



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

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

THE HONOURABLE

)

THURSDAY, THE 6TH

)

JUSTICE OSBORNE

)

DAY OF JUNE, 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
(Holdback Release)**

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 May 28, 2024, and the Second Report of the Receiver dated May 28, 2024 (the “**Second Report**”), 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, 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 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, or the Second Report, as the case may be.

APPROVAL OF HOLDBACK RELEASE

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to (i) pay the Holdback Amount on behalf of the Nominee to the Holdback Parties in the amounts specified in Appendix “C” to the Second Report and (ii) pay any additional holdback amount pursuant to the Provincial Lien Legislation owing to a Holdback Party for the period following the Effective Date where such Holdback Party has fully completed its scope of work in relation to the Project as determined by the Receiver and such Holdback Party is not required by the Construction Manager for continued construction on the Project (a “**Final Holdback Payment**”), in each case subject to the Holdback

Release Conditions being satisfied (or waived) as determined by the Receiver in its sole discretion, including execution of a Holdback Release Agreement satisfactory to the Receiver by each Holdback Party.

4. **THIS COURT ORDERS** that, except for the payments of the Holdback Amount to the Holdback Parties contemplated by this Order, all Persons shall be permanently and forever barred, estopped, stayed and enjoined from making, asserting or enforcing any claim, right, demand, remedy or other entitlement to the Holdback Amount, or on account of any alleged deficiency in the Holdback Amount or any holdback under the Provincial Lien Legislation for the period prior to the Effective Date, or to funds or entitlements in the place of the Holdback Amount or any holdback under the Provincial Lien Legislation for the period prior to the Effective Date, or otherwise in connection with the payments of the Holdback Amount or any other holdback amount under the Provincial Lien Legislation contemplated by this Order; provided that nothing in this paragraph 4 shall restrict or otherwise prejudice Mizrahi Inc.'s ("MI") claim for a 5% construction management fee on certain holdback payments as specified in invoice C1506 issued by MI to the Receiver.

5. **THIS COURT ORDERS** that the Receiver, in paying the Holdback Amount or any Final Holdback Payment in accordance with 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.

6. **THIS COURT ORDERS** that, notwithstanding: (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) in respect of any Debtor and any bankruptcy order issued pursuant to any such application; (c) any application for an order under the *Companies’ Creditors Arrangement Act* (Canada) in respect of any Debtor and any order issued pursuant to any such application; and (d) any assignment in bankruptcy made in respect of any of the Debtors, the payments of the Holdback Amount and any Final Holdback Payment made pursuant to this Order are final and irreversible and shall be binding upon any trustee in bankruptcy or monitor that may be appointed in respect of any of the Debtors, and shall not be void or voidable by creditors of any of the Debtors, nor shall any such payment of the Holdback Amount or any Final Holdback Payment constitute or be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer-at-undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person, and shall, upon the receipt thereof, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to any of the Debtors or their respective Property.

7. **THIS COURT ORDERS** that the Receiver shall not incur any liability in connection with the payments of the Holdback Amount or any Final Holdback Payment contemplated herein, save and except for liability arising from any gross negligence or wilful misconduct on its part, as determined pursuant to a final order of this Court that is not subject to appeal or other review and all rights to seek any such appeal or other review shall have expired.

8. **THIS COURTS ORDERS** that, upon execution of a Holdback Release Agreement between the Receiver and a Holdback Party, the subcontract between such Holdback Party and the

Former Developer shall be deemed to have been certified complete pursuant to the Provincial Lien Legislation as of the Effective Date, and that all other requirements of section 33 of the Provincial Lien Legislation shall be deemed to have been complied with as of the Effective Date.

9. **THIS COURT ORDERS AND DECLARES** that the payments of the Holdback Amount and any Final Holdback Payment contemplated herein shall not constitute a “distribution” by the Receiver and the Receiver shall not constitute a “legal representative”, “representative” or a “responsible representative” of any of the Debtors or “other person” for the purposes of Section 159 of the *Income Tax Act* (Canada), section 117 of the *Taxation Act*, 2007 (Ontario), Section 270 of the *Excise Tax Act* (Canada), Sections 46 and 86 of the *Employment Insurance Act* (Canada), Section 22 of the *Retail Sales Tax Act* (Ontario), Section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Statutes**”), and the Receiver, in making any payment of the Holdback Amount or a Final Holdback Payment in accordance with this Order is not “distributing”, nor shall it be considered to have “distributed”, such funds for the purposes of the Statutes, and the Receiver shall not incur any liability under the Statutes for paying the Holdback Amount or any Final Holdback Payment in accordance with this Order, and the Receiver shall not have any liability for any of the Debtors’ tax liabilities regardless of how or when such liabilities may have arisen, and is hereby forever released, remised and discharged from any claims against the Receiver under or pursuant to the Statutes or otherwise at law arising as a result of the payments of the Holdback Amount or any Final Holdback Payment contemplated in this Order, and any claims of such nature are hereby forever barred.

10. **THIS COURT ORDERS** that the Receiver is authorized and directed to transfer any funds in the Holdback Accounts relating to the period prior to the Effective Date and in excess of the Holdback Amount to the Receiver's construction account.

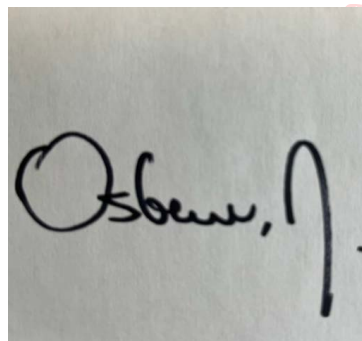
GAMMA CARVE-OUT

11. **THIS COURT ORDERS** that, notwithstanding any other provision hereof, Gamma Windows & Walls International Inc. ("**Gamma**") and any holdback amount owing to Gamma shall not be subject to the terms of this Order.

GENERAL

12. **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.

13. **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 handwritten signature in black ink, appearing to read "Osborn, J.", is written over a light-colored rectangular background.

2024.06.1
1 23:28:40
-04'00'

**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**

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

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

Applicant

Respondents

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

**ORDER
(HOLDBACK RELEASE)**

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