

Court File No.: CV-24-00715321-00CL

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

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

Applicant

- AND -

**MIZRAHI (128 HAZELTON) INC. AND
MIZRAHI 128 HAZELTON RETAIL INC.**

Respondents

**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 ALIXPARTNERS RESTRUCTURING, INC.
IN ITS CAPACITY AS RECEIVER AND MANAGER**

September 11, 2026

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**FACTUM OF ALIXPARTNERS RESTRUCTURING, INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

PART I - INTRODUCTION

1. This factum is filed in support of a motion by AlixPartners Restructuring, Inc. ("**AlixPartners**"), (formerly, KSV Restructuring Inc. "**KSV**") in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of: (a) certain condominium units located at 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario (as legally described in the Receivership Order, defined below) (the "**Real Property**"); and (b) all of the assets, undertakings and properties of Mizrahi (128 Hazelton) Inc. ("**Hazelton**") and Mizrahi 128 Hazelton Retail Inc. ("**Retail**", together with Hazelton, the "**Debtors**"), or either of them, acquired for, or used in relation to a business carried on by the Debtors (the "**Property**"), or either of them, including all proceeds thereof, to seek approval of, among other things:

- (a) approving a transaction (the “**404 Transaction**”) contemplated by the Original APS (defined below) for the sale of Unit 404 to Brelow Inc. (“**Brelow**”), and vesting all of Hazelton’s right, title and interest in and to the Unit 404 Purchased Assets (as defined below) to Brelow;
- (b) approving a transaction (the “**Parking Garage Transaction**”), and together with the 404 Transaction, the (“**Transactions**”) contemplated by the Parking Garage Agreement (defined below) for the sale of a private parking garage including two parking spaces to Hazy Holdings Inc. (“**Hazy**”); and vesting all of Hazelton’s right, title and interest in and to the Parking Garage Purchased Assets (as defined below) to Hazy;
- (c) authorizing the Receiver to distribute the net proceeds of the Transactions to Constantine Enterprises Inc. (“**CEI**”), Hazelton’s senior secured creditor, on account of the CEI Priority Debt (as defined below);
- (d) approving the Seventh Report of the Receiver dated September 9, 2026 (the “**Seventh Report**”) and the activities of the Receiver as set out therein;
- (e) such further and other Relief as this Honourable Court may deem just.

PART II - SUMMARY OF FACTS

2. Further background regarding these proceedings is set out the Seventh Report. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Seventh Report.

Background

3. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on June 4, 2024 (the “**Receivership Order**”) KSV (as replaced by AlixPartners) pursuant to a substitution order made on June 3, 2026) was appointed as Receiver of the Property.¹

Hazelton

4. Hazelton is a nine-storey, 20-unit luxury condominium development project located in Toronto’s Yorkville neighbourhood with approximately 2,000 square feet of ground floor commercial retail space and three levels of underground parking.²

5. Hazelton remains the registered owner of the Real Property which has not been sold during this receivership, being Unit 404 (defined below) and the Parking Garage (defined below) and units 802 and 901. Unit 802 is presently listed for sale and construction of unit 901, a large top-floor unit, is expected to commence shortly.³

6. The shares in the capital of Hazelton are owned 50% by Mizrahi Developments Inc. (“**MDI**”) and 50% by CEI.⁴ MDI is controlled by Sam Mizrahi.⁵

7. Hazelton is indebted to CEI, Hazelton’s senior secured creditor, pursuant to, among other things, the DUCA Commitment (as defined in the Seventh Report), which is the senior ranking mortgage on the Real Property.⁶

¹ Seventh Report at section 1.0, para 1, MR, Tab 2, p 15.

² Seventh Report at section 1.0, para 3, MR, Tab 2, p 16.

³ Seventh Report at section 1.0, para 5, MR, Tab 2, p 16.

⁴ Seventh Report at section 2.0, para 1, MR, Tab 2, p 18.

⁵ Seventh Report at section 2.0, para 1, MR, Tab 2, p 18.

⁶ Seventh Report at section 2.0, paras 2 – 3, MR, Tab 2, p 18.

