

***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 June 12, 2024)**

1. **Introduction and overview.** This is the *aide memoire* of Alvarez & Marsal Canada Inc. in its capacity as receiver and manager (in such capacities, the “**Receiver**”)<sup>1</sup> for the case conference scheduled for June 12, 2024.

2. MI claims that it is owed a significant amount (presently estimated at between \$8 million and \$12 million) for its work on the Project following the Appointment Date. The Receiver denies that MI is entitled to any further payment, and has determined that MI owes significant amounts to the Debtors. By Endorsement dated March 18, 2024 (the “**March 18 Endorsement**”), Justice Osborne found that all of these issues would be determined together based on a complete evidentiary record.

3. The Receiver’s attempts to compile that record have been delayed by MI’s refusal to produce critical financial information (which will require a production motion), delays in providing electronic project records (which were only provided on June 9, 2024) and shifting positions. Despite numerous discussions between counsel, the parties have been unable to resolve their procedural disputes and have scheduled this case conference to:

- (a) Schedule the Receiver’s motion for production of unredacted copies of bank records that show how Project funds were spent; and
- (b) Adjust the schedule for MI’s motion seeking payment from the Receiver (the “**MI Payment Motion**”).

4. **The Receiver’s Production Motion:** Beginning on April 3, 2024,<sup>2</sup> the Receiver tried to obtain the financial records required to complete its investigation of the facts underlying the MI

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<sup>1</sup> Capitalized terms not otherwise defined have the meaning ascribed to them in the Second Report of the Receiver dated May 28, 2024.

<sup>2</sup> Email from M. Dunn to J. Morse dated April 3, 2024, Tab A.

Payment Motion and certain potential claims against MI. Specifically, at least \$200 million loaned to the Project was paid into MI's bank account (the "**MI Account**") and not to the Project bank accounts (the "**Project Accounts**"). MI transferred some of these funds to the Project Accounts, but approximately \$92 million was never transferred to the Project Accounts. MI claims that these amounts were used to pay Project expenses directly from the MI Accounts.<sup>3</sup>

5. MI has refused to produce complete bank account statements for the MI Accounts. It initially produced heavily redacted statements that only showed funds transferred to the Project Accounts from the MI Account. MI has now conceded that this is not appropriate, and that the Receiver is entitled to MI Account statements that show how Project funds were used.<sup>4</sup> However, MI insists on producing *another* set of redacted statements. Before producing these statements, MI seeks confirmation from the Receiver that it will accept the proposed redactions (before having seen them).

6. The Receiver is not prepared to agree to MI's terms. First, the MI Account statements are Records within the meaning of the Receivership Order. Nothing in the Receivership Order allows a party to redact information from Records that are produced to the Receiver. Second, it is highly unlikely that MI can produce redacted bank statements that show how funds for the Project (which includes at least \$200 million) that were paid into the MI Accounts were used but exclude all other information. Third, even if the proposed redactions are possible, they will take significant time and there is a risk of further disputes about whether the documents were properly redacted. This is neither necessary nor appropriate.

7. In light of the foregoing, the Receiver seeks to schedule its motion for an Order requiring production of the MI Account statements and certain ancillary documents.

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<sup>3</sup> Letter from J. Morse to M. Dunn dated April 19, 2024, Tab B.

<sup>4</sup> Letter from J. Morse to M. Dunn dated May 3, 2024, Tab C.

8. **The MI Payment Motion:** The Receiver has been unable to complete its investigation and deliver the “full record” contemplated by the March 18 Endorsement because of the aforementioned difficulties obtaining information from MI. First, as described above, MI has refused to deliver the financial records required to complete the Receiver’s investigation. Second, MI did not deliver the electronic Project records (including historical e-mail correspondence) required to assess various issues relating to the MI Payment Motion and potential claims against MI until June 9, 2024, several months after MI originally promised to deliver them.<sup>5</sup> Third, MI has been unable to provide a reliable or consistent estimate of its claim. MI’s most recent estimates of its claim value range from \$8 million to \$12 million. MI also recently advanced a separate unsecured pre-receivership claim of almost \$20 million and argued that this alleged debt provided a complete answer to any set-off claims advanced against MI, including with respect to the repayment of commissions paid to MI for condominium sale agreements that have been terminated due to deposit defaults.

