



Court File No:

**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

**APPLICATION UNDER 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**

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

via Zoom at

<https://ca01web.zoom.us/j/65979875939?pwd=VVRJZHVVVRWQ1cGdkRERtTGpRajNFUT09>

Meeting ID: 659 7987 5939

Passcode: 879894

on Wednesday, October 18, 2023, at 10:00 a.m.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date October __, 2023

Issued by

Local registrar

Address of court office: 330 University Avenue,
Toronto, ON M5G 1R8

TO: SERVICE LIST

APPLICATION

1. The applicant, KEB Hana Bank (i) as trustee of IGIS Global Private Placement Real Estate Fund No. 301 (in such capacity, the “**Term Lender**”), and (ii) as trustee of IGIS Global Private Placement Real Estate Fund No. 434 (in such capacity, the “**Standby Lender**” and together with Term Lender, the “**Senior Secured Lenders**”), makes application for an order (the “**Appointment Order**”) substantially in the form to be included with the application record granting, among other things, the following relief:

- (a) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver (in such capacity, and not in its personal or corporate capacity, the “**Receiver**”), without security, in respect of all of the assets, undertakings and properties of the respondents, Mizrahi Commercial (The One) LP (the “**Beneficial Owner**”), Mizrahi Development Group (The One) Inc. (the “**Nominee**” and together with the Beneficial Owner, the “**Borrower**”) and Mizrahi Commercial (The One) GP Inc. (“**GP Inc.**”) acquired for or used in relation to a business carried on by the Borrower or GP Inc., including, without limitation, in connection with the Project (as defined below) and the Project itself, including all proceeds thereof (collectively, the “**Property**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario);
- (b) granting the Receiver a charge over all of the Property as security for the Receivership Costs (as defined below), with such charge having priority over all other charges and security interests other than Aviva’s security interest in the Condo Deposits in the Condo Deposit Account (each as defined below) and subject to subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA (the “**Receiver’s Charge**”);

- (c) approving the Receivership Funding Credit Agreement (as defined below);
- (d) granting KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (in such capacity, the “**Receivership Lender**”) a charge over all of the Property as security for the performance, including repayment, of all obligations incurred under the Receivership Funding Credit Agreement, with such charge having priority over all other charges and security interests other than (i) the Receiver’s Charge and (ii) Aviva’s security interest in the Condo Deposits in the Condo Deposit Account, and subject to subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA (the “**Receiver’s Borrowings Charge**”);
- (e) prohibiting the commencement or continuance of any proceedings against the Receiver and the Receiver’s counsel, except with the written consent of the Receiver or leave of the Court;
- (f) staying all proceedings currently underway against or in respect of the Borrower, GP Inc. or the Property until further order of the Court and prohibiting the commencement or continuance of any proceedings against or in respect of the Borrower, GP Inc. or the Property, except with the written consent of the Receiver or leave of the Court;
- (g) requiring cooperation and information sharing in respect of the Project from all individuals, firms, corporations, governmental bodies or agencies, and other entities having notice of the Appointment Order, including the Borrower and GP Inc. (and their current and former directors, officers, employees, shareholders, limited partners and general partners), and the Developer, Mizrahi LP Inc.,

Coco LP Ltd., Mizrahi and Coco (each as defined below), and construction managers, general contractors, contractors and subcontractors of the Project;

- (h) staying and suspending all rights and remedies against the Receiver, the Borrower or GP Inc., or affecting the Property, except with the written consent of the Receiver or leave of the Court, and subject to other customary exclusions;
- (i) restraining any person from interfering with, terminating or ceasing to perform any right in favour of or held by the Borrower, GP Inc., the Developer or in respect of the Project, except with the written consent of the Receiver or leave of the Court;
- (j) restraining all counterparties to oral or written agreements with the Borrower, GP Inc. or the Developer, or those with contractual, statutory or regulatory mandates for the supply of goods and/or services to the Borrower, GP Inc., the Developer and/or the Project, from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, until further order from the Court and provided that the normal prices or charges for all such goods or services received are paid by the Receiver or the Developer, as determined by the Receiver, in accordance with normal payment practices of the Borrower and GP Inc. or the Developer, as applicable; and
- (k) requiring any party that has provided a financial assurance to or for the benefit of the Borrower or GP Inc., including where such financial assurance has been provided to the Developer, to continue to honour such financial assurance, notwithstanding any default of cross-default provisions arising as a result of the

Appointment Order, the financial circumstances of the Borrower or GP Inc., or otherwise.

