

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

AIDE MEMOIRE OF MIZRAHI INC
(MARCH 18, 2024 CASE CONFERENCE BEFORE JUSTICE OSBORNE)

1. On October 18, 2023, Justice Osborne granted an Order (the “**Appointment Order**”) appointing a receiver and manager, Alvarez & Marsal Canada Inc. (the “**Receiver**”) over the assets, undertaking and property of the owners of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (the “**Project**”).
2. Since 2014, Mizrahi Inc. (“**MI**”) has acted as the general contractor and developer of the Project.
3. MI brings a motion seeking the following relief:
 - a. An order setting aside the December 2023 payment letters and a declaration that they are void; and
 - b. An order for payment of outstanding arrears owed to MI for construction services and labour, plus a 5% construction management fee for construction services and labour provided by MI to the Project as required by paragraph 17 of the Appointment Order.
4. On this case conference, MI seeks to timetable a motion for relief against joinder so that its motion to set aside the December 2023 payment letters and for payment owed pursuant to paragraph 17 of the Appointment Order can proceed expeditiously and separate from the Receiver’s potential cross-motion for its unspecified relief for a set-off of the Project’s potential claims against MI.
5. Relief against joinder is necessary to avoid unduly complicating MI’s simple motion with the unrelated, unspecified and unquantified “potential claims” identified by the Receiver. The court has authority to grant relief against joinder in this proceeding pursuant to Rule 5.05, which provides the following:

5.05 Relief Against Joinder

Where it appears that the joinder of multiple claims or parties in the same proceeding may unduly complicate or delay the hearing or cause undue prejudice to a party, the court may,

- (a) order separate hearings;
- (b) require one or more of the claims to be asserted, if at all, in another proceeding;

(c) order that a party be compensated by costs for having to attend, or be relieved from attending, any part of a hearing in which the party has no interest;

(d) stay the proceeding against a defendant or respondent, pending the hearing of the proceeding against another defendant or respondent, on condition that the party against whom the proceeding is stayed is bound by the findings made at the hearing against the other defendant or respondent; or

(e) make such other order as is just.

6. As shown below, MI brings a simple motion that largely concerns the interpretation of the Appointment Order on facts that should be undisputed. In response, the Receiver claims it is investigating “potential claims” that may give rise to a right to a set-off in an unknown amount and on unspecified legal grounds. These unspecified “potential claims” all concern issues that pre-date the Appointment Order and are unrelated to the Appointment Order, raising a significant issue of pre-post compensation, even if such claims could be established.
7. MI therefore seeks to bring a motion for relief from joinder of MI’s motion and the potential cross-motion of the Receiver on the basis that the Receiver’s motion will unduly complicate and delay MI’s motion, and unnecessarily prejudice MI.
8. Below is a brief outline of the issues raised in MI’s motion that are contrasted with the unspecified claims of the Receiver in its contemplated cross-motion to establish MI’s entitlement to relief from joinder.

MI seeks an Order to Set Aside the December 2023 Payment Letters

9. With respect to the December 2023 payment letters, MI signed them without legal advice or notice of significant and substantial changes made by the Receiver. The December 2023 payment letters were signed while Mr. Sam Mizrahi was boarding an airplane for the holidays, the Receiver did not copy counsel for MI when sending Mr. Mizrahi the December 2023 payment letters, and the Receiver failed to identify the changes to the December 2023 payment letters from the form of payment letter used by

the parties in October and November 2023. The December 2023 payment letter should be replaced with the form of payment letter used in October and November 2023, or January and February 2024.

10. MI does not seek any monetary relief for the setting aside of the December 2023 payment letters.

Therefore, the claim for a set off is entirely unrelated to any of the “potential claims” identified by the Receiver.

MI Brings a Motion to Enforce Paragraph 17 of the Appointment Order for the Payment of Outstanding Invoices for Construction Services and Labour

11. MI’s motion for the payment of money owed under the Appointment Order requires little more than an interpretation of the Appointment Order, which compelled MI to continue to provide the Project with its construction services and labour. MI was obligated to provide these services to maintain the *status quo* of the Project and to ensure that construction of the Project continued during the receivership. The obligation of MI to continue to provide the Project with services and the Receiver’s obligation to pay for those services in accordance with the normal payment practices of the Project is set out in paragraph 17 of the Appointment Order, which provides:

17. THIS COURT ORDERS that all **Persons** having oral or written agreements with the **Debtors**, or the Developer or contractual, statutory or regulatory mandates **for the supply of goods and/or services to the Debtors, or the Developer and/or the Project, including** without limitation, all computer software, communication and other data services, **construction management services, project management services**, permit and planning management services, accounting services, centralized banking services, payroll and benefit services, warranty services, **sub-contracts, trade suppliers**, equipment vendors and rental companies, insurance, transportation services, utility, customers, clearing, warehouse and logistics services or other services to the Debtors, or the Developer and/or the Project **are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as maybe required by the Receiver**, and that the Receiver shall be entitled to the continued use of the Debtors’ current telephone numbers, facsimile numbers, internet addresses and domain names, **provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver or the Developer, as determined by the Receiver, in accordance with normal payment practices of the Debtors** or the Developer, as applicable, or, with respect to the Debtors or the Developer, such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court. **[Emphasis Added]**

12. Paragraph 17 of the Appointment Order requires MI to continue to provide its construction services and labour to the Project and it requires the Receiver to continue to pay MI for these services in accordance with the normal payment practices of the Project. MI provided its services as required by paragraph 17 of the Appointment Order, but the Receiver refused to pay MI in accordance with the normal payment practices of the Project, essentially claiming those services were too expensive.
13. MI specifically negotiated and consented to the Appointment Order with counsel for the Senior Lender, and the Receiver to ensure that while MI would be bound to continue to provide its construction services and labour to the Project, it would continue to get paid for those construction services and labour in keeping with the long standing and normal payment practices of the Project. At the time of the Appointment Order, each and every relevant stakeholder was well aware of the nature of MI's compensation for construction services and labour and no concerns or complaints were raised. There is no dispute that MI was paid for its construction management services and labour in the amounts sought by MI in this motion for approximately 4 years. The Senior Lender, its Administrative Agent, the cost consultant, Altus, and the beneficial owners of the Project were all aware of these payments and reviewed and approved these payments.
14. On February 26, 2024, the Receiver exercised its rights under paragraph 5 of the Appointment Order to disclaim MI's contract.¹ MI's obligation to provide services to the Project under the Appointment Order ended on March 13, 2024. This was the proper procedure for the Receiver to take if it did not want to abide by paragraph 17 of the Appointment Order and pay MI for its constructions services and labour in accordance with the normal payment practices of the Project.
15. MI's claim to payment for outstanding amounts owed for construction services and labour will crystallize on the next payment period. Attached as **Tab 1** is an updated estimate of the total amount that will be outstanding, subject to what the Receiver decides to pay. The total claim amount is

¹ First Report of the Receiver at p. 234.

estimated to be \$5,460,338.08, plus interest owed under the CCDC2 contract, which will total \$132,715.68 by the end of March 2024.

16. The Receiver's complaint that it does not know the full amount of MI's claim to payment is disingenuous as only the Receiver knows what it will choose to pay for the final payment cycle. Assuming the Receiver follows its past practice of payments to MI, the final total claim amount will not significantly change at the end of the payment cycle. The only variables are (1) the receipt of invoices from subcontractors of MI, (2) knowing what the Receiver will actually pay, and (3) obtaining the final time sheets. This information will be known for certain by the end of April.
17. In summary, MI's claim for payment is based upon the court's interpretation of the Appointment Order. The facts underlying MI's claim for payment should be undisputed. The historical practice of payments to MI is memorialized and was followed for four years prior to the Appointment Order. There is no dispute that the construction services and labour underlying MI's claim for payment were provided to the Project following the Appointment Order. The dispute is simply the amount to be paid for those services under paragraph 17 of the Appointment Order.
18. The factual background underlying MI's claim for payment is set out in the affidavit of Mr. Mark Kilfoyle, sworn February 27, 2024 and those facts accord with the facts set out in the Receiver's First Report and the Receiver's acknowledgement in a November 26, 2023 email that MI's calculation of what it claims it is owed is consistent with the "historical practice prior to the commencement of the Receivership".²

The Receiver's Cross-Motion for Unspecified Claims Should Proceed on its Own Timetable

19. In contrast to the straight forward nature of MI's motion for payment, the Receiver seeks to bring a cross-motion for unspecified relief claiming it intends to seek a set-off of amounts unknown against

² Affidavit of Mark Kilfoyle, sworn February 27, 2024 at Exhibit P.

MI's claim for payment. The Receiver has refused to confirm which of these "potential claims" it intends to advance.