8. The current amount owing to it under the DUCA Commitment was approximately \$6.7 million (the “**CEI Priority Debt**”), including interest, but excluding costs and expenses and applicable interest thereon, in each case, which continue to accrue before and after the date of the Seventh Report.⁷

The Original APS Sale Process

9. On November 16, 2018, Robert Hiscox (“**Hiscox**”) and Hazelton entered into an agreement of purchase and sale, as amended (the “**Original APS**”) to purchase Unit 404 together with a storage locker and two parking spots for \$2,315,450 (inclusive of HST).⁸

10. Hiscox paid a deposit of \$231,517.50 (the “**Deposit Amount**”) and \$168,005.68 for upgrades and staging costs (the “**Upgrade Amount**”).⁹

11. Hiscox is a principal of CEI, Hazelton’s senior secured creditor and a director of Hazelton.¹⁰

12. Unit 404 has been marketed extensively both prior to and since the commencement of the receivership. In total, it has been on the market for over 800 days with two different real estate firms, both of whom have used traditional methods for marketing condominiums.¹¹

13. In early June 2026, Hiscox advised the Receiver that he was proposing to assign his interest in Unit 404, the locker and the two parking spots (located in a private garage) pursuant to two proposed transactions:¹²

⁷ Seventh Report at section 2.0, para 3, MR, Tab 2, p 18.

⁸ Seventh Report at section 3.0, para 2, MR, Tab 2, p 19.

⁹ Seventh Report at section 3.0, para 2, MR, Tab 2, p 19.

¹⁰ Seventh Report at section 1.1, para 1(b), MR, Tab 2, p 16.

¹¹ Seventh Report at section 3.0, paras 3 – 4, MR, Tab 2, p 19.

¹² Seventh Report at section 1.1, para 1(b)(i)-(ii), MR, Tab 2, p 16.

- (a) an assignment of Unit 404 and the storage locker (collectively, “**Unit 404**”) to Brelow for a purchase price of \$2,200,000 (plus HST) pursuant to an assignment agreement dated as of June 3, 2026 (the “**404 Assignment Agreement**”); and
- (b) an assignment of a private parking garage containing two parking spots (the “**Parking Garage**”) to Hazy, the purchaser of the ground floor unit, for \$350,000 (plus HST) pursuant to an assignment agreement dated as of October 2, 2025 (the “**Parking Garage Agreement**”);

14. Hiscox requested the Receiver’s consent to the 404 Transaction and the Parking Garage Transaction which was provided by the Receiver pursuant to (a) a consent and amendment agreement entered into on or about August 18, 2026, among Hiscox, the Receiver and Brelow (the “**404 Consent and Amendment Agreement**”) and (b) a consent and amendment agreement entered into on or about August 18, 2026 among Hiscox, the Receiver and Hazy.¹³

15. Pursuant to the 404 Assignment Agreement and the 404 Consent and Amendment Agreement, Mr. Hiscox has agreed to assign his interest in Unit 404 to Brelow for \$2.2 million (inclusive of any applicable HST). Brelow has paid a deposit in the amount of \$115,000, which is presently being held in trust by GSNH.¹⁴

16. Pursuant to the 404 Consent and Amendment Agreement:¹⁵

- (a) Unit 404 is being purchased on an “as is, where is” basis, without any material representations and warranties;
- (b) the Parking Garage is excluded; and
- (c) the sale is subject to Court approval.

¹³ Seventh Report at section 1.1, para 1(b)(i)-(ii), MR, Tab 2, p 16.

¹⁴ Seventh Report at section 3.0, para 5, MR, Tab 2, p 20.

¹⁵ Seventh Report at section 3.0, para 6, MR, Tab 2, p 20.