2. The grounds for the application are as follows:

The parties

- (a) The Beneficial Owner is an Ontario-based limited partnership formed to undertake the development of an 85-storey mixed-use tower marketed as “The One” (the “**Project**”) on the lands and premises on the southwest corner of Bloor Street West and Yonge Street in Toronto, Ontario (“**One Bloor**”).
- (b) Jenny Coco (“**Coco**”) (and/or her family and other related persons or entities) and Sam Mizrahi (“**Mizrahi**”) each have a 50% ultimate indirect voting interest in the Beneficial Owner through their respective indirect ownership of the Beneficial Owner’s two limited partners, namely 12823543 Canada Ltd. (“**Coco LP Ltd.**”) and Sam M. Inc. (“**Mizrahi LP Inc.**”).
- (c) The Beneficial Owner’s sole general partner is GP Inc., a corporation incorporated under the laws of Ontario.
- (d) Coco LP Ltd. and Mizrahi LP Inc. each hold 50% of the common shares of GP Inc.
- (e) The Nominee is a corporation incorporated under the laws of Ontario and is wholly owned by GP Inc.
- (f) The Nominee is the registered owner of One Bloor as nominee for and on behalf of the Beneficial Owner.

The Project

- (g) The Project, which is partially constructed, is contemplated to be an 85-storey mixed-use residential tower.
- (h) The Project features underground parking, concourse and ground floor retail, a restaurant on the third level, and a hotel on levels 5 and 7 through 16 (collectively, the “**Commercial Component**”), and luxury residential suites occupying the remainder of the building up to level 84, plus the mechanical penthouse on level 85 (the “**Residential Component**”).
- (i) Mizrahi Inc. (the “**Developer**”) is the developer and general contractor of the Project, and is responsible for overseeing the development, construction and day-to-day management of the Project.

The Borrower’s secured indebtedness to the Senior Secured Lenders

- (j) To assist with financing the Project, the Borrower, the Senior Secured Lenders and certain others are parties to a credit agreement dated August 30, 2019, as amended on April 30, 2020, October 30, 2020, February 4, 2021, September 9, 2021, and August 30, 2022 (as amended, the “**Credit Agreement**”).
- (k) The Credit Agreement made available to the Borrower a term credit facility (the “**Term Facility**”) funded by the Term Lender, and a standby credit facility funded by the Standby Lender at the election of the Senior Secured Lenders, subject to certain conditions precedent (the “**Standby Facility**” and together with the Term Facility, the “**Credit Facilities**”).

- (l) As of September 29, 2023, the total amount outstanding under the Term Facility and Standby Facility was approximately \$906 million and \$329 million, respectively, and in each case inclusive of principal, interest and certain other fees, costs and expenses (the “**Obligations**”).
- (m) The Senior Secured Lenders have been granted various security for the Obligations, including the following (together, the “**Security**”):
 - (i) a general security agreement with the Borrower, dated August 30, 2019, which grants a security interest over all of the Borrower’s current and after-acquired property located at, used primarily in connection with, or arising from One Bloor, financing statements in respect of which are registered under the *Personal Property Security Act* (Ontario) against the Nominee, the Beneficial Owner and GP Inc.;
 - (ii) a demand debenture from the Nominee dated August 30, 2019, as amended on February 4, 2021 and September 9, 2021, in the maximum principal amount of \$957 million, a charge in respect of which was registered against title to One Bloor on August 30, 2019, as amended on February 16, 2021 and October 5, 2021;
 - (iii) a general assignment of rents and leases dated August 30, 2019, registered against title to One Bloor on August 30, 2019; and
 - (iv) two pledge agreements from GP Inc. granting first priority interests in certain of GP Inc.’s bank accounts and in GP Inc.’s investment assets, including its common shares in the Nominee.