20. On March 8, 2024, counsel for MI wrote to counsel for the Receiver seeking confirmation of which of these potential claims will proceed. Counsel for the Receiver failed to answer the question in a response dated March 11, 2024, and refused to answer the question in an email exchange dated March 7, 8, 11, and 12, 2024. Copies of these communications are attached as **Tab 2**.
21. The Receiver's Supplemental Report to the First Report claims that it may advance a "potential" claim for set-off against MI for (1) overpayment for the value of work provided (paragraph 3.17); (2) a "potential obligation" to refund commissions for agreements of purchase and sale that may be cancelled (paragraph 3.19(i) in the Supplemental Report); (3) outstanding arrears owing to Project suppliers (paragraph 3.19(ii) of the Supplemental Report); and (4) "potential liability relating to substantial payments advanced by CERIECO" paid to "unknown third parties" (paragraph 3.19(iii)).
22. The Receiver seeks a very lengthy and extended timetable to bring its cross-motion in the hope that unspecified "potential claims" may result in a set-off on unspecified legal grounds in response to MI's motion for the simple interpretation of the Appointment Order.
23. There is little doubt that the Receiver's cross-motion will unduly and unnecessarily complicate and delay MI's motion.
24. In addition, the Receiver's potential claims are fraught with difficulty. The identified potential claims concerns pre-receivership work, not the interpretation of the Appointment Order, giving rise to a significant issue of pre-post compensation and the applicability of the law of set-off.
25. There can be no claim for overpayment to MI since the Appointment Order (the facts establish the opposite). The potential claim for refund of commissions, which is scantily described in the Receiver's reports, also concerns pre-receivership work by MI, is an uncrystallized and conditional claim (if a claim exists) and would solely concern MI's entitlement to payment *qua* developer, not as general contractor.

26. The claim for outstanding arrears to Project suppliers has been addressed and settled to the knowledge of the Receiver. Attached at **Tab 3** is an email exchange outlining MI's agreement to pay these suppliers.
27. Finally, the potential claim for amounts advanced by CERIECO makes no sense. CERIECO, a subordinate lender to the project, has sued the Project, its beneficial owners and other third parties, including the former law firm that represented the Project, Dentons, in a Superior Court of Justice action bearing court file number CV22-00681586-00CL (the "CERIECO Action").
28. The Receiver's "potential claim" with respect to CERIECO payments is completely unspecified. The CERIECO Action, in part, concerns the payment of a break fee paid by CERIECO in an agreement reached between the Owners of the Project (Mr. Mizrahi and Ms. Coco) and CERIECO in exchange for a guarantee to the Coco parties. If this is the unspecified payment to third parties referred to by the Receiver, then any liability with respect to payments made by CERIECO are the subject of the CERIECO Action. The Project can have no valid claim to these payments, and, even if it did, those claims should be advanced within the CERIECO litigation, in which the Project is a party. The pleadings in the CERIECO Action can be accessed at this [link](#). Pleadings in the CERIECO Action have just been exchanged.

There is no Set-Off Claim Available for Pre-Post Compensation

29. Even if the Receiver did bring its identified "potential claims" against MI, and it established liability for those claims, it will not be able to establish an equitable or common law set-off. MI will rely on the Supreme Court of Canada's decision in *Montreal (Ville) v Restructuration Deloitte Inc*, 2021 SCC 53, in which the Court refused a claim for set-off based between debts owed prior to a CCAA order and amounts owed to the debtor post-order. In that case, Chief Justice Wagner and Justice Côté for a majority of the Court noted the mischief that arises from allowing claims for pre-post compensation:

If a creditor could rely on compensation to refuse to pay for goods or services supplied by the debtor during the status quo period, the restructuring could be torpedoed. The debtor would have a disincentive to provide its creditors with goods and services because it would fear not being paid for them; it would then be deprived of the funds needed to continue operating³

30. The same analysis will apply in this case in the context of a receivership where MI is obligated to provide services to the Project.
31. The court's determination of whether there can be a claim for pre-post compensation is an unnecessary and unduly complicating factor, which militates in favour of granting relief from joinder.
32. Further complicating the issues raised by the Receiver's potential claims as part of its cross-motion is that MI has a significant claim against the Project as developer for unpaid development fees. The Project has a total salable value of \$1,158,277,266, and MI is owed \$23,165,545.32 as a Residential Development Fee.
33. MI also owns residential units in the Project. If the Receiver decides to cancel agreements of purchase and sale for the Project, which, the court should note, attracted a price of approximately \$3,000 per square foot, then MI will be entitled to a return of \$2,704,640, which was credited against MI's entitlement to a Residential Development Fee against MI's deposits on its residential units, pursuant to an agreement between the beneficial owners.
34. In summary, MI brings a simple and straightforward motion concerning the interpretation of the Appointment Order. In response, the Receiver threatens a host of unspecified and unquantified "potential claims" in an effort to stretch the timetable for the return of MI's motion and introducing significant complications and delay which are unnecessary, causing significant prejudice to MI, which is faced with the costs of shutting down its operations on the Project due to the disclaimer of its contract by the Receiver.

