Court File No.: CV-24-00723780-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

2106580 ONTARIO INC. AND OSMINGTON (WOOD STREET) INC.

Applicants

- and –

GREEN WORLD CONSTRUCTION INC.

Respondent

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

Factum of the Receiver
(Motion re: Sale Process Approval, September 12, 2025)

September 8, 2025

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington St. W., 35th Floor
Toronto, ON M5V 3H1

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

Daniel Rosenbluth (LSO #71044U)
Tel: 416.646.6307
daniel.rosenbluth@paliareroland.com

Lawyers for the Receiver

PART I. OVERVIEW

1. KSV Restructuring Inc., in its capacity as receiver and manager (the **"Receiver"**) of the Property (as defined below), brings this motion seeking an order approving:

(a) the proposed Sale Process (as defined below) in respect of the Property;

(b) the Stalking Horse APS (as defined below) solely for the purpose of acting as the "stalking horse" bid in respect of the Sale Process;

(c) the Break Fee (as defined below) in favour of the Stalking Horse Bidder (as defined below) of $855,000, provided that such amount is only payable from the proceeds of a superior offer on closing; and

(d) the Receiver's First Report dated September 5, 2025 (the **"First Report"**) and the Receiver's activities described therein.

2. The relief sought is supported by both of the Property's mortgagees and there is no known opposition to the motion at this time.

PART II. SUMMARY OF FACTS

3. Set out below is a brief summary of the facts which are set out in more detail in the First Report.

A. The Debtor and the Property

4. The debtor, Green World Construction Inc. (the **"Debtor"**), owns the real property located at 175-199 Essa Road, Barrie and 50 Wood Street, Barrie (collectively, the "**Property**").

5. The Property is the Debtor's primary asset. It is approximately 55 acres and is poised for large scale development; it is currently vacant and undeveloped land, with the exception of the Barrie Curling Club which operates from the southeastern corner of the Property.[1]

B. The Receivership and the creditors

6. The Receiver was appointed by order of the Superior Court of Justice (Commercial List) dated May 20, 2025 (the **"Receivership Order"**) at the instance of Osmington (Wood Street) Inc. ("**Osmington Wood**") and 2106580 Ontario Inc. ("**2106580**", and together with Osmington Wood, **"Osmington**"), the Debtor's senior secured creditor.

7. Osmington holds a first mortgage registered on the Property. It secures indebtedness of approximately $31.4 million as at August 15, 2025, with costs and interest continuing to accrue.[2]

8. MarshallZehr Group Inc. (**"MarshallZehr"**) holds a second mortgage in the amount of $13.3 million.[3]

C. The Stalking Horse APS and the Sale Process

9. The purpose of the proposed Sale Process is to market the Property while providing a degree of certainty to stakeholders as to the completion of a transaction with a "floor" value.

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[1] First Report, paras. 2.0(1) and (2).
[2] First Report, paras. 3.0(1-2).
[3] First Report, para. 3.0(3).

10. The Receiver's reasons for deciding on a stalking horse structure for the Sale Process are set out in more detail in submissions, below, and in the First Report.[4]

11. The purchaser under the Stalking Horse APS is Aggregated Investments Inc. (the **"Stalking Horse Bidder"**), an investor in the MarshallZehr second mortgage.

12. The Stalking Horse APS contemplates a purchase price of $34,220,000 inclusive of a deposit of $3,422,000. This is an amount which is expected to be sufficient to repay Osmington.

13. The Stalking Horse APS also provides for a break fee of $855,000 – approximately 2.5% of the purchase price – in the event that the Stalking Horse APS is not ultimately the successful bid on the Property. The reasonableness of the break fee is set out in submissions below.

14. The terms of the Stalking Horse APS are discussed in more detail in section 4.1 of the First Report and the agreement itself is enclosed as Appendix B to the First Report.

