

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**

Mappro Realty Inc. (“**Mappro**”), will make a motion to the Honourable Justice Osborne,  
or another Judge of the Commercial List, on the day of , 2024 at  
10:00 a.m., or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location: 330 University Avenue, Toronto, Ontario.

**THE MOTION IS FOR:**

## 1. An order:

- a) abridging the time for service and validating the service of this notice of motion and the motion record so that it is properly returnable before the court on the date of the motion;
- b) for leave to commence a proceeding against Alvarez & Marsal Canada Inc. and Alvarez & Marsal Canada Inc. in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc. (collectively or individually, the “**Receiver**”);
- c) to the extent required, lifting the stay of proceedings (the “**Stay**”) ordered by The Honourable Justice Osborne pursuant to an order dated October 18, 2023 (the “**Receivership Order**”) to enable Mappro, a plaintiff in an Ontario Superior Court proceeding bearing Court File No. CV-22-00686696-0000 (the “**Mappro Action**”), to:
  - i) seek leave to amend its amended statement of claim (the “**Existing claim**”), in the form attached as Schedule "A" (the “**Proposed Amended Claim**”), in order to:
    - 1. add the following parties as defendants (the “**Proposed New Defendants**”): Mizrahi Commercial (The One) LP (“**Mizrahi LP**”), Mizrahi Commercial (The One) GP Inc. (“**Mizrahi GP**”), Mizrahi Inc. (“**Mizrahi Inc**”), and SKYGRiD Construction Inc. (“**Skygrid**”);
    - 2. add the Receiver as a defendant; and
    - 3. account for events that occurred after the Existing Claim was issued;
  - ii) continue the Mappro Action, as amended, in the normal course (as against all defendants named in the Proposed Amended Claim);
  - iii) in the alternative to paragraph 1(c)(ii), continue the Mappro Action, as amended, in the normal course as against any one or more of the following

non-debtor defendants: the City of Toronto (the “**City**”), Mizrahi Inc, Skygrid, and the Receiver; and

- d) to the extent required, lifting the Stay to enable Mappro to continue its injurious affection claim (the “**Injurious Affection Claim**”) commenced under the *Expropriation Act*, R.S.O. 1990, c. E.26.
- e) for its costs of this motion; and
- f) any further relief that the Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

*The Parties, the Properties, and the Project*

- 2. Mappro owns the property (the “**Mappro Property**”) municipally known as 19 Bloor Street West, Toronto, Ontario. The Mappro Property is located on the corner of Bloor Street and Balmuto Street.
- 3. Mizrahi Development Group (The One) Inc. (“**Mizrahi Group**”) is the registered owner of the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto, Ontario on which a mixed-use development project (the “**Project**”) is being constructed.
- 4. Mappro more recently learned that:
  - a) Mizrahi Group is the nominee for and on behalf of Mizrahi LP, the beneficial owner of the Mizrahi Property;
  - b) Mizrahi GP is the sole general partner of Mizrahi LP;
  - c) Mizrahi Inc has been referred to as “the developer and general contractor” of the Project until in or around early 2024. Mizrahi Inc also described itself as the “owner” of the Project; and
  - d) Skygrid became the construction manager and/or general contractor on the Project in or around early 2024.
- 5. On October 18, 2023, the Receiver was appointed the “[r]eceiver without security of all of the assets, undertakings and properties of [Mizrahi LP, Mizrahi Group, and Mizrahi GP (collectively, the “**Debtors**”)] ... acquired for, or used in relation to a business carried on

by the Debtors, including, without limitation, in connection with the Project and the Project itself, including all proceeds thereof.”

6. Mizrahi Group, Mizrahi LP, Mizrahi GP, Mizrahi Inc, Skygrid, and the Receiver are collectively and individually referred to as “**Mizrahi.**”