³ *Montreal (Ville) v Restructuration Deloitte Inc*, 2021 SCC 53 at para 59.

35. MI's motion raises significant issues for the conduct of receiverships in Canada and should be addressed expeditiously. If a receiver is entitled to decide not to pay a supplier of services, despite clear language in the receivership order requiring payment for the supply of those services, then suppliers will be left in the untenable position of being forced to work by court order with no corresponding requirement that they be paid. This is a dangerous precedent that will have significant impact upon the conduct of construction projects throughout Canada, especially now in an environment of high interest rates, low demand for real estate and a growing number of projects being placed into receivership. The Receiver's conduct in this proceeding should give anyone currently providing services to the Project pause, as they too may be subject to non-payment contrary to the Appointment Order.
36. The Receiver acknowledges that MI has not been paid what it would have been paid prior to the Appointment Order for the same services and labour. All of the other suppliers to the Project have been paid what the Project paid them prior to the court order. MI has been singled out by the Receiver not to be paid in accordance with the normal payment practices of the Project as ordered by paragraph 17 of the Appointment Order.
37. MI does not contest the Receiver's right to bring its motion for its potential claims, but there is no reason to delay MI's motion so the Receiver can consider whether it will pursue those claims. The Receiver is using the threat of a set-off for unspecified potential claims and its proposed extended timetable to obtain a tactical and unfair advantage.
38. The Receiver complains it must review MI's motion record in order to respond, but there is nothing in MI's motion record that the Receiver does not already know. It made the decision not to pay MI's invoices for construction services and labour. It acknowledged in a November 26, 2023 email that this decision was contrary to the Project's historical practice. There is no need for expert evidence on the reasonableness of the fees charged by MI for its goods and services as claimed by the Receiver because

the Appointment Order clearly requires that MI be paid based on the normal payment practices of the Project, which are not in dispute.

39. MI is entitled to seek to enforce paragraph 17 of the Appointment Order without further delay. As a result, it seeks relief from joinder to the unspecified potential claims that the Receiver may decide to bring. MI will cooperate with the Receiver for a timetable for its motion, but MI's motion for payment and to set aside the December 2023 payment letters should not be delayed any further.

40. MI proposes the following timetable:

Motion for relief against joinder: March 26, 2024 subject to the court's availability

