

**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

NOTICE OF MOTION

The Receiver will make a Motion to a Judge presiding over the Commercial List on a date to be determined at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

☐ In writing under subrule 37.12.1(1) because it is
[insert on consent, unopposed or made without notice];

☐ In writing as an opposed motion under subrule 37.12.1(4);

☐ In person;

☐ By telephone conference;

☐ By video conference.

at the following location

330 University Avenue, Toronto ON M5G 1R7

THE MOTION IS FOR

- (a) an order granting the Receiver leave to seek judgment within this proceeding against Mizrahi Inc. and Sam Mizrahi for damages related to breaches of contract and fiduciary duty, as detailed below;
- (b) judgment as against Mizrahi Inc. and Sam Mizrahi in the amount of \$1,564,322 for breaches of contract and fiduciary duty;
- (c) in the alternative to (b), directions establishing a schedule for the Receiver to seek judgment as against Mizrahi Inc. and Sam Mizrahi in the amount of \$1,564,322 for breaches of contract and fiduciary duty;
- (d) the costs of this motion; and
- (e) such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

The Parties

- (a) by Order of Justice Cavanagh dated June 4, 2024, the Receiver was appointed receiver of all of the assets, undertakings and properties of the Respondents, including real property consisting of certain condominium units located at the address municipally known as 126 and 128 Hazelton Avenue in Toronto;
- (b) Mizrahi (128 Hazelton) Inc. (**Hazelton**) was involved in the development and construction of a nine-storey, 20-unit luxury condominium development project at the Hazelton Avenue addresses (the **Project**);

- (c) Hazelton is owned equally by Mizrahi Developments Inc. (**MDI**) and the applicant, Constantine Enterprises Inc. (**CEI**);
- (d) both MDI and Mizrahi Inc. are ultimately controlled by Sam Mizrahi;

The Agreements

- (e) by way of a Development Management Agreement dated June 19, 2015 (the **DMA**), Hazelton retained Mizrahi Inc. to be the development manager of the Project, and Sam Mizrahi agreed to be personally liable for certain of Mizrahi Inc.'s obligations under the DMA;
- (f) the DMA entitled Mizrahi Inc. to be paid certain sums as compensation for its work, but also required Mizrahi Inc. and Sam Mizrahi personally to repay some of those amounts if the DMA was terminated prior to completion of the Project;
- (g) by way of a Construction Management Agreement dated March 31, 2017 (the **CMA**), Hazelton retained Mizrahi Inc. to be the construction manager of the Project;
- (h) the CMA specified how Mizrahi Inc. was to be compensated for its services thereunder, which consisted of: (i) a fee equal to 5% of the "Construction Cost"; (ii) payment for services rendered by specified Mizrahi Inc. personnel on an hourly basis; and (iii) reimbursement of certain expenses plus a 15% administrative charge;

Mizrahi Inc. Renders Improper Invoices Pursuant to CMA

- (i) between November 2020 and November 2022, Mizrahi Inc. billed Hazelton \$1,064,322 improperly for services that were not contemplated by the CMA;

- (j) the improper charges are related to invoices rendered by CLM General Enterprises Ltd. (**CLM**), a third party that Mizrahi Inc. engaged to provide labour workers to service the Project;
- (k) CLM delivered invoices to Mizrahi Inc. in respect of its work, but instead of forwarding those invoices to Hazelton for payment or reimbursement, Mizrahi Inc. prepared its own invoices which included the services provided by CLM as if they had been provided by Mizrahi Inc.;
- (l) in preparing its invoices, Mizrahi Inc. significantly increased the hourly rate of each CLM employee, resulting in rates that were more than double the actual rates charged by CLM;
- (m) Mizrahi Inc. also modified the hours worked by CLM employees and classified some of those hours as being “overtime”, which was billed at significantly higher rates than regular hours, even though CLM never billed any “overtime” hours;
- (n) in total, Mizrahi Inc. billed Hazelton \$1,064,322 more for CLM’s services than CLM had billed to Mizrahi Inc., and Hazelton paid the entirety of that amount to Mizrahi Inc.;
- (o) Mizrahi Inc. had no contractual or other entitlement to receive the additional \$1,064,322, which was billed in a misleading fashion and without the knowledge of CEI;
- (p) as the directing mind of Mizrahi Inc., Sam Mizrahi is personally liable to Hazelton for misrepresenting the cost of CLM’s work and for breaching the fiduciary duties he owed to Hazelton as a director and officer of that company;

- (q) Mizrahi Inc. terminated the CMA on March 4, 2024, and asserted that Hazelton owed it money;

Termination of the DMA

- (r) on June 21, 2024, the Receiver terminated the DMA;
- (s) the Receiver was entitled to terminate the DMA due to Mizrahi Inc.'s failure to perform its duties in an efficient manner, its failure to exercise its duties in a reasonable commercial manner and in the best interest of Hazelton, and its failure to ensure that all costs and expenses were within the limits of the Project budget;
- (t) as of June 21, 2024, the Project was more than five years behind schedule, construction liens of \$863,657 and \$138,765 had been registered against the property, a secured creditor had delivered notices of intention to enforce its security and the Project was expected to exceed its initial budget by more than \$50 million;
- (u) in addition to these facts, all of which justified termination of the DMA, the Receiver subsequently learned of Mizrahi Inc.'s wrongful invoicing of CLM costs, which is a further failure to act reasonably and in Hazelton's best interests;
- (v) as of the date of termination, the Project Completion Date (as defined in the DMA) has not been achieved, and thus Mizrahi Inc. and Sam Mizrahi were contractually obligated to repay \$500,000 of the fees paid to Mizrahi Inc. pursuant to the DMA;
- (w) the Receiver has demanded repayment of the \$500,000, but neither Mizrahi Inc. nor Mr. Mizrahi have responded to that demand;

Liability of Mizrahi Inc. and Sam Mizrahi

- (x) Mizrahi Inc. is liable to Hazelton for breach of the CMA, unjust enrichment and misrepresentation in the amount of \$1,064,322;
- (y) Sam Mizrahi is liable to Hazelton for misrepresentation and breach of fiduciary duty in the amount of \$1,064,322;
- (z) Mizrahi Inc. and Sam Mizrahi are both additionally liable to Hazelton for the sum of \$500,000 in respect of the DMA;

Seeking Judgment Within Receivership

- (aa) the most efficient and practical forum for the hearing of the claims against Mizrahi Inc. and Sam Mizrahi is this application;
- (bb) neither Mizrahi Inc. nor Sam Mizrahi are strangers to the receivership: Mr. Mizrahi is already on the service list for the application, he is a director, officer and controlling mind of the Respondents, and Mizrahi Inc. was intimately involved with the Project;
- (cc) the claims deal with issues concerning the Project, which is the primary asset of the Respondents and the subject matter of this application;
- (dd) in the event that Mizrahi Inc. asserts a setoff defence, as its termination of the CMA suggests is possible, any such claim must be heard in this application;
- (ee) Rule 57.03 of the *Rules of Civil Procedure*; and
- (ff) such further and other grounds as the lawyers may advise.

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

(gg) the Fifth Report of the Receiver, dated July 16, 2025; and

(hh) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 18, 2024

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Applicant

-and-

Court File No. CV-24-00715321-00CL
MIZRAHI (128 HAZELTON) INC. et al.
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PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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