

**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

**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**

**SECOND SUPPLEMENTAL REPORT TO THE THIRD REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.**

AUGUST 7, 2024

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1.0 INTRODUCTION AND PURPOSE OF THIS REPORT

- 1.1 On October 18, 2023, pursuant to an Order (Appointing Receiver) (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), Alvarez & Marsal Canada Inc. was appointed as receiver and manager (in such capacities, 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**”) acquired for, or used in relation to, a business carried on by the Debtors, including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower (the “**Project**”) located on the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario.
- 1.2 In connection with the Receiver’s motion seeking production of certain documents (the “**Receiver’s Production Motion**”) from Mizrahi Inc. (“**MI**”), the former developer and general contractor of the Project, the Receiver prepared and filed with the Court the Third Report of the Receiver dated June 21, 2024 (the “**Third Report**”). In the Supplemental Report to the Third Report dated July 11, 2024 (the “**Supplemental Third Report**”), the Receiver addressed the resolution of the Receiver’s Production Motion and the partial resolution of MI’s motion for certain miscellaneous relief dated June 21, 2024 (the “**MI Miscellaneous Motion**”).
- 1.3 The sole issue remaining to be determined on the MI Miscellaneous Motion is the request for production to Sam Mizrahi (“**Mr. Mizrahi**”) of certain construction records in his capacity as an “owner” of the Project and a guarantor of the Project’s debts.

1.4 This report is the second supplemental report to the Third Report (the “**Second Supplemental Third Report**”). The purpose of this Second Supplemental Third Report is to provide further information regarding:

- (a) the construction records already provided to Mr. Mizrahi; and
- (b) the basis for the Receiver’s position that no further construction records should be produced to Mr. Mizrahi at this stage.

1.5 This Second Supplemental Third Report also provides an update on the status of the MI Payment Motion, and MI’s very recent production of certain Project Records and financial documents required by the Receiver to respond to the MI Payment Motion (which are currently being reviewed by the Receiver and its legal counsel).

1.6 This Second Supplemental Third Report should be read in conjunction with the Third Report and the Supplemental Third Report and is subject to the restrictions and limitations described therein. Capitalized terms used and not defined in this Second Supplemental Third Report have the meanings given to them in the Third Report, the Supplemental Third Report or the Receivership Order, as applicable.

2.0 UPDATE ON MI MISCELLANEOUS MOTION

2.1 Subsequent to the update provided by the Receiver in the Supplemental Third Report, the parties resolved the issue of MI’s request for certain documents to be produced from the Senior Secured Lenders. A letter from counsel to the Receiver to counsel to MI dated July 29, 2024 (the “**Receiver’s July 29 Letter**”), setting out this resolution and the Receiver’s position on remaining issues is attached hereto as **Appendix “A”**.

- 2.2 As a result of this further resolution, the MI Miscellaneous Motion now solely concerns MI's request for an order requiring the Receiver to produce to Mr. Mizrahi copies of all quantity survey reports, the daily logs of the Project's construction manager, SKYGRiD Construction Inc. ("**SKYGRiD**"), updated construction schedules and budgets for the Project (collectively, the "**Construction Documents**"). A copy of MI's Notice of Motion is attached hereto as **Appendix "B"**.
- 2.3 In the Receiver's July 29 Letter, counsel to the Receiver explained the rationale of why the Receiver does not intend to produce the Construction Documents, as further described below.
- 2.4 On July 30, 2024, counsel to MI responded to the Receiver's July 29 Letter disputing the Receiver's position on the Construction Documents (the "**MI July 30 Letter**"). On July 31, 2024, counsel to MI sent a further letter with various questions. Those letters are attached hereto as **Appendices "C" and "D"**.
- 2.5 On August 6, 2024, the Receiver responded to MI by outlining in further detail its position in respect of the Construction Documents (the "**Receiver's August 6 Letter**"). This letter is attached hereto as **Appendix "E"**.
- 2.6 The Receiver's view, as set out in the Receiver's August 6 Letter, is that no further production of the Construction Documents is reasonable or appropriate at this time.
- 3.0 INFORMATION ALREADY PROVIDED TO MR. MIZRAHI**
- 3.1 Mr. Mizrahi has access to the data room developed for the sale and investment solicitation process (the "**SISP**") in respect of the Project (the "**SISP Data Room**") in his capacity as

principal of Mizrahi Real Estate Group, Inc. (“**Mizrahi Real Estate**”). In order to access the SISP Data Room, Mizrahi Real Estate (and all other participants in the SISP) had to execute a SISP specific non-disclosure agreement (an “**NDA**”). A brief timeline of the NDA negotiations is set out below:

- **June 6, 2024:** Commencement of the SISP;
- **June 21, 2024:** Mr. Mizrahi reached out to the Broker (as defined in the SISP) to express an interest in submitting a proposal in connection with the SISP;
- **July 2, 2024:** The Broker provided Mr. Mizrahi with a form of NDA, which had been revised to reflect that MI already had access to much of the information in the SISP Data Room;
- **July 3, 2024:** At the request of Mr. Mizrahi, the Receiver provided Mr. Mizrahi with a redline version of the standard form of NDA showing the minor changes made to the NDA, as noted above;
- **July 9, 2024:** Mr. Mizrahi informed the Receiver that the Receiver’s email containing the NDA went into his junk folder within his email inbox;
- **July 11, 2024:** Counsel to Mizrahi Real Estate sent proposed revisions to the form of NDA to counsel to the Receiver;
- **July 12, 2024:** The Receiver agreed to MI’s proposed revisions to the NDA and the Receiver’s counsel provided an execution copy of the NDA to Mizrahi Real Estate’s counsel. The Receiver’s counsel also requested the contact information for the parties

with whom Mizrahi Real Estate intended to partner with in submitting a proposal in connection with the SISP (collectively, the “**Proposal Participants**”) so that it could provide a form of NDA directly to the Proposal Participants;

- **July 15, 2024:** Contact information for the Proposal Participants was provided. Mizrahi Real Estate’s counsel confirmed that Mizrahi Real Estate would execute the NDA. A revised execution version of the NDA was provided to Mizrahi Real Estate and to each of the Proposal Participants;¹
- **July 22, 2024:** The Receiver followed up on status of Mizrahi Real Estate’s NDA;
- **July 24, 2024:** A signed NDA was received from Mizrahi Real Estate. A fully executed version was provided by the Receiver on the same day (to Mizrahi Real Estate and to those Proposal Participants who signed an NDA), along with data room access.

3.2 Mr. Mizrahi’s motion seeks production of four categories of Construction Documents, which include:

- (a) construction schedules;
- (b) construction budgets;
- (c) quantity survey reports; and
- (d) daily construction logs.

¹ The Proposal Participants are third parties that collaborated with Mizrahi Real Estate in the SISP process.

3.3 The SISP Data Room, which Mr. Mizrahi has had access to since July 24, 2024, includes much of the information sought by Mr. Mizrahi, as outlined below:

- (a) the budget included in the SISP Data Room includes both a “cost to date” (which captures all costs incurred on the Project up to March 12, 2024) and an estimated “cost to complete” (which captures the forecast cost of completing the Project). The cost to complete dated June 11, 2024 is “as of” March 12, 2024, but includes all forecast costs to complete the Project;
- (b) the schedules included in the SISP Data Room provide projected dates for completion of all major construction and procurement activities on the Project. The “all tasks” schedule for the Project is 186 pages and provides detailed information with respect to when each significant task or milestone required to complete the Project is expected to occur; and
- (c) with respect to quantity survey reports, the Receiver has received cost reports from the Senior Secured Lenders’ cost consultant. These are not shared in the SISP Data Room, but they form the basis for the cost to date and cost to complete information that is shared in the SISP Data Room.

3.4 The only remaining request in the MI Miscellaneous Motion is for SKYGRiD’s daily construction logs. The Receiver opposes this request.

3.5 The daily construction logs are confidential materials prepared by SKYGRiD. They contain a high level summary of the daily construction activities, including the number of workers on site for various trades and weather conditions. The daily construction logs are

not available in the SISP Data Room, nor have they been shared with any SISP participant or any other stakeholder in these Receivership proceedings.

4.0 THE CONSTRUCTION DOCUMENTS ARE NOT RELEVANT TO THE MI PAYMENT MOTION

4.1 MI did not itself seek production of the Construction Documents or allege that they were relevant in its Notice of Motion for the MI Payment Motion. In correspondence, counsel for MI has suggested that the Construction Documents are relevant to the MI Payment Motion. The Receiver does not agree.

4.2 In the MI Payment Motion, MI alleges that the Receiver is obligated to continue paying MI using the same payment practices utilized by the Debtors in the pre-Receivership period, and thus that MI has been underpaid. The Construction Documents are not relevant to what MI alleges.

4.3 The Receiver is yet to file its evidence on the MI Payment Motion, making any request on the basis of hypothetical positions the Receiver might take premature.

4.4 The Receiver notes that MI will have an opportunity to pose written questions after the Receiver's report is served in response to the MI Payment Motion. This will include an opportunity to request the production of documents that are relevant to the Receiver's position. It is not necessary, at this stage, for MI to seek production of documents that may never be relevant to the MI Payment Motion based on its assumptions about the Receiver's potential evidence and positions.

4.5 In any event, MI has explicitly stated in the MI July 30 Letter that its true purpose in seeking the Construction Documents is to assess Mr. Mizrahi's exposure under his

guarantee of the Project's debts. The Receiver is not a party to the guarantee and, as far as the Receiver knows, no action has been taken to enforce the guarantee. The Receiver does not consider that it has an obligation to compile and produce documentation requested a purpose which is not directly related to these Receivership Proceedings.

- 4.6 The Receiver has provided, and will continue to provide, updates about the status of construction to all stakeholders.