Responding Motion Record of the Receiver to MI's motion: April 4, 2024

Cross-examinations completed by: April 26, 2024

Facta exchanged the week of: May 6, 2024

Hearing the week of: May 13, 2024 subject to the court's availability

ALL OF WHICH IS RESPECTFULLY SUBMITTED March 15 2024

OCTOBER BILLING				NOVEMBER BILLING				DECEMBER BILLING				JANUARY BILLING				FEBRUARY BILLING				MARCH BILLING				APRIL BILLING				Total Outstanding
Item	Total Cost BILLED	Total Cost PAID	Difference	Item	Total Cost BILLED	Total Cost PAID	Difference	Invoice	Total Cost BILLED	Total Cost PAID	Difference	Invoice	Total Cost BILLED	Total Cost PAID	Difference	Invoice	Total Cost BILLED	Total Cost ESTIMATED TO BE PAID	Difference	Invoice	Total Cost BILLED	Total Cost ESTIMATED TO BE PAID	Difference	Invoice	Total Cost BILLED	Total Cost ESTIMATED TO BE PAID	Difference	
CM Fee (September Invoice)	352,671.97	352,671.97	-				-				-				-				-				-				-	
Equipment Cost	12,482.26	12,482.26	-	Equipment Cost	12,482.26	12,482.26	-	Equipment Cost	12,482.26	12,482.26	-	Equipment Cost	13,806.22	13,806.22	-	Equipment Cost	13,449.31	13,449.31	-	Equipment Cost	7,654.66	7,654.66	-	Equipment Cost	-	-	-	
Recoverable Cost	1,286,007.42	1,286,007.42	-	Recoverable Cost	1,145,240.17	1,145,240.17	-	Recoverable Cost	1,444,933.27	1,444,933.27	-	Recoverable Cost	1,381,596.94	1,100,833.89	(280,763.05)	Recoverable Cost	1,252,340.15	1,252,340.15	-	Recoverable Cost	1,862,908.12	1,862,908.12	-	Recoverable Cost	-	-	-	
Construction Staff Cost	751,646.30	439,795.34	(311,850.96)	Construction Staff Cost	751,646.30	439,795.34	(311,850.96)	Construction Staff Cost	751,646.30	439,795.34	(311,850.96)	Construction Staff Cost	751,646.30	439,795.34	(311,850.96)	Construction Staff Cost	751,208.59	439,357.63	(311,850.96)	Construction Staff Cost	286,392.97	174,196.45	(112,196.52)	Construction Staff Cost	-	-	-	
Crane Labour	139,234.56	185,171.36	(34,063.14)	Crane Labour	96,848.33	65,865.59	(30,980.74)	Crane Labour	138,768.26	97,969.31	(40,798.95)	Crane Labour	64,603.08	67,370.61	2,767.53	Crane Labour	110,489.87	71,650.49	(38,839.38)	Crane Labour	86,799.96	72,086.04	(16,713.92)	Crane Labour	36,791.89	26,225.78	(10,565.31)	
Site Labour	1,382,907.60	668,286.89	(714,620.80)	Site Labour	1,652,672.96	511,117.80	(840,955.16)	Site Labour	1,371,167.43	664,246.60	(706,920.83)	Site Labour	861,714.87	582,977.50	(278,737.37)	Site Labour	1,210,340.21	581,042.89	(708,797.32)	Site Labour	963,507.04	1,012,412.23	48,905.19	Site Labour	426,194.67	197,144.19	(229,050.48)	
Marketing	113,000.00	-	(113,000.00)	Sept. Sales Gallery	45,576.66	27,345.99	(18,230.67)	Sales Center	45,576.66	28,713.29	(16,863.37)	Sales Center	45,576.66	-	(45,576.66)	Sales Center	45,576.66	-	(45,576.66)	Sales Center	45,576.66	-	(45,576.66)	Sales Center	-	-	-	
				Oct. Sales Gallery	45,576.66	27,345.99	(18,230.67)																				-	
				Nov. Sales Gallery	45,576.66	27,345.99	(18,230.67)																				-	
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David Trafford

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Tuesday, March 12, 2024 8:15 PM
To: David Trafford; Jerome Morse
Cc: Weisz, Steven J; nperfetto@foglers.com; ebabin@babinbessnerspry.com; dbish@torys.com; dlevangie@foglers.com; bmonahan@babinbessnerspry.com; jdacks@osler.com; mdelellis@osler.com; Veronica Stasolla; O'Neill, Brendan; Armstrong, Christopher; Linde, Jennifer; Cohen, Kirby
Subject: RE: Mizrahi Inc.

Thank you for your e-mail. We believe that our position is clear, and do not agree that MI has suffered, or will suffer, prejudice that would warrant an urgent schedule or bifurcation.

We should proceed to a case conference in order to set a schedule to deal with all of the issues, including whatever bifurcation motion your client intends to bring. The Receiver, of course, reserves all rights in respect of your client's proposed motions.

We would ask that all counsel advise whether they are available, and can be ready, for a case conference on March 18.

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
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From: David Trafford <DTrafford@morseshannon.com>
Sent: Tuesday, March 12, 2024 10:48 AM
To: Dunn, Mark <mdunn@goodmans.ca>; Jerome Morse <jmorse@morseshannon.com>
Cc: Weisz, Steven J <SWeisz@cozen.com>; nperfetto@foglers.com; ebabin@babinbessnerspry.com; dbish@torys.com; dlevangie@foglers.com; bmonahan@babinbessnerspry.com; jdacks@osler.com; mdelellis@osler.com; Veronica Stasolla <vstasolla@morseshannon.com>; O'Neill, Brendan <boneill@goodmans.ca>; Armstrong, Christopher <carmsstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>
Subject: RE: Mizrahi Inc.

Good morning,

The purpose of item 1 of our March 8 letter was to understand whether our client's prejudice by delay can be ameliorated by a commitment to fund the substantial interest and legal costs due to such delay. The receiver's response does not commit to such an approach so my client is exposed to that prejudice to be taken into account. It is difficult to understand why the receiver does not estimate interest on \$6M for the relevant period and the legal costs related to the set off claims the receiver may advance and agree to commit in principle to set aside such amounts.

