CITATION: *Mizrahi Commercial (The One) LP et al.*, 2025 ONSC 2672
COURT FILE NOs.: CV-23-00707839-00CL and CV-25-00740512-00CL
DATE: 20250430

ONTARIO - SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

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

RE: **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

and

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

BEFORE: Peter J. Osborne J.

COUNSEL: *Brendan O'Neill, Christopher Armstrong, Mark Dunn and Jennifer Linde*, for Alvarez & Marsal Canada Inc., in its capacity as Receiver

Jeremy Dacks and Michael De Lellis, for KEB Hana Bank / Senior Secured Lenders

Jennifer Stam, for Proposed CRO

Britt Shales, for CERIECO Canada Corp.

David Bish, Nina Perfetto and David W. Levangie, for Coco International Inc. and 12823543 Canada Ltd.

Jerome R. Morse, David M. Trafford, Steven Weisz and Dilina Lallani, for Mizrahi Inc.

Adam Slavens, for Tarion Warranty Corporation

Michael Hochberg, for Core Architects Inc.

Harvey Chaiton, for Aviva Insurance

Jeffrey A.L. Kriwetz, for Chateau Yorkville Corp.

HEARD: April 22, 2025

REASONS FOR DECISION

1. Last week, on April 22, 2025, I granted three orders in these two related proceedings:

   a. in the Receivership Proceeding (CV-23-00707839-00CL), a Discharge Order discharging the Receiver and granting corollary relief;

   b. in a new *CCAA* Proceeding (CV-25-00740512-00CL), an Initial Order; and

   c. also in the new *CCAA* Proceeding, an Order approving a Transaction with Tridel Builders Inc. for the continued construction of The One, together with related relief.

2. Those three orders were granted at the conclusion of the hearing of the motions with reasons to follow. These are those reasons.

3. This Endorsement applies equally to each of the two above-noted Proceedings. Defined terms in this Endorsement have the meaning given to them in the Application materials (*CCAA*) or the motion materials (Receivership), unless otherwise stated.

4. These matters arise out of the construction (and related financing defaults) of The One, a development project at the marquee intersection of Yonge and Bloor Streets in Toronto, including an 85 storey condominium, hotel and retail tower and related amenities. The Receiver was originally appointed on October 18, 2023 to bring stability and appropriate oversight to the Project with a view to ensuring that construction of the Project would continue and recoveries could be maximized. Accordingly, the Receivership Proceeding has been ongoing for some time, with the full involvement of all stakeholders.

5. These matters were originally returnable on March 17, 2025. I granted an adjournment at the request of Mizrahi Inc. to allow that party a sufficient opportunity to file responding materials in opposition to certain elements of the relief sought.

6. Upon the return of these matters on April 22, 2025, the parties advised that the objections of Mizrahi Inc. had been resolved with the result that all of the relief sought was proceeding on a

consent or unopposed basis, save for Château Yorkville Corp. which requested an adjournment. That adjournment request is addressed below. Other than that, the *CCAA* Application and the motion within the Receivership Application were supported by the Receiver and proposed Monitor and the fulcrum creditor KEB Hana Bank and the Senior Secured Lenders, and were not opposed by any other stakeholder.

Adjournment Request

7. At the outset of the hearing, a party new to these proceedings, Château Yorkville Corp., appeared to request an adjournment of the motions "to a date no earlier than June 16, 2025" (i.e., almost two months) and an order abridging the time for service and validating service of its motion. One business day before the hearing of these motions, it filed a Notice of Motion and Affidavit of Antony DeFrancesco sworn April 17, 2025, on which it relies.

8. Notwithstanding the late filing of materials, I heard the motion for an adjournment. Château Yorkville requested an adjournment of the motion for approval of the Transaction on the basis that now, following completion of the SISP and the selection of Tridel, it has submitted to the Monitor a "transaction structure and indicative execution path" which includes the assignment or acquisition of existing secured debt, the provision of funds to support project completion, and a long-term asset stewardship plan. It has filed a redacted copy of a funding support letter in an amount exceeding CAD $1.4 billion. It is also filed a redacted copy of a financing term sheet.

