent to the tenants of the Fernwood Units requiring them to make payment to an agent for the Condominium.

14. The Condominium has received only one payment from a tenant in response to these letters. The Condominium received \$650.00 from a tenant in Unit 14, 246 Penetanguishene Road. After retaining counsel specializing in debtor/creditor rights and bankruptcy law, namely Chris Reed, the Condominium has paid this amount over to the Fernwood Receiver on the understanding that the Receiver would hold this amount to be dealt with pursuant to an order of this Honourable Court.

15. The Fernwood Arrears cause great financial hardship for the Condominium. The Condominium is required by law to maintain a reserve fund to cover the costs of future repairs and maintenance. Because Fernwood has not paid its fair share to the Condominium, the Condominium has not been able to properly fund its reserve fund. The reserve fund is currently underfunded by just over \$91,000. If the Fernwood Arrears are not collected through use of the s.87 right, then there will have to be a special assessment levied on all units in the Condominium. The practical effect of the special assessment would be that the other units in the Condominium will be paying 58% of the Fernwood Arrears that should have been paid by Fernwood. (Fernwood would pay 42% of the amount in any event because it would be responsible to pay 42% of the special assessment.)

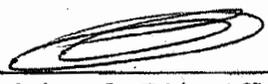
16. It appears that the proceeds of the Receivership will likely be payable to Marshallzehr and not to any other creditor unless another creditor can establish priority over Marshallzehr. I say this based upon the numbers disclosed in the Notice & Statement of Receiver dated February 21, 2020, a copy of which is attached as Exhibit D.

17. Based on the information provided by the Receiver to the Condominium about leases of the Fernwood Units, the Condominium estimates that tenants in the Fernwood Units are presently paying, collectively, approximately \$35,000 to 38,000 per month in rent. The fundamental dispute in this case is whether some part of those funds can be redirected or seized by the Condominium to obtain payment of the Fernwood Arrears or whether all the benefit of those funds will be paid to Marshallzehr, leaving the other unit owners in the Condominium to bear the cost of common expenses enjoyed by the Fernwood Units and their tenants, but not paid for by the units' owner.

18. In order to ensure that the court has jurisdiction to deal with any inadvertent breach of existing orders and has a formal request for rulings concerning the rights of the Condominium to deliver a notice under s.87 of the Act, the Condominium's lawyers will be bringing cross-motions in both the Fernwood receivership and the Fernwood bankruptcy proceedings. Copies of the relevant Notices of Motion will be filed with the Motion Record containing this affidavit.

SA ✓
Town ✓
SA ✓

Sworn ^{SA}remotely by Deanna ^{SA}Fudge in the)
City of ~~New Tecumseth~~ ^{Barre}, before me at the)
City of ~~New Tecumseth~~ ^{Barre}, on November 19,)
2020 in accordance with)
O. Reg. 431/20, Administering Oath or
Declaration Remotely.



A Commissioner for Taking Affidavits
Sonya Hudis



Deanna Fudge

SSCC 420 Georgian Meadows (656)
 BUDGET FOR FISCAL YEAR
 OCTOBER 1, 2020 TO SEPTEMBER 30, 2021

