

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

B E T W E E N:

**KEB HANA BANK as trustee of IGIS GLOBAL PRIVATE PLACEMENT REAL
ESTATE FUND NO. 301 and as trustee of IGIS GLOBAL PRIVATE PLACEMENT
REAL ESTATE FUND NO. 434**

Applicant

- and -

**MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT
GROUP (THE ONE) INC., and MIZRAHI COMMERCIAL (THE ONE) GP
INC.**

Respondents

**AIDE MEMOIRE OF THE RECEIVER,
ALVAREZ & MARSAL CANADA INC.**

(Re: Case Conference to be held on July 15, 2024)

July 12, 2024

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Lawyers for the Receiver

1. Gamma Windows and Walls International Inc. (“**Gamma**”) seeks to schedule a motion compelling the Receiver to make payment of approximately \$700,000 allegedly owing to Gamma in connection with its work on “The One” project (the “**Project**”). The amounts claimed by Gamma are the subject of a \$1.8 million lien notice filed by Gamma pursuant to the Lien Regularization Order (“**LRO**”) previously granted by the Court.¹ The Receiver is of the view that Gamma is not entitled to the amounts it claims in light of, among other things, various deficiencies identified in its work and its failure to complete its required scope of work on the Project.

2. The LRO contemplates a streamlined process for the resolution of all claims made under the LRO. The Receiver intends to serve a motion for approval of a Lien Claims Resolution Order (“**LCRO**”) in the near future, and Gamma’s claim should be resolved in accordance with the LRO and LCRO. There is no urgency to Gamma’s motion and no reason to adopt the *ad hoc* approach that Gamma suggests. The Receiver opposes Gamma’s motion being scheduled, both because it is premature and because Gamma’s claim should be resolved in accordance with LCRO.

3. At this juncture, the Receiver believes that the parties should attempt to consensually resolve their dispute. As the Receiver has advised Gamma, in order to do so, the Receiver requires information from its construction manager, SKYGRiD Construction Inc. (“**SKYGRiD**”), as to the estimated cost of completing Gamma’s scope of work and correcting existing deficiencies. The Receiver understands that SKYGRiD will have obtained third-party quotes for this within the next one to two weeks. Once this information has been received and reviewed, the Receiver is prepared to engage in good faith negotiations with Gamma in the month of August to attempt to resolve the dispute.

¹ Gamma’s proposed motion also seeks to have the balance of its lien claim referred to an associate judge for resolution.

4. If a consensual resolution cannot be achieved, Gamma's claim (along with other disputed claims that have or will be filed pursuant to the LRO) can be referred for resolution in accordance with the LCRO which the Receiver intends to seek approval of shortly.² A copy of the current draft of the LCRO is attached as **Schedule "A"**. The Receiver is in the process of considering potential candidates for the role of claims officer(s) and expects to seek Court approval of the LCRO in the late July / early August timeframe (subject to Court availability).

5. The Receiver's proposed approach will facilitate the potential consensual resolution of the dispute with Gamma (with potential attendant cost savings for both the receivership estate and Gamma, as well as preserving judicial recourses). If the dispute cannot be consensually resolved, Gamma's claim can be referred for resolution in accordance with the LCRO, if granted. Such an approach is fair and reasonable in that it adopts a uniform and efficient process for resolving all claims filed pursuant to the LRO, rather than the *ad hoc* one-off approach Gamma seeks.

6. The Receiver does not anticipate any meaningful difference in the overall timing for resolving Gamma's claim relative to Gamma's proposed motion, including because the Receiver requires an opportunity to obtain the relevant pricing information from SKYGRiD before any litigation process can be progressed.

7. Gamma's claims may also raise overlapping legal issues with the motion for payment brought by Mizrahi Inc. ("MI") expected to be heard by the Court in September 2024, including, for example, the issue of the appropriate interpretation of paragraph 17 of the Receivership Order, which Gamma says creates a payment right in its favour (which the Receiver disputes). Given the relative significance of the MI payment dispute (which the Receiver and MI have been preparing

² Paragraph 23 of the LRO contemplates that the Receiver shall, at a time determined by the Receiver to be appropriate, bring a motion seeking approval of a process for reviewing, determining or challenging lien claims asserted in any lien notices delivered under the Lien Regularization Order.

for over several months and involves claims exceeding \$10 million) and the possibility of overlapping legal issues, both efficiency and fairness argue in favour of any resolution of Gamma's claim being deferred until after the hearing of the MI payment dispute.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th date of July, 2024.

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SCHEDULE "A"
DRAFT LIEN CLAIM RESOLUTION ORDER
(ATTACHED)

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

THE HONOURABLE)
)
JUSTICE OSBORNE) DAY OF ●, 2024

B E T W E E N:

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Applicant

- and -

MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., and MIZRAHI COMMERCIAL (THE ONE) GP INC.

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 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

LIEN CLAIMS RESOLUTION ORDER

THIS MOTION, made by Alvarez & Marsal Canada Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (collectively, the “**Debtors**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Receiver dated ●, 2024, and the ● Report of the Receiver dated, 2024, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the “**RFCA Lender**”), and counsel for the other parties appearing as noted on the counsel slip, no one else appearing for any party although duly served,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that, unless otherwise defined herein, capitalized terms used herein shall have the meaning given to them in the Lien Regularization Order of this Court made in the within proceedings dated March 7, 2024 (the “**LRO**”).

