

Court File No. CV-23-00707839-00CL

**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

**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**

**RESPONDING MOTION RECORD OF THE RESPONDENT,
CULT IRON WORKS LTD.
(Motion returnable June 6, 2024)**

June 3, 2024

**BISCEGLIA & ASSOCIATES
PROFESSIONAL CORPORATION**

Barristers-At-Law
9100 Jane Street
Bldg. A, Suite 200
Vaughan, Ontario
L4K 0A4

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LSO No. 34568Q

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Lawyers for the Respondent,
Cult Iron Works Ltd.

Court File No. CV-23-00707839-00CL

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<p>HOME CONSTRUCTION REGULATORY AUTHORITY 40 Sheppard Ave. W, Suite 400 Toronto, ON M2N 6K9 Wendy Moir E-mail: wendy.moir@hcraontario.ca Marc Spector E-mail: marc.spector@hcraontario.ca James Ryu E-mail: james.ryu@hcraontario.ca General E-mail Inbox E-mail: info@hcraontario.ca</p>	

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I N D E X

<u>Tab No.</u>	<u>Document</u>
1.	Affidavit of Paul Ditta, sworn June 3, 2024
A.	Exhibit A – Letter of Intent
B.	Exhibit B – Email to Kathryn Mayes of CCM
C.	Exhibit C – Payment Guarantee by Mizrahi Development Group (The One) Inc., dated July 5, 2021
D.	Exhibit D – Claim for Lien dated December 1, 2023
E.	Exhibit E – Statement of Claim issued January 11, 2024
F.	Exhibit F – Application to Delete Construction Lien dated January 16, 2024
G.	Exhibit G – Email from Brian Kester of Mizrahi Developments dated June 27, 2023

TAB 1

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Ontario

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ONE) INC., and MIZRAHI COMMERCIAL (THE ONE) GP INC.**

Respondents

AFFIDAVIT OF PAUL DITTA

**I, PAUL DITTA, of the Town of Whitchurch-Stouffville, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:**

1. I am an officer and director of Cult Iron Works Limited (“Cult”) one of the lien claimants in relation to this matter and, as such, have knowledge, information and belief regarding the matters hereinafter deposed to. Where information comes from another source, I identify the source and do verily believe the information provided by the source to be true.

2. I am swearing this Affidavit in response to the Alvarez & Marsal Canada Inc.’s (the “Receiver”) motion, but Cult’s objection is limited to the relief being sought with respect to the release of the holdback funds as set out in paragraph 3 of the Notice of Motion.

3. In or about May, 2019, Cult signed a Letter of Intent to provide miscellaneous metals to construction of the One Condominiums (the “Project”). Attached and marked as **Exhibit “A”** is

a copy of the Letter of Intent (“LOI”).

4. Cult met frequently with the then construction manager, Clark Construction Management Inc. (“CCM”) and, later Mizrahi Inc., to finalize a form of contract. However, we did not agree on several contract terms. One of the issues was that there were significant delays on the Project and Cult was incurring escalation costs because of those ongoing days. Attached and marked as **Exhibit “B”** is a copy of my email to Kathryn Mayes of CCM regarding the contract terms.

5. One additional document that was signed was a Payment Guarantee by Mizrahi Development Group (The One) Inc., in favour of Cult. Attached and marked as **Exhibit “C”** is a copy of the Payment Guarantee by Mizrahi Development Group (The One) Inc., dated July 5, 2021.

6. Given the Receivership, on December 1, 2023, Cult caused a claim for lien to be registered on the Project. Attached and marked as **Exhibit “D”** is a copy of the Claim for Lien, dated December 1, 2023, bearing Instrument No. AT6471408 (“Claim for Lien”).

7. On or about January 11, 2024, Cult also commenced an action in relation to the Claim for Lien. Attached and marked as **Exhibit “E”** is a copy of the Statement of Claim, issued January 11, 2024.

8. On or about January 16, 2024, an Application to Delete Construction Lien was registered on title pursuant to the Order of the Honourable Associate Justice Wiebe, dated January 15, 2024. Attached and marked as **Exhibit “F”** is a copy of the Application to Delete Construction Lien, dated January 16, 2024, Instrument No. AT6496477.

9. Cult is claiming both its holdback and its escalation costs. The breakdown of Cult’s claim for lien is:

NATURE OF CLAIM	AMOUNT (INCLUSIVE OF HST)
HOLDBACK	\$260,819.99
PROLONGATION CLAIM	\$183,852.06
TOTAL	\$444,672.05

10. As I understand, Cult is the only lien claimant on the Project.
11. Cult has not been asked to continue providing materials and services on the Project.
12. In the Motion Record, the Receiver has acknowledged the holdback due and owing to Cult.
13. However, prior to the Receivership, Mizrahi had agreed to compensate Cult for its escalation costs. Attached and marked as **Exhibit "G"** is a copy of the email from Brian Kester of Mizrahi Developments dated June 27, 2023.
14. I swear this affidavit in response to the Receiver's motion and for no other or improper purpose.

SWORN BEFORE ME)
 by Paul Ditta of the Town of)
 Whitchurch-Stouffville, in the Province)
 of Ontario, before me at the City of)
 Vaughan, in the Regional Municipality)
 of York, on June 3, 2024 in accordance)
 with O. Reg. 431/20, Administering)
 Oath or Declaration)
 Remotely)

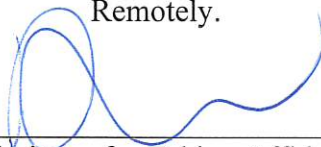

 PAUL DITTA


 A Commissioner for Taking Affidavits, etc.

Emilio Disceglia

R. Battista Frino
Barrister-at-law

*This is **Exhibit "A"** referred
to in the Affidavit of **Paul Ditta***
sworn before me, by video conference,
at the Town of Whitchurch-Stouffville,
in the Province of Ontario, this
3rd day of June, 2024 in accordance with O.
Reg.431/20, Administering Oath or Declaration
Remotely.



A Commissioner for Taking Affidavits, etc.

R. Battista Frino
Barrister-at-law



Tuesday, May 7, 2019

Attention: **Joseph Ditta**
Cult Iron Works LTD.
5 Stalwart Industrial Drive, Gormley, ON. L0H 1G0

Re: The ONE – Miscellaneous Metals – Contract Award Acknowledgement

Dear Joseph Ditta,

On behalf of Mizrahi Development Group (The One) Inc., this letter shall confirm that **Cult Iron Works LTD.** has been awarded the Contract for **Miscellaneous Metals** for The ONE project at One Bloor Street West, Toronto, as per the terms and conditions of the scope of work (see attached) and our Standard Contract.

Please acknowledge the agreed upon pricing listed below by signing and dating the space provided, and return a copy of this document via email to Matthew Jagiello at: Mjagiello@clarkcm.ca

By signing below, Cult Iron Works LTD. hereby agrees to execute all requirements and associated works of the Miscellaneous Metals for the construction of The ONE at the agreed amount of:

Total Contract Amount (Including Bonding and Allowances):

\$2,365,520.00 (CDN) (excluding HST)

Two million, three hundred, sixty-five thousand, five hundred and twenty Canadian Dollars.

 Per

 Date

When issued and executed, the Contract agreement shall replace this Letter of Intent. Prior to entering the Contract agreement, Mizrahi Development Group (The One) Inc., reserves the right to withdraw from any obligations **Cult Iron Works LTD.** contained in this Letter of Intent or elsewhere.

Yours truly,

Sam Mizrahi
 President
 Mizrahi Development Group (The One) Inc.