9. The Receiver is (and has always been) prepared to move forward with the MI Payment Motion expeditiously. But it needs complete information about the Project (and time to review information that was recently provided) to prepare a full record. It seeks to set an expedited, but reasonable, schedule to proceed towards a hearing on the merits.

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<sup>5</sup> Email from D. Trafford to M. Dunn *et al* dated June 9, 2024, Tab D.

**A**

**From:** [Dunn, Mark](#)  
**To:** [Jerome Morse](#)  
**Cc:** [Weisz, Steven J](#); [Veronica Stasolla](#); [O'Neill, Brendan](#); [Armstrong, Christopher](#); [Linde, Jennifer](#); [David Trafford](#); [Cohen, Kirby](#)  
**Subject:** RE: Mizrahi Inc.  
**Date:** Wednesday, April 3, 2024 5:14:20 PM

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Mr. Morse,

As you know, the Receivership Order requires that Mizrahi Inc. produce all project records to the Receiver. The Receiver has repeatedly requested that all project e-mails and electronic documents be transferred to it. These e-mails were promised several weeks ago, but they have not been provided and Mizrahi Inc. has stopped responding to the Receiver's inquiries. Mizrahi Inc. said that a third party contractor was involved, but has refused to say who the contractor is and limited documents have been provided.

We look forward to a complete update, and to receiving all of the required documents shortly. If we do not receive a satisfactory response by April 5, 2024, we have been instructed to bring a motion for production of the documents.

I look forward to hearing from you.

**Mark Dunn**

He/Him  
Goodmans LLP

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Bay Adelaide Centre  
333 Bay Street, Suite 3400  
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**B**

April 19, 2024

**Delivered Via Email** [carmstrong@goodmans.ca](mailto:carmstrong@goodmans.ca), [mdunn@goodmans.ca](mailto:mdunn@goodmans.ca),  
[jlinde@goodmans.ca](mailto:jlinde@goodmans.ca)

Christopher Armstrong  
Mark Dunn  
Jennifer Linde  
Goodmans LLP  
333 Bay Street, Suite 3400  
Toronto ON M5H 2S7

Dear Counsel:

**Re: Mizrahi Inc.  
Our File No. 50960**

---

This responds to your email of April 16, 2024.

### **Approval of Payments to MI**

While not explicitly raised in your email, we understand the Receiver has concerns about the approval of payments to MI and the amounts paid to MI for its general contracting services, which was addressed in our previous letter. In addition to what was set out previously relevant to the issue, be advised that following the agreement of the beneficial owners to accept the Mediator's Proposal, Ms. Coco, either directly, or through her agent, Ms. Maria Rico, had control over the release of Project funds, signed the vast majority of cheques and cheque requisitions, and approved invoices and Project costs. Ms. Coco also signed the construction draw requests up until approximately June 2022. She continued to have the obligation to sign Project cheques up until the time of the receivership. There were numerous occasions where Ms. Coco would refuse to release payment for Project expenses and her concerns were reviewed and either approved or rejected by KEB Hana, or the administrative agent.

### **Redaction of Records**

Our client disagrees with the Receiver's interpretation of the Receivership Order with respect to MI's obligation to produce Project Records. Information on banking documents unrelated to the Project does not meet the definition of a Record within the meaning of the Order. The Receiver has no need to review banking information of MI unrelated to the Project. This is especially true in the circumstances of your admission that the Receiver

does not seek “to understand how MI used funds paid to it by the Debtors for its services”. If the Receiver has concerns about specific information that was redacted, please advise and we can work together to consider how to address those concerns. Under no circumstances (absent a court order) will MI agree to deliver unredacted bank statements that include a host of information unrelated to the Project. We note, as discussed further below, that in the past the Receiver was content to receive redacted bank statements on the understanding that it was not entitled to review banking information of MI unrelated to the Project. For example, please see the enclosed email from Kris Tanaka to Mark Kilfoyle at MI, dated December 28, 2023. All of the Receiver’s questions asked about the redacted bank statements were answered.