*The Nuisance*

7. In or around the summer of 2020, Mizrahi, with the City’s consent, erected and began using a portion of Balmuto directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) in connection with the Project. Mizrahi installed and began operating a concrete pump pedestal and a generator on the Staging Area. Nobody made any efforts to consult with Mappro, seek its consent, or provide Mappro with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
8. Since the summer of 2020, Mizrahi has been using the Staging Area to pump concrete to the Project, among other construction-related activities. For the most part, Mizrahi has done so with the City’s consent, granted in the form of permits, that have been extended from time to time.
9. Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:
  - a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
  - b) it creates unreasonable noise, vibration, dust, dirt, and smell;
  - c) it is unsightly;
  - d) it obstructs the sidewalk in front of the Mappro Building;
  - e) it restricts access to the Mappro Building and the emergency exits;
  - f) it restricts visibility into and from the Mappro Building;
  - g) it restricts access to the fire hydrant;
  - h) it causes homeless people to loiter directly in front of the Mappro Property, leading to numerous instances of begging, drug use, and individuals urinating and defecating directly in front of the Mappro Property; and
  - i) it causes the Mappro Property to be vandalized and broken-into.
10. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

11. The non-trivial interference, which has been severe and lengthy, is unreasonable.
12. There is no public utility in the Project; it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi and its lenders.
13. In September 2022, Mappro commenced the Mappro Action against Mizrahi Group (i.e. the registered owner of the Mizrahi Property) and the City, in which it advanced claims that they were liable for the on-going nuisance, among other things. Mappro seeks damages and a mandatory permanent injunction requiring Mizrahi to stop using the Staging Area, remove the Staging Area, and repair the portion of Balmuto that the Staging Area currently occupies.
14. In September 2022, Mappro also started the Injurious Affection Claim against Mizrahi Group and the City.
15. In the fall of 2023, the applicant in the within proceeding sought the appointment of a receiver and manager without security, of all of the assets, undertakings and properties of the Debtors. On October 18, 2023, Justice Osborne issued the Receivership Order appointing the Receiver pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
16. During the course of the receivership proceedings, Mappro discovered the roles that the Proposed Defendants were playing in relation to the Project.
17. Since October 18, 2023, the Receiver has had care and control of the Project and the Mizrahi Property and has been responsible for making all decisions concerning both, including the decisions to (a) continue using the Staging Area and (b) seek extensions of the permit allowing the use. Since the Receiver was appointed, the permit has been extended on two occasions (once in March 2024 and a second time in July 2024).
18. Despite the Receiver’s knowledge that the use of the Staging Area is causing a nuisance, it has continued to use the Staging Area and has failed to take any steps to improve the situation for Mappro.

19. The Receivership Order provides that:
- a) “. . .[N]o proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver ... except with ... leave of this Court.”
  - b) “... [N]o Proceeding against or in respect of the Debtors or the [Mizrahi] Property, or [Mizrahi Inc.] for matters arising after the date of this Order, shall be commenced or continued except with ... leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.”
  - c) “... [A]ll rights and remedies against the Debtors, the Receiver, or affecting the [Mizrahi] Property, or against [Mizrahi Inc.] ... for matters arising after the date of this Order, including, without limitation, licenses and permits required for the Project regardless of who is the legal holder of any such licenses and permits, are hereby stayed and suspended except with ... leave of this Court, provided however ... that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on ...”
  - d) “the Receiver shall incur no liability or obligation (including, without limitation, any personal liability or obligation under or in connection with (i) the Receivership Funding Credit Agreement; (ii) the performance, actions, errors, omissions or negligence by or of any construction manager, project manager, developer, contractor, subcontractor or other service provider directly or indirectly involved in the Project, and all other persons acting on their instructions or behalf, or (iii) as a result of its appointment or the carrying out of the provisions of this Order), save and except for liability arising from any gross negligence or wilful misconduct on its part ...”
20. Mappro has a reasonable chance of succeeding in its claim against the Receiver. Its claim is neither frivolous, nor vexatious.
21. The Receivership Order does not operate to stay or prevent the commencement of any proceedings against the Receiver or others concerning the nuisance that has been ongoing since October 18, 2023, which constitutes “business which the Debtors are not lawfully entitled to carry on.” Likewise, the Receivership Order does not shield the Receiver from liability arising from the nuisance, which constitutes “wilful misconduct.”
22. The Stay does not apply to prevent Mappro from continuing its claims in the Proposed Amended Claim and the Injurious Affection Claim against the non-Debtor parties (the “**Non-Debtor Parties**”); namely, the City, Mizrahi Inc., and Skygrid.
23. In the alternative and to the extent required, Mappro seeks to lift the Stay as set out in paragraph 1. The Court has broad discretion to lift the Stay, including to prevent an abuse

of process. There are sound reasons for doing so, including, but not limited to those set out below.