Bid Recap Date: May 14, 2019
Revision #: 3

Project Name: The One Bloor
Project Number: 1709BB03
Owner: Mizrahi Developments
Closing Date: April 15, 2019

The One - Miscellaneous Metals

Tender Summary

Final Negotiated Amount	\$	2,365,520.00	Cult Iron Works
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General Scope of Work

	Y/N	Cost	Notes
Agree to sign CCA 1 type contract	Y		
Review and acknowledge Schedule A - List of Contract Documents	Y		
Review and acknowledge Schedule B - Bid Form	Y		
Review and acknowledge Schedule C - Scope of Work (see below for breakdown)	Y		
Review and acknowledge Schedule D - Master Construction Schedule (for key milestone dates)	Y		
Review and acknowledge Schedule E - CCM Quality Management Plan	Y		
Review and acknowledge Schedule F - CCM Construction Management Plan	Y		
Review and acknowledge Addendum 1	Y		
Review and acknowledge Addendum 2	Y		
Prepare Work Schedule Plan	Y		
Any long lead items/durations (<3 weeks) if so, what is it & how long?	Y		None
Taxes: Excluded	Y		
General Liability and WSIB	Y		
Union labor	Y		Union #105
Maximum crew size and total manhours	Y		Estimated crew size 2-10
Support staff size (including project manager, foremen, etc.)	Y		Foreman, General Foreman
Current volume/backlog of work	Y		\$10MM
Use specified products and manufacturers, include delivery charges	Y		N/A
Second tier subcontractors	Y		None
Include all labour and material escalation	Y		
Include all means and methods required to complete this scope of work	Y		
Protect existing finishes as required	Y		
Coordination with all other trades as required	Y		
Provide 2 year standard warranty on all material and workmanship or as specified otherwise	Y		
Include all submittals with 10 days of award or as required. In general, bidders are required to expedite all shop drawings/ submittals. Partial submittals will be required to expedite the schedule-critical components of the work.	Y		As required
Due to logistical constraints, material storage will not be available at the job site. Contractor to plan and schedule deliveries accordingly.	Y		


Trade Specific Scope of Work

	Y/N	Cost	Notes
Furnish and install steel railings for all stairs as indicated on bid documents	Y		
Furnish and install hand railings for all stairs as indicated on bid documents	Y		

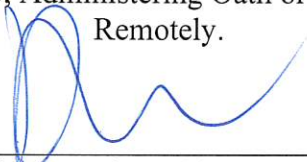
Bid Summary Sheet		Project Name: The One Bloor Project Number: 1709BB03 Owner: Mizrahi Developments Closing Date: April 15, 2019		Bid Recap Date: May 14, 2019 Revision #: 3	
The One - Miscellaneous Metals					
Tender Summary		Cult Iron Works			
Furnish and install hand railings for all ramps as required by code or as indicated in bid documents		Y			
Furnish and install guard rails in stairs as indicated and elsewhere as indicated on bid documents		Y			
Furnish elevator divider beams as indicated in bid documents to be completed with tack welding.		Y			
Furnish elevator machine beams as indicated in bid documents		Y			
Furnish elevator hoist beams as indicated in bid documents		Y			
Furnish embedded steel in elevator pit as indicated in bid documents		Y	\$	25,970.00	Breakout pricing included in Final Negotiated Amount
Furnish and install secondary elevator pit grating as indicated on bid documents		Y			
Furnish and install elevator pit ladders as indicated in bid documents		Y	\$	99,510.00	Breakout pricing included in Final Negotiated Amount
Furnish and install elevator ladders with cage for storm tank as required or as indicated in bid documents		Y			
Furnish and install galvanized ladders with guardrail as required or as indicated in bid documents		Y			
Furnish and install roof hatch access ladder with safety cages, primed		Y			
Furnish and install galvanized intake/exhaust air grille as indicated in bid documents		Y			
Furnish and install all miscellaneous angles at air shaft grills as indicated in bid documents or as required		Y			
Furnish and install galvanized grating as indicated in bid documents		Y			
Furnish and install galvanized steel framing for gas meter enclosure. Framing to be completed with door and hardware.		Y			
Furnish and install steel support in common area washrooms as required or as indicated on bid documents.		Y			
Furnish and install steel toilet partitions in common area washrooms as required or as indicated on bid documents.		Y			
Furnish and install steel tube framing for urinal partitions in common area washrooms as required or as indicated on bid documents.		Y			
Furnish and install height restriction bar at parking ramp		Y			
Furnish interior steel lintels for masonry wall openings		Y			
Furnish exterior steel lintels for masonry wall openings		Y			
Furnish lateral support brackets for masonry walls		Y			
Furnish shelf angles as required or as indicated in bid documents		Y			
Furnish and install HSS framing to support exterior wall at storage G-10		Y			
Furnish and install HSS post and bent plate angles for overhead doors and fire shutters		Y	\$	77,024.00	Breakout pricing included in Final Negotiated Amount
Furnish and install galvanized steel access ladder at winter garden as indicated in bid documents		Y			
Furnish and install all miscellaneous metal for facade on Yonge street		Y			
Furnish and install metal guard rail with pickets at loading dock		Y			
Furnish and install HSS tube steel for partition wall on 1st floor. Type W-3, between GL. C/2-5		Y			
Furnish and install HSS tube steel to support studs at level 2 thru level 3 between stair D & E		Y			
Furnish and install all miscellaneous metal including, HSS tube to support shaft wall as indicated in bid documents along col. GL. D-G/6		Y			
Furnish and install HSS framing c/w const. angles to support soffit ESS-104 as referenced on 3/A-713b		Y			
Furnish and install galvanized steel framing to support granite pavers above air intake shaft as referenced on A-800		Y			
Furnish and install HSS tube steel and galvanized steel angle to support masonry/flashing assembly as referenced on A-712.		Y			

Project Name: The One Bloor Project Number: 1709BB03 Owner: Mizrahi Developments Closing Date: April 15, 2019		Bid Recap Date: May 14, 2019 Revision #: 3	
The One - Miscellaneous Metals			
Tender Summary			
Cult Iron Works			
Furnish and install access ladder at elevator overruns as indicated on bid documents.	Y		
Furnish and install HSS framing c/w const. angles to support soffit ESS-107 as referenced on A-442	Y		
Sub-Total	\$		1,690,520.00
Cash Allowances (Included within stipulated sum)			
Furnish and install steel angles at stair D & E for shaft wall support	Y	\$	350,000.00
Furnish and install miscellaneous brackets to support stone cladding above ground floor at heritage and EW retail.	Y	\$	45,000.00
Furnish and install miscellaneous framing for heritage building	Y	\$	80,000.00
Furnish and install all miscellaneous metal not previously identified	Y	\$	200,000.00
Sub-Total	\$		675,000.00
Grand Total (Including Trade Specific Scope of Work and Cash Allowances)			
Grand Total	\$		2,365,520.00
Alternative Prices (Excluded from stipulated sum)			
Furnish and install overhead rolling fire shutter doors	N		
HSS Support Framing for Mid-Level Mechanical Louvers	Y	\$	1,687,792.00
Galvanized steel angle for top support of louvers at mid-level mechanical	Y	\$	279,712.00
Steel Canopy at Amenity Level	Y	\$	54,184.00
Steel HSS framing to support cladding above CMU at Level 2	Y	\$	76,061.00
No. 4 finish stainless steel spiral concourse pan stairs (treads by Others)	Y	\$	500,000.00
Unit Prices			
Furnish exterior galvanized bollard	Y	\$	905.00
Furnish interior bollard	Y	\$	689.00
Furnish and install stainless steel, brushed #4 finish corner guard	Y	\$	809.00
Furnish and install galvanized corner guard	N		
Furnish and install steel guards for standpipe risers	Y	\$	735.00
Furnish and install steel framing for electrical switch boxes	N	\$	995.00
Furnish and install wire mesh switch protection cage and cover with lock	N		
Separate Items (Not included in Stipulated Sum)	Y/N	Cost	Notes
Exclusions			
a. Structural steel.	Y/N	Cost	Notes
b. Feature stairs (no details)	Y		
c. Steel hangers on 5th and 9th floors as per 3/A450	Y		



Bid Summary Sheet		Project Name: The One Bloor Project Number: 1709BB03 Owner: Mizrahi Developments Closing Date: April 15, 2019		Bid Recap Date: May 14, 2019 Revision #: 3			
The One - Miscellaneous Metals							
Tender Summary							
Cull Iron Works							
d. Chain link fencing							
e. Miscellaneous bent plate at beams at building crown to create gutters to drain water and snow captured on roof back to TMD roof.							
f. Miscellaneous metal at base and header of 75mm exterior glass to support glazing shoes.							
g. Balcony railings and divider screens							
h. Bike racks							
i. Bench supports							
j. Cooling tower supports							
k. Any wood							
l. Light gauge steel							
m. Sump pit covers and frames							
n. Ladders and guardrails at pool and hot tubs							
o. Stud rails							
p. Drain covers							
q. Aluminum threshold							
r. Decorative metal screen							
s. Stainless steel, aluminum, and glass							
t. Any steel in suits							
u. Four (4) circular stairs at penthouse units at Levels 82 to roof.							
v. Stainless steel pipe handrails at swimming pool at Level 6 exterior amenity terrace							
w. All structural steel for heritage building							
x. Metal decking							
y. Curtain wall angle anchors							
z. Furnish and install stainless steel grating as required or as indicated in bid documents							
aa. Furnish and install galvanized HSS posts for vertical support for EWS-201 as indicated in bid documents							
ab. Furnish and install as miscellaneous metal including, HSS tube and continuous angle to support exterior wall EWS-901 as indicated in bid documents. Refer 4/A-436							
ac. Furnish and install pipe guards for all MEP penetrations as required or as indicated on bid documents							
Special Notes/Comments:							

*This is **Exhibit "B"** referred
to in the Affidavit of **Paul Ditta***
sworn before me, by video conference,
at the Town of Whitchurch-Stouffville,
in the Province of Ontario, this
3rd day of June, 2024 in accordance with O.
Reg.431/20, Administering Oath or Declaration
Remotely.