17. Pursuant to the Parking Garage Agreement, Mr. Hiscox has agreed to assign his interest in the Parking Garage to Hazy for \$350,000. Hazy Holdings has paid a \$20,000 deposit which is also being held in trust by GSNH.¹⁶

Purchase Price Allocation

18. The proposed allocation of funds from the Transactions, as set out in the Seventh Report, provides, among other things, that the Receiver will retain the "lift" from the transaction of \$234,550 but that Hiscox will receive a credit for the deposit he paid (\$231,517.50) and upgrade costs (\$168,005.68).¹⁷

19. The Receiver believes that the credit being provided to Mr. Hiscox for the Deposit Amount and Upgrade Amounts are reasonable in the circumstances for the following reasons:¹⁸

- (a) Unit 404 was a completed unit – Mr. Hiscox could have required the Receiver to complete the Original APS in which case the Deposit Amount and Upgrade Amounts would have been credited on closing;
- (b) absent a credit for the Deposit Amount, Mr. Hiscox has advised he would make a claim against Aviva, which would potentially increase the priority claims in the estate and/or against the guarantors of the Aviva facility, which the Receiver understands include Mr. Mizrahi and Mr. Hiscox;
- (c) the net purchase price to be paid to the Receiver, being approximately \$2.15 million, would likely exceed the net proceeds of an alternative transaction based on the appraised value of Unit 404 and the Parking Garage, after considering standard realtor commissions and professional costs;

¹⁶ Seventh Report at section 3.0, para 7, MR, Tab 2, p 20.

¹⁷ Seventh Report at section 3.1, para 1, MR, Tab 2, p 21.

¹⁸ Seventh Report at section 3.1, para 2(a) – (f), MR, Tab 2, p 21.

- (d) a similar credit for deposits was provided to CEI in the context of the sale of unit 403 (which was similarly assigned by CEI which entered into the initial APS with Hazelton), and which was approved by the Court on September 20, 2024.
- (e) while Mr. Hiscox had originally requested a credit of \$234,550.00 in respect of the “lift” (referred to above), he has agreed that this will be paid to the Receiver provided that he be reimbursed for the Upgrades that he funded prior to the assignment; and
- (f) as reflected in the Appraisal, if Unit 404 and the Parking Garage continue to be marketed for sale, additional professional costs will be incurred and there is a significant risk that the selling price will be less than achieved through the Transactions, particularly in the context of the distressed state of the condominium market in the GTA.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

The Court has the Jurisdiction to Approve the Transactions

20. Pursuant to Section 100 of the *Courts of Justice Act*,¹⁹ as amended and section 243(1) of the *Bankruptcy and Insolvency Act*,²⁰ the Court has the jurisdiction to grant the proposed vesting orders.

The Court Should Approve the Transactions

21. The factors for the Court to consider in determining whether the Transactions should be granted are set out in *Royal Bank of Canada v Soundair*.²¹ *Soundair* states that a Court should consider:

¹⁹ *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, [s 100](#).

²⁰ *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended, [s 243\(1\)](#).

²¹ *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#) at para. 15 [“*Soundair*”].

- (a) whether the receiver has made a sufficient effort to obtain 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 are to be obtained; and
- (d) whether there has been unfairness in the working out of the process.

22. Deference is to be afforded to the Receiver in regard to the Transactions. Unless there is a violation of the *Soundair* principles or other exceptional circumstances, the court should uphold the business judgment of the Receiver.²² As affirmed by the Court in *Soundair*:

If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.²³

23. In this case, there are no exceptional circumstances which would justify rejecting the Receiver's recommendation in respect to each of the Transactions. The Transactions should be approved for the following reasons:²⁴

²² *Crown Trust Co. et al. v. Rosenberg et al.*, [1986 CanLII 2760](#) at para 83; *9-Ball Interests Inc. v. Traditional Life Sciences Inc.*, [2012 ONSC 2788](#) at para 28; and *Business Development Bank of Canada et al v. 1673747 Ontario Inc. et al.*, [2013 ONSC 286](#) at para 38.

²³ *Soundair* at para 21.

²⁴ Seventh Report at section 3.2, para 1(a) – (j), MR, Tab 2, pp. 22 – 23.