- a) The stay must be lifted to allow Mappro to amend the Existing Claim to account for events that took place after the Existing Claim was issued (e.g. the continued use of the Staging Area and the extensions of the relevant permits after November 30, 2022). Mappro must amend the Existing Claim before November 30, 2024. If Mappro is not allowed to do so, it will lose its rights to claim (through the courts or through a claims process in the receivership) the damages arising from the nuisance that has been ongoing since November 30, 2022. This will cause Mappro to suffer material prejudice.
- b) The stay must be lifted to allow Mappro to amend the Existing Claim to name as defendants, entities and individuals that Mappro recently learned are either owners of the Mizrahi Property (in some capacity) or acted as the contractor on the Project – all of whom are responsible for the nuisance.
- c) In the Existing Claim and Proposed Amended Claim, in addition to damages, Mappro seeks an injunction that would prevent Mizrahi from continuing to use the Staging Area. If the Stay is not lifted, Mappro will lose its right to seek this relief, which cannot be granted through a receivership claims process. Mappro should be able to present its case to the Court and have the Court decide whether Mizrahi's use of the Staging Area should stop.
- d) There is no reason why Mappro should be unable to proceed with its claims against the Non-Debtor Parties. In addition, the Debtors and the Receiver are necessary parties for the complete adjudication of the matters at issue in the Mappro Action and the Injurious Affection Claim. It would be costly, time-intensive, and prejudicial to Mappro if Mappro were to proceed against the Non-Debtor Parties now (which it should be allowed to do) and then be required to re-litigate the claims against the Debtors in a claims process in the receivership.

- e) The Mappro Action is in respect of an unliquidated debt, the proof and valuation of which has a degree of complexity that makes the summary procedure of a receivership inappropriate.
  - f) Mappro will suffer material prejudice if the stay is not lifted. It would only be equitable to lift the Stay in the circumstances.
  - g) The totality of the circumstances and a consideration of the relative prejudice to both sides support the lifting the Stay.
24. Rules 1.04, 1.05, 3.02, 5.03, 5.04(2), 26.01, 26.02 and 37 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.
  25. The principles in sections 69.4 and 215 of the *BIA*.
  26. Such further grounds as the lawyers may advise and to this Honourable Court may seem just.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. Affidavit of Isabelle Hayen, to be sworn.

October 2, 2024

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# Schedule "A"

No. CV-22-00686696-0000

## ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

~~MIZRAHI DEVELOPMENTS INC.~~ MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., and CITY OF TORONTO, MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI COMMERCIAL (THE ONE) GP INC., MIZRAHI INC., SKYGRiD CONSTRUCTION INC., ALVAREZ & MARSAL CANADA INC., and ALVAREZ & MARSAL CANADA INC. in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc.

Defendants

### AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

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Defendant

AND TO:     MIZRAHI COMMERCIAL (THE ONE) GP INC.

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Defendant

AND TO:     MIZRAHI INC.

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Defendant

AND TO:     SKYGRiD CONSTRUCTION INC.

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Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc.)

## CLAIM

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), claims against the Defendants as follows:
  - a) damages in the amount of \$3,000,000;
  - b) an interlocutory and mandatory permanent injunction requiring Mizrahi (defined below) ~~the defendants~~ to immediately:
    - i) stop using the Staging Area (defined below);
    - ii) remove the Staging Area in its entirety or move it so that it is no longer in front of the property (the "**Mappro Property**") municipally known as 19 Bloor Street West, Toronto;
    - iii) repair the portion of Balmuto Street ("**Balmuto**") currently occupied by the Staging Area and return it to its previous condition;
  - c) pre-judgment interest in accordance with the Courts of Justice Act;
  - d) costs of this action; and
  - e) any further relief this Honourable Court deems just.
2. All dates and amounts set out herein are approximate.