A Commissioner for Taking Affidavits, etc.

R. Battista Frino
Barrister-at-law

Battista Frino

From: Paul Ditta <pditta@cultironworks.com>
Sent: July 6, 2020 1:31 PM
To: Kathryn Mayes
Cc: Rob Ditta; Brett Latham; Cosimo Crupi
Subject: RE: ONE - Cult - Force Majeure Clause

Hi Kathryn,

Thank you for sending this to me.

The Force Majeure Clause must be resolved where it is mutually acceptable.

Todate, there have been several delays on this project that will impact the original schedule. The Force Majeure Clause proposed by Gladholt in its present form is not acceptable. Based on the original project time line the project will go beyond the expiry of our collective agreement, which will have a cost impact.

Please let me know when we can discuss and finalize the contract terms and conditions.

Thank you,

Paul Ditta
 Cult Iron Works Limited
 PO Box 189
 5 Stalwart Industrial Drive
 Gormley, L0H 1G0
 Phone: 905-888-5511 x222
 Mobile: 416-571-1222
 Fax: 905-888-5513
 Email: pditta@cultironworks.com



From: Kathryn Mayes <KMayes@clarkcm.ca>
Sent: July-02-20 12:54 PM
To: Paul Ditta <pditta@cultironworks.com>
Cc: Rob Ditta <rditta@cultironworks.com>; Brett Latham <BLatham@clarkcm.ca>
Subject: RE: ONE - Cult - Force Majeure Clause

Paul

Thank you for your time just now. See below re the correspondence between the lawyers re wording of the Force Majeure. Hope this helps. As mentioned it might be best to go back to the original CCA1 wording.

Kind regards

Kat

From: Cosimo Crupi <cacrupi@crupilaw.ca>
Sent: Tuesday, May 5, 2020 9:22 AM
To: Keith Bannon <KeithBannon@glaholt.com>
Cc: Pavle Levkovic <PavleLevkovic@glaholt.com>; Justyne Escujuri <JustyneEscujuri@glaholt.com>
Subject: RE: ONE | Cult Subcontract

Good morning Keith,

I hope this email finds you safe and healthy during this difficult period of time. I wish to respond to your email of April 29th, 2020 by addressing each numbered item in your email as follows:

1. The "Payment Guarantee" offered by your client is not acceptable. If Cult is required to provide bonding then Mizrahi Inc. must provide a labour and material payment bond;
2. Cult will agree to provide a quote for a bond, which quote will include the projected costs for management, accounting and professional fees, associated with the application for the bond, but only if Mizrahi Inc. agrees to provide Cult with a labour and material payment bond;
3. Cult will not accept a "pay when paid clause" in the Agreement; and
4. Your proposed definition of "Force Majeure" is acceptable. However, the exclusion of compensation for "all costs" incurred by such delays, whether arising directly or indirectly as a result of such Force Majeure event, is not acceptable. There are certain costs, which my client would expect to be compensated for in the event of Force Majeure. By way of example only, if the Force Majeure event were to continue beyond the projected completion date for the Agreement, and a new union contract comes into effect, my client would expect to be compensated for the delta in increased labour costs. My client sees no point in elaborating further on this point until the terms above are accepted by your client.

I understand that your client has asked my client for a meeting to discuss this matter. My client is not opposed to meeting with your client provided that nothing discussed or agreed to at any such meeting shall be binding on the parties unless and until it has been confirmed in writing by respective counsel for the parties.

Regards,

Cosimo Crupi



Cosimo A. Crupi, Lawyer
CRUPI LAW PROFESSIONAL CORPORATION
 Markhamwoods Business Centre
 305 Renfrew Drive | Suite 302
 Markham, Ontario | L3R 9S7
 Telephone: 905.415.8900 Ext. 225
 Facsimile: 905.415.8902
www.crupilaw.ca
www.linkedin.com/in/cosimoanthonycrupi

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From: Keith Bannon <KeithBannon@glaholt.com>

Sent: April 29, 2020 11:06 AM

To: Cosimo Crupi <cacrupi@crupilaw.ca>

Cc: Pavle Levkovic <PavleLevkovic@glaholt.com>; Justyne Escujuri <JustyneEscujuri@glaholt.com>

Subject: RE: ONE | Cult Subcontract

Cosimo,

We write in response to your email of March 25, 2020.

1. “Mizrahi shall provide Cult with a satisfactory labour and materials payment bond, at its own expense, in the minimum amount to be mutually agreed upon; the cost of which shall be paid by Mizrahi and not charged back to Cult”.

A labour and material bond is not necessary as Mizrahi Inc. will be providing a Payment Guarantee from Mizrahi Development Group (The One) Inc. (form of agreement attached).

2. “Cult shall provide Mizrahi with a performance bond in an amount to be mutually agreed upon, the cost of which shall be paid by Mizrahi and not charged back to Cult”.

This work in principle, but Cult must provide a quote for the cost of the bond, for Mizrahi Inc.’s review and approval. The cost of performance bond will be paid from the cash allowance, at Mizrahi’s option and discretion, should it be required and approved.

3. “All ‘pay when paid’ provisions shall be deleted from the Subcontract. Mizrahi shall be obligated to pay Cult invoices within 45 days after invoice month end. If a Cult invoice is not paid within the stated period, then Cult will have the right to terminate the Subcontract without any liability whatsoever”.

These clauses must remain in the Subcontract; however, as stated above, Mizrahi Inc. will provide a Payment Guarantee from Mizrahi Development Group (The One) Inc.

4. “The Subcontract must contain a satisfactory ‘Force Majeure’ clause, which includes ‘pandemic’ and ‘epidemic’ as a force majeure event”.

The Supplementary Conditions of the Subcontract (“SCC”) will be amended as per the below, to include the following Definition of “Force Majeure” and a revised Supplementary Subcontract Condition (“SSC”) 19:

Add a new Definition 28, Force Majeure, as follows:

28. Force Majeure

Force Majeure means any of the following events or circumstances (or combination of events and circumstances):

- (i) any strikes, lockouts, or labour disputes affecting the construction industry generally at the *Place of the Work*, provided that such strike, lockout or labour dispute is not initiated by the *Subcontractor*, its sub-subcontractors or suppliers, or their respective employees; or
- (ii) epidemics or pandemics (including, for greater certainty, the COVID-19 outbreak), enemy or hostile actions, sabotage, war, blockades, insurrections, riots, nuclear and radiation activity or fallout, civil

disturbances, explosions, fire and acts of God (provided that adverse weather conditions shall not be considered acts of God, even if such conditions are unusually adverse),
in each case which:

- (a) were not caused by a party, or anyone under their control;
- (b) are beyond the control of the party affected by that event or circumstance;
- (b) cause delay in, or prevent performance by, the affected party of any of its obligations under this *Subcontract*; and
- (c) cannot be prevented, overcome or remedied by the exercise by the affected party of a reasonable standard of care and diligence.