5.0 UPDATE ON SCHEDULING FOR THE MI PAYMENT MOTION

- 5.1 As described in the Third Report, the Receiver has been unable to complete its investigation into the issues that are relevant to the MI Payment Motion because of MI's failure to provide the MI Account Statements, Ancillary Documents and Project Records (each as defined in the Third Report) on a timely basis. A summary of the pertinent dates and documents produced is set out below:

- (a) MI initially agreed to deliver the Project Records in late March 2024;
- (b) some Project Records were delivered on June 9, 2024, although the password for those documents was not provided until June 11, 2024;
- (c) on June 27, 2024, and attached hereto as **Appendix "F"**, the Receiver advised MI that the Project Records did not include key information and included a number of potentially privileged documents. The Receiver suspended its access to the Project Records to avoid inadvertently accessing privileged documents;
- (d) by letter dated July 3, 2024, and attached hereto as **Appendix "G"**, MI confirmed that there was "missing information" in the Project Records it had produced and

that it was working with MI's document review consultant to "remedy those deficiencies";

- (e) as a result of the resolution of the Receiver's Production Motion as described in the Supplemental Third Report, MI produced the MI Account Statements and certain Ancillary Documents between July 19, 2024 and July 24, 2024; and
- (f) on July 19, 2024, MI provided a USB drive that is said to contain the missing information previously identified by the Receiver in the Project Records and the balance of the Ancillary Documents. However, because the information was provided on a physical drive (instead of a download link), the Receiver had to physically deliver the USB drive to its document review team located in the United States. The Project Records on the USB drive then had to be processed into the Receiver's electronic document review software database. Given the volume of documents (approximately 195,000 new parent emails and attachments), the data upload was not completed until August 2, 2024.

- 5.2 The Receiver only received access to the new Project Records produced by MI on August 2, 2024. The Receiver is currently assessing whether MI has produced the missing information previously identified by the Receiver. In addition, the Receiver is currently assessing the sufficiency of the MI Account Statements and Ancillary Documents provided by MI between June 9, 2024 and July 24, 2024.

6.0 CONCLUSION AND RECOMMENDATION

- 6.1 As set out above, the sole remaining issue on the MI Miscellaneous Motion pertains to MI's request for Mr. Mizrahi to be provided access to extensive Construction Documents

of no apparent relevance, when he is already privy to many of these documents as a result of his access to the SISP Data Room. The Receiver respectfully requests that this aspect of the MI Miscellaneous Motion be dismissed.

All of which is respectfully submitted,

**Alvarez & Marsal Canada Inc., in its capacity as receiver and manager of
Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc.,
and Mizrahi Commercial (The One) GP Inc.**

Per:



Name: Stephen Ferguson
Title: Senior Vice-President

Per:



Name: Josh Nevsky
Title: Senior Vice-President

APPENDIX “A”

July 29, 2024

Our File No.: 232285

Via Email

Morse|Shannon LLP
133 Richmond Street West
Suite 501
Toronto, ON M5H 2L3

Attention: Jerome Morse

Dear Mr. Morse:

Re: Mizrahi Inc. (“MI”)

We write in respect of MI’s motion dated June 21, 2024 (the “**MI Motion**”) seeking, among other things, production of certain documents. We understand that MI is prepared to withdraw its request for the relief sought in paragraph 3 of the MI Motion provided that the Receiver produces payment approval documents exchanged between the Senior Secured Lenders and MI. The Receiver has agreed to produce the payment approval documents exchanged between MI and the Senior Secured Lenders. These documents have been provided to it by the Senior Secured Lenders. To be clear, the Receiver will only produce documents previously provided to it by the Senior Secured Lenders. It is not agreeing to any independent obligation to locate or produce any additional documents.

With respect to the request for the production of the documents listed in paragraph 4 of the MI Motion:

- Mizrahi Real Estate Group, Inc. has now executed a SISP non-disclosure agreement and been given access to the data room developed in connection with the SISP. The SISP data room includes updated construction schedule and budget information;
- the Receiver does not have any updated quantity survey reports; and
- In the Receiver’s view, MI has not articulated any valid reason for production of the daily logs at this stage. The Receiver does not believe that production of the daily logs is necessary or appropriate.

In light of the foregoing, our understanding is that the production of the daily logs will be the only issue remaining in the MI Motion. Please advise whether your client intends to proceed with its

motion for production of the daily logs. If so, we would propose writing to Justice Osborne to advise His Honour that the parties will require 15 minutes on August 9, 2024 to argue that issue.

Yours truly,

Goodmans LLP



Mark Dunn
Partner
MD/es

cc: Christopher Armstrong, Brendan O'Neill, Sarah Stothart and Jennifer Linde, Goodmans LLP

Stephen Ferguson, Joshua Nevsky, Melanie MacKenzie, Fiona Mak, Andrew Sterling and Ethan Krieger, Alvarez & Marsal Canada Inc.