	2018-2019	62 UNITS Approved 2019-2020	Aug-20 11 months Actual	Projected Year End	Variance	62 UNITS Approved 2019-2020 Budget	
	Actual	Budget					
Revenues							
Common Element Fees 4005	\$ 178,560.00	\$ 191,952.00	\$ 175,956.00	\$ 191,952.00	\$ -	\$ 233,616.00	21.71%
Interest Income 4300	\$ 326.87	\$ 300.00	\$ 252.48	\$ 275.43	\$ 24.57	\$ 200.00	
Special assessment (insurance)		\$ -	\$ 13,950.00	\$ 13,950.00	\$ -	\$ -	
Total Revenues	\$ 178,886.87	\$ 192,252.00	\$ 190,158.48	\$ 206,177.43	\$ 24.57	\$ 233,816.00	
Expenses							
Hydro 6102	\$ -	\$ 500.00	\$ -	\$ 2,500.00	\$ 2,000.00	\$ 2,000.00	
Water and Sewer 6105	\$ -	\$ -	\$ 9,952.51	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	
Total Utilities & Other	\$ -	\$ 500.00	\$ 9,952.51	\$ 4,500.00	\$ 4,000.00	\$ 4,000.00	
Repairs & Maintenance							
Snow Removal 6201	\$ 38,419.98	\$ 33,000.00	\$ 26,743.35	\$ 26,743.35	\$ 6,256.65	\$ 30,000.00	
Grounds Keeping 6202	\$ 11,582.50	\$ 9,800.00	\$ 7,012.02	\$ 10,967.02	\$ 1,167.02	\$ 11,000.00	
Waste Removal 6203	\$ 6,176.01	\$ 9,600.00	\$ 13,588.74	\$ 15,000.00	\$ 5,400.00	\$ 12,000.00	
General Building Maintenance 6401	\$ 5,322.30	\$ 6,200.00	\$ 926.60	\$ 2,000.00	\$ 6,000.00	\$ 15,630.00	
Total Repairs & Maintenance	\$ 61,500.79	\$ 58,600.00	\$ 48,270.71	\$ 54,710.37	\$ 5,689.63	\$ 68,630.00	
Administration Expenses							
Management Fees 6701	\$ 21,018.00	\$ 23,435.00	\$ 20,807.82	\$ 23,435.00	\$ -	\$ 24,381.00	
Insurance 6704	\$ 19,388.11	\$ 25,000.00	\$ 35,620.32	\$ 38,859.32	\$ 13,859.32	\$ 45,000.00	
Legal 6705			\$ 7,140.02	\$ 14,640.02	\$ 14,640.02	\$ 5,000.00	
Professional Fees 6706	\$ 2,640.57	\$ 2,600.00	\$ 3,005.12	\$ 3,005.12	\$ 405.12	\$ 3,000.00	
Office Expenses 6709	\$ 887.07	\$ 1,000.00	\$ 1,219.72	\$ 1,519.72	\$ 519.72	\$ 1,000.00	
CAO 6712	\$ 833.17	\$ 750.00	\$ 837.00	\$ 837.00	\$ 87.00	\$ 837.00	
Bank Charges 6719	\$ 330.11	\$ 350.00	\$ 230.48	\$ 295.48	\$ 54.52	\$ 350.00	
Total Administration Expenses	\$ 45,097.03	\$ 53,135.00	\$ 68,860.48	\$ 82,591.66	\$ 29,456.66	\$ 79,568.00	
Total Operating Expenses	\$ 106,597.82	\$ 112,235.00	\$ 127,083.70	\$ 141,802.03	\$ 27,767.03	\$ 152,198.00	
Reserve Fund Study	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Reserve Fund Contribution	\$ 74,400.00	\$ 80,017.00	\$ 73,348.88	\$ 80,017.00	\$ -	\$ 81,618.00	
Total Reserve Contribution	\$ 74,400.00	\$ 80,017.00	\$ 73,348.88	\$ 80,017.00	\$ -	\$ 81,618.00	
Total Costs	\$ 180,997.82	\$ 192,252.00	\$ 200,432.58	\$ 221,819.03	\$ 27,767.03	\$ 233,816.00	
Net Income (Loss) for the Year	-\$ 2,110.95	\$ -	-\$ 10,274.10	-\$ 15,641.60	\$ 27,791.60	\$ -	
COMMON ELEMENT FEES		\$ 258.00				\$ 314.00	
Net Income (Loss) for the Year	-\$ 2,110.95	\$ -	-\$ 10,274.10	-\$ 15,641.60		\$ -	

This is Exhibit B referred to in
the affidavit of Deanna Fudge sworn
before me, this 19th day of
 November , 2020.

A handwritten signature consisting of several overlapping, loopy strokes, likely representing the name of the notary public.