15. The Sale Process proposed by the Receiver is discussed in detail in section 4.3 of the First Report and a copy of the Sale Process itself is enclosed as Appendix D thereto. The key timelines under the Sales Process are as follows:

[4] First Report, ss. 4.2 and 4.4.

Milestone	Key Dates
Start of the Sale Process	As soon as possible following the Sale Process Order
LOI Deadline	October 13, 2025 (5:00 p.m. EST)
Qualified Bid Deadline (if an LOI is submitted by the LOI deadline)	October 28, 2025 (5:00 p.m. EST)
Selection of Qualified Bids	October 30, 2025 (5:00 p.m. EST)
Auction (if required)	Within 3 business days of the Receiver determining an Auction will take place
Motion Materials Served for the Approval and Vesting Order	Within 15 calendar days after the selection of the Successful Bid
Closing Date	As soon as reasonably practicable after the Approval and Vesting Order

16. The marketing process proposed by the Receiver is summarized at section 4.3.1 of the First Report; it contemplates an industry-standard solicitation process which will include marketing materials, a standard-form NDA, and a comprehensive virtual data room to allow interested parties to conduct due diligence on the opportunity.

17. The Sale Process contemplates that the Receiver will be conducting the marketing and sale process. Representatives of the Receiver have significant real estate experience and have conducted numerous similar real estate sale processes in recent years.[5]

D. Support of the secured creditors

18. Both Osmington and MarshallZehr support the relief sought on this motion.[6]

[5] First Report, para. 4.3.1(4).
[6] First Report, para. 4.4(1)(f).

PART III. ISSUES AND SUBMISSIONS

1. Approval of the sale process

19. Court-appointed receivers have the powers set out in the Orders appointing them. In this case, the Receivership Order authorizes and grants the Receiver the powers to market and sell the Property .[16]

20. Pursuant to subsection 243(1)(c) of the *Bankruptcy and Insolvency Act* ("**BIA**"), this Court has jurisdiction to approve the proposed Sale Process.[7] Although the decision to approve a particular form of sale process is distinct from the approval of a proposed sale, courts have held that the reasonableness and adequacy of any sale process proposed by a court-appointed receiver must be assessed with reference to the *Soundair* factors that a court will consider when approving a proposed sale, including the following

(a) whether the receiver has made a sufficient effort to get the best price, and has not acted improvidently;

(b) whether the interests of all parties have been considered;

(c) the efficacy and integrity of the process by which offers will be obtained; and

(d) whether there has been unfairness in the working out of the process.[8]

21. Additional consideration should be given to the following factors:

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[7] *Bankruptcy and Insolvency Act*, s. 243(1)(c).

[8] *Royal Bank of Canada v Soundair Corp.,* 1991 CanLII 2727 at p 8; *CCM Master Qualified Fund v blutip Power Technologies,* 2012 ONSC 1750 at para 6 [***CCM Master***]; *Choice Properties Limited Partnership v Penady (Barrie) Ltd.,* 2020 ONSC 3517 at para 16 [***Choice Properties***].

(a) the fairness, transparency and integrity of the proposed process;

(b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and

(c) whether the sale process will optimize the chances, in the particular circumstance, of securing the best possible price for the assets up for sale.[9]

22. The proposed sale process need not be perfect, only reasonable. A court should give significant weight to the recommendation of its receiver, who is a court-appointed officer with significant expertise in insolvency proceedings.[10]

23. Approval of the Sale Process should be granted at this time for the following reasons, among others:

(a) the Sale Process provides for a robust marketing of the Property, will test the market for the Property for the benefit of all stakeholders, and is commercially efficient;

(b) the Sale Process establishes a protocol through which there is an opportunity for a transaction with greater value than the Stalking Horse APS and optimizes the chances of securing the best possible price for the Property; and

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[9] See *CCM Master* at para 6; *Choice Properties* at para 16.

[10] *Marchant Realty Partners Inc. v 2407553 Ontario Inc.*, 2021 ONCA 375 at paras 10, 15 and 19.