1412-2869-3773

APPENDIX “B”

**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

NOTICE OF MOTION

Mizrahi Inc. (“**MI**”) will make a motion before Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on August 9, 2024 as soon as it can be heard at the Courthouse at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally in-person.

THE MOTION IS FOR:

1. An order that any claims for set-off advanced by the court appointed receiver, Alvarez & Marsal Canada (“A&M” or the “Receiver”) be and are restricted to claims the Receiver identifies solely from a review of documentation provided by MI on or after May 27, 2024;
2. An order requiring the Receiver to increase the reserve set aside to address MI’s claim for payment in its pending motion to enforce paragraph 17 of the Receivership Order to \$11 million;

3. An order requiring the Receiver to obtain and produce to MI all documentation referable to the approval and/or denial of payments to MI, the approval and denial of construction draw requests for Project funds by MI, the payment of all approved payments and any other related documentation within the possession of the Receiver, or the Secured Senior Lender (defined below); and
4. An order requiring the Receiver to produce to Mr. Sam Mizrahi copies of all quantity survey reports, the daily logs of the Project's general contractor, Skygrid, updated construction schedules and budgets for the Project.

THE GROUNDS OF THE MOTION ARE AS FOLLOWS:

1. MI is a corporation beneficially owned by Mr. Sam Mizrahi. MI provides construction and development management services in Ontario.
2. Mr. Mizrahi (and related entities) have a 50% ultimate indirect voting interest in the beneficial owner of the Project, Mizrahi Commercial (The One) LP (the "Owner"). The other 50% indirect voting interest in the Owner is held by Ms. Jenny Coco (and related entities) (the "Coco Parties"). The registered owner of the Project is Mizrahi Commercial (The One), GP Inc.
3. On October 18, 2023, Justice Osborne granted an order appointing the Receiver (the "Receivership Order") over the Owner and related entities.

MI's Payment Motion and the Need to Increase the Amount Reserved by the Receiver

4. MI has brought a motion to enforce paragraph 17 of the Receivership Order seeking payment by the Receiver for fees and costs owed to MI by the Project for post-receivership work (the "Payment Motion").

5. To address potential prejudice to MI due to non-payment of its claim at issue in the Payment Motion, on or about March 7, 2024, the Receiver undertook to the court to reserve \$6 million to protect MI's claim for payment under the Payment Motion.
6. Since that time, MI's claim for non-payment at issue in the Payment Motion was increased substantially to \$10,911,766.25. As such, MI is again faced with significant prejudice of non-payment of its claim at issue in the Payment Motion. The amount claimed by MI in the Payment Motion is subject to interest at a per diem of \$3,040.02.
7. MI's claim at issue in the Payment Motion in the sum of \$10,911,766.25 includes \$4,529,644.83 referable to unpaid hard costs owed to third parties. The Receiver has not provided any response to MI's requests for information on why these third party hard costs remain unpaid.
8. MI is prejudiced by the potential of non-payment to its claim for fees and expenses owed pursuant to paragraph 17 of the Receivership Order for post-receivership work.
9. The Receiver has a practice of maintaining a reserve sufficient to pay unpaid costs claimed against the Project and should be required to maintain that practice to address the claims advanced by MI in the Payment Motion.
10. The reserve set aside by the Receiver to address the prejudice to MI due to the potential for non-payment should be increased given the increase in MI's claim for non-payment at issue in the Payment Motion to \$11 million.

The Receiver has Failed to Comply with the Timetable for the Payment Motion

11. In an Endorsement, dated March 18, 2024, Justice Osborne directed that the Receiver deliver its Responding Motion Record for the Payment Motion by May 31, 2024. This date was proposed by the Receiver over the objection of MI which sought a tighter timeline. The Receiver advised the court that it required time to investigate and consider potential claims for set-off against MI's claim for payment of fees and costs for post-receivership work required to be paid to MI pursuant to section 17 of the Receivership Order.
12. To date, the Receiver has only identified one claim for an alleged set-off.
13. On May 28, 2024, MI's counsel wrote to counsel for the receiver indicating MI required the delivery of the Receiver's Responding Motion Record by May 31, 2024, but agreed the record could be supplemented by any claims or evidence subsequently identified by the Receiver revealed in materials recently delivered or to be delivered.
14. The Receiver did not respond to this communication and did not deliver a Responding Motion Record by May 31, 2024 or at all.
15. The Receiver should be precluded from advancing any claims for a set-off, except for claims that are identified by the Receiver arising from documentation reviewed after May 27, 2024 as a result of its failure to comply with the timetable it proposed and as endorsed by Justice Osborne.

Production of Documentation Referable to the Approval of Payments to MI

16. The Receiver has suggested that it has concerns over the flow of money from the Project to the MI, but has refused to specify any of its concerns. There is no doubt that MI received significant sums of Project funds as fees, and to pay Project costs,

including amounts owed to third parties, such as subcontractors. In addition, one of the Project's lenders required its funds for the Project to be deposited into MI's bank accounts, before the funds were either directed to third parties as approved, directed to Project bank accounts, kept by MI as consideration for fees and expenses owed to it by the Project, or directed by MI to third parties for the payment of Project costs.