A COMMISSION FOR TAKING AFFIDAVITS

Owner Ledger

**Fernwood Development Corp.
14 - 246 Penetanguishene Rd
Barrie, ON**

Date: 10/06/20
Owner Code: 14myt
Property: 656
Unit: 246-14
Status: Current
Fees: 314.00
Deposit: 0.00
Move In Date: 04/01/18
Move Out Date:
Due Day: 1
Tel# (B)
Tel# (H)

Date	Description	Charges	Payments	Balance
				0.00
	Balance Forward			225.00
	Fees	225.00		450.00
04/01/18	Fees (05/2018)	225.00		675.00
05/01/18	Fees (06/2018)	225.00		900.00
06/01/18	Fees (07/2018)	225.00		1,125.00
07/01/18	Fees (08/2018)	225.00		1,350.00
08/01/18	Fees (09/2018)	240.00		1,590.00
09/01/18	Fees (10/2018)	240.00		1,830.00
10/01/18	Fees (11/2018)	240.00		2,070.00
11/01/18	Fees (12/2018)	240.00		2,310.00
12/01/18	Fees (01/2019)	240.00		2,550.00
01/01/19	Fees (02/2019)	240.00		2,790.00
02/01/19	Fees (03/2019)	240.00		2,960.00
03/01/19	chk# 5586 PYMT MARSHALLZEHR GROUP INC.		1,830.00	1,200.00
03/21/19	Fees (04/2019)	240.00		1,440.00
04/01/19	Fees (05/2019)	240.00		1,680.00
05/01/19	Fees (06/2019)	240.00		1,920.00
06/01/19	Fees (07/2019)	240.00		2,160.00
07/01/19	Fees (08/2019)	240.00		2,400.00
08/01/19	Fees (09/2019)	258.00		2,658.00
09/01/19	Fees (10/2019)	258.00		2,916.00
10/01/19	Fees (11/2019)	113.00		3,029.00
11/01/19	Admin fee NOL	200.00		3,229.00
11/12/19	Title search	258.00		3,487.00
12/01/19	Fees (12/2019)	258.00		3,745.00
01/01/20	Fees (01/2020)	225.00		3,970.00
01/06/20	Special Assessment Fee	258.00		4,228.00
02/01/20	Fees (02/2020)	258.00		4,486.00
03/01/20	Fees (03/2020)	258.00		4,744.00
04/01/20	Fees (04/2020)	258.00		5,002.00
05/01/20	Fees (05/2020)	258.00		5,260.00
06/01/20	Fees (06/2020)	258.00		5,518.00
07/01/20	Fees (07/2020)		1,290.00	4,228.00
07/08/20	RMS CANADA LTD	258.00		4,486.00
08/01/20	Fees (08/2020)		258.00	4,228.00
08/17/20	PYMT EFT RSM CANADA LTD			CONTINUED

Owner Ledger

**Fernwood Development Corp.
14 - 246 Penetanguishene Rd
Barrie, ON**

Date: 10/06/20
 Owner Code: 14myt
 Property: 656
 Unit: 246-14
 Status: Current
 Fees: 314.00
 Deposit: 0.00
 Move In Date: 04/01/18
 Move Out Date:
 Due Day: 1
 Tel# (B)
 Tel# (H)

Date	Description	Charges	Payments	Balance
	Balance Forward			4,228.00
09/01/20	Fees (09/2020)	258.00		4,486.00
09/01/20	PYMT EFT RSM CANADA LTD		258.00	4,228.00
10/01/20	Fees (10/2020)	314.00		4,542.00
10/04/20	PYMT EFT RSM CANADA LTD		314.00	4,228.00

Current	30 Days	60 Days	90 Days	Amount Due
0.00	0.00	0.00	4,228.00	4,228.00

Owner Ledger

**Fernwood Developments Corp.
10 - 242 Penetangulshene Rd.
Barrie, ON**

Date: 10/06/20
Owner Code: 242-10
Property: 656
Unit: 242-10
Status: Current
Fees: 314.00
Deposit: 0.00
Move In Date:
Move Out Date:
Due Day: 1
Tel# (B)
Tel# (H)

