



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

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

THE HONOURABLE

)

THURSDAY, THE 7TH

)

JUSTICE OSBORNE

)

DAY OF MARCH, 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**

**ORDER
(Construction Continuance and Ancillary Relief)**

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.

ON READING the Notice of Motion of the Receiver dated February 26, 2024, and the First Report of the Receiver dated February 26, 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, and counsel for the other parties appearing as noted on the Counsel Slip, the Service List and those other persons specified in the affidavits of service of Jennifer Linde dated February 26 and 28, 2024, having been served,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the First Report 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 indicated or defined herein, capitalized terms used herein shall have the meaning given to them in the Order (Appointing Receiver) of this Court dated October 18, 2023 (the “**Receivership Order**”).

ENGAGEMENT OF SKYGRID

3. **THIS COURT ORDERS** that the engagement of SKYGRiD Construction Inc. (“**Skygrid**”) by the Receiver pursuant to paragraph 4(e) of the Receivership Order, the related engagement letter dated February 26, 2024 in the form attached as Appendix “K” to the First Report (the “**Skygrid Engagement Letter**”), and the subsequent execution of a customized industry form of Construction Management Contract on terms consistent with the Skygrid Engagement Letter, and on such other definitive terms as the Receiver

considers appropriate (such contract, the “**Skygrid Construction Agreement**”), be and the same are hereby authorized and approved.

4. **THIS COURT ORDERS** that the execution and delivery of the Skygrid Engagement Letter, with such minor amendments as the Receiver and Skygrid may agree to, and the Skygrid Construction Agreement, on such terms as may be agreed to by the Receiver and Skygrid, are hereby authorized and approved. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Skygrid Engagement Letter and the Skygrid Construction Agreement.
5. **THIS COURT ORDERS** that the Receiver shall be entitled to make, directly or indirectly, payments to suppliers, contractors, subcontractors and other creditors of the Project in such amounts as the Receiver considers necessary from time to time.

LIMITATION ON LIABILITY OF SKYGRID

6. **THIS COURT ORDERS** that Skygrid, in its capacity as construction manager of the Project (the “**Construction Manager**”), shall have no liability in respect of services or materials provided to the Project by any contractor, subcontractor, trade supplier or other Person for any period prior to March 13, 2024 (the “**Effective Date**”).
7. **THIS COURT ORDERS** that the stay of proceedings, rights and remedies provided for in paragraphs 14 and 15 of the Receivership Order shall extend to the Construction Manager, solely in its capacity as Construction Manager, from the Effective Date until further Order of this Court. For greater certainty, Mizrahi Inc., solely in its capacity as

former developer or general contractor of the Project (in such capacity, the “**Former Developer**”), shall remain subject to the stay of proceedings, rights and remedies provided for in paragraphs 14 and 15 of the Receivership Order, pending further Order of this Court.

LIMITATION ON LIABILITY OF MIZRAHI INC.

8. **THIS COURT ORDERS** that the Former Developer shall have no liability in respect of the supply of services or materials to the Project by any contractor, subcontractor, trade supplier or other Person on or after the Effective Date (a “**Post-Disclaimer Supply**”).
9. **THIS COURT ORDERS** that, for greater certainty, this Order shall not release the Former Developer from any liability that does not relate to a Post-Disclaimer Supply, including liabilities relating to services or materials supplied to or ordered for the Project before the Effective Date and the impact of such supply on the activities of the Construction Manager or its subcontractors or any other Person after the Effective Date, even where such liabilities are not discovered by the Receiver, the Former Developer or the Debtors, or any other Person, or are not asserted by any contractor, subcontractor or trade supplier, or any other Person, until after the Effective Date. For greater certainty, claims for delay, unpaid accounts for the supply of services or materials, lien or trust claims, damages, costs, holdback, lost profit, termination or demobilization costs made by any contractor, subcontractor, trade supplier or other Person that supplied services or materials to the Project prior to the Effective Date are not affected by paragraph 8 above.