17. To date, the Receiver has not provided any particulars or information on the nature of its concerns. The records in the Receiver's possession reveal that all money received by MI from the Project was approved by the Senior Secured Lender, its administrative agent, and the quantity surveyor, Altus and for a period of time the Coco parties.
18. Furthermore, the Receiver has not identified any discrepancies with respect to the payment of MI or the payment by MI of third party costs, with one minor exception arising in February 2024, which was addressed by the Receiver and MI and resolved by agreement that the Receiver pay the third parties directly with the balance paid to MI.
19. Given the unspecified allegations of the Receiver of concerns with respect to payments made to MI from Project funds, MI seeks production of all documentation in the Receiver's possession concerning the approval and/or denial of Project payments to MI as the Receiver obtained from the Senior Secured Lender. If the Receiver has not obtained this information, MI seeks an order compelling the Receiver to obtain such information as it is empowered to do under the Receivership Order.

20. MI requires this information to adequately respond to any potential claims the Receiver may advance, even though no such claims have been identified by the Receiver.

Production of Quantity Survey Reports, Skygrid Daily Logs, Updated Budgets and Schedules for the Project

21. Mr. Sam Mizrahi is a 50% beneficial owner of the Project and is the principal of MI. Mr. Mizrahi is also a guarantor under the Project's outstanding debts, which has resulted in the Receivership Order.

22. Mr. Mizrahi, as owner of the Project and guarantor, is entitled to production of the quantity survey reports of the Project, the daily logs of the general contractor to the Project, Skygrid, updated budgets and schedules for the Project.

23. This production of this documentation to Mr. Mizrahi is relevant to his interests in the Project as owner and guarantor to the Project's debts.

24. The production of this documentation is subject to the implied undertaking rule and will be kept confidential by Mr. Mizrahi and his counsel.

25. Sections 4.2(1)(2) and 243 of the *Bankruptcy and Insolvency Act*.

26. The inherent and equitable jurisdiction of this Court.

27. Rules 1.04, and 37 of the *Rules of Civil Procedure*.

28. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE RELIED UPON:

1. The affidavit of Veronica Stasolla, affirmed June 21, 2024;
2. The affidavit of Mark Kilfoyle, affirmed June 21, 2024; and

3. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 21, 2024

MORSE SHANNON LLP

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Mizrahi Inc.

**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, MIZRAHI
DEVELOPMENT GROUP (THE ONE) INC., and MIZRAHI
COMMERCIAL (THE ONE) GP INC.**

Applicant

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

MORSE SHANNON LLP

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Lawyers for the Respondents

APPENDIX “C”

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

July 30, 2024

**Delivered Via Email mdunn@goodmans.ca, carmstrong@goodmans.ca,
jlinde@goodmans.ca, boneill@goodmans.ca**

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

Dear Counsel:

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

We write further to your letter of July 29, 2024. We confirm agreement to settle the issue of the production of approval documentation from the Senior Secured Lender. Please provide those documents and the approval documents obtained from the Coco parties, which the Receiver previously agreed to produce.

Our client disagrees with the Receiver's position on the need to produce the Skygrid daily logs, updated construction schedules and budgets. We are advised that there is no information in the SISP data room on the updated status of construction or schedules, specifics of the costs incurred by the Project since Skygrid became general contractor, or updated costs to complete. The cost to complete information is as of the disclaimer of the Mizrahi Inc GC contract. The information in the data room is plainly insufficient for our client to assess his exposure on his personal guarantee. In fact, our client was already in possession of the vast majority of the information in the data room.

In addition, you are incorrect to say that the production of this documentation is not relevant to the Payment Motion. It is clearly relevant to the Payment Motion in which your client alleges that Mizrahi Inc was overpaid as general contractor. In the Receiver's Report justifying MI's termination as GC, it was stated that changing to Skygrid would save the Project approximately \$1 million per month. You have advised that the Receiver's issue list, includes among other things, that the value of the work provided by Mizrahi Inc as general contractor was not market. The costs incurred by the Project for Skygrid and the speed of its construction are clearly relevant to that issue.

We disagree that this issue can be resolved in 15 minutes on August 9. Instead, we propose that Justice Osborne set aside 45 minutes for argument on the issue.

Finally, with respect to our clients' agreement to settle the issue of the Receiver being barred from pursuing set-off claims because of its non-compliance with the timetable for the Payment Motion, the Receiver agreed not only to provide a preliminary list of issues, but the supporting primary documents relied upon for those potential claims. You have only provided a list of the "key documents", which we gather is synonymous with the "primary documents" agreed to be produced. Please produce the "key" or "primary" documents without further delay.