SSC 19 Delete SCC 6.5.3 and replace with the following:

If the *Subcontractor* is delayed in the performance of the *Work* by *Force Majeure*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend. The *Subcontractor* shall submit to the *Consultant*, within 14 *Working Days*, a detailed account of the *Contract Time* extension claimed and the grounds upon which the extension is based, complete with all required supporting documentation as determined by the *Consultant*. For greater certainty, this requirement does not replace the requirement for the *Subcontractor* to provide *Notice in Writing* of the cause of the delay in accordance with SCC 6.5.4. The *Subcontractor* shall not be entitled to payment for costs incurred by such delays, whether arising directly or indirectly as a result of such *Force Majeure* event. For greater certainty, notwithstanding anything in SCC 6.5.2, the *Subcontractor* shall not be entitled to reimbursement for any delays arising directly or indirectly as a result of *Force Majeure* events, even if such *Force Majeure* events result in a stop work order being issued by a court or other public authority.

We trust this resolves your client's concerns and remain,

Yours truly,



Keith Bannon

Managing Partner | Glaholt Bowles LLP

T: 416.368.8280 | F: 416.368.3467 | kb@glaholt.com

800-141 Adelaide St. W., Toronto, ON M5H 3L5

[Website](#) | [Twitter](#) | [LinkedIn](#) | [vcard](#)

Glaholt Bowles has created a [COVID-19 Resources Page](#) with information to help our clients and the industry. Please visit for important news and updates and let us know how we may assist you. Our office remains open and our lawyers and staff are working remotely to continue providing exceptional service to our clients during this period.

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Kathryn Mayes MEng | Project Manager

CLARK CONSTRUCTION MANAGEMENT INC.

33 Bloor St E, Suite 304 | Toronto, ON M4W 3H1 | cell (416) 388-8943 | email kmayes@clarkcm.ca

www.clarkconstructionmgt.com

 Please consider the environment before printing this email

From: Kathryn Mayes
Sent: June 30, 2020 6:34 PM
To: Paul Ditta <pditta@cultironworks.com>
Cc: Rob Ditta <rditta@cultironworks.com>; Brett Latham <BLatham@clarkcm.ca>
Subject: ONE - Cult - Force Majeure Clause

Paul

We had a follow up with Mizrahi today and they are not willing to accept the proposed Cult Force Majeure wording. They want to revert to the proposal made by Keith Bannon to Cosimo Crupi on April 29, 2020.

The payment guarantee has been clarified and the bond requirement has been dropped. I hope that we can close this final item and get the subcontract executed.

I am back in the office on Thursday if you want to call to further discuss, my contact details are below.

Kind regards

Kat



Kathryn Mayes MEng | Project Manager
CLARK CONSTRUCTION MANAGEMENT INC.
 33 Bloor St E, Suite 304 | Toronto, ON M4W 3H1 | cell (416) 388-8943 | email kmayes@clarkcm.ca
www.clarkconstructionmgt.com

 Please consider the environment before printing this email

From: Paul Ditta <pditta@cultironworks.com>
Sent: June 8, 2020 8:42 AM
To: Matthew Jagiello <MJagiello@clarkcm.ca>; Brett Latham <BLatham@clarkcm.ca>; Kathryn Mayes <KMayes@clarkcm.ca>
Cc: Rob Ditta <rditta@cultironworks.com>
Subject: Force Majeure Clause

Good morning Matt, Brett & Kathryn,

These are the changes that we propose with respect to Force Majeure.

The beginning of Section 6.5.1 needs to be amended as you have indicated so that it reads:

“If the Subcontractor is delayed in the performance of the Subcontract Work by:
.1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors’ association of which the Subcontractor is a member to which it is otherwise bound);
.2 fire, unusual delay by common carriers or unavoidable casualties;
.3 abnormally adverse weather conditions;
.4 a pandemic, epidemic, plague or other widespread occurrence of a contagion or disease;

- .5 a mandatory public quarantine order issued by a governmental authority;*
- .6 any other cause beyond the Subcontractor's control other than one resulting from a default of a breach of Subcontract by the Subcontractor..."*

And at the end of Section 6.5.1 its should read:

"The Subcontractor shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the Owner, Consultant, Contractor, or anyone employed or engaged by them directly or indirectly. Notwithstanding the foregoing, or any other term of this Subcontract, the Subcontractor shall be entitled to payment for costs incurred by any such delays which occur before, and continue beyond, April 30th, 2022

As for the contract, we have reviewed the payment guarantee proposed, and are more comfortable with the standard CCA 1 2008.

Thanks,

Paul Ditta
 Cult Iron Works Limited
 PO Box 189
 5 Stalwart Industrial Drive
 Gormley, L0H 1G0
 Phone: 905-888-5511 x222
 Mobile: 416-571-1222
 Fax: 905-888-5513
 Email: pditta@cultironworks.com




*This is **Exhibit "C"** referred
to in the Affidavit of **Paul Ditta**
sworn before me, by video conference,
at the Town of Whitchurch-Stouffville,
in the Province of Ontario, this
3rd day of June, 2024 in accordance with O.
Reg.431/20, Administering Oath or Declaration
Remotely.*

A Commissioner for Taking Affidavits, etc.

R. Battista Frino
Barrister-at-law

PAYMENT GUARANTEE

dated as of July 5, 2021 , ~~2019~~

in respect of

MIZRAHI INC.

granted by

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

in favour of

CULT IRON WORKS LIMITED

PAYMENT GUARANTEE

dated as of _____, 2019

in respect of

MIZRAHI INC.

granted by

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

in favour of

CULT IRON WORKS LIMITED

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PAYMENT GUARANTEE

This Guarantee (as amended, restated, supplemented, replaced or otherwise modified from time to time, this "Guarantee") made effective as of August 26th, 2019 is granted by:

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.,
(together with its successors and permitted assigns, the "Guarantor")

in favour of

CULT IRON WORKS LIMITED
(together with its successors and assigns, the "Subcontractor")

RECITALS:

WHEREAS, pursuant to that certain CCA1 Stipulated Price Subcontract made as of August 26th 2019 (as amended, restated, replaced, supplemented or otherwise modified from time to time, including pursuant to any and all change orders issued in connection therewith, the "Subcontract") between **MIZRAHI INC.** as contractor (together with its estate, successors and assigns, the "Contractor") and the Subcontractor as subcontractor, the Subcontractor has agreed to undertake certain Work as described therein.

AND WHEREAS, as a condition precedent to the commencement of any Work under the Subcontract, the Subcontractor requires, *inter alia*, that the Guarantor shall have executed and delivered this Guarantee to and in favour of the Subcontractor with respect to all of the obligations and liabilities of the Contractor under the Subcontract.

NOW THEREFORE in consideration of the sum of \$10.00 and other good and valuable consideration now paid by Subcontractor to the Guarantor (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby covenant and agree as follows:

ARTICLE 1 – INTERPRETATION

Section 1.1 Definitions

Unless otherwise defined, capitalized terms used herein shall have the respective meanings given to such terms in the Subcontract, and:

- (1) "Contractor" has the meaning given to it in the Recitals.
- (2) "Subcontract" has the meaning given to it in the Recitals.
- (3) "Guarantee" has the meaning given to it in the preamble to this Guarantee.
- (4) "Guaranteed Obligations" has the meaning given to it in Section 2.1.
- (5) "Guarantor" has the meaning given to it in the preamble to this Guarantee.
- (6) "Subcontractor" has the meaning given to it in the preamble to this Guarantee.

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(7) **"Pay-If-Paid Clause"** means a 'pay-when-paid', 'pay-if-paid' or any similar clause contained in the Subcontract, pursuant to which, the Contractor does not have to pay the Subcontractor (or to provide any relief to the Subcontractor) until the Contractor has received funds in respect of such payment from the owner, as defined therein (or received the same relief from the owner), including Article 6.2(iii), as stated in Supplementary Article SA 2, Article SA 3 (which restates Article 6.3) and Section SSC 10 (which restates SCC 6.6.7) of the Subcontract. For greater certainty, Article 6.2, with the exception of subparagraph 6.2(iii), as modified by Supplementary Article 2, does not form part of the definition of "Pay-If-Paid Clause".