### A. The Parties and the Properties

3. Mappro, an Ontario corporation, owns the Mappro Property.
4. ~~Mizrahi Developments Inc.~~ The defendant, Mizrahi Development Group (The One) Inc. ("**Mizrahi Group**"), an Ontario corporation, is ~~a developer and the registered owner of~~ owns the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto as nominee for and on behalf of the defendant, Mizrahi Commercial (The One) LP ("**Mizrahi LP**").
5. The defendant, Mizrahi LP, an Ontario limited partnership, is the beneficial owner of the Mizrahi Property.
6. The defendant, Mizrahi Commercial (The One) GP Inc. ("**Mizrahi GP**"), an Ontario corporation, is the sole general partner of Mizrahi LP and the sole owner of Mizrahi Group.

7. The defendant, Mizrahi Inc. (“**Mizrahi Inc**”), an Ontario corporation, is believed to have acted as the developer and general contractor of the project being built on the Property (the “**Project**”) until early 2024. Mizrahi Inc is also believed to have described itself as the “owner” of the Project.
8. The defendant, SKYGRiD Construction Inc. (“**Skygrid**”), an Ontario corporation, became the construction manager and/or general contractor on the Project in early 2024.
9. On October 18, 2023, Alvarez & Marsal Canada Inc. (the “**Receiver**”) was appointed the “[r]eceiver without security of all of the assets, undertakings and properties of [Mizrahi LP, Mizrahi Group, and Mizrahi GP (collectively, the “**Debtors**”)] ... acquired for, or used in relation to a business carried on by the Debtors, including, without limitation, in connection with the Project and the Project itself, including all proceeds thereof.”
10. Mizrahi Group, Mizrahi LP, Mizrahi GP, Mizrahi Inc, Skygrid, and the Receiver are collectively or individually referred to as “**Mizrahi**.”
11. The defendant, the ~~The~~ City of Toronto (the “**City**”), is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. It owns the lands on which the Staging Area was installed.

#### **B. The Properties and the Project**

12. The Mappro Property is located on the southeast corner of Balmuto and Bloor Street (“**Bloor**”). The building on the Mappro Property is currently split into two units: one leased and operated by Scotiabank, and the other operated by Mappro (the “**Mappro Building**”).
13. Mappro has made significant efforts and continues to try to lease the Mappro Building to a high-end retail tenant.
14. Mizrahi is in the process of constructing a mixed-use development (the “**One**”) on the Mizrahi Property. For what is believe to be a short period of time, Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the Project project (the “**Project**”). At all relevant times, Clarke is believed to have acted as Mizrahi's agent.
15. The Mizrahi Property and the Mappro Property are not adjoining properties.

**C. The Project, the Staging Area, and the Original Permit**

16. In or around March 2015, Mizrahi submitted to the City its site plan and zoning application (among other things) for the Project. The City authorized the construction of the Project by issuing various types of authorizations and permits. There was no contemplation of using Balmuto as a construction staging area.
17. At some point, Mizrahi decided that it wanted to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for the construction of the Project.
18. Mizrahi required a permit from the City to erect and use the Staging Area.
19. Neither Mizrahi, nor the City made any efforts to consult with Mappro, seek its consent, or provide it with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
20. On or around July 14, 2020, the City granted Clarke, as Mizrahi's agent, a temporary street occupation permit (the "**Original Permit**") allowing Mizrahi to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.
21. The City's grant of the Original Permit was contrary to the provisions of the City of Toronto Municipal Code (the "**Code**") because, among other things:
  - a) neither Mizrahi nor Clarke owns any lands abutting Balmuto;
  - b) Mappro did not consent to Mizrahi's occupation of Balmuto or waive its claims against the City for any losses or damages arising from the occupation; and,
  - c) Mizrahi and Clarke failed to provide Mappro with notice of the occupation of Balmuto.
22. At an unknown date, Mizrahi erected and began using the Staging Area by, among other things, installing and operating a concrete pump pedestal and a generator. Mizrahi used the Staging Area to pump concrete to the Project, among other things.
23. The Staging Area occupies more space than the Original Permit allowed. The City did not take any steps to ensure that Mizrahi complied with the terms of the Original Permit.

24. Mappro did not learn about Mizrahi's intention to obtain a permit or use the Staging Area until it saw the construction equipment installed on the Staging Area.
25. Mappro's initial calls to the City concerning the Staging Area went unanswered.
26. It is unknown whether the City extended the duration of the Original Permit. If the City extended the duration of the Original Permit, it was done without justification and without authority. If the City did not do so, Mizrahi continued to use the Staging Area without permission.