9. Château Yorkville submitted that due to the short timelines between the filing of the *CCAA* Application on April 3 and the return date of April 22, there had "not been a meaningful window to fully engage with the Receiver, Court Monitor, or other interested parties".

10. The motion for adjournment was strongly opposed by the Receiver/Proposed Monitor and the Senior Secured Lenders. It was not supported by any other stakeholder.

11. After hearing submissions with respect to the proposed adjournment, including from counsel on behalf of Château Yorkville, whose candour and forthrightness I acknowledge, I dismissed the motion for a further adjournment.

12. Château Yorkville has not appeared in these proceedings previously. The SISP that resulted in the selection of Tridel and the request for Transaction approval today has been ongoing for many months. I approved the SISP almost a year ago on June 6, 2024. Château Yorkville did not participate in the SISP at all. The Phase 1 Bid Deadline established under the SISP was July 30, 2024. Château Yorkville did not submit a bid or even execute the non-disclosure agreement to access any of the available due diligence information. Nor did it make even informal inquiries or contact the Receiver, the Senior Secured Lenders, or their professional advisors about the Project at all.

13. The Receiver publicly disclosed the selection of Tridel's bid under the SISP and outlined its key terms approximately four months ago.

14. In my view, to grant the requested adjournment now would undermine the integrity of a Court-authorized sales process, well publicized and noticed, and pursuant to which stakeholders, including but not limited to other bidders, devoted very significant financial and professional

resources, all in accordance with the approved timelines. It would be unfair to the stakeholders and other bidders to re-open the process now.

15. Given the sheer scale of the Project, the necessity to avoid delays and disruption to the construction schedule to accelerate completion and maximize recoveries, and the very significant interest costs accruing on a project with a value of approximately $2 billion, a further delay of two months is prejudicial.

16. Moreover, even today, Château Yorkville does not have an unconditional commitment for the necessary financing. The Term Sheet attached to the DeFrancesco affidavit as Exhibit "A" is expressly according to its terms "non-binding".

17. Even if it did have an unconditional financing commitment, the CDN $1.4 billion of financing that Château Yorkville submits that it can raise is in any event not sufficient to fund the Transaction Proposal as defined in the SISP, and it is materially short of any amount required to satisfy both the $1.2 billion minimum bid threshold established under the SISP and the cost of construction to complete the Project. It is also materially below the amount required to provide value to any secured creditors beyond the Senior Secured Lenders. It is for these reasons, among others, that those parties oppose the adjournment request.

18. For all of these reasons, I denied the motion for a further adjournment and proceeded to hear the motion in the Receivership Proceeding and the *CCAA* Application.

Motion for Discharge of the Receiver

19. The Receiver seeks to be discharged in its capacity as such, subject to the completion of certain incidental matters as fully set out in the motion materials required to complete the administration of the Receivership Proceeding, and coincident with the *CCAA* Application.

20. The Receiver's Charge and the Receiver's Borrowings Charge are proposed to survive the discharge and remain in full force and effect with the priorities set out in the *CCAA* Initial Order, also requested today and discussed below.

21. The Lien Charges as defined in the Lien Regularization Order would also continue, subject to the resolution of the related Lien Claims in accordance with the procedures already established. Finally, the charge in favour of the Royal Bank of Canada would also survive the discharge and remain in full force and effect attached to the RBC Collateral with the priority set out in the *CCAA* Initial Order.

22. The Unresolved Lien Claims and the Unresolved Receivership Claims would also not be released.

23. The basis for the proposed discharge is fully set out in the motion materials.

24. This Court routinely grants orders discharging receivers on terms similar to those sought here. I am satisfied that such relief is appropriate where the Receivership Proceedings are transitioning to the *CCAA* Proceedings in accordance with the terms of the proposed *CCAA* Initial Order. The terms and corollary relief are also appropriate.