Based on the preliminary issues raised by the Receiver, we do not anticipate our client will require a significant amount of time to deliver responding/reply materials on the Payment Motion. Please provide the Receiver's position on when it will deliver its responding motion record, in the event this issue must be raised before Justice Osborne.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT

cc: Steve Weisz
David Trafford

APPENDIX “D”

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

July 31, 2024

**Delivered Via Email mdunn@goodmans.ca, carmstrong@goodmans.ca,
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Mark Dunn
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Dear Counsel:

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

We write in advance of the motion before Justice Osborne returnable August 9 and ask that your client provide answers to the following questions arising from the Supplemental Report to the Third Report of the Receiver (the "Report"):

1. At paragraph 3.5(c) of the Report, the Receiver indicates it is negotiating the terms of an NDA with Mr. Mizrahi. Please confirm that there have been no negotiations with respect to a form of NDA since the disclaimer of the MI contract and MI's request for the production of the Skygrid daily logs, updated construction budgets and schedules (the "Construction Reports");
2. Please confirm that the Receiver was unwilling to negotiate terms of an NDA for the production of the Construction Reports as proposed in our letter of July 3, 2024;
3. At paragraph 3.5(a) of the Report, the Receiver contends that the Construction Reports are not relevant to MI's Payment Motion. Does the Receiver agree it may seek a set-off against MI in its payment motion and argue, among other things, that MI was overpaid as general contractor to the project and that the fees and costs it charged to the project were not market?
4. If the answer to question 3 above is affirmative, does the Receiver take the position that the fees and costs charged to the project by Skygrid are market?

5. In s. 4.4 of the Report, the Receiver contends that it was not provided with Project Records referable to the review and approval of certain fees charged by MI. Please provide the Receiver's position as to whether Project Records referable to the review and approval of fees charged was provided in our letter of June 3, 2024. Note should the letter of June 3, 2024 be filed with the court, we ask that the password and link contained therein be redacted to preserve confidentiality of the documents provided.

We look forward to your client's answers to the questions posed.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT

cc: Steve Weisz
David Trafford

APPENDIX “E”

August 6, 2024

Our File No.: 232285

Via Email

Morse|Shannon LLP
133 Richmond Street West
Suite 501
Toronto, ON M5H 2L3

Attention: Jerome Morse

Dear Mr. Morse:

Re: Mizrahi Inc. (“MI”)

We write in response to your letters dated July 30, 2024 and July 31, 2024. Capitalized terms not otherwise defined have the meaning ascribed to them in the Receiver’s Third Report.

Request for Production of Construction Documents

Mr. Mizrahi seeks production of four categories of construction documents in the Notice of Motion:

- Construction schedules;
- Construction budgets;
- Quantity survey reports; and
- Daily logs.

As a preliminary matter, we do not agree that the Receiver has an obligation to compile and produce documentation that your client wants for the purpose of assessing his exposure under the guarantee (the purpose asserted in your July 30th correspondence). The Receiver is not a party to the guarantee and, to date, the Receiver has not been notified that any action has yet been taken to enforce the guarantee.

A number of stakeholders have an actual or potential economic interest in the outcome of the Project and those interests are not, without more, sufficient to justify the production of detailed confidential information about the construction process. The Receiver has provided, and will continue to provide, updates about the status of construction to all stakeholders.

In any event, the SISP Data Room, which Mr. Mizrahi has access to, includes much of the information sought by Mr. Mizrahi in his Notice of Motion, including (among other things) an updated schedule and budget for the completion of the Project. Your assertion that there is “no information in the SISP data room on the updated status of construction or schedules” is not correct.

The budget information in the SISP Data Room includes both a “cost to date” (which captures all costs incurred on the Project up to March 12, 2024) and a “cost to complete” (which captures the forecast cost of completing the Project). The cost to complete dated June 11, 2024 is “as of” March 12, 2024, but includes all forecast costs to complete the Project.

Similarly, the schedules included in the SISP Data Room provide projected dates for completion of all major construction and procurement activities and milestones on the Project. The “all tasks” schedule for the Project is 186 pages and provides detailed information with respect to when each significant task and milestone required to complete the Project is expected to occur.

In terms of quantity survey reports, the Receiver has received cost reports from the Senior Secured Lenders’ cost consultant. These are not shared in the SISP Data Room, but they form the basis for the cost to date and cost to complete information that is shared in the SISP Data Room.

The Receiver is not, with respect, able to understand how the daily logs are relevant. The daily logs contain a very high level summary of the daily construction activities including the number of workers on site for various trades and weather conditions.

The assertion that the daily logs and other construction documents are somehow relevant to the MI Payment Motion is premature, as the Receiver is yet to file its evidence or submissions on the Motion. The Receiver notes that MI will have an opportunity to pose written questions after the Receiver’s report is served in response to the MI Payment Motion. This will include an opportunity to request the production of documents that are relevant to the Receiver’s position. It is not necessary, at this stage, for MI to seek production of documents that may never be relevant to the MI Payment Motion based on its assumptions about the Receiver’s potential evidence.

Responses to Questions Posed July 31, 2024

We respond to MI’s questions set out in your July 31st correspondence as follows.