### **CERIECO**

This issue was not raised in your previous email and the *bona fides* of raising it now will be an issue going forward. We are advised that the Receiver met with Mr. Mark Kilfoyle and Mr. Remy Del Bel in and around December 2023 and January 2024 and were provided with all of the documentation and a narrative about the inflows and outflows of the funds received by MI from CERIECO. The Receiver expressed it was satisfied with the complete explanation and reconciliation. We have attached the transmittals of those communications with the Receiver.

As was explained to the Receiver, CERIECO funds were directed to MI because when monies had been directed into the Project account, Ms. Coco, who had complete control over the accounting of the Project at that time, would refuse to sign cheques. You will see from a review of the Mediator’s Proposal and subsequent Project documents that Ms. Coco, or her agent, Ms. Maria Rico, had transparency and control over the Project accounts. They performed exacting reviews of the construction draw requests and any and all Project payments. Ms. Coco’s refusal to sign cheques for Project expenses threatened the Project and led to an arbitration between the beneficial owners, which resulted in the Mediator’s Proposal.

The CERIECO credit agreement provided that the funds it distributed could be paid directly to MI to avoid delay and disputes with the signing of cheques by Ms. Coco. This procedure was explained to KEB Hana, which agreed with it. The CERIECO Supplier Credit Agreement provides:

#### **3.3 Direction Regarding Disbursement of Advances**

The Credit Parties acknowledge that in order to be compliant with certain internal governance requirements, CERIECO is required to advance all Advances to Mizrahi Inc. as subcontractor, notwithstanding that all Credit Parties are primary obligors under this Agreement and that the customary practice in Ontario is to disburse Advance proceeds to the owner or to such other party the owner may direct. Accordingly, each Advance Request for an Advance incorporates an irrevocable direction to CERIECO to disburse proceeds under each Advance to that bank account designated by Mizrahi Inc.

If there are further questions arising from the documents and narrative with respect to CERIECO payments already provided to the Receiver by our client, please advise. In response to your email, the information and documentation provided establishes a complete explanation and reconciliation that all CERIECO funds were expended by MI on the Project as approved.

### **Payment of Hard Costs**

We understand that the Receiver has already contacted suppliers to obtain their invoices and confirmation that they were paid for hard costs. The records produced to date by MI also confirm the payment of hard costs. Please identify any third parties that the Receiver has contacted that have not substantiated the payment of hard costs by MI for Project costs. Again, should there be specific information that is sought or concerns raised about specific costs, please advise and our client will address them.

### **Production of Further Project Documents**

MI has provided all files in its possession that predate Procore. As per the Receiver's request, the balance of the emails will be provided in PST format. The litigation support firm that was engaged, Ricoh, estimates the filtration process will take 3-4 weeks from our last correspondence. In advance of the above work being completed, MI expects to begin delivering the balance of the Google drive contents of the employees on a rolling basis next week.

### **HST Reserve**

You are correct that the Mediator's Proposal contemplated the establishment of a HST reserve fund. Ms. Coco's team had the responsibility to establish the HST reserve fund and did not do so. To the best of MI's knowledge, there is no HST reserve fund.

Our client's response to your email may be supplemented in due course as additional information is obtained, particularly as it relates to the Receiver's requests to obtain access to unredacted bank records of MI, which have only been redacted because they have no relation or relevance to the Project. Thus far there has not been a single instance where MI's response to the extensive disclosure sought has led to a substantive discrepancy. All redacted bank records of money MI received as approved must therefore correspond with the Receiver's records of money paid to MI. Similarly all sums paid to MI for third party and hard costs have been substantiated by MI with receipts for the sums paid to the third party or hard cost approved by the Project. If there are any discrepancies identified by the Receiver, none have been identified to MI to date. MI reiterates it will meet to discuss any discrepancies identified by the Receiver so it may be satisfied that MI has been paid no more than approved, and, in the case of third party costs and hard costs, such costs were incurred and paid by MI.