25. Mizrahi Inc. does not oppose the discharge but requested out of an abundance of caution clarification as to its effect on the payment motion and cross-motion pending and scheduled to be heard in June of this year. That has been agreed with the Receiver. Accordingly, the relief sought on the within Application and motion is without prejudice to the claims, defences and positions of MI and the Receiver in their ongoing dispute scheduled to be heard by the Court in June 2025, or thereafter, including MI's positions that it is entitled to a trust claim over the proceeds of sale or deposits paid by existing Unit purchasers, and that MI can advance a set-off claim arising from the disclaimer of the Mediator's Proposal and the Exclusive Listing Agreement. It is acknowledged that nothing in the foregoing reservation of rights will detract from the release provided for in paragraph 12 of the Discharge Order.

26. For all of these reasons, I am satisfied that a discharge of the Receiver is appropriate.

27. Finally, I am satisfied that the Receiver's Reports, including the Joint Eighth Report of the Receiver and Pre-Filing Report of the Proposed Monitor (the "Joint Report") and the conduct and activities of the Receiver as set out therein are appropriate and should be approved. Those activities are consistent with the terms of the original Appointment Order and have been accretive to the progress of the Receivership Proceeding to date.

28. The fees and disbursements of the Receiver and its counsel are fully described in the fee affidavits filed. I am satisfied that the fees are appropriate, consistent with market rates for similar services, and correlate to the activities set out in the Joint Report (as well as the earlier Reports of the Receiver 1-7) and described above. There is no opposition from any party, including but not limited to the Senior Secured Lenders, to the requested fee approval. Those fees and disbursements are approved: *Bank of Nova Scotia v. Diemer*.

CCAA Application

29. The Applicants, by and through the Receiver, seek an Initial Order pursuant to the *CCAA* in the draft form submitted. It is proposed that the firm currently acting as the Receiver, Alvarez & Marsal Canada Inc., be appointed as Monitor, and that FAAN Advisors Group Inc. be appointed as Chief Restructuring Officer of the Companies.

30. This relief is also supported by the Senior Secured Lenders, and is not opposed by any other party (save for Château Yorkville, the adjournment request of which I addressed above).

31. I am satisfied that this relief is appropriate for the reasons set out in the motion materials, including but not limited to the reasons set out in the Joint Report dated April 3, 2025.

32. Each of the Applicants are debtor companies to which the *CCAA* applies - where the total claims exceed $5 million. There is no issue that the Companies, including the Beneficial Owner, are insolvent and already subject to the Receivership Order as a result of their inability to repay their significant secured debt obligations owing to the Senior Secured Lenders and other subordinate secured lenders.

33. I recognize that the Beneficial Owner is a limited partnership and not a "debtor company". However, it is well established that this Court has the jurisdiction to extend *CCAA* protection to partnerships to achieve the purposes of the *CCAA* where the operations of a partnership are integral

and closely tied to the operations of the business of the debtor. See, for example, *Target, Just Energy, Nordstrom and BBB Canada Ltd.*, among others.

34. The requirements of section 10(2) of the *CCAA* have been complied with, and the 20 week cash flow forecast is appended to the Joint Report.

35. This Court is the appropriate forum for the *CCAA* Proceedings as contemplated in section 9(1), as the head office and principal place of business of each of the Applicants is Toronto.

36. A&M is qualified to act as Monitor as provided for in section 11.7 of the *CCAA*. It has consented to act in that capacity, and is not affected by any of the restrictions set out in section 11.7(2). A&M is particularly well-suited for the role of Monitor here given not only its extensive experience acting as a Court-appointed Monitor in CCAA proceedings, but its extensive experience with this Project in particular, given that it has been the Receiver.

37. I am also satisfied that FAAN should be appointed as CRO, pursuant to section 11 of the CCAA. It is familiar with the Project and has been engaged as a financial advisor to the Senior Secured Lenders since July, 2024. I am satisfied that its expertise will assist the debtors in achieving the objectives of the *CCAA* and continuing operation of the business during the restructuring process. The CRO will, with guidance from Tridel, make decisions on behalf of the Companies relating to the development of the Project in consultation with the Monitor and the Senior Secured Lenders, where appropriate.