Section 1.2 Rules of Interpretation

In this Guarantee, unless the subject matter or context clearly indicates to the contrary:

- (a) all uses of the words "hereto", "herein", "hereof", "hereby" and "hereunder" and similar expressions refer to this Guarantee and not to any particular section or portion of it, and all references in this Guarantee to Articles, Sections and Schedules shall be construed to refer to Articles, Sections of and Schedules to, this Guarantee;
- (b) where the word "including" or "includes" is used in this Guarantee, it means "including without limitation" or "includes without limitation".
- (c) words importing the singular include the plural and vice versa and words importing gender include the masculine, feminine and neutral genders;
- (d) the terms "In writing" and "written" shall include printing, typewriting or any electronic means of communication capable of being visibly reproduced at the point of reception, including, without limitation, telexes, telegraphs or facsimile; and
- (e) the division of this Guarantee into sections and the insertion of headings are for reference only and are not to affect the construction or interpretation of this Guarantee.

Section 1.3 Paramountcy

Except as otherwise provided in this Guarantee, including in Section 1.4(b) hereof, if there is a conflict or inconsistency between any provision of this Guarantee and any provision of the Subcontract, the relevant provision of the Subcontract shall govern and prevail to the extent necessary to resolve such conflict or inconsistency.

Section 1.4 Maximum Liability

Notwithstanding anything contained herein to the contrary:

- (a) the total liability of the Guarantor under this Guarantee shall be no greater than the total liability of the Contractor under the Subcontract;
- (b) the liability of the Guarantor under this Guarantee shall not be impacted or decreased on the basis of reliance on a Pay-If-Paid Clause and the terms of this

- 5 -

Guarantee supersede and override any Pay-If-Paid Clause contained in the Subcontract.

Section 1.5 Defences Under the Subcontract

This Guarantee shall be subject in all respects to the terms of the Subcontract, including, but not limited to, Article 6 – Payment, the notice provisions within SCC 7.2, and the Supplementary Conditions of the Subcontract. In response to any demand for payment under this Guarantee, the Guarantor shall have recourse to all defences, contractual, at law, or otherwise, that are available to the Contractor under, or in connection with, the Subcontract, save and except that in all cases, that the Guarantor shall not have recourse to any defences available to the Contractor under a Pay-If-Paid Clause (and for greater certainty, if the Contractor does not make a payment under the Subcontract by relying on such a clause, such non-payment shall constitute an obligation of the Guarantor hereunder and the Subcontractor shall have the right to demand such payment hereunder whether or not such non-payment constitutes a default under the Subcontract).

Section 1.6 Payment on Demand

In consideration of the mutual covenants and agreements contained herein, and in consideration of the Works to be undertaken by the Subcontractor pursuant to the Subcontract which will provide the Guarantor with direct benefit, the Guarantor hereby agrees, subject to Section 1.5, to make immediate direct payment to the Subcontractor of all progress payments (including, for greater certainty, any payments constituting releases of statutory holdbacks and any progress payments in respect of approved Change Orders), as verified by the Consultant, payable by the Contractor to the Subcontractor under the Subcontract that are overdue from time to time. Such payments shall be made by the Guarantor upon demand by the Subcontractor, after the Subcontractor shall first have made demand on the Contractor and any requisite notice period shall have expired, in accordance with the terms and conditions of the Subcontract, and the Guarantor shall have the benefit of defences under the Subcontract as set out in Section 1.5, save and except that the Guarantor shall not have recourse to any defences available to the Contractor under a Pay-If-Paid Clause.

ARTICLE 2 – GUARANTEE AND REALIZATION

Section 2.1 Guarantee

The Guarantor hereby irrevocably guarantees to the Subcontractor complete payment of all progress payments (including, for greater certainty, any payments constituting releases of statutory holdbacks and any progress payments in respect of approved Change Orders), as verified by the Consultant, that the Contractor fails to pay to the Subcontractor, to the extent the Contractor is in default of its payment obligations under the Subcontract; and for greater certainty, this Guarantee is subject to the terms of the Subcontract, including, but not limited to, Article 6 – Payment, the notice provisions within SCC 7.2, and the Supplementary Conditions of the Subcontract, but subject to the Guarantor's limitation on its recourse with respect to defences available to the Contractor under a Pay-If-Paid Clause, as set out in Section 1.5 (collectively, the "Guaranteed Obligations"). The Guarantor acknowledges the Subcontractor may make multiple demands pursuant to the Guaranteed Obligations under this Guarantee.

ARTICLE 3 – OBLIGATIONS CONTINUING

Section 3.1 Payment

The obligations of the Guarantor hereunder shall be continuing and shall remain in full force until the Guaranteed Obligations (including all payments, statutory holdbacks and any contractual holdbacks) under the Subcontract have been indefeasibly paid and satisfied in full, subject to the terms of the Subcontract. For greater certainty, if the Contractor does not make a payment under the Subcontract by relying on a Pay-If-Paid clause, such non-payment shall constitute a continuing obligation of the Guarantor hereunder, including without limiting the generality of the foregoing, pursuant to Section 1.6 and Section 2.1.

ARTICLE 4 – PAYMENT

Section 4.1 Payment on Demand

Subject to the terms of the Subcontract, the Guarantor agrees to make payment to the Subcontractor, of all of the Guaranteed Obligations that are not paid by the Contractor when due and payable to the Subcontractor, or any of them, in the currency or currencies in which such Guaranteed Obligations are denominated, upon demand for payment therefor by the Subcontractor to the Guarantor and in any event no later than five business days after such demand for payment.

The Subcontractor is obligated to enforce its remedies against the Contractor under the Subcontract, prior to proceeding to enforce this Guarantee. For greater certainty, if the Contractor does not make a payment under the Subcontract by relying on the Pay-If-Paid clause alone, such non-payment shall constitute an obligation of the Guarantor hereunder and the Subcontractor shall have the right to demand such payment hereunder whether or not such non-payment constitutes a default under the Subcontract.

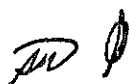
Section 4.2 Application of Funds

The Subcontractor may apply payments received from the Guarantor for the Contractor's account and the Guarantor's account to such portions of the Guaranteed Obligations and the obligations of the Guarantor, respectively, then due and payable in its reasonable discretion.

ARTICLE 5 – OBLIGATIONS NOT AFFECTED

Section 5.1 Dealing with the Contractor and Others

The Subcontractor, without releasing, discharging, limiting or otherwise affecting in whole or in part the Guaranteed Obligations and without the consent of or notice to the Guarantor, may grant time, extensions, compromises, concessions, waivers, releases, discharges and other indulgences to the Contractor or any other Persons; take or abstain from taking collateral from the Contractor or any other Person, or from perfecting liens or collateral of the Contractor or any other Person; release, discharge, compromise, realize, enforce or otherwise deal with or do any act or thing in respect of (with or without consideration) any and all collateral given by the Contractor or any other Person with respect to the obligations of the Contractor; apply all money at any time received from the Contractor or any other Person; and save and



- 7 -

except for gross negligence or wilful misconduct of the Subcontractor, as determined by a court of competent jurisdiction by final and non-appealable judgment, the Subcontractor shall not incur any liability to the Guarantor as a result thereof.

Section 5.2 Acknowledgement

The Guarantor hereby unconditionally and irrevocably waives any right to revoke the Guarantee and acknowledges that this Guarantee shall guarantee all presently existing and future Guaranteed Obligations, up to the limits specified under section 2.1, until the complete, irrevocable, and indefeasible payment and satisfaction in full of the Guaranteed Obligations. The Guarantor hereby acknowledges receipt and independent review of the terms of the Subcontract and of all the provisions therein contained and consents to and approves the same.

ARTICLE 6 – REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 6.1 Representation and Warranties

The Guarantor represents and warrants to the Subcontractor that it has the full corporate power and authority to enter into the Guarantee, to carry out its obligations hereunder and to consummate the transactions contemplated hereby; its execution and delivery of this Guarantee and performance of its obligations hereunder have been duly authorized by all requisite corporate action on the part of the Guarantor; and this Guarantee has been duly executed and delivered by the Guarantor, and constitutes a legal, valid and binding obligations of the Guarantor enforceable against the Guarantor in accordance with its terms.

ARTICLE 7 – GENERAL

Section 7.1 No Waiver, Cumulative Remedies


No failure to exercise and no delay in exercising, on the part of the Subcontractor, any right, remedy, power or privilege under this Guarantee, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege under this Guarantee preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges under this Guarantee are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 7.2 Further Assurances

The Guarantor shall from time to time promptly, upon the request of the Subcontractor, take such action, and execute and deliver, or cause to be executed and delivered, such further documents and instruments as may be reasonably necessary or appropriate to give effect to the provisions and intent of this Guarantee.