The purpose of item 3 of our letter was to ascertain what claims the receiver intends to advance and when the receiver commenced evaluation of the claims, which informs a reasonable timetable to litigate the issues together. As noted, the receiver's reports do not state that a claim will be brought, but rather indicate claims may or could be brought. The receiver's response to item 3 does not confirm whether any or all of the claims are proceeding. If there is no

commitment now to proceed with claims, there is no need for bifurcation and the timetable would be for MI's motion for payment. If the claims the receiver is committed to proceeding with and when it commenced its evaluation are identified then MI may assess what is reasonable for a timetable to litigate such claims.

MI's need for bifurcation is reasonably evaluated with the benefit of the answers to items 1 and 3 posed in our March 8 letter. Your lack of response yesterday puts MI in the position that without a bifurcation motion it will be prejudiced. If a phone call today could result in the receiver answering items 1 and 3 posed in our letter of March 8, then we suggest a call this morning.

If the receiver maintains its position conveyed yesterday, then a case conference before Justice Osborne is required. We are available March 18 for a zoom attendance. In item 2 of your response, you acknowledge our understanding of His Honour's direction to be fully briefed when the matter is next before him. Please provide your client's position as to whether this case conference will be to address the scheduling of a bifurcation motion or if you understand that the issue will be briefed and argued on the merits at that time.

Yours truly,

David Trafford

Partner

Direct Line: 416-941-5850



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!

From: Dunn, Mark <mdunn@goodmans.ca>

Sent: Monday, March 11, 2024 4:21 PM

To: Jerome Morse <jmorse@morseshannon.com>

Cc: David Trafford <DTrafford@morseshannon.com>; Weisz, Steven J <SWeisz@cozen.com>; nperfetto@foglers.com; ebabin@babinbessnerspry.com; dbish@torys.com; dlevangie@foglers.com; bmonahan@babinbessnerspry.com; jdacks@osler.com; mdelellis@osler.com; Veronica Stasolla <vstasolla@morseshannon.com>; O'Neill, Brendan <boneill@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>

Subject: RE: Mizrahi Inc.

Jerome,

The purpose of my March 7, 2024 e-mail was to discuss the possibility of a consent schedule that would allow all of the issues between the parties to be litigated together. Please advise whether your client will engage in that discussion.

To the extent that your client still intends to seek an urgent schedule and have its motion determined before any of the other issues between the parties then we will need a case conference. We understand that Justice Osborne is available for a one hour case conference on March 18 and 19, 2024 or a 30 minute case conference on March 25, 2024.

You have asked for a response to the numbered paragraphs in your letter, and so the Receiver responds as follows:

1. We cannot respond to this request until your client quantifies the full amount of its claim, and whatever additional amount it says should be reserved;
2. Acknowledged;
3. The Receiver's position is set out in its First Report and First Supplemental Report. The Receiver reserves its right to advance any claim that it uncovers in the course of its investigation, but does not presently intend to advance any other set-off claims.

Finally, in your oral submissions on March 8, 2024, you asserted that MI was entitled to further fees (over and above those claimed in the motion) and that those fees would exceed whatever amount it is found to owe the Debtors. We are not aware of any claim to further fees by MI, and would appreciate it if you could advise what you were referring to.

Regards,

Mark

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Veronica Stasolla <vstasolla@morseshannon.com>

Sent: Friday, March 8, 2024 11:46 AM

To: O'Neill, Brendan <boneill@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; Dunn, Mark <mdunn@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>

Cc: Jerome Morse <jmorse@morseshannon.com>; David Trafford <DTrafford@morseshannon.com>; Weisz, Steven J <SWeisz@cozen.com>; nperfetto@foglers.com; ebabin@babinbessnerspry.com; dbish@torys.com; dlevangie@foglers.com; bmonahan@babinbessnerspry.com; jdacks@osler.com; mdelellis@osler.com

Subject: Mizrahi Inc.

Good morning,

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!

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

March 8, 2024

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

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

Dear Counsel:

Re: Mizrahi Inc.
Our File No. 50960

I respond to your three points using your numbering:

1. Acknowledged, but be advised if the schedule proposed by the Receiver is accepted by Osborne J., MI will seek as a term an increase in the amount set aside to cover off substantial legal costs to litigate the cross claims and interest specified in 6.2 of the CCDC contract from the date of non-payment to the estimated date of payment that would be approximately April 2024 to account for time under reserve and any appeal by the Receiver, unless the Receiver undertakes not to appeal then the estimated payment date would be October 2024;
2. Acknowledged, but Osborne J. was apprised that, as part of the timetable, MI would seek to add the step of bifurcation, and His Honour acknowledged MI had the right to do so and, if so, his expectation was he would be fully briefed by the parties;
3. In the Receiver's supplemental report at paragraphs 3.3 and 3.17 (overpayment for value of work), 3.19(i) (commissions refund also addressed in 12.5 of Receiver's first report), 3.19(ii) (outstanding arrears owing to project suppliers), 3.19(iii) (CERIECO advances paid to third parties), potential claims are identified. Please confirm which claims will proceed, when the Receiver commenced evaluation of the claims, whether there are any other claims to be advanced, and when the Receiver commenced evaluation of such other claims.