38. The Applicants propose an initial stay of proceedings to and including August 15, 2025. The Companies will have sufficient liquidity to continue operations through that period with funding under the DIP Credit Agreement.

39. The *CCAA* contemplates that a stay granted on an initial application may not exceed 10 days in duration, and that the relief be limited to that which is reasonably necessary during that 10 day period. The rationale for the interim and short duration nature of that relief is to avoid procedural and substantive unfairness that can arise from the fact that such relief is typically granted on an *ex parte* or limited notice basis. Accordingly, it is appropriate to grant only that relief absolutely necessary and to provide all affected parties with the ability to return to Court on an expedited basis to take such positions as may be appropriate on the comeback hearing.

40. None of those imperatives applies here. The Companies have been the subject of (highly public and publicized) Court-supervised Receivership Proceedings for more than 18 months. Existing relief already granted by this Court has included the same or substantially similar relief as that being sought under the proposed Initial Order. All parties on the Service List in the Receivership Proceedings, all known creditors, subcontractors and trades engaged on the Project, and Unit purchasers for whom the Receiver has an email address were provided with full notice of the Application. None opposes the relief sought today.

41. Moreover, the Transaction for which approval is sought today, and the contemplated transition from the Receivership Proceedings to the CCAA Proceedings, were first reported to all stakeholders in the publicly available Sixth Report of the Receiver dated December 11, 2024 to which the Term Sheet in respect of the Transaction was appended.

42. This Court has previously exercised its discretion to issue a stay of proceedings beyond the 10 day period on a CCAA conversion application. See, for example: *Joriki Topco Inc., The Body Shop Canada Limited, Re Tribalscale Inc. and Re Medifocus Inc.*

43. I am satisfied that a stay exceeding 10 days is warranted here and that no party is prejudiced thereby. Indeed, I am satisfied that requiring a 10 day comeback hearing would serve no practical purpose and would unnecessarily increase costs. I also observe that the proposed form of Order contains the usual comeback clause enabling any affected party to seek the advice and directions of the Court, on an expedited basis if necessary.

44. I am further satisfied that it is appropriate to extend the stay to the Developers (including MI, SKYGRiD and Tridel). Stay protection has been granted in many cases in favour of third parties where such is necessary and appropriate to facilitate restructuring efforts. I am satisfied that extending the stay to the third parties here will assist in maintaining stability and value during the restructuring proceedings. The protections in favour of the Developers are limited to that which is necessary to ensure that the construction of the Project continues uninterrupted.

45. For the same reasons that justify an extended stay, I am satisfied that the Monitor should be exempt from certain notice and creditors list requirements under the *CCAA*. Put simply, all of the affected parties are already well on notice and involved to the extent they wish to be, as a result of the Receivership Proceedings that have been ongoing for approximately 18 months.

46. The proposed order contemplates that payments for ongoing construction and other services related to the Project will continue to be made by the Companies with the consent of the Monitor. That is appropriate here and the Companies require the authority to make pre-filing payments to facilitate the orderly transition from the Receivership Proceedings and prevent any prejudice to parties who have supplied goods and services during the Receivership Proceedings and ensure that those goods and services that are integral to the ongoing construction of the Project continue to be provided in the normal course.

47. During the Receivership Proceedings, the Receiver sought and obtained several Orders from this Court to address the filing and resolution of Lien Claims and contribute to ensuring the ongoing construction of the Project. The Companies will continue to require the benefit of those Orders in the context of the *CCAA* proceedings.

48. The Applicants propose an Administration Charge in the amount of $3.5 million, to rank *pari passu* with the Receiver's Charge granted in the Receivership Proceedings. I am satisfied that such is appropriate here, as contemplated in section 11.52 of the *CCAA*. I have considered the factors recognized as being relevant to a consideration of whether an administration charge should be approved, including the size and complexity of the business being restructured, the proposed role of the beneficiaries of the charge, whether there is an unwarranted duplication of roles, whether the quantum of the proposed charge appears to be fair and reasonable, the position of the secured creditors likely to be affected, and the position of the Monitor. All of those factors support the proposed charge here.