- (n) In addition to the Security, the Obligations are guaranteed by Coco (in her personal capacity), Mizrahi (in his personal capacity), and GP Inc.
- (o) The Term Facility and the Standby Facility matured on August 30, 2023 and September 29, 2023, respectively, and have not been repaid.

Other secured indebtedness

- (p) In addition to the Obligations owing to the Senior Secured Lenders, the Borrower has incurred secured indebtedness to following creditors:
 - (i) Aviva Insurance Company of Canada's ("**Aviva**") in respect of its surety to Taron Warranty Corporation on behalf of the Nominee in connection with the Project, in the amount of \$8,320,000, and excess condominium deposit insurance to the Nominee in respect of the Project, which coverage limit is \$201,680,000;
 - (ii) Coco International Inc. (the "**Coco Lender**"), a corporation controlled by Coco (or other related persons or entities), in respect of a credit agreement with the Beneficial Owner whereby the Coco Lender agreed to provide a \$75 million credit facility to the Beneficial Owner;
 - (iii) CERIECO Canada Corp. and its agent 10216267 Canada Corp. (collectively, "**CERIECO**") in respect of several agreements whereby CERIECO agreed to advance a contractor's loan in the amount of \$213,000,000 to the Borrower in connection with the first stage of construction of the Project; and
 - (iv) NongHyup Bank, in its capacity as trustee of Hana Private Real Estate Investment Trust No. 137 (the "**Hana Lender**"), in respect of a credit

agreement whereby the Hana Lender agreed to advance funds under a term loan facility in the maximum principal amount of \$55,000,000.

- (q) The below table sets out the approximate total secured indebtedness of the Borrower, which in the case of the lenders other than the Senior Secured Lenders and Aviva is limited to the principal amounts of the Borrower's indebtedness (and which amounts may have accrued additional interest and/or fees):

Creditor	Approximate secured indebtedness
Senior Secured Lenders	\$1.235 billion
Aviva	\$130 million
Hana Lender	\$55 million
Coco Lender	\$60 million
CERIECO	\$182 million
Total:	\$1.662 billion

- (r) Pursuant to several priority, subordination and standstill agreements, as amended, the Senior Secured Lenders have first priority over One Bloor and all of the Borrower's other assets, other than deposit monies received from purchasers of units in the Residential Component of the Project and the interest thereon (the "Condo Deposits") deposited into a certain designated trust account (the "Condo Deposit Account"), over which the Senior Secured Lenders have second priority to Aviva. The table below sets out the priorities, in descending order:

One Bloor	All Property other than One Bloor and Condo Deposits in the Condo Deposit Account	Condo Deposits in the Condo Deposit Account
Senior Secured Lenders	Senior Secured Lenders	Aviva
Aviva	Hana Lender	Senior Secured Lenders
Hana Lender	Coco Lender	Hana Lender
Coco Lender	CERIECO	Coco Lender
CERIECO		CERIECO

The Borrower's defaults

- (s) Since the closing of the Credit Agreement in 2019, the Borrower has committed several defaults and events of default thereunder that are continuing (each, an **“Event of Default”**).
- (t) Most recently, the Borrower failed to repay the Obligations under each of the Credit Facilities at maturity, each such failure to repay representing a separate and independent Event of Default (the **“Repayment Events of Default”**).
- (u) On October 4, 2023, the Senior Secured Lenders delivered a formal demand letter to the Borrower, demanding immediate payment of all Obligations under the Credit Facilities and enclosing a notice of intention to enforce security pursuant to s. 244 of the BIA (the **“Demand and 244 Notice”**).
- (v) To date, the Demand and 244 Notice has not been satisfied and the Repayment Events of Default are continuing.