Date	Description	Charges	Payments	Balance
				0.00
	Balance Forward	163.32		163.32
01/01/17	Fees (01/2017)	163.32		326.64
02/01/17	Fees (02/2017)	163.32		489.96
03/01/17	Fees (03/2017)	163.32		653.28
04/01/17	Fees (04/2017)	163.32		816.60
05/01/17	Fees (05/2017)	163.32		979.92
06/01/17	Fees (06/2017)	163.32		1,143.24
07/01/17	Fees (07/2017)	163.32		1,306.56
08/01/17	Fees (08/2017)	163.32	979.92	326.64
08/01/17	chk# 01535 PYMT	163.32		489.96
09/01/17	Fees (09/2017)	163.32		653.28
10/01/17	Fees (10/2017)	163.32	489.96	163.32
10/19/17	chk# 01550 PYMT	163.32		326.64
11/01/17	Fees (11/2017)	163.32		489.96
12/01/17	Fees (12/2017)	320.04		810.00
12/12/17	Bal. fees Oct./Nov./Dec.2017	270.00		1,080.00
01/01/18	Fees (01/2018)	270.00		1,350.00
02/01/18	Fees (02/2018)	270.00		1,620.00
03/01/18	Fees (03/2018)	270.00		1,845.00
04/01/18	Fees (04/2018)	225.00	810.00	1,035.00
04/02/18	chk# 02528 PYMT FERNWOOD DEV.	225.00		1,260.00
05/01/18	Fees (05/2018)	225.00		1,485.00
06/01/18	Fees (06/2018)	225.00	810.00	675.00
06/05/18	chk# 02567 PYMT FERNWOOD DEV.	225.00		900.00
07/01/18	Fees (07/2018)	225.00		1,125.00
08/01/18	Fees (08/2018)	225.00		1,350.00
09/01/18	Fees (09/2018)	240.00		1,590.00
10/01/18	Fees (10/2018)	240.00		1,830.00
11/01/18	Fees (11/2018)	240.00		2,070.00
12/01/18	Fees (12/2018)	240.00		2,310.00
01/01/19	Fees (01/2019)	240.00		2,550.00
02/01/19	Fees (02/2019)	240.00		2,790.00
03/01/19	Fees (03/2019)	240.00	1,830.00	960.00
03/21/19	chk# 5586. PYMT MARSHALLZEHR GROUP INC.	240.00		1,200.00
04/01/19	Fees (04/2019)	240.00		1,440.00
05/01/19	Fees (05/2019)			CONTINUED

Owner Ledger

**Fernwood Developments Corp.
10 - 242 Penetanguishene Rd.
Barrie, ON**

Date: 10/06/20
 Owner Code: 242-10
 Property: 656
 Unit: 242-10
 Status: Current
 Fees: 314.00
 Deposit: 0.00
 Move In Date:
 Move Out Date:
 Due Day: 1
 Tel# (B)
 Tel# (H)

Date	Description	Charges	Payments	Balance
	Balance Forward			1,440.00
06/01/19	Fees (06/2019)	240.00		1,680.00
07/01/19	Fees (07/2019)	240.00		1,920.00
08/01/19	Fees (08/2019)	240.00		2,160.00
09/01/19	Fees (09/2019)	240.00		2,400.00
10/01/19	Fees (10/2019)	258.00		2,658.00
11/01/19	Fees (11/2019)	258.00		2,916.00
11/12/19	Admin fee legal	113.00		3,029.00
11/12/19	Title search	200.00		3,229.00
12/01/19	Fees (12/2019)	258.00		3,487.00
01/01/20	Fees (01/2020)	258.00		3,745.00
01/06/20	Special Assessment Fee	225.00		3,970.00
02/01/20	Fees (02/2020)	258.00		4,228.00
02/28/20	Condominium lien	1,000.00		5,228.00
03/01/20	Fees (03/2020)	258.00		5,486.00
04/01/20	Fees (04/2020)	258.00		5,744.00
05/01/20	Fees (05/2020)	258.00		6,002.00
06/01/20	Fees (06/2020)	258.00		6,260.00
07/01/20	Fees (07/2020)	258.00		6,518.00
07/08/20	RMS CANADA LTD		3,289.00	3,229.00
08/01/20	Fees (08/2020)	258.00		3,487.00
08/17/20	PYMT EFT RSM CANADA LTD		258.00	3,229.00
09/01/20	Fees (09/2020)	258.00		3,487.00
09/01/20	PYMT EFT RSM CANADA LTD		258.00	3,229.00
10/01/20	Fees (10/2020)	314.00		3,543.00
10/04/20	PYMT EFT RSM CANADA LTD		314.00	3,229.00

Current	30 Days	60 Days	90 Days	Amount Due
0.00	0.00	0.00	3,229.00	3,229.00

This is Exhibit D referred to in
the affidavit of Deanna Fudge sworn
before me, this 19th day of
 November , 2020.

A handwritten signature consisting of several overlapping, loopy strokes, likely representing the name of the notary public.