Section 7.3 Notices

Except as otherwise provided herein, all notices provided for hereunder shall be given and deemed to be received in accordance with the provisions of the Subcontract to the addresses as set out therein (in respect of the Subcontractor) and as set out on the signature page below (in respect of the Guarantor).



Section 7.4 Governing Law

This Guarantee shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Section 7.5 Jurisdiction

Any action or proceeding arising out of based upon this Guarantee will be instituted in the courts of the Province of Ontario, and the Guarantor irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding.

Section 7.6 Entire Agreement

This Guarantee, including all documents contemplated hereby, constitute the entire agreement between the parties with respect to the subject matter and supersedes all prior negotiations, undertakings, representations and understandings.

Section 7.7 Severability

Any provision of this Guarantee which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.8 Amendments in Writing.

No term or provision of this Guarantee may be waived, amended supplemented or otherwise modified except by an agreement in writing signed by the Guarantor and the Subcontractor.

Section 7.9 Successors and Assignees

(1) Successors and Assigns. This Guarantee shall be binding on the Guarantor, its successors and permitted assigns, and shall inure to the benefit of and be enforceable by the Subcontractor and its successors and assigns.

(2) Assignment. Neither party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the other party, which consent shall not be unreasonably withheld.

Section 7.10 Other Terms

(1) Interpretation. This Guarantee has been negotiated and approved by the parties and, notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of the authorship of any of the provisions of this Guarantee.

Section 7.11 Counterpart; Delivery by Electronic Transmission

This Guarantee may be executed in any number of counterparts, each of which shall collectively and separately constitute one and the same agreement. Any party may execute this Guarantee by signing any counterpart of it and may communicate such signing by telecopier,

- 9 -

electronic means or otherwise. Any counterpart executed or transmitted by electronic means, as executed, shall be deemed a valid and binding original.

[SIGNATURE PAGE FOLLOWS]

PD *11*

IN WITNESS WHEREOF, the undersigned Guarantor has caused this Guarantee to be duly executed and delivered as of the date first written above.

THE GUARANTOR:

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

Notice Address: 125 Hazelton Avenue
Toronto, Ontario
M5R 2E4

Per:  _____

Name: Sam Mizrahi
Title: President

Attention: Sam Mizrahi _____

Email: sam@mizrahidevelopments.ca _____

Facsimile: 1-866-300-0219 _____

THE SUBCONTRACTOR:

CULT IRON WORKS LIMITED

Notice Address:

P.O. Box 189

5 Stalwart Industrial Drive
Gormley, Ontario, L0H 1G0

Per:  _____

Name: Paul Ditta

Title: President

Attention: Paul Ditta

Email: pditta@cultironworks.com

Facsimile: Fax: 905-888-5513

*This is **Exhibit "D"** referred
to in the Affidavit of **Paul Ditta***
sworn before me, by video conference,
at the Town of Whitchurch-Stouffville,
in the Province of Ontario, this
3rd day of June, 2024 in accordance with O.
Reg.431/20, Administering Oath or Declaration
Remotely.



A Commissioner for Taking Affidavits, etc.

R. Battista Frino
Barrister-at-law

LRO # 80 Construction Lien

Received as AT6471408 on 2023 12 01 at 15:15

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 3

Properties

PIN 21109 - 0244 LT

Description FIRSTLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; SECONDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; THIRDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; FOURTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 163R658; SUBJECT TO AN EASEMENT AS IN AT5101384; FIFTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; SIXTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; SEVENTHLY: FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, SAVE AND EXCEPT PART 2 ON PLAN 66R-32221; SUBJECT TO AN EASEMENT AS IN AT5101384; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 AND 8 ON PLAN 66R-32221 AS IN AT6077647; SUBJECT TO AN EASEMENT OVER PARTS 4, 5 AND 6 ON PLAN 66R-32221 AS IN AT6077654; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT OVER PART 3 ON PLAN 66R-32221 IN FAVOUR OF PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT AS IN AT6227322; CITY OF TORONTO

Address 1 BLOOR ST WEST
TORONTO

Consideration

Consideration \$519,319.76

Claimant(s)

Name CULT IRON WORKS LIMITED
Address for Service 5 Stalwart Industrial Drive, Gormley,
Ontario, L0H 1G0

SOLICITOR: Emilio Bisceglia
9100 Jane Street, 2nd floor,
Concord, Ont L4K 0A4

I, Paul Ditta, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner See Schedule Name and address of person to whom lien claimant supplied services or materials See Schedule Time within which services or materials were supplied from 2020/03/26 to 2023/11/15 Short description of services or materials that have been supplied : The supply of services and materials for miscellaneous metals and related matters. Contract price or subcontract price \$2,792,021.97 (H.S.T. included) Amount claimed as owing in respect of services or materials that have been supplied \$519,319.76 (H.S.T. included)

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: See Schedules

Signed By

Anne Scott 85 Rosebury Lane acting for Signed 2023 12 01
Woodbridge Applicant(s)
L4L 3Z1

Tel 905-264-1632

Fax 905-264-1059

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

SUMMIT SEARCH LIMITED 85 Rosebury Lane 2023 12 01
Woodbridge
L4L 3Z1

Tel 905-264-1632

LRO # 80 Construction Lien

Received as AT6471408 on 2023 12 01 at 15:15

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 3

Submitted By

Fax 905-264-1069

Fees/Taxes/Payment

Statutory Registration Fee	\$69.95
Total Paid	\$69.95

File Number

Claimant Client File Number : 714/23

Name of Owner:

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

The One – 1 Bloor St. West, Toronto, Ontario

189 Forest Hill Road, Toronto, Ontario, M5P 2N3

Name of person to whom lien claimant supplied services or materials:

MIZRAHI INC.

189 Forest Hill Road, Toronto, Ontario, M5P 2N3

125 Hazelton Avenue, Toronto, Ontario, M5R 2E4

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

The One – 1 Bloor St. West, Toronto, Ontario

189 Forest Hill Road, Toronto, Ontario, M5P 2N3

MIZRAHI DEVELOPMENTS

126 Hazelton Avenue, Toronto, Ontario, M5R 2E5

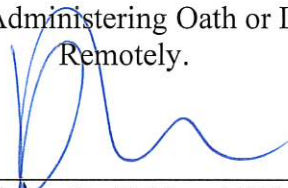
125 Hazelton Avenue, Toronto, Ontario, M5R 2E4

189 Forest Hill Road, Toronto, Ontario, M5P 2N3

MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

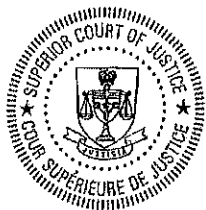
125 Hazelton Avenue, Toronto, Ontario, M5R 2E4

*This is **Exhibit "E"** referred
to in the Affidavit of **Paul Ditta***
sworn before me, by video conference,
at the Town of Whitchurch-Stouffville,
in the Province of Ontario, this
3rd day of June, 2024 in accordance with O.
Reg.431/20, Administering Oath or Declaration
Remotely.



A Commissioner for Taking Affidavits, etc.

R. Battista Frino
Barrister-at-law



Court File No.

Ontario
SUPERIOR COURT OF JUSTICE

**IN THE MATTER OF THE *CONSTRUCTION ACT*,
 R.S.O. 1990, c.C.30**

B E T W E E N:

CULT IRON WORKS LIMITED

Plaintiff

- and -

**MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.,
 MIZRAHI INC., MIZRAHI DEVELOPMENTS,
 MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.,
 COCO INTERNATIONAL INC.,
 AVIVA INSURANCE COMPANY OF CANADA/AVIVA, COMPAGNIE D'ASSURANCE
 DU CANADA, CERICCO CANADA CORP. and
 KEB HANA BANK CANADA**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff(s). 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(s) or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), 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 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 (5) years after the action was commenced unless otherwise ordered by the Court.