1. The Receiver negotiated the terms of an NDA with MI. A brief timeline of those negotiations is set out below.
 - **June 6, 2024:** Commencement of SISP.
 - **June 21, 2024:** MI reached out to JLL (Matt Picken) to express an interest in submitting a bid.
 - **July 3, 2024:** Receiver provided MI with a form of NDA which reflected that MI already had access to much of the information in the SISP data room.

- **July 9, 2024:** Mr. Mizrahi informed the Receiver that the Receiver's email with the NDA went into MI's "junk folder".
 - **July 11, 2024:** Counsel to MI sent proposed revisions to the form of SISP NDA.
 - **July 12, 2024:** Receiver agreed to MI's proposed revisions and provided an execution copy. Receiver also requested contact information for the Proposal Participants.
 - **July 15, 2024:** Contact information for Proposal Participants was provided. Execution version of the NDA was provided to MI and all Proposal Participants.
 - **July 22, 2024:** Receiver followed up on status of MI's NDA.
 - **July 24, 2024:** Signed NDA received by MI. A fully executed version was provided by the Receiver on the same day (to MI and to all Proposal Participants who signed an NDA), along with data room access.
2. As noted above, the Receiver entered into an NDA with Mizrahi Real Estate Group, Inc. It was willing to negotiate the terms of an NDA, and sign an NDA.
 3. The Receiver may argue that MI was overpaid for its work as general contractor on the Project and that MI was paid above-market rates.
 4. The Receiver believes that SKYGRiD's fees are consistent with market rates.
 5. MI provided a link to documents by e-mail on June 3, 2024. The link did not include complete information with respect to the approval of fees charged by MI. In fact, the e-mail communicating the link advised that "our client continues to populate the link with additional documents" but this does not appear to have happened.

Scheduling Inquiry

You have requested the Receiver's position on scheduling the MI Payment Motion. We are in the process of assessing whether MI has now produced a complete set of Project Records (as defined in the Receiver's Third Report). By way of reminder:

- MI initially agreed to deliver the Project Records in late March 2024;
- Some Project Records were delivered on June 9, 2024, although the password for those documents was not provided until June 11, 2024;
- On June 27, 2024, the Receiver advised MI that the Project Records did not include key information and included a number of apparently privileged documents. The Receiver suspended its access to the Project Records to avoid inadvertently accessing privileged documents;
- By letter dated July 3, 2024, MI confirmed that there was "missing information" in the Project Records that had been produced and that it was working with MI's document review consultant to "remedy those deficiencies"; and

- On July 19, 2024, MI provided a USB drive that is said to contain the missing information previously identified by the Receiver. However, because the information was provided on a physical drive (instead of a download link) the Receiver had to physically ship the USB drive to its document review team in the United States. The Project Records on the USB then had to be processed into the Receiver's database. Given the volume of documents (approximately 195,000 parent emails and attachments), the data upload in Relativity was not completed until the end of day on August 2, 2024.

Since the Receiver only had access to the (allegedly) complete Project Records on August 2, 2024, it is only now able to assess whether they contain the missing information previously identified by the Receiver. In addition, the Receiver is currently assessing the financial records provided by MI between July 10, 2024 and July 25, 2024.

In light of the foregoing, the Receiver expects to be in a position to discuss a revised schedule next week. We would be pleased to schedule a case conference to address the scheduling of the MI Payment Motion, but do not believe that scheduling ought to be addressed at the hearing on August 9, 2024.

Yours truly,

Goodmans LLP



Mark Dunn
Partner
MD/as

cc: Christopher Armstrong, Brendan O'Neill, Sarah Stothart and Jennifer Linde, Goodmans LLP

Stephen Ferguson, Joshua Nevsky, Melanie MacKenzie, Fiona Mak, Andrew Sterling and Ethan Krieger, Alvarez & Marsal Canada Inc.

APPENDIX “F”

From: [Dunn, Mark](#)
To: [Jerome Morse](#); [David Trafford](#); [Weisz, Steven J](#)
Cc: [Armstrong, Christopher](#); [Linde, Jennifer](#); [O'Neill, Brendan](#); [Cohen, Kirby](#)
Subject: RE: Mizrahi Inc.
Date: Thursday, June 27, 2024 4:46:50 PM

Counsel,

I am writing to address two issues relating to the e-mail records produced by MI on June 9, 2024.

In the course of reviewing the records, we identified an e-mail between MI and one of its former lawyers, Ms. Campion at Lax O'Sullivan. We did not read the e-mail. We conducted a search for Ms. Campion's name (again, without reading the e-mails or any metadata relating to the e-mails) and noted that she seems to have sent or received several e-mails in the database.

The Receiver seeks to avoid inadvertently accessing privileged information. In order to address this issue, and out of an abundance of caution, we have temporarily paused access to the e-mail database. **Please confirm that your client has not produced any privileged documents or that it has waived privilege over any documents that it has produced.**

As you know, the Receiver requires access to the e-mail database in order to carry out its mandate and respond to the MI Payment Motion. It is therefore essential that we hear from you immediately on this issue.