The Project is delayed and over budget and faces other challenges

- (w) When the Credit Agreement was executed in 2019, it was expected that the Project would be completed by December 31, 2022, at a projected cost of approximately \$1.4 billion.
- (x) As of October 4, 2023, concrete columns and walls had only been poured up to the 40th floor and the Borrower now projects that the Project will not be completed until March 2025.
- (y) In the most recent budgets for the Project, prepared by the Senior Secured Lenders' cost consultant, which are based on the Borrower's latest construction schedule and commitments and cost data to May 31, 2023, anticipated gross Project expenditures exceed \$2 billion, more than \$600 million more than projected in 2019.
- (z) As of August 31, 2023, 70 units in the Residential Component of the Project remain unsold.
- (aa) The Borrower has not been able to complete a sale or mortgage of the Commercial Component of the Project (or even the severance of the Commercial Component lands).
- (bb) The Project recently lost its anchor retail tenant and no replacement anchor tenant has been secured.
- (cc) Over the past several years, Coco's and Mizrahi's relationship has become increasingly acrimonious and dysfunctional, and their disagreements have impeded

the ability of the Borrower to complete the Project and impaired the relationship with the Senior Secured Lenders.

- (dd) As a general matter, information received by the Senior Secured Lenders concerning the Project has been insufficient for the Senior Secured Lenders or their cost consultant to form an accurate view of the ultimate expected cost to complete the Project and the completion date.
- (ee) The Borrower cannot continue construction of the Project without further advances under the Credit Agreement or alternative financing acceptable to the Senior Secured Lenders.
- (ff) As a result of all of these issues, the Senior Secured Lenders have lost confidence in the Borrower.

It is just and convenient to appoint the Receiver

- (gg) All Obligations outstanding under the Credit Facilities are now due and payable and the Borrower has neither repaid the Obligations, nor indicated any intention or ability to repay, despite multiple demands.
- (hh) The Senior Secured Lenders are contractually entitled to seek the appointment of a receiver upon an Event of Default.
- (ii) The appointment of a receiver will bring stability and appropriate oversight to the Project and can best preserve and protect the Property in order to maximize recoveries from the Project for the benefit of all stakeholders.

- (jj) A&M has consented to act as Receiver if appointed by this Honourable Court on terms substantially in the form of the proposed Appointment Order, including the granting of the Receiver's Charge (described in paragraph 1(b) above) to secure the Receiver's fees and expenses that are necessary to perform its powers and duties as Receiver, including the fees and disbursements of its independent counsel (such fees and expenses, "**Receivership Costs**").
- (kk) If appointed, the Receiver will immediately engage with stakeholders, including the Developer and the trades and subtrades contracted on the Project, and will hire a project manager, as well as other advisors that it deems necessary to assist with and oversee the administration and construction of the Project (each on terms acceptable to the Receivership Lender).
- (ll) During the first six months following the granting of the Appointment Order, the Receiver will, among other things:
- (i) prepare a report on the fair market value for each condominium unit in the Residential Component;
 - (ii) prepare a plan with respect to the treatment of any condominium sales agreements entered into to date;
 - (iii) obtain a report on hard and soft construction costs of the Project ("**Project Costs**") incurred to date, the estimated cost (and time) to complete and the estimated revenues;
 - (iv) prepare a business plan setting out an execution strategy for the Project to maximize recoveries for the benefit of all stakeholders; and

(v) complete the legal severance of the lands and premises of the Commercial Component from the balance of the Project.

(mm) The appointment of A&M as Receiver is just and convenient.

The Receivership Funding Credit Agreement should be approved

(nn) Given the Borrower's limited cash resources, the Receiver (if appointed) will require substantial and ongoing funding throughout the receivership proceedings, which costs include ongoing Project Costs and Receivership Costs.

(oo) By agreement that will be made effective as of the date of the Appointment Order (the "**Receivership Funding Credit Agreement**"), the Receivership Lender has agreed to make available to the Receiver a non-revolving term credit facility in the maximum principal amount of \$315 million (the "**Receivership Facility**"), on a super-priority basis, to fund, among other things, Project Costs and Receivership Costs, subject to certain conditions.