DATE:

ISSUED BY: _____
Local Registrar

ADDRESS OF COURT HOUSE:

Ontario
Superior Court of Justice
330 University Avenue
8th Floor
Toronto, Ontario, M5G 1R7

TO:**MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.**

The One – 1 Bloor St. West, Toronto, Ontario, M4W 1A3
and/or
189 Forest Hill Road, Toronto, Ontario, M5P 2N3

TO:**MIZRAHI INC.**

189 Forest Hill Road, Toronto, Ontario, M5P 2N3
and/or
125 Hazelton Avenue, Toronto, Ontario, M5R 2E4

TO:**MIZRAHI DEVELOPMENTS**

126 Hazelton Avenue, Toronto, Ontario, M5R 2E5
and/or
125 Hazelton Avenue, Toronto, Ontario, M5R 2E4
and/or
189 Forest Hill Road, Toronto, Ontario, M5P 2N3

TO:**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

125 Hazelton Avenue, Toronto, Ontario, M5R 2E4

TO:

COCO INTERNATIONAL INC.

271 Spadina Road, 5th Floor, Toronto, Ontario, M5R 2V3

and/or

949 Wilson Avenue, Toronto, Ontario, M3K 1G2

TO:

**AVIVA INSURANCE COMPANY OF CANADA/AVIVA, COMPAGNIE D'ASSURANCE
DU CANADA**

10 Aviva Way, 100, Markham, Ontario, L6G 0G1

and/or

c/o Suite 205, 600 Cochrane Drive, Markham, Ontario, L3R 5K3

TO:

CERIECO CANADA CORP.

99 Bank Street, 1420, Ottawa, Ontario, K1P 1H4

and/or

1 Yonge Street, 1801, Toronto, Ontario, M5E 1W7

and/or

c/o Dentons Canada LLP, 1420-99 Bank Street, Ottawa, Ontario, K1P 1H4

and/or

181 Bay Street, Suite 4400, Toronto, Ontario, M5J 2T3

TO:

KEB HANA BANK CANADA

627 Bloor Street West, Bloor Branch

Toronto, Ontario, M6G 1K8

CLAIM

1. The Plaintiff claims as against the Defendants, or any one of them, for the following:

- (a) payment of the sum of \$444,669.05;
- (b) alternatively, the sum of \$444,669.05 as restitution to the Plaintiff of the reasonable value of the materials and services supplied by the Plaintiff to the detriment of the Plaintiff and the benefit of the Defendants, all on the basis of *quantum meruit* and unjust enrichment;
- (c) alternatively, the sum of \$444,669.05 as damages for breach of contract plus damages for breach of the duty of good faith in contractual performance for an amount to be determined by the Court or at trial;
- (d) pre-judgment and post-judgment interest calculated as follows:
 - 2% per annum above the prime rate for the first 60 days.
 - 4% per annum above the prime rate after the first 60 days.
 - Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted for prime business loans as it may change from time to time.
- (e) in the alternative, pre-judgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, and any amendments thereto;
- (f) its costs of this action on a substantial indemnity basis, including H.S.T.
- (g) that, in default of payment of the said sum of \$444,669.05 inclusive of H.S.T. plus costs, all the estate and interest of the Defendants in the lands and premises hereinafter described in Schedule "A" attached hereto ("Lands") be sold and the proceeds, together with the cash proceeds of any and all bonds or letters of credit paid into Court under the *Construction Act* with respect to the improvement and premises be applied towards payment of the Plaintiff's claim for principal, interest and costs pursuant to the provisions of the *Construction Act*, R.S.O. 1990, c. C. 30;

- (h) an order for declaration as to the holdback in relation to the Defendants and an order that the Plaintiff be paid any amounts owing;
- (i) a declaration that the Plaintiff's lien attaches to any security posted to vacate the Plaintiff's claim for lien;
- (j) a declaration that the Plaintiff's claim for lien is a charge against the holdback required to be retained by the Defendants, or any of them, pursuant to the *Construction Act*;
- (k) full priority over the charges of Coco International Inc., Aviva Insurance Company of Canada/Aviva, Compagnie D'Assurance Du Canada, Cerieco Canada Corp. and Keb Hana Bank Canada, or alternatively, priority to the extent of any deficiency in the holdbacks required to be retained by the Defendants, or any of them, and in addition, or in the further alternative, to the extent that the charges may be prior charges under the *Construction Act*, priority over the charges of these Defendants to the extent that any portion advanced exceeded the actual value of the premises at the time when the first lien arose, or in the further alternative, priority over the said charges to the extent of any unadvanced portions thereof or in addition, or in the further alternative, priority to the extent of any advance made at the time when there was a preserved or perfected lien against the lands and premises hereinafter described, or after receipt of a written notice of a lien;
- (l) an accounting from the Defendants of the funds advanced for the purpose of financing the construction of the improvement;
- (m) for the purposes above, and for all other purposes that all proper directions be given, queries made, and accounts taken;
- (n) an order for an issuance of a Writ of Possession in relation to the Lands;

- (o) an order for Writ of Possession of the Lands;
- (p) an order for possession of the Lands; and
- (q) such further and other relief as to this Honourable Court may seem just.

Parties

2. The Plaintiff, Cult Iron Works Limited (“**Plaintiff**”), is a corporation incorporated pursuant to the laws of the Province of Ontario. At all material times, the Plaintiff carried on business as a supplier of miscellaneous metals and related matters.

3. The Defendant, Mizrahi Development Group (The One) Inc., (“**Owner**”) is a company incorporated pursuant to the laws of the Province of Ontario, and at all material times, was the owner and party to whom the Plaintiff supplied the services and materials.

4. The Defendants, Mizrahi Inc., Mizrahi Developments and Mizrahi Development Group (1451 Wellington) Inc., (collectively “**Mizrahi**”), were at all material times, the parties to whom the Plaintiff supplied the services and materials.

5. The Defendants, Coco International Inc., Aviva Insurance Company of Canada/Aviva, Compagnie D’Assurance Du Canada, Cerieco Canada Corp. and Keb Hana Bank Canada, who at all material times, are mortgagees who provided mortgage funds.

Improvement

6. On or about August 7, 2019, the Plaintiff and the Defendant, Mizrahi, entered into a contract to provide services and materials, including miscellaneous metals and related matters with respect to the construction of a mixed-use condominium development to the Lands with the municipal address of 1 Bloor Street West, Toronto, known as The One (“**Project**”).

7. It was a term of the delivery that any overdue invoice from the Plaintiff would bear interest as follows:

- (a) 2% per annum above the prime rate for the first 60 days.
- (b) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted for prime business loans as it may change from time to time.

8. The Plaintiff delivered the materials and services requested with the sum of \$519,319.76, including H.S.T., remaining unpaid and owing to the Plaintiff.

9. By reason of supplying the services and materials, the Plaintiff became entitled to a lien upon the interest of the Lands for the sum of \$519,319.76 together with interest, plus costs of this action, pursuant to the provisions of the *Construction Act*.

10. Subsequent to registering the Claim for Lien, the Plaintiff received a payment from Mizrahi and the amount owing is now \$444,669.05, inclusive of H.S.T. and not \$519,319.76.

11. Alternatively, the Plaintiff states that it supplied materials and services at the request of and for the benefit of the Defendants to the detriment of the Plaintiff and without juristic reason. These Defendants have been enriched by the Plaintiff's materials which are valued in the amount of \$444,669.05. The Plaintiff claims restitution from these Defendants, or any of them, to the full extent of the value of the enrichment. The Plaintiff pleads and relies on the doctrine of *quantum meruit* and the principles against unjust enrichment.

12. By Order of the Honourable Mr. Justice Osborne dated October 18, 2023, Alvarez & Marsal Canada Inc., was appointed as receiver and manager, without security of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., and related corporations in connection with the Project.

Claim for Lien

13. On December 1, 2023, the Plaintiff caused to be registered a Claim for Lien against title to the Lands in the Land Registry Office for the Land Titles Division of Toronto (No. 80), as Instrument No. AT6471408. Attached hereto and marked as Schedule “B” is a true copy of the Claim for Lien.

14. At all material times, the lands and premises described in the Claim for Lien were owned by the Owner and are the Lands to which the Plaintiff supplied materials at the request of, upon the credit, on behalf, with the privity and consent, and for the direct benefit of the Owner, and accordingly, it is and was, at all material times, the statutory owner within the meaning of the *Construction Act*.

15. As a result of the above, the Defendants, or any of them, are liable to the Plaintiff to the extent that they failed to comply with their obligations under the *Construction Act*. In this regard, the Plaintiff asks for an accounting of all payments made in relation to the Improvement.

MORTGAGES

Coco International Inc.

