



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00707839-00CL

DATE: March 18, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: KEB HANA BANK v MIZRAHI COMMERCIAL (THE ONE) LP et al.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Jerome Morse Steven Weisz David Trafford	Mizrahi Inc.	jmorse@morseshannon.com sweisz@cozen.com dtrafford@morseshannon.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Mark Dunn, Kirby Cohen, Brendan O'Neill	Alvarez & Marsal Canada Inc. in its capacity as Receiver	mdunn@goodmans.ca kcohen@goodmans.ca boneill@goodmans.ca
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Mark Sheeley	Counsel to the Senior Secured Lenders	msheeley@osler.com

ENDORSEMENT OF JUSTICE OSBORNE:

- [1] This case conference was requested to deal with the scheduling of a proposed motion by the Mizrahi Parties and the proposed cross-motion of the Receiver relating to the same issues.
- [2] Defined terms in this Endorsement have the meaning given to them in my last Endorsement issued in this proceeding, which Endorsement also describes the context for these two motions.
- [3] The Mizrahi Parties seek fees they say are owing to them, and which, they say, were paid in the ordinary course pre-filing. The Receiver takes the position that it has been unable to yet find any contractual basis for the payment of some of the fees, that during the pre-filing. They were paid to and from Mizrahi entities so did not represent arm's-length transactions, and there may also be claims to be asserted by way of setoff.
- [4] Having heard from all interested parties, I am satisfied that, and while the Commercial List will attempt to accommodate the parties and deal with matters on as expeditious a basis as is possible, these motions cannot and should not be separated and must be determined on the basis of a full record. Fairness to all parties demand nothing less. In my view the motions cannot be separated since there are issues about the entitlement of the Mizrahi Parties to the fees they claim, separate and apart from any claims of setoff, and there would inevitably be duplication and significant inefficiencies, apart from procedural and substantive unfairness if the matters did not proceed together.
- [5] Accordingly, the responding materials from the Receiver, together with its cross-motion materials, will be delivered by May 31, 2024. The Mizrahi Parties will deliver reply materials, if any, on their motion already served together with responding materials in respect of the cross-motion of the Receiver, by June 28, 2024.
- [6] Thereafter, and once all of the materials of been exchanged, and the parties have a much fuller appreciation of the claims by and against the various entities, a case conference may be scheduled before me through the Commercial List office to schedule remaining steps thereafter. As I indicated to the parties at this case conference, and as suggested by the Receiver and supported by the senior secured lenders and the Coco Parties, the expectation is that the parties will work toward a hearing (likely 1.5 – two days in length) to be scheduled in September, 2024 subject to the availability of the Court. That means that cross examinations, written questions and facta need to be all completed as soon as possible but in any event by mid-August.
- [7] The parties are free to adjust the above deadlines on the consent of all parties, and consistent with the overarching objective of having these motions heard likely in September.

Owen, J.