(c) the Sale Process is consistent with sale procedures used in other Court-supervised stalking horse sale processes.

2. The Stalking Horse APS

24. Courts have routinely approved "stalking horse" bids in receivership proceedings, *BIA* proposals, and *Companies' Creditors Arrangement Act* proceedings.[11]

25. In a recent decision in *Validus Power Corp. et al. and Macquarie Equipment Finance Ltd.*,[12] Justice Osborne held:

> This Court has held that when considering a sales solicitation process, including the use of a stalking horse bid, the Court should assess the following factors (See: *CCM Master Qualified Fund v. Bluetip Power Technologies*, 2012 ONSC 1750 at para. 6):
>
> a. the fairness, transparency and integrity of the proposed process;
>
> b. the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
>
> c. whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

26. In the current circumstances, the Stalking Horse APS provides a floor price for the Property and is satisfactory to the secured lenders of the Debtor.[13] In *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd*., the Court confirmed that "the use of stalking horse bids to set a baseline for the bidding process […] has been recognized by Canadian courts as a reasonable and useful element of a sale process."[14]

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[11] See *CCM Master* at para 7.
[12] 2023 ONSC 6367 (Commercial List).
[13] First Report, para. 4.3(1)(f).
[14] *CCM Master* at para 7; see also the Endorsement of the Honourable Justice Osborne dated November 12, 2024, Ontario Superior Court of Justice (Commercial List), *In the Matter of MarshallZehr Group Inc. v. Spotlight on Courtland Inc.*, Court File No. CV-24-00717917-00CL, para 28 [*MarshallZehr*].

27. Courts have noted that since the purpose of a stalking horse is to set a baseline, “the appropriate, fair and transparent manner in which to test value is to conduct the sale process and see what offers the market generates. If […] the stalking horse bid is low, the market […] will presumably speak in the form of superior bids.”[15]

28. Additionally, the proposed Stalking Horse APS provides the certainty of closing a transaction on a timely basis, which is a meaningful benefit for stakeholders of the receivership.

29. The break fee contemplated as part of the Stalking Horse APS is also reasonable. As set out in the First Report and particularly Schedule C thereto, the Receiver has conducted a review of other break fees approved in stalking horse agreements in other Canadian insolvency proceedings and has concluded that the proposed break fee here – representing 2.5% of the purchase price – is at the low to middle range of comparable approved stalking horse agreements.[16]

30. The Receiver is of the view that the proposed break fee will not discourage other bidders from submitting offers. Break fees are frequently approved in insolvency proceedings and are designed not only to compensate the cost and risk incurred by a stalking horse purchaser in putting together a stalking horse bid, but also to reflect the value of the stability which a stalking horse bid provides.[17]

31. Further factors supporting the reasonableness of the relief sought include:

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[15] *MarshallZehr* at para 17.

[16] First Report, Schedule C.

[17] *Danier Leather*, at para. 41; *Green Growth Brands Inc. (Re)*, 2020 ONSC 3565 at para. 52.

(a) the bidding procedures contemplated under the Sale Process provide an opportunity to complete a transaction with greater value than the Stalking Horse APS, which benefits all stakeholders, and optimizes the chances of securing the best possible price for the Property;

(b) the Receiver is of the view that the duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit an offer; and

(c) as at the date of this Report, the Receiver is not aware of any objections to the relief sought pursuant to the proposed Sale Process Order.[18]

PART IV. RELIEF SOUGHT

32. The Receiver respectfully seeks an order in the form enclosed as tab 3 to its motion record, a copy of which is also uploaded separately in Case Center.

33. ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of September 2025.

Paliare Roland Rosenberg Rothstein LLP

[18] First Report, para. 4.4

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FACTUM OF THE RECIEVER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1

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

Daniel Rosenbluth (LSO #71044U)
Tel: 416.646.6307
daniel.rosenbluth@paliareroland.com

Lawyers for the Receiver