If the Receiver commits to respond to items 1 and 3 above by Monday next at 5 pm, it will inform MI's decision on the path forward.

If the Receiver will not respond as requested then please advise immediately so there is no delay as to MI's proposed path forward which will no doubt include a request to be heard on bifurcation.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT

CC:

David Trafford - dtrafford@morseshannon.com
Steven Weisz - SWeisz@cozen.com
Nina Perfetto - nperfetto@foglers.com
Edward Babin - ebabin@babinbessnerspry.com
David Bish - dbish@torys.com
David Levangie - dlevangie@foglers.com
Brendan Monahan - bmonahan@babinbessnerspry.com
Jeremy Dacks - JDacks@osler.com
Michael De Lellis - MDeLellis@osler.com

David Trafford

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Thursday, March 7, 2024 7:19 PM
To: Jerome Morse
Cc: Perfetto, Nina; Weisz, Steven J; Edward Babin; David Trafford; Bish, David; Levangie, David W.; Brendan Monahan; Armstrong, Christopher; Linde, Jennifer; O'Neill, Brendan
Subject: The One - Scheduling Issues

Jerome,

I am writing further to our attendance in Court this morning. There were three developments that should, in our view, help the parties resolve the scheduling dispute:

1. The Receiver agreed to reserve an amount sufficient to cover your client's claim, up to \$6 million;
2. Justice Osborne indicated that the claims advanced by your client would likely need to be heard together with the other issues between the parties; and,
3. Justice Osborne urged the parties several times to explore the possibility of a consent schedule.

Please advise whether you are prepared to agree to a schedule that will provide the Receiver with appropriate time to file its cross-motion and for the Receiver and other stakeholders appropriate time to file responding evidence on the issues that we have previously identified and we can set up a call to explore the possibility of a reasonable schedule.

If your client maintains its position, please let us know so that we can coordinate the scheduling of a case conference.

Regards,

Mark

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

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David Trafford

Subject: FW: 1BW - Outstanding Invoices

From: "Nevsky, Joshua" <jnevsky@alvarezandmarsal.com>
Date: March 11, 2024 at 3:15:14 PM EDT
To: Remy Del Bel <remy@mizrahidevelopments.ca>
Cc: "Sterling, Andrew" <asterling@alvarezandmarsal.com>, Sam Mizrahi <sam@mizrahidevelopments.ca>, Mark Kilfoyle <Mark@mizrahidevelopments.ca>, "Ferguson, Stephen" <sferguson@alvarezandmarsal.com>
Subject: 1BW - Outstanding Invoices

Thank you Remy

Josh Nevsky
Alvarez & Marsal
D: 416.847.5161
M: 416.710.0910

From: Remy Del Bel <remy@mizrahidevelopments.ca>
Sent: Monday, March 11, 2024 3:02 PM
To: Nevsky, Joshua <jnevsky@alvarezandmarsal.com>
Cc: Sterling, Andrew <asterling@alvarezandmarsal.com>; Sam Mizrahi <sam@mizrahidevelopments.ca>; Mark Kilfoyle <mark@mizrahidevelopments.ca>; Ferguson, Stephen <sferguson@alvarezandmarsal.com>
Subject: Re: 1BW - Outstanding Invoices



[EXTERNAL EMAIL]: Use Caution

Hi Josh,

The actual payment dates are the following for Morrow and ASG they are March 30, April, 30, May 30. With the amounts for each of their account spread over these months.

Best regards,
Remy

Remy Del Bel
Vice President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext.4260
C. 416.951.6225



F. 1.866.300.0219
E. Remy@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

On Mar 11, 2024, at 12:03 PM, Nevsky, Joshua
<jnevsky@alvarezandmarsal.com> wrote:

Thank you Remy.

Can you please provide a copy of the arrangements you are referring to below, I don't believe we have seen these forms of settlement agreements or payment plans. Alternatively, can you please specify the actual payment dates and amount for each of the payments?

Happy to discuss further if helpful.