REVIEW OF LIEN NOTICES

3. **THIS COURT ORDERS** that the Receiver shall review all Lien Notices delivered pursuant to the LRO and at any time in its sole discretion may:

- (a) demand particulars from a Lien Claimant in connection with any Lien Claim in accordance with paragraph 22 of the LRO;
- (b) attempt to consensually resolve and settle a Lien Claim asserted in a Lien Notice with the relevant Lien Claimant;

- (c) by notice in writing to the relevant Lien Claimant, accept (in whole or in part) a Lien Claim asserted in a Lien Notice; and
- (d) by notice in writing to the relevant Lien Claimant, dispute (in whole or in part) a Lien Claim asserted in a Lien Notice and refer such Lien Claim to the Claims Officer (as defined below) for determination, or in the alternative, refer such Lien Claim to the Court for determination (any such disputed Lien Claim so referred for determination by the Receiver being referred to herein as a “**Disputed Lien Claim**”).

4. **THIS COURT ORDERS** that where a Lien Claim has been settled or accepted (in whole or in part) by the Receiver, the Receiver shall be authorized to pay the amount so settled or accepted without any further order of the Court; provided that nothing herein shall preclude the Receiver from seeking Court approval of any such settlement or acceptance of a Lien Claim at its election.

RESOLUTION OF DISPUTED LIEN CLAIMS

5. **THIS COURT ORDERS** that, where a Disputed Lien Claim has been referred to a Claims Officer by the Receiver, the Claims Officer shall:

- (a) determine the amount, validity, priority, timeliness and any other dispute in respect of such Disputed Lien Claim in accordance with this Order and shall provide written reasons;
- (b) establish a process for the fair and expeditious resolution of any Disputed Lien Claim, having regard to the quantum of the Disputed Lien Claim, the complexity of the issues and any other matter that the Claims Officer considers relevant;

- (c) determine all substantive and procedural matters which may arise in respect of their determination of the Disputed Lien Claim, including but not limited to any participation rights for any stakeholder (however, the Applicant and the RFCA Lender shall have the right to participate and make submissions in any proceeding before a Claims Officer), the manner in which any evidence may be adduced, and the manner of submissions (which, for greater certainty, may be limited to written submissions);
- (d) have the discretion to mediate any dispute that is referred to such Claims Officer at its election and with the consent of the parties; and
- (e) have the discretion to make a cost award against or in favour of the Receiver or the Lien Claimant relating to the determination of a Disputed Lien Claim (including in respect of the fees and expenses of the Claims Officer).

6. **THIS COURT ORDERS** that the Receiver and/or the Lien Claimant, or any other stakeholder participant in a proceeding before a Claims Officer, may, within ten (10) days of such party receiving notice of the Claims Officer's determination of the Disputed Lien Claim, appeal such determination to the Court by serving and filing a notice of motion, and the appeal shall be initially returnable for scheduling purposes within ten (10) days of filing such notice of motion.

7. **THIS COURT ORDERS** that, if no party appeals the determination of the Claims Officer of the Disputed Lien Claim within the time set out in paragraph 6, the determination of the Claims Officer shall be final and binding upon the Receiver and the Lien Claimant, and there shall be no further right of appeal, review or recourse to the Court from the final determination of the Claims Officer.

CLAIMS OFFICER

8. **THIS COURT ORDERS** that ●, and such other person(s) as may be appointed by the Court from time to time on a motion by the Receiver (which motion may be made in writing if unopposed), be and is hereby appointed as the claims officer for determining Disputed Lien Claims pursuant to this Order (the “**Claims Officer**”).

9. **THIS COURT ORDERS** that the Claims Officer shall incur no liability or obligation as a result of their appointment or in acting as the Claims Officer pursuant to the provisions of this Order. No proceeding or enforcement process in any court or tribunal shall be commenced against or in respect of the Claims Officer, except with prior leave of this Court granted in the within proceedings.

NOTICES AND COMMUNICATIONS

10. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by the Receiver to a Lien Claimant shall be given in accordance with paragraphs 32 and 33 of the Receivership Order, provided that, for greater certainty, the Receiver may provide any notice or communication to a Lien Claimant pursuant to this Order by e-mail where the e-mail addresses of the Lien Claimant and/or its counsel are known by the Receiver.

GENERAL

11. **THIS COURT ORDERS** that, in discharging its obligations under this Order, the Receiver (a) shall have all of the protections given to it by the Receivership Order, the LRO, this Order, any other orders of the Court in these receivership proceedings, the *Bankruptcy and Insolvency Act* (Canada) and other applicable law; (b) shall incur no liability or obligation as a

result of carrying out matters or any act or omission in connection with this Order; (c) shall be entitled to rely on the books and records of the Debtors and any information provided by representatives of the Debtors, all without independent investigation; (d) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and (e) may seek such assistance as may be required to carry out matters in connection with this Order.

12. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in respect of the discharge of its powers and duties hereunder.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

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NO. 301 and as trustee of IGIS GLOBAL PRIVATE
PLACEMENT REAL ESTATE FUND NO. 434**

Applicant

and **MIZRAHI COMMERCIAL
(THE ONE) LP, et al.**

Respondents

Court File No. CV-23-00707839-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**LIEN CLAIMS
RESOLUTION ORDER**

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