A COMMISSION FOR TAKING AFFIDAVITS



RSM

RSM Canada Limited

100 King Street West

Suite 200, Box 27

Toronto, ON M5X 1C7

Tel: 416 490 0700

Fax: 416 490 2676

www.rsmcanada.com

**NOTICE AND STATEMENT OF RECEIVER
(SECTION 245(1) AND 246(1) OF THE BANKRUPTCY AND INSOLVENCY ACT (CANADA))**

In the matter of the receivership of Fernwood Developments (Ontario) Corporation (the "Company")

The receiver gives notice and declares that:

1. On the 12th day of February, 2020, the undersigned, RSM Canada Limited, was appointed as receiver (the "Receiver"), without security, of all of the assets, undertakings and properties of the Company, an insolvent person that is described below:

Description	Amount
Security Deposits	\$ 1,400,000
Renture	170,169
Rent Receivables	1,086,524
Property - Barrie	13,192,729
Rental Units	7,672,571
	<u>\$23,521,993.00</u>

**The amounts above reflect the net book values recorded on the Company's
Draft Financial Statements as at October 21, 2019.*

2. The undersigned became a receiver in respect of the Company by virtue of being appointed by the Ontario Superior Court of Justice - Commercial List.
3. The undersigned commenced the exercise of its powers in respect of that appointment on the 12th day of February, 2020.
4. The following information relates to the receivership:
 - a) Registered Head Office of the Company: 240 Penetanguishene Rd, Barrie, ON L4M 7C2.
 - b) Principal line of business: Real estate development company and real property owner.
 - c) The amounts owed by the Company to the creditors who appear to hold a security interest include:

THE POWER OF BEING UNDERSTOOD
ALWAYS STARTS WITH COMMUNICATION

© 2019 RSM Canada Limited. All rights reserved. RSM Canada Limited is a member of the RSM network of member firms of the RSM Group of Companies. RSM Canada Limited is a member of the RSM Group of Companies.

Royal Bank of Canada	Unknown
Bank of Montreal	Unknown
MarshallZehr Group Inc.	24,000,000

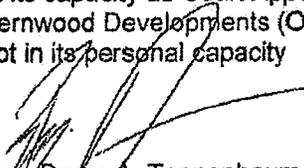
- d) The list of creditors of the Company and the amount owed to each creditor by the insolvent company is attached hereto. This list has been compiled from information available to the Receiver, including the books and records of the Company and a search of the Personal Property Security Registration System and limited enquiries by the Receiver and has not been audited or verified by the Receiver. The fact that persons are receiving this notice or are included on the creditors list does not mean that it has been determined that they are a creditor or that if they are a creditor, that their claim is admitted in the amount set out on that list.
- e) The current intended plan of the Receiver, to the extent that such a plan has been determined, is to realize on the assets of the Company.
- f) Contact person for the Receiver:

Echa Odeh
RSM Canada Limited
11 King Street West
Suite 700, PO Box 27
Toronto, Ontario M5H 4C7
Telephone: (647) 730-3728
Facsimile: (416) 480-2646
E-mail: echa.odeh@rsmcanada.com

- g) Additional information: A copy of the receivership order is posted on the Receiver's website at <https://rsmcanada.com/what-we-do/services/consulting/financial-advisory/restructuring-recovery/current-restructuring-recovery-engagements/fernwood-developments-ontario-corporation.html>. Other pertinent public information will be posted to this website as that information becomes available.

Dated at Toronto this 21st day of February, 2020.

RSM CANADA LIMITED
In its capacity as Court Appointed Receiver of
Fernwood Developments (Ontario) Corporation, and
not in its personal capacity


Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

MARSHALLZEHR GROUP INC.

Applicant

and

FERNWOOD DEVELOPMENTS
(ONTARIO) CORPORATION
Respondent

Court File No.: CV-20-635523-CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF DEANNA FUDGE
(Sworn November 19, 2020)

HODISLAW

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Barrie, ON L4M 0C2

Sonja Hodis

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Email: sonja@hodislaw.com

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Lawyers for Simcoe Standard Condominium
Corporation No. 420

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

FERNWOOD DEVELOPMENTS (ONTARIO) CORPORATION

Respondent

APPLICATION UNDER SECTION 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.C43, AS AMENDED

**NOTICE OF MOTION
(Returnable November 27, 2020)**

Simcoe Standard Condominium Corporation No. 420 (the "Condominium") will make a motion to a Judge of the Commercial List on Friday November 27, 2020, at 10:00 a.m., or as soon after that time as the motion can be heard. The motion will be heard at the same time as a motion brought by the Receiver regarding the application of the receivership stay to the Condominium and details regarding participation in the hearing of the Receiver's motion copied from the Receiver's Notice of Motion are reproduced in Schedule A below.