(pp) Following the closing of the Receivership Facility, the Receivership Lender will advance \$80 million, after which it may make monthly advances, beginning in November 2023, of no more than \$30 million (to a maximum of \$235 million) to fund approved Project Costs and Receivership Costs based on actual expenditures from the preceding month, which ongoing funding commitments are conditioned on various factors, including:

(i) the continuation of the proposed Appointment Order,

- (ii) the achievement of certain milestones, including the delivery of a report outlining the expected cost to complete the Project (the “**Cost to Complete Report**”),
 - (iii) the outcome of the Cost to Complete Report, and
 - (iv) the Receivership Lender’s right, at any time upon 60 days’ notice to the Receiver, to require the Receiver to seek Court approval of a sales process in respect of the Property, with the costs of such sales process to be funded by the Receivership Lender.
- (qq) Upon receipt of the Cost to Complete Report, the Receivership Lender and the Senior Secured Lenders intend to consider and discuss available options and alternatives with their advisors and the Receiver, which options may include the possibility of providing further funding and/or requesting that the Receiver pursue a sales process for the Project.
- (rr) The Receivership Lender is only prepared to advance funds within a Court-supervised process and in accordance with the terms of the Receivership Funding Credit Agreement and the proposed Appointment Order, including the granting of the Receiver’s Borrowing’s Charge (described in paragraph 1(d) above).
- (ss) The Receiver’s Borrowing Charge will rank behind the Receiver’s Charge but ahead of all other indebtedness, but the Receiver’s Borrowing Charge and the Receiver’s Charge will rank behind Aviva’s security interest in the Condo Deposits in the Condo Deposit Account.

- (tt) The Receivership Funding Credit Agreement is fair and reasonable in comparison with the economic terms of credit facilities approved in other recent real estate and significant Court-supervised insolvency proceedings.

Relief in favour of the Developer should be granted

- (uu) The Appointment Order extends certain protections to the Developer that are necessary to facilitate the Receiver's oversight of the development and continued construction of the Project.

General

- (vv) The applicant relies on sections 31 and 243 of the *Bankruptcy and Insolvency Act*, section 101 of the *Courts of Justice Act*, and Rules 1.04, 2.03, 3.02, 16.08 and 38 of the *Rules of Civil Procedure*.
- (ww) Such further grounds as this Court may permit.
3. The following documentary evidence will be used at the hearing of the Application:
- (a) the affidavit of Joo Sung Yoon, made October 17, 2023, and the exhibits thereto;
 - (b) the consent of A&M to act as the Receiver, to be filed;
 - (c) such other material as is required and this Court may permit.

October 17, 2023

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, ON M5X 1B8

Michael De Lellis (LSO# 48038U)
Email: mdellellis@osler.com
Tel: (416) 862.5997

Jeremy Dacks (LSO# 41851R)
Email: jdacks@osler.com
Tel: (416) 862.4923

Shawn Irving (LSO# 50035U)
Email: sirving@osler.com
Tel: (514) 904.4733

Mark Sheeley (LSO# 66473O)
Email: msheeley@osler.com
Tel: (416) 862.6791

Fax: (416) 862.6666

Lawyers for the Applicant

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PROCEEDING COMMENCED AT: TORONTO**

**NOTICE OF APPLICATION
(Order Appointing Receiver)**

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50, Toronto ON M5X 1B8

Michael De Lellis (LSO# 48038U)
Tel: 416.862.5997
Email: mdelellis@osler.com

Jeremy Dacks (LSO# 41851R)
Tel: 416.862.4923
Email: jdacks@osler.com

Shawn Irving (LSO# 50035U)
Tel: 416.862.4733
Email: sirving@osler.com

Mark Sheeley (LSO# 66473O)
Tel: 416.862.6791
Email: msheeley@osler.com

Lawyers for the Applicant