49. I am similarly satisfied that the proposed DIP Credit Agreement and DIP Lenders' Charge should be approved. Put simply, significant additional funding is required to complete the Project.

The Senior Secured Lenders have confirmed that they are prepared to provide that financing by way of the DIP Credit Agreement. Accordingly, the Companies request approval of the DIP Credit Agreement and authorization to borrow up to $615 million plus interest, fees and expenses thereunder.

50. That quantum is significant, to state the obvious. I have considered the factors set out in section 11.2(4) of the *CCAA* relevant to a determination of whether a priming charge in connection with interim financing should be approved. Pepall, J observed in *CanWest Publishing* the importance of meeting the criteria set out in section 11.2(1) as well as those found in section 11.2(4).

51. Consideration of all of those criteria supports the approval of the DIP Lenders' Charge. Notice has been given to all secured creditors. The DIP Credit Agreement provides for sufficient funding to ensure that the Companies can complete construction of the Project and finance these CCAA Proceedings.

52. The DIP Lender is not prepared to advance additional funds without the security of a Court-ordered priority charge under the *CCAA*, and the DIP Credit Agreement is the only source of funding available to complete the construction of the Project for the benefit of stakeholders.

53. The DIP Lenders' Charge does not secure a pre-filing obligation, including because the funds advanced under the RFCA are secured only by the Receiver's Borrowings Charge which is being continued in the *CCAA* Proceedings. The Proposed Monitor is of the view that the economic and other terms of the DIP Credit Agreement are appropriate, including because no fees are being charged by the DIP Lender, and the interest rate is less than that payable under the RFCA and well below rates charged in other relatively recent real estate development insolvency proceedings.

54. The Receiver also requested a sealing order in respect of Confidential Appendix"1" to the Joint Report which contains a confidential summary of the letters of intent received in the SISP. Such sealing relief may be granted pursuant to section 137(2) of the *Courts of Justice Act*. This Court has, on many occasions, granted sealing orders in respect of bids or summaries of bids received in a sales process.

55. I am satisfied that the factors set out by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate* have been met here. The LOI summary contains commercially sensitive information that could and very likely would negatively impact realization efforts in respect of the Project, including as relates to the estimated value of the individual components of the Project, financial and other details concerning the LOIs submitted, and other information that could undermine the Transaction. The sealing order is subject to further order of the Court.

56. In addition, the requested authorization to change the names and registered addresses of the Companies is appropriate here. The proposed changes will facilitate marketing efforts and more accurately reflect the involvement in and ownership of the Project. Such relief is authorized pursuant to section 186(2) of the Ontario *Business Corporations Act*. The Ontario Business Registry was served with the Application materials and does not appear today to oppose the relief sought.

57. I am also satisfied that the proposed Transaction should be approved, and the Transaction Approval Order should be granted pursuant to the exercise of the broad discretion provided to this Court in section 11 of the *CCAA*. The Transaction does not involve the sale or disposition of assets, but rather a commercial arrangement whereby Tridel, a preeminent developer particularly in the condominium sector, has been engaged to complete the construction, development and ultimate realization of value from the Project in exchange for a fee. Such a transaction was expressly contemplated in the previously approved SISP.

58. Notwithstanding that the non-exhaustive list of factors set out in section 36(3) of the *CCAA* may not technically apply in the circumstances, they are relevant by analogy, and I have considered all of them together with the *Soundair Principles* in the exercise of my section 11 discretion. Finally, I have considered the *Nortel* factors relevant to whether a sale or transaction should be authorized in a *CCAA* proceeding in the absence of a plan of arrangement. Those factors too, are satisfied here.

59. The proposed Transaction is clearly warranted at this time. Many decisions relating to the development of the Project that did not directly impact the Schedule were suspended pending the outcome of the SISP. Now that Tridel has been selected, it is appropriate to proceed with the Transaction so that the critical decisions regarding the development, marketing and monetization of the Project can be made on a timely basis.