PROPOSED METHOD OF HEARING: The motion is to be heard by video conference due to the COVID-19 crisis.

THE MOTION IS FOR:

- (a) An order varying the order of Justice Hainey dated February 12, 2020, by lifting the stay contained in paragraphs 9 and 10 of that order (the "Receivership Stay") to allow the Condominium to deliver a letter to tenants of the Respondent ("Fernwood") pursuant to s.87 of the *Condominium Act* (a "CA s.87 Notice"), with

the effect of such order either being retroactive to October 12, 2020, or effective as of the date of the Court's order;

- (b) an Order lifting the Receivership Stay to allow the Condominium to collect and/or retain payments paid by Fernwood tenants to the Condominium in accordance with any CA s.87 Notice;
- (c) in the alternative to a) and b), an order that the distribution of any funds to creditors by the Receiver shall be made as if the Condominium had delivered a CA s.87 Notice as of the date of the Court's order and that payments made thereafter by tenants to the Receiver had instead been made to the Condominium, and an order that any distribution of funds by the Receiver would be in accordance with any rights and priorities that would accrue to the Condominium as if such notice and payment had actually occurred;
- (d) costs of this motion; and
- (e) such further relief as is just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Fernwood owes the Condominium over \$76,000 in unpaid common expenses. This will cause a very material deficit in the Condominium's budgeted revenue and in its reserve funds.
- (b) The Receivership Stay prevents the Condominium from exercising a form of statutory security and remedy provided for in s. 87 of the *Condominium Act*. That remedy provides an enforcement right enabling the Condominium to recover unpaid common expenses in priority to other secured creditors.
- (c) Lifting the Receivership Stay to allow the Condominium to serve a CA s.87 Notice will preserve the rights and respective priority position of all creditors.

- (d) The Receivership Stay should not be used or applied in such a manner as to deny one creditor access to form of statutory security and remedy, thereby prejudicing the rights of the creditor so denied and improving the position of other creditors.
- (e) Varying the Order of Justice Hainey as requested would be just and convenient.
- (f) Section 87 of the *Condominium Act* and section 101 of the *Courts of Justice Act*.
- (g) Such further grounds as the Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the affidavit of Deanna Fudge sworn November 19, 2020, and
- (b) such further evidence as the Court may permit.

November 20, 2020

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62 Camelot Square
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Fax: 416.981.0060

**Lawyers for Simcoe Standard Condominium
Corporation No. 420**

TO: THE SERVICE LIST, attached

Schedule A

Conference Details provided by the Receiver's counsel to join the Receiver's Motion via Zoom:

Join Zoom Meeting

<https://us02web.zoom.us/j/83519523165?pwd=SWdETllyclpiYWZ3KzNyN09XeHQyUT09>

Meeting ID: 835 1952 3165

Passcode: 81074

MARSHALLZEHR GROUP INC.

Applicant

and

FERNWOOD DEVELOPMENTS
(ONTARIO) CORPORATION

Respondent

Court File No.: CV-20-635523-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable November 27, 2020)**

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**Lawyers for Simcoe Standard Condominium
Corporation No. 420**

TAB 3

Court File No. 31-2661061

Ontario
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

Province: Ontario
Bankruptcy Division: 03-Barrie
Bankruptcy File No. 31-2661061
Estate No. 31-2661061

IN THE MATTER OF THE BANKRUPTCY OF FERNWOOD
DEVELOPMENTS (ONTARIO) CORPORATION, of the City
of Barrie, in the Province of Ontario.

NOTICE OF MOTION
(returnable November 27, 2020)

Simcoe Standard Condominium Corporation No. 420 (the "Condominium") will make a motion to a Judge of the Commercial List on Friday November 27, 2020, at 10:00 a.m., or as soon after that time as the motion can be heard. The motion will be heard at the same time as a motion brought by the Receiver regarding the application of the receivership stay to the Condominium and details regarding participation in the hearing of the Receiver's motion copied from the Receiver's Notice of Motion are reproduced in Schedule A below.