TRANSFER OF MATERIALS

10. **THIS COURT ORDERS** that the Former Developer and any other Person shall permit the Receiver or its designee to access and take possession of any property that:
- (a) is, or is intended to be, part of the Project, or that is used directly or indirectly in the making of the Project, or that is used to facilitate directly or indirectly the making of the Project, including without limitation all materials, plans, models, drawings, specifications, site diaries, consulting reports, Project documentation (whether in electronic or paper form), contracts, agreements, account statements, invoices, purchase orders, tender offers, listings of trades and suppliers (including addresses and contact information), employment agreements, listings of equipment owned and obtained through the Project, or other property used or intended to be used in the making of the Project; or
 - (b) is equipment rented without an operator for use in the making of the Project ((a) and (b) collectively, the “**Project Materials**”).
11. **THIS COURT ORDERS** that the Former Developer shall, within fifteen (15) days of being provided a list of outstanding Project Materials by the Receiver, provide the Receiver or its designee with information in respect of such Project Materials that includes a description of all such Project Materials, the location of all such Project Materials and the identity and contact information of any Person storing or otherwise in possession of all such Project Materials.

12. **THIS COURT ORDERS** that no Person shall interfere with the Receiver's or its designee's possession of the Project Materials, or the Receiver or its designee taking possession of the Project Materials, without leave of this Court.
13. **THIS COURT ORDERS** that the Receiver shall be at liberty to pay such amounts as it determines are appropriate in connection with obtaining possession of any Project Materials; provided that any dispute in respect of the amount required to be paid by the Receiver in connection with any Project Materials shall be determined by this Court on a motion brought by the Receiver or other interested Person on not less than five (5) days notice. In the event of a dispute, the Project Materials shall be delivered as and when required by the Construction Manager; provided that the Receiver has given notice to all interested Persons that a motion under this paragraph will be brought and that the Receiver shall honour the terms of any final Order arising therefrom.

NO AFFIRMATION AND NO PERSONAL LIABILITY

14. **THIS COURT ORDERS** that the Receiver, in making payments directly or indirectly to suppliers, contractors, subcontractors and other creditors in accordance with paragraph 4(d) of the Receivership Order or paragraph 5 of this Order, is not affirming or assuming (and has not affirmed or assumed) any agreement or mandate for the supply of goods and/or services to the Debtors, the Former Developer, the Construction Manager and/or the Project, and that the Receiver shall have no personal liability for any payments or other obligations under any such agreement or mandate.

TARION MATTERS

15. **THIS COURT ORDERS** that the limitations of liability provided for in paragraphs 6 and 8 of this Order do not extend to any obligations or liabilities arising under the *Ontario New Home Warranties Plan Act* and the regulations promulgated thereunder, which Act and regulations shall continue to apply to the Construction Manager, the Former Developer and the Project.

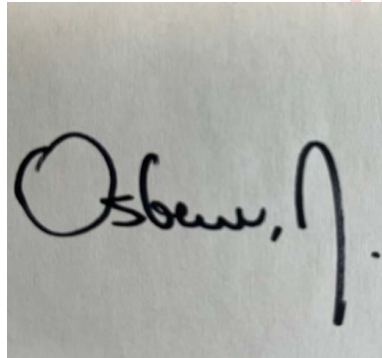
APPROVAL OF RECEIVER'S ACTIVITIES

16. **THIS COURT ORDERS** that the First Report and the actions, conduct and activities of the Receiver as set out therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

17. **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.

18. **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.

A rectangular image showing a handwritten signature in black ink on a light-colored background. The signature appears to be "Osburn, J." with a stylized flourish at the end.

2024.03.08

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	<div>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</div> <div>CONSTRUCTION CONTINUANCE AND ANCILLARY RELIEF ORDER</div> <div>GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 Brendan O'Neill LSO# 43331J boneill@goodmans.ca Christopher Armstrong LSO# 55148B carmstrong@goodmans.ca Jennifer Linde LSO#86996A jlinde@goodmans.ca Tel: (416) 979-2211 Fax: (416) 979-1234 Lawyers for the Receiver</div>