



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-23-00707839-00CL DATE: July 15, 2024

NO. ON LIST: 8

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

BEFORE JUSTICE: **Justice OSBORNE**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
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**For Defendant, Respondent, Responding Party, Defence:**

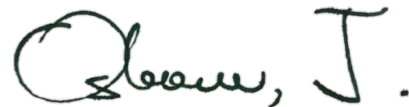
Name of Person Appearing	Name of Party	Contact Info
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**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

**ENDORSEMENT OF JUSTICE OSBORNE:**

1. Gamma Windows and Walls seeks to schedule a motion compelling the Receiver to pay to invoices for approximately \$700,000 that Gamma rendered to Mizrahi Inc., when Mizrahi Inc. was Construction Manager. Gamma also seeks an order directing a reference to have the balance of its lien claim for approximately \$1.839 million determined by an Associate Justice specializing in construction lien matters.
2. Gamma argues that, among other things, paragraph 17 of the ARIO has the effect of delegating from the Receiver to Mizrahi Inc. all issues with respect to work done prior, such that only Mizrahi Inc., and not the Receiver, has the ability to challenge those invoices. It concedes the Receiver does have the ability to challenge the invoices for the work done subsequent to its appointment, but submits that the work was done according to specifications and that claim also should be paid.
3. Mizrahi Inc. is concerned that some of these issues, and particularly the interpretation of paragraph 17 of the ARIO, overlap with issues that will be the subject of its motion currently scheduled to be heard in September.
4. The Receiver takes the position that nothing should be referred to an Associate Justice and that the lien regularization order and forthcoming lien claims process should be utilized to deal with these matters to the extent they are not resolved. Moreover, they may be resolved since the Receiver intends to advise Gamma within the next two weeks as to whether and the extent to which it, and its construction manager Skygrid, challenge Gamma invoices and claims.
5. In my view, the Gamma motion should be heard together with, or in any event not before, the outstanding Mizrahi Inc. motion. The court has already scheduled hearing time on August 9, 2024 for other matters, and by that date, the Receiver will have advised Gamma of the extent of dispute, such that all parties will be better informed and the Receiver's motion for the appointment of a Claims Officer for the lien claims regularization matters can be brought forward as well. Accordingly, it makes sense to deal with Gamma consent matters, if there are any, on that date, and also to consider scheduling as will then be appropriate.

Osborne, J.