



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

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

THE HONOURABLE

)

FRIDAY, THE 9<sup>TH</sup>

)

JUSTICE OSBORNE

)

DAY OF AUGUST, 2024

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

**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 July 29, 2024, and the Fourth Report of the Receiver dated July 29, 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 a 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) 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;
- (b) 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);

- (c) 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;
- (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 OFFICERS**

8. **THIS COURT ORDERS** that (a) the Honourable Thomas J. McEwen, McEwen Resolutions Inc., (b) Mr. Joel Richler, and (c) 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 are hereby appointed as claims officers for determining Disputed Lien Claims pursuant to this Order (each, a “**Claims Officer**” and, collectively, the “**Claims Officers**”).

9. **THIS COURT ORDERS** that the Claims Officers shall incur no liability or obligation as a result of their appointment or in acting as the Claims Officers 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 Officers, 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.

Osborne J. Digitally  
signed by  
Osborne J.  
Date:  
2024.08.13  
12:12:31 -04'00'

**KEB HANA BANK as trustee of IGIS GLOBAL  
PRIVATE PLACEMENT REAL ESTATE FUND  
NO. 301 and as trustee of IGIS GLOBAL PRIVATE  
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and **MIZRAHI COMMERCIAL  
(THE ONE) LP, et al.**

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Applicant

Respondents

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

**LIEN CLAIMS  
RESOLUTION ORDER**

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