16. Coco International Inc. became a mortgagee of the Lands by virtue of a charge which was registered on November 30, 2015, in the Land Registry Office for the Land Titles Division of Toronto (No. 80), as Instrument No. AT4081016 (“**Coco Mortgage**”).

17. The Coco Mortgage was given and taken by the Owner with the intention to secure the financing of the improvements on the Lands and the Plaintiff therefore claims that its lien has full priority over the Coco Mortgage.

18. Alternatively, the Plaintiff states that its lien has full priority over the Coco Mortgage to the extent that any portion of the Coco Mortgage advanced exceeded the actual value of the Lands at the time when the first lien arose.

19. In the further alternative, the Plaintiff states that its claim for lien has priority over the Coco Mortgage to the extent of any unadvanced portions.

20. The knowledge of all advances pursuant to the Coco Mortgage is within the knowledge of the respective Defendants.

21. In the further alternative, the Plaintiff states that its lien has priority over the Coco Mortgage to the extent of any advance made at a time when there was a preserved or perfected lien against the Lands or after receipt of written notice of a lien.

10

22. To the extent that the Coco Mortgage may be a subsequent mortgage under the *Construction Act*, the Plaintiff states that its lien has priority over the Coco Mortgage to the extent of any deficiency in the holdback required to be retained by the Owner as the Coco Mortgage was registered after the time when the first lien arose in respect of the construction project or improvement.

Aviva Insurance Company of Canada

23. Aviva Insurance Company of Canada became a mortgagee of the Lands by virtue of a charge, which charge was registered on March 12, 2018, in the Land Registry Office for the Land Titles Division of Toronto (No. 80), as Instrument No. AT4818862 (“**Aviva Mortgage**”).

24. The Aviva Mortgage was given and taken by the Owner with the intention to secure the financing of the improvements on the Lands and the Plaintiff therefore claims that its lien has full priority over the Aviva Mortgage.

25. Alternatively, the Plaintiff states that its lien has full priority over the Aviva Mortgage to the extent that any portion of the Aviva Mortgage advanced exceeded the actual value of the Lands at the time when the first lien arose.

26. In the further alternative, the Plaintiff states that its claim for lien has priority over the Aviva Mortgage to the extent of any unadvanced portions.

27. The knowledge of all advances pursuant to the Aviva Mortgage is within the knowledge of the respective Defendants.

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28. In the further alternative, the Plaintiff states that its lien has priority over the Aviva Mortgage to the extent of any advance made at a time when there was a preserved or perfected lien against the Lands or after receipt of written notice of a lien.

29. To the extent that the Aviva Mortgage may be subsequent mortgages under the *Construction Act*, the Plaintiff states that its lien has priority over the Aviva Mortgage to the extent of any deficiency in the holdback required to be retained by the Owner as the Aviva Mortgage was registered after the time when the first lien arose in respect of the construction project or improvement.

Cerieco Canada Corp.

30. Cerieco Canada Corp. became a mortgagee of the Lands by virtue of a charge which was registered on July 11, 2019, in the Land Registry Office for the Land Titles Division of Toronto (No. 80), with Instrument No. AT5183295 ("**Cerieco Mortgage**").

31. The Cerieco Mortgage was given and taken by the Owner with the intention to secure the financing of the improvements on the Lands and the Plaintiff therefore claims that its lien has full priority over the Cerieco Mortgage.

32. Alternatively, the Plaintiff states that its lien has full priority over the Cerieco Mortgage to the extent that any portion of the Cerieco Mortgage advanced exceeded the actual value of the Lands at the time when the first lien arose.

33. In the further alternative, the Plaintiff states that its claim for lien has priority over the Cerieco Mortgage to the extent of any unadvanced portions.

12

34. The knowledge of all advances pursuant to the Cerieco Mortgage are within the knowledge of the respective Defendants.

35. In the further alternative, the Plaintiff states that its lien has priority over the Cerieco Mortgage to the extent of any advance made at a time when there was a preserved or perfected lien against the Lands or after receipt of written notice of a lien.

36. To the extent that the Cerieco Mortgage may be a subsequent mortgage under the *Construction Act*, the Plaintiff states that its lien has priority over the Cerieco Mortgage to the extent of any deficiency in the holdback required to be retained by the Owner as the Cerieco Mortgage was registered after the time when the first lien arose in respect of the construction project or improvement.

Keb Hana Bank Canada

37. Keb Hana Bank Canada became a mortgagee of the Lands by virtue of two charges which were registered on August 30, 2019 and June 26, 2020, respectively, in the Land Registry Office for the Land Titles Division of Toronto (No. 80), with Instrument Nos. AT5225851 and AT5461644 (“**Keb Mortgages**”).

38. The Keb Mortgages were given and taken by the Owner with the intention to secure the financing of the improvements on the Lands and the Plaintiff therefore claims that its lien has full priority over the Keb Mortgages.

13

39. Alternatively, the Plaintiff states that its lien has full priority over the Keb Mortgages to the extent that any portion of the Keb Mortgages advanced exceeded the actual value of the Lands at the time when the first lien arose.

40. In the further alternative, the Plaintiff states that its claim for lien has priority over the Keb Mortgages to the extent of any unadvanced portions.

41. The knowledge of all advances pursuant to the Keb Mortgages are within the knowledge of the respective Defendants.

42. In the further alternative, the Plaintiff states that its lien has priority over the Keb Mortgages to the extent of any advance made at a time when there was a preserved or perfected lien against the Lands or after receipt of written notice of a lien.

43. To the extent that the Keb Mortgages may be subsequent mortgages under the *Construction Act*, the Plaintiff states that its lien has priority over the Keb Mortgages to the extent of any deficiency in the holdback required to be retained by the Owner as the Keb Mortgages were registered after the time when the first lien arose in respect of the construction project or improvement.

44. The Plaintiff further states that in the event that its claim for lien is vacated from title to the Lands by the posting of security with the Accountant of the Ontario Superior Court of Justice, the Plaintiff's claim is entitled to be paid from the proceeds of the security, should it be found that the posting of the security resulted in the Plaintiff's claim for lien ceasing to attach to and/or bind the Lands and premises or the holdback.

14

45. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario.

DATE OF ISSUE:

BISCEGLIA & ASSOCIATES

Professional Corporation

Barristers-at-law

9100 Jane Street, Suite 200, Building A

Vaughan, Ontario, L4K 0A4

Emilio Bisceglia -LSO No. 34568Q

Tel: (905) 695-5200

Lawyers for the Plaintiff

Schedule "A"*PIN* 21109 - 0244 LT

Description FIRSTLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; SECONDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; THIRDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; FOURTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 163R658; SUBJECT TO AN EASEMENT AS IN AT5101384; FIFTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; SIXTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; SEVENTLY: FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, SAVE AND EXCEPT PART 2 ON PLAN 66R-32221; SUBJECT TO AN EASEMENT AS IN AT5101384; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 AND 8 ON PLAN 66R-32221 AS IN AT6077647; SUBJECT TO AN EASEMENT OVER PARTS 4, 5 AND 6 ON PLAN 66R-32221 AS IN AT6077654; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT OVER PART 3 ON PLAN 66R-32221 IN FAVOUR OF PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT AS IN AT6227322; CITY OF TORONTO

Address 1 Bloor St West, Toronto

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 3

Properties

PIN 21109 - 0244 LT

Description FIRSTLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; SECONDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; THIRDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; FOURTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 163R658; SUBJECT TO AN EASEMENT AS IN AT5101384; FIFTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; SIXTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; SEVENTHLY: FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, SAVE AND EXCEPT PART 2 ON PLAN 66R-32221; SUBJECT TO AN EASEMENT AS IN AT5101384; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 AND 8 ON PLAN 66R-32221 AS IN AT6077647; SUBJECT TO AN EASEMENT OVER PARTS 4, 5 AND 6 ON PLAN 66R-32221 AS IN AT6077654; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT OVER PART 3 ON PLAN 66R-32221 IN FAVOUR OF PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT AS IN AT6227322; CITY OF TORONTO

Address 1 BLOOR ST WEST
TORONTO

Consideration

Consideration \$519,319.76

Claimant(s)

Name CULT IRON WORKS LIMITED
Address for Service 5 Stalwart Industrial Drive, Gormley,
Ontario, L