PROPOSED METHOD OF HEARING: The motion is to be heard by video conference due to the COVID-19 crisis.

THE MOTION IS FOR:

- (a) an order declaring that by delivering a letter to tenants of the Bankrupt ("Fernwood") pursuant to s.87 of the *Condominium Act* (a "CA s.87 Notice") the Condominium is entitled to be paid the rents of those tenants and that therefore the rents are not "the debtor's property" for the purposes of s. 69.3 of the *Bankruptcy and Insolvency Act* ("BIA"),

- (b) in the alternative to a), an order declaring that the Condominium, insofar as it is entitled to seize rents pursuant to a CA s.87 Notice, is a secured creditor for the purposes of s. 69.3(2) of the *BIA*;
- (c) in the alternative to both a) and b), an order lifting the stay contained in s. 69.3(1) of the *BIA*, (the “Bankruptcy Stay”), to allow the Condominium to deliver a CA s.87 Notice to tenants of the Fernwood, with the effect of such order either being retroactive to October 12, 2020, or effective as of the date of the Court’s order;
- (d) costs of this motion; and
- (e) such further relief as is just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Fernwood owes the Condominium over \$76,000 in unpaid common expenses. This will cause a very material deficit in the Condominium’s budgeted revenue and in its reserve funds.
- (b) The Condominium enjoys a form of statutory security and remedy provided for in s. 87 of the *Condominium Act*. This right allows it to recover unpaid common expenses from tenants in priority to other secured creditors. It can exercise that right by delivering a CA s.87 Notice to tenants renting units the lessor of which is in arrears of paying common expenses. The CA s.87 Notice requires that all rents be paid to the Condominium.
- (c) Upon delivery of a CA s.87 Notice, tenant rents are payable to the Condominium, are not payable to Fernwood. Rents subject to a CA s.87 Notice are therefore not property of Fernwood.
- (d) The rights of the Condominium in s.87 of the *Condominium Act* are a “charge or lien” against rents payable to Fernwood as security for common expenses due from Fernwood to the Condominium. The Condominium is therefore a secured creditor of Fernwood for the purposes of the *BIA*.

- (e) If the Bankruptcy Stay prohibits the Condominium from serving CA s.87 Notices, then the Condominium is materially prejudiced by that stay.
- (f) The Bankruptcy Stay should not be used or applied to deny the Condominium access to a statutory security and remedy, thereby prejudicing the rights of the Condominium and improving the position of other creditors. If the Bankruptcy Stay prevents the Condominium from delivering CA s.87 Notices, then it is equitable to lift that stay and allow the Condominium to deliver such Notices.
- (g) Sections 2, 69.3, and 69.4 of the *Bankruptcy and Insolvency Act* (“BIA”)
- (h) Such further grounds as the Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the affidavit of Deanna Fudge sworn November 19, 2020, and
- (b) such further evidence as the Court may permit.

November 20, 2020

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**Lawyers for Simcoe Standard Condominium
Corporation No. 420**

TO: THE SERVICE LIST, attached

Schedule A

Conference Details provided by the Receiver's counsel to join the Receiver's Motion via Zoom

Join Zoom Meeting

<https://us02web.zoom.us/j/83519523165?pwd=SWdETllyclpiYWZ3KzNyN09XeHQyUT09>

Meeting ID: 835 1952 3165

Passcode: 81074

IN THE MATTER OF THE BANKRUPTCY OF FERNWOOD DEVELOPMENTS (ONTARIO)
CORPORATION, of the City of Barrie, in the Province of Ontario.

Bankruptcy File No. 31-2661061
Estate No. 31-2661061

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY)

Proceeding commenced at Toronto

NOTICE OF MOTION
(RETURNABLE NOVEMBER 27, 2020)

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**Lawyers for Simcoe Standard Condominium
Corporation No. 420**

MARSHALLZEHR GROUP INC.
Applicant

FERNWOOD DEVELOPMENTS
(ONTARIO) CORPORATION
Respondent

Court File No.: CV-20-635523-CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

RESPONDING MOTION RECORD
(Returnable November 27, 2020)

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Corporation No. 420