In addition, we have a more general concern about the sufficiency of the e-mail productions. By way of example, MI has alleged that the payments it received were specifically approved by the Senior Secured Lenders and Altus. The documents evidencing these approvals, together with the related e-mails, ought to be in the database. But the database does not, for example, appear to include payment approvals from the Senior Secured Lenders for most of the relevant months, and it includes almost no correspondence with Altus about the monthly cost approval or periodic budget adjustments.

Please note that we have not had an opportunity to review and identify all relevant information that may be missing from the database. We are raising the issue now so that errors in the production process can be addressed expeditiously and the Receiver's investigation can continue.

I look forward to hearing from you, and would be pleased to discuss these issues with you.

From: Veronica Stasolla <vstasolla@morseshannon.com>
Sent: Thursday, June 20, 2024 1:35 PM
To: Dunn, Mark <mdunn@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>; O'Neill, Brendan <boneill@goodmans.ca>
Cc: Jerome Morse <jmorse@morseshannon.com>; David Trafford

<DTrafford@morseshannon.com>; Weisz, Steven J <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)



133 Richmond St. West, Suite 501, Toronto, Ontario M5H 2L3

Tel: 416-863-1230 1-888-745-1230 Fax: 416-863-1241

www.morseshannon.com

PLEASE NOTE OUR NEW ADDRESS ABOVE!

APPENDIX “G”

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

July 3, 2024

Delivered Via Email mdunn@goodmans.ca, carmstrong@goodmans.ca,
jlinde@goodmans.ca, boneill@goodmans.ca

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

Dear Counsel:

Re: Mizrahi Inc.
Our File No. 50960

We write further to your letter of June 30, 2024.

The Reserve for the Payment Motion

I confirm that our clients have resolved the issue of the amount set aside by the Receiver to address MI's claim in the Payment Motion on the terms set out in your letter. MI will withdraw its motion as it relates to the reserve.

Revised Timetable for Payment Motion

As discussed during our call today, our client is prepared to resolve this aspect of its motion on the understanding the receiver will deliver a list of issues that it is investigating as set-off claims against MI and the receiver will provide the primary documents relevant to those claims. Our client acknowledges that this list would be preliminary and may be amended as the receiver reviews further documentation. During our call you suggested the list could be provided within a week or two. We do not understand why the receiver cannot provide the list of claims it is investigating forthwith with an undertaking to advise in the future when it has decided to add or delete any items from the list (again with the production of primary documents relevant to new claims). An understanding of the potential claims MI will be responding to is vital to our ability to craft a timetable for the Payment Motion that maintains a September motion date. Waiting two weeks to provide this list will serve no purpose as the delay eliminates the intended efficiency of an agreed upon timetable and reduces MI's time to be in a position to adequately respond to any potential claims. Since the list is provided on a without prejudice basis, we see no reason

to wait. Please advise if your client is prepared to provide the list of potential claims tomorrow with the primary documents to be produced by the end of the week.

We agree that a final timetable for the Payment Motion cannot be made until the issue of the production of project documents (addressed below) is dealt with.

MI Request for Production

I confirm our client is prepared to revisit the signing of an NDA so he can obtain the information on the progress of construction as requested. We understand the receiver is nonetheless unwilling to produce Skygrid's daily logs, the updated construction schedule, an updated budget or the quantity survey reports to our client in his capacity as owner and/or guarantor. Please advise if any of this information is included in the SISP database as we may be able to narrow this issue or resolve it if it is rendered moot given our client's present intention to participate in the SISP.

We do not understand why the receiver has not requested payment approval information from the Senior Secured Lender and reiterate that it should do so. MI will seek production of that documentation in its motion.

Redaction of Banking Records

As discussed, our client is prepared to consider resolving the receiver's motion for the production of banking and financial documentation if the parties can agree upon strict confidentiality terms that govern the use and disclosure of MI's documentation. A proposal will follow in due course. We have asked our client how long it will take to produce the unredacted records if the parties reach agreement and will advise in due course.

The Ricoh Production and Project Records

We confirm that any inclusion of email communications involving Nadia Campion were produced inadvertently and the production does not constitute a waiver of solicitor-client privilege. Ricoh was given strict instructions on the exclusion of privileged communication and efforts are underway to understand how this inadvertent disclosure occurred and to determine whether there were any further errors concerning privileged communication. We have received confirmation that there was missing information in the Ricoh documents produced and we are working with the consultant to remedy those deficiencies and will report back as soon as possible on the expected timeline.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT

cc: Steve Weisz
David Trafford

**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**

**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

**SECOND SUPPLEMENTAL REPORT TO THE THIRD REPORT
OF THE RECEIVER, ALVAREZ & MARSAL CANADA INC.
AUGUST 7, 2024**

GOODMANS LLP

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Lawyers for the Receiver