Regards,
Josh

Josh Nevsky
Alvarez & Marsal
D: 416.847.5161
M: 416.710.0910

From: Remy Del Bel <remy@mizrahidevelopments.ca>
Sent: Monday, March 11, 2024 11:36 AM
To: Nevsky, Joshua <jnevsky@alvarezandmarsal.com>
Cc: Sterling, Andrew <asterling@alvarezandmarsal.com>; Sam Mizrahi <sam@mizrahidevelopments.ca>; Mark Kilfoyle <mark@mizrahidevelopments.ca>; Ferguson, Stephen <sferguson@alvarezandmarsal.com>
Subject: Re: 1BW - Outstanding Invoices

 [EXTERNAL EMAIL]: Use Caution

Hi Josh,

As per your email below on March 6th the variance owed to Morrow by Mizrahi Inc. for the \$580,464.74 is being made to Morrow as per our

arrangement with Morrow over 3 monthly payments one of being March 30, 2024.

The amount owed to ASG we have already an arrangement with ASG to make payments with them as agreed with ASG over 3 monthly payments.

Best regards,
Remy



Remy Del Bel
Vice President
[125 Hazelton Avenue](#)
[Toronto, Ontario M5R 2E4](#)
T. 416.922.4200 ext.4260
C. 416.951.6225
F. 1.866.300.0219
E. Remy@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

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On Mar 11, 2024, at 9:34 AM, Nevsky, Joshua
<jnevsky@alvarezandmarsal.com> wrote:

Hi all,

Following up on the below. Can we please receive a schedule from MI on the timing of the catch-up payments to be made to Morrow and ASG.

Thank you,

Josh

Josh Nevsky
Alvarez & Marsal
D: 416.847.5161
M: 416.710.0910

From: Nevsky, Joshua
Sent: Wednesday, March 06, 2024 11:23 AM
To: Remy Del Bel <remy@mizrahidevelopments.ca>; Sterling, Andrew <asterling@alvarezandmarsal.com>
Cc: Sam Mizrahi <sam@mizrahidevelopments.ca>; Mark Kilfoyle <mark@mizrahidevelopments.ca>; Ferguson, Stephen <sferguson@alvarezandmarsal.com>
Subject: RE: 1BW - Outstanding Invoices

Hi Remy,

Appreciate you making those payments noted below, thank you.

Regarding Morrow, I don't believe we have received the noted MI payment schedule. Based on the schedule Andrew provided on Monday, we understand that Morrow is owed \$580,464.74. We have seen communications that set out a scheduled payment of \$249,595.84 to be made by MI on or before March 30, 2024. Can you please advise on what the variance of \$330,868.90 relates to, and when that amount will be paid by MI?

Thank you,
Josh

Josh Nevsky
Alvarez & Marsal
D: 416.847.5161
M: 416.710.0910

From: Remy Del Bel <remy@mizrahidevelopments.ca>
Sent: Tuesday, March 05, 2024 4:35 PM
To: Sterling, Andrew <asterling@alvarezandmarsal.com>
Cc: Sam Mizrahi <sam@mizrahidevelopments.ca>; Mark Kilfoyle <mark@mizrahidevelopments.ca>; Nevsky, Joshua <jnevsky@alvarezandmarsal.com>; Ferguson, Stephen <sferguson@alvarezandmarsal.com>
Subject: Re: 1BW - Outstanding Invoices

 [EXTERNAL EMAIL]: Use Caution

Andrew,

Per your attached schedule, responses per vendor:

Morrow - Payment schedule previously shared.

Stephenson's - EFT Payment send today, copy attached

My Construction - Cheque cut today, copy attached

ASG - We acknowledge and commit to making this payment

Haimul - Wire Payment sent today, copy attached.

Best Regards,

Remy



Remy Del Bel

Vice President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4260

C. 416.951.6225

F. 1.866.300.0219

E. Remy@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

On Mar 4, 2024, at 6:23 PM, Sterling, Andrew
<asterling@alvarezandmarsal.com> wrote:

Dear Sam, Mark, and Remy,
Please see attached for a list of funded invoices which appear to be outstanding based on statements received from certain vendors. Please let us know how you intend to address these. We reserve the right to supplement this listing to the extent additional information becomes available to us.
Thanks,

Andrew Sterling, CFA
Senior Associate
Alvarez & Marsal Canada
200 Bay Street, Suite 3501
Toronto, ON M5J 2J1
Direct: +1 416 847 5152
Mobile: +1 647 994 7646
AlvarezandMarsal.com

<image001.jpg>



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