**D. The Multi-Year Permit**

27. The Original Permit was only intended to be a stopgap solution. Mizrahi wanted to use the Staging Area for the duration of the Project, which was anticipated to take many years.
28. As a result, Mizrahi sought to obtain a longer-term permit (the "**Multi-Year Permit**").
29. Mizrahi first made its request for the Multi-Year Permit to the Toronto East York Community Council ("**TEYCC**").
30. On or around November 10, 2020, Mizrahi's request for the Multi-Year Permit came before TEYCC for a vote. Before the vote, the City submitted a report to TEYCC. In the report, the City admitted that City Council approval was required to issue the Multi-Year Permit (i.e. a permit that allows a temporary occupation of City lands that do NOT abut the lands of the applicant) because its issuance would "not comply with City policy or by-laws."
31. On or around November 10, 2020, TEYCC recommended that City Council grant the Multi-Year Permit, with certain additional recommendations including, among other things, that:
  - a) the City grant the Multi-Year Permit without Mizrahi having to comply with the Code; and,
  - b) Mizrahi execute an indemnity agreement in favour of the City with respect to Mizrahi's occupation of Balmuto.
32. On or around November 25, 2020, City Council adopted TEYCC's recommendations (with some small amendments) and authorized the City to grant the Multi-Year Permit for the period November 30, 2020 to November 30, 2022.

33. The City then issued the Multi-Year Permit allowing Mizrahi to "stage concrete truck and deliveries on both northbound lanes of Balmuto ... fronting [the Mappro Building] ... pertinent to the development of [the One]."
34. Mizrahi did not comply with the terms of the Multi-Year Permit. For instance, it occupied more space than it was permitted. The City did not take any steps to ensure that Mizrahi was complying with the terms of the Multi-Year Permit.

**E. The Multi-Year Permit Was Repeatedly Extended**

35. The Multi-Year Permit was in effect extended on numerous occasions after it expired on November 30, 2022.
36. On December 14, 2022, the Multi-Year Permit was extended from December 14, 2022 to March 31, 2023.
37. Mizrahi did not have permission from the City to use the Staging Area between November 30, 2022 and December 14, 2022.
38. On March 29, 2023, the Multi-Year Permit was extended from April 1, 2023 to April 1, 2024.
39. The Receiver was appointed on October 18, 2023. Since that date, the Receiver has had care and control of the Project and the Mizrahi Property and has been responsible for making all decisions concerning both, including the decisions to (a) continue using the Staging Area and (b) seek extensions of the permit allowing the use. Since the Receiver was appointed, the permit has been extended on two occasions:
  - a) on March 20, 2024, the Multi-Year Permit was extended from April 2, 2024 to July 31, 2024; and
  - b) on July 24, 2024, the Multi-Year Permit was extended from August 1, 2024 to February 1, 2026.
40. Mizrahi has used the Staging Area continuously since installing it. It has done so with the City's permission (except during short periods of time when Mizrahi did not have a permit allowing it to use the Staging Area).
41. Mappro has not been provided with copies of all of the various permit extensions.

42. Mappro has been given no guarantees that the Multi-Year Permit will not be further extended past February 1, 2026.

**F. The Effects of the Installation and Use of the Staging Area**

43. Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:
- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
  - b) it creates unreasonable noise, vibration, dust, dirt, and smell;
  - c) it is unsightly;
  - d) it obstructs the sidewalk in front of the Mappro Building;
  - e) it restricts access to the Mappro Building and the emergency exits;
  - f) it restricts visibility into and from the Mappro Building; ~~and~~
  - g) it restricts access to the fire hydrant<sub>s</sub>;
  - h) it caused homeless people to loiter directly in front of the Mappro Property, leading to numerous instances of begging, drug use, and individual urinating and defecating directly in front of the Mappro Property; and
  - i) it caused the Mappro Property to be vandalized and broken-into.
44. Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants.
45. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.
46. Mappro has begun ~~is now in~~ the process of renovating the Mappro Building. The installation and use of the Staging Area will likely interfere with, delay, and increase the cost of Mappro's renovation. This too will negatively impact Mappro's ability to lease the Mappro Building.