60. The solicitation process was reasonable and was completed in accordance with the terms of the Court-approved SISP. The Broker completed a broad canvas of the market, contacting 91 selected parties about the opportunity, sending a form of NDA and promotional video to over 4000 potentially interested parties, entering into NDAs with 53 parties of which 50 accessed the data room and resulted in the receipt of 11 LOIs. Four Development Proposals resulted that were determined to be Qualified LOIs. No Transaction Proposal submitted was determined to be a Qualified LOI.

61. The Transaction benefits stakeholders in that it represents the best chance of maximizing the value of the Project and ensuring its completion for the benefit of all stakeholders, including the Senior Secured Lenders, trades and suppliers, the City and Unit purchasers, among others.

62. I observe that notwithstanding the view of the Receiver and Proposed Monitor that the Transaction will maximize value, the expectation is that the Senior Secured Lenders will not recover their outstanding pre-receivership secured debt of more than $1.2 billion in full, with the result that it is unlikely that there will be recoveries for subordinate secured or unsecured lenders. However, the Receiver and Proposed Monitor are of the view that there was no viable proposal submitted in the SISP that would have resulted in a different outcome.

63. The Receiver and Proposed Monitor submit, and I accept, that the fees payable to Tridel are fair and reasonable. The fee structure is competitive with other Development Proposals received in the SISP and was further negotiated.

64. The Receiver and Proposed Monitor fully support the Transaction and were integrally involved in the negotiation of its terms. Key stakeholders, including certain of the Companies' secured creditors, were consulted or provided confidential updates as the process continued. The

Senior Secured Lenders support the Transaction and are willing to provide further funding to the Project if the Transaction is approved. As noted, no viable alternative funding proposal was received.

65. I am satisfied that the Tridel Charge should be granted as security for the Tridel Charge Obligations, which charge is to rank subordinate to the Administration Charge, the Receiver's Charge, the DIP Lender's Charge and the Receiver's Borrowings Charge. Authority to grant such a charge flows from section 11 of the *CCAA*, and in particular, section 11.52(1)(b). Here, Tridel would not be prepared to enter into the Transaction absent a Court-ordered priority charge securing certain of its fees payable in connection therewith. Given the sheer scale and complexity of this project, that is reasonable.

66. I am further satisfied that the proposed Tridel Reconfiguration Plan should be approved. This Court approved an earlier Reconfiguration Plan in June, 2024 to reconfigure certain floors in the Project to accommodate an additional 88 Units. Tridel reviewed that Reconfiguration Plan during the SISP as fully set out in the Joint Report, and as part of its Development Proposal proposed a further reconfiguration of certain floors to reduce the total number of Units by 27, resulting in a net total of 476 Units.

67. The Receiver and Proposed Monitor have been fully involved with the further proposed reconfiguration and supports it, as do the Senior Secured Lenders. The specific design changes associated with the reduction in Units are expected to optimize the number of larger Units, while balancing the velocity of sales of such Units, and are anticipated to generate meaningful additional incremental value, with minimal impact on the Schedule. The parties have assured me that the proposed Tridel Reconfiguration Plan will not result in any material delays or the necessity for changes to municipal approvals.

68. I recognize that the Tridel Reconfiguration Plan will impact certain existing Unit Purchasers. In most cases, Equivalent Units will be available to the extent the relevant CSAs are ultimately affirmed. The Receiver has disclaimed the CSAs where Qualified Units are not available, and notice of the Tridel Reconfiguration Plan has been given to Unit purchasers. None appeared at the hearing of these motions to oppose. None of the disclaimers has been opposed. Accordingly, I am satisfied that the Tridel Reconfiguration Plan should be approved pursuant to section 11 of the *CCAA* as it will allow for the maximization of value in respect of the Residential Component of the Project.

69. For all of these reasons, and as stated at the conclusion of the hearing of the motion and Application, I granted the requested Receivership Discharge Order, the *CCAA* Initial Order and the Transaction Approval Order. They have immediate effect without the necessity of issuing and entering.

Osborne J.