- (a) Unit 404 was listed for sale for 841 days and was originally listed in November 2022;
- (b) Unit 404 was listed using traditional methods to market a condominium, including on MLS, through social media, open houses and direct solicitation;
- (c) the total consideration from the Transactions is supported by the Appraisal;
- (d) the Toronto condominium market remains distressed with sales at multi-year lows;
- (e) the Receiver has been advised that there is no commission payable on the Transactions;
- (f) both Brelow and Hazy have paid non-refundable deposits and the Transactions are only conditional on Court approval;
- (g) if the Receiver did not consent to the assignments and the proposed Transactions, there would either have to be a continued marketing of the Unit or a motion by the Receiver to seek to disclaim the Original APS. In the latter circumstances, given Unit 404 is a completed unit, Mr. Hiscox could require the Receiver to close on the Original APS, in which case the net proceeds would be \$1,915,926.82 (i.e., the original purchase price less the deposit and upgrades);
- (h) delays resulting from either re-marketing or litigating will result in ongoing professional costs and interest on the CEI Priority Debt;
- (i) although the proposed credit for the Deposit Amount and Upgrade Repair Amount will reduce the net available proceeds, if those amounts were not reimbursed to Mr. Hiscox, he would have a claim against Aviva for some or all of such amounts,

which in turn would have increased liabilities in the estate, as well as potentially against personal guarantees provided to Aviva by Mr. Mizrahi and Mr. Hiscox; and

- (j) the Transactions are acceptable to CEI, as the senior secured creditor.

The Receiver Should be Authorized to Make Certain Distributions

24. The Court has held that it is appropriate to authorize a receiver to make distributions of sale proceeds concurrently with the approval of such sale in order to “maximize efficiency and avoid the need for an additional motion to seek approval for a distribution.”²⁵

25. Norton Rose Fulbright Canada LLP, the Receiver’s counsel, has provided the Receiver with an opinion that, subject to standard assumptions and qualifications, the DUCA Commitment (and CEI’s other security) is valid and enforceable.

26. After repaying the amounts owing to CEI under the Receiver’s Borrowing Charge (which has a Court-ordered priority subordinate only to the Receiver’s Charge (as defined in the Receivership Order)), the Receiver intends to make distributions to CEI of the net proceeds of the Transactions as a partial repayment of the CEI Priority Debt.²⁶

The Activities of the Receiver Should be Approved

27. It is well-established that the court has inherent jurisdiction to review and approve the activities of a court-appointed receiver where the receiver demonstrates that it has acted reasonably, prudently and not arbitrarily.²⁷ Such approvals are commonly granted as part of orders in receivership proceedings.²⁸

²⁵ *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, [2014 ONSC 1173](#) at para. 53.

²⁶ Seventh Report at section 4.0, para 2, MR, Tab 2, pp. 23.

²⁷ *Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.*, [2014 BCSC 1855](#) para. 54; see also *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at para. 23 and *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161](#) at para. 15.

²⁸ See the [Order of Justice Penny](#) dated June 5, 2023, *Atrium Mortgage Investment Corporation and Dorr Capital Corporation v Stateview Homes (Nao Towns II) Inc. et al.*, Superior Court of Justice of Ontario (Commercial List), Toronto, Court File No. CV-23-00698395-00CL, at para 7.

28. The activities of the Receiver described in the Seventh Report were necessary and undertaken in good faith pursuant to the Receiver's duties and powers as set out in the Receivership Order.

PART IV - ORDER REQUESTED

29. For the reasons set out above, the requested relief set out in the Receiver's notice of motion should be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of September, 2026.



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SCHEDULE "A" - LIST OF AUTHORITIES

1. *9-Ball Interests Inc. v. Traditional Life Sciences Inc.*, 2012 ONSC 2788
2. *Business Development Bank of Canada et al v. 1673747 Ontario Inc. et al.*, 2013 ONSC 286
3. *Crown Trust Co. et al. v. Rosenberg et al.*, 1986 CanLII 2760
4. *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173
5. *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161
6. *Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.*, 2014 BCSC 1855
7. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA)
8. *Target Canada Co. (Re)*, 2015 ONSC 7574.
9. Order of Justice Penny dated June 5, 2023, *Atrium Mortgage Investment Corporation and Dorr Capital Corporation v Stateview Homes (Nao Towns II) Inc. et al.*, Superior Court of Justice of Ontario (Commercial List), Toronto, Court File No. CV-23-00698395-00CL.

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date September 11, 2026



Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

COURTS OF JUSTICE ACT **R.S.O. 1990, C. C.43**

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

BANKRUPTCY AND INSOLVENCY ACT **R.S.C., 1985, c. B-3**

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a)** take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b)** exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c)** take any other action that the court considers advisable.

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