**G. Nuisance**

47. The granting and extension of the various permits ~~Original Permit and Multi-Year Permit~~ and the installation and use of the Staging Area interferes to a significant degree with Mappro's use and enjoyment of the Mappro Property.
48. The non-trivial interference, which has been severe and lengthy, is unreasonable.
49. There is no public utility in the Project (i.e. the construction of the One); it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi and its lenders. It is not reasonable that Mizrahi should be allowed to profit at Mappro's expense.
50. The defendants are liable to the plaintiff for creating an ongoing nuisance and for permitting any form of the nuisance to occur.
51. The defendants also failed to act reasonably throughout the process:
  - a) The defendants failed to discuss the Staging Area with Mappro before installing it (even though Mappro was going to be the entity most impacted by its installation).
  - b) The defendants changed the location of the Staging Area to Balmuto mid-Project, thereby precluding Mappro from being able to oppose the granting of the original building permit.
  - c) Mizrahi refused to meaningfully engage with Mappro until Mappro's legal counsel got involved.
  - d) Mappro's initial calls to the City regarding the Staging Area went unanswered.
  - e) Although the City held consultative talks with community members, it made it clear that it cared little that the installation and use of the Staging Area would negatively impact Mappro (i.e. a non-voting entity).
  - f) The City granted the Original Permit contrary to the provisions of the Code.
  - g) The City granted the various permits and extensions thereof ~~Multi-Year Permit~~ knowing full well that the granting of the permit (a) ran afoul of the City's own policies and (b) would cause Mappro significant financial harm. In doing something



it knew to be wrong, the City then ensured that it was protected from litigation risks by obtaining an indemnity from Mizrahi.

- h) The defendants failed to take any steps to mitigate the impacts of the ongoing nuisance.
- i) The defendants failed to provide Mappro with reasonable notice when seeking and granting extensions of the various permits.

52. Mappro has suffered, and continues to suffer, damages arising from the nuisance.

~~53. It is very unlikely that Mizrahi will have completed the Project by November 30, 2022 (i.e. the date on which the Multi Year Permit expires). In such a case, Mizrahi will be forced to request an extension of the Multi Year Permit. Based on the City's conduct to date, it is likely that, without the Court's intervention, the City will grant such an extension, without paying any regard to the damages that such extension will cause to Mappro. It is, thus, likely that the nuisance to Mappro will continue long past November 30, 2022.~~

54. It is possible that the nuisance to Mappro will continue past February 1, 2026.

55. As against the Receiver, Mappro is only claiming damages arising from the nuisance that has been ongoing since the Receiver was appointed on October 18, 2023.

56. As against Skygrid, Mappro is only claiming damages arising from the nuisance that has been ongoing since Skygrid began working on the Project.

#### **H. Negligence (as against all defendants other than the Receiver)**

57. The defendants owe Mappro a duty of care.

58. The defendants acted negligently by, among other things:

- a) failing to provide notice to, consult with, or obtain consent from Mappro before installing and constructing the Staging Area;
- b) granting the Original Permit contrary to the provisions of the Code;
- e) installing and operating the Staging Area in a manner that does not comply with any of the permits ~~either the Original Permit, the Multi Year Permit, or both;~~

- d) failing to ensure that Mizrahi complied with the terms of any of the permits ~~the Original Permit, the Multi-Year Permit, or both~~; and
  - e) failing to mitigate the effects that the installation and use of the Staging Area has on Mappro.
59. Mappro has suffered, and continues to suffer, damages arising from the defendants' negligence.
60. The plaintiff pleads the *Negligence Act*, the *City of Toronto Act*, and the Code.

September 7, 2022

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Lawyers for the plaintiff,  
Mappro Realty Inc.

MAPPRO REALTY INC.

Plaintiff

-and- ~~MIZRAHI DEVELOPMENTS INC.~~ MIZRAHI  
DEVELOPMENT GROUP (THE ONE) INC., et al.  
Defendants

No. CV-22-00686696-0000

*Ontario*  
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT  
TORONTO

**AMENDED AMENDED STATEMENT OF CLAIM**

SPEIGEL NICHOLS FOX LLP  
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RCP-F 4C (September 1, 2020)

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, No. CV-23-00707839-00CL  
et al.

Respondents

*Ontario*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT  
TORONTO

**NOTICE OF MOTION**

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