We pause to note that many of the issues raised by the Receiver are strikingly similar to the issues raised, multiple times, by Ms. Coco throughout the various arbitrations proceedings between parties, including baseless allegations of MI self-dealing. Ms.

Coco's attempts to obtain unfettered access to MI's records, especially those unrelated to the Project, were, unsurprisingly, unsuccessful as were her allegations of self-dealing.

By now the Receiver must recognize that Ms. Coco and KEB Hana had significant, if not complete, control and oversight over the use of Project funds and the payment of Project expenses. To date, no one has been able to identify a single substantive issue with the use of Project funds or the payment of Project expenses to or by MI. Construction draw requests were closely and, often, pedantically reviewed for accuracy and completeness. Ms. Coco sought a full audit of the Project as part of the arbitration proceeding that resulted in the Mediator's Proposal. In the Mediator's Proposal, Mr. Morrison found "nothing useful" was to be gained from a historical audit and that the previous audit undertaken by BDO disclosed no issues.

The Receiver's persistence in seeking irrelevant documentation in light of your comment that the Receiver is not looking to understand how MI used its own funds suggests this exercise is nothing but a fishing expedition designed to delay the return of MI's motion, while unnecessarily increasing the costs incurred by all parties to no one's benefit, most notably the Project. Our client is increasingly concerned that your client, the Receiver, is losing sight of its obligations to the Project.

We propose a meeting between counsel, the knowledgeable persons at MI and the Receiver to discuss how MI can satisfy the Receiver that all funds paid to MI were approved by some combination of Ms. Coco, the Senior Lender's consultant and the Senior Lender, and spent on the Project as approved.

Yours very truly,

*J.R. Morse*

Jerome R. Morse  
DT/vs

C

**Jerome R. Morse**  
*Certified by the Law Society of Upper Canada  
as a Specialist in Civil Litigation*  
Direct Line: 416-941-5867  
jmorse@morseshannon.com

May 3, 2024

**Delivered Via Email** [mdunn@goodmans.ca](mailto:mdunn@goodmans.ca), [carmstrong@goodmans.ca](mailto:carmstrong@goodmans.ca),  
[jlinde@goodmans.ca](mailto:jlinde@goodmans.ca)

Mark Dunn  
Christopher Armstrong  
Jennifer Linde  
Goodmans LLP  
333 Bay Street, Suite 3400  
Toronto ON M5H 2S7

Dear Counsel:

**Re: Mizrahi Inc.**  
**Our File No. 50960**

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We write further to our call of May 2, 2024. During our call, you advised, for what we understand to be the first time, that the redacted banking documentation produced by our client to the receiver included redactions of payments made to third parties for project costs. This was not our understanding having not reviewed the banking documentation. On further investigation, we are advised that you are correct.

MI acknowledges that the receiver is entitled to banking documentation that reveals any project payments. MI is prepared to undertake the expense and spend the time on the process of redacting its banking records so that only non-project expenses are redacted from those records, but will only do so if the receiver agrees that it will accept such records. The definition of "Records" in the receivership order does not entitle the receiver to information that is irrelevant and unrelated to the project. If the receiver maintains its position that no redactions whatsoever are acceptable and that redacting documents to remove reference to non-project related payments or information is contrary to the order, then MI will not incur the expense and spend the time to redact its banking documentation and the parties should proceed to have the issue decided by the court.

MI is prepared to work with the receiver to ensure it is satisfied that the proposed redactions are proper to allay any concerns that the receiver may have.

We look forward to the receiver's position on this issue. Yours very truly,

*J.R. Morse*

Jerome R. Morse  
DT/vs

cc: Steve Weisz  
David Trafford

D

**From:** [David Trafford](#)  
**To:** [Dunn, Mark](#); [O'Neill, Brendan](#); [Armstrong, Christopher](#); [Linde, Jennifer](#)  
**Cc:** [Steve Weisz](#); [Jerome Morse](#); [Veronica Stasolla](#)  
**Subject:** Mizrahi Inc.  
**Date:** Sunday, June 9, 2024 9:55:29 AM

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Good morning,

Please use the link below to access the project documents as compiled by Ricoh:

<https://mizrahi.wetransfer.com/downloads/a74ef63e43f9898670041cd790b0f2f220240608133414/b8905d19b389daad645d8b18740223c420240608133414/db9276>

yours truly,

**David Trafford**  
*Partner*  
Direct Line: [416-941-5850](tel:416-941-5850)

**MORSE | SHANNON** LLP  
PERSONAL INJURY • COMMERCIAL LITIGATION

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**PLEASE NOTE OUR NEW ADDRESS ABOVE!**

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**From:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>  
**Sent:** Tuesday, June 4, 2024 10:59 AM  
**To:** Jerome Morse <[jmorse@morseshannon.com](mailto:jmorse@morseshannon.com)>; David Trafford <[DTrafford@morseshannon.com](mailto:DTrafford@morseshannon.com)>  
**Cc:** Weisz, Steven J <[SWeisz@cozen.com](mailto:SWeisz@cozen.com)>; Armstrong, Christopher <[carmstrong@goodmans.ca](mailto:carmstrong@goodmans.ca)>; Linde, Jennifer <[jlinde@goodmans.ca](mailto:jlinde@goodmans.ca)>; O'Neill, Brendan <[boneill@goodmans.ca](mailto:boneill@goodmans.ca)>  
**Subject:** RE: Mizrahi Inc.

I'm following up on my note below. We think it would be helpful to have a call either this afternoon or tomorrow morning about the motion on Thursday. Please let us know if you are available. I know that Jerome is traveling, so we are happy to accommodate his schedule or speak with other members of the team.

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**From:** Dunn, Mark  
**Sent:** Monday, June 3, 2024 5:26 PM  
**To:** Jerome Morse <[jmorse@morseshannon.com](mailto:jmorse@morseshannon.com)>  
**Cc:** David Trafford <[DTrafford@morseshannon.com](mailto:DTrafford@morseshannon.com)>; Weisz, Steven J <[SWeisz@cozen.com](mailto:SWeisz@cozen.com)>; Armstrong, Christopher <[carmstrong@goodmans.ca](mailto:carmstrong@goodmans.ca)>; Linde, Jennifer <[jlinde@goodmans.ca](mailto:jlinde@goodmans.ca)>; 'Veronica Stasolla' <[vstasolla@morseshannon.com](mailto:vstasolla@morseshannon.com)>  
**Subject:** RE: Mizrahi Inc.

Jerome,

Thank you for your letter. The Holdback Release Order is not meant to release or otherwise prejudice MI's claim to a 5% construction management fee (the "CM Fee") on the holdback amounts. In our view, that issue should be dealt with together with the other issues between MI and the Receiver as part of the MI Payment Motion.

We have reviewed the Holdback Release Order, and do not believe that it will prejudice your client's claim for a CM Fee on the holdback. If you believe that specific language is required to make that more clear then we would be pleased to consider your proposal.

Regards,

Mark

---

**From:** Veronica Stasolla <[vstasolla@morseshannon.com](mailto:vstasolla@morseshannon.com)>  
**Sent:** Monday, June 3, 2024 1:50 PM  
**To:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Armstrong, Christopher <[carmstrong@goodmans.ca](mailto:carmstrong@goodmans.ca)>; Linde, Jennifer <[jlinde@goodmans.ca](mailto:jlinde@goodmans.ca)>  
**Cc:** Jerome Morse <[jmorse@morseshannon.com](mailto:jmorse@morseshannon.com)>; David Trafford <[DTrafford@morseshannon.com](mailto:DTrafford@morseshannon.com)>; Weisz, Steven J <[SWeisz@cozen.com](mailto:SWeisz@cozen.com)>  
**Subject:** Mizrahi Inc.

Good afternoon,

Please see the attached correspondence from Jerome Morse.

Regards,

**Veronica Stasolla**  
*Legal Assistant*  
Direct Line: [416-941-5889](tel:416-941-5889)

<image001.jpg>

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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. et al

Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AIDE MEMOIRE OF THE RECEIVER  
(Re: Case Conference to be held on June 12, 2024)**

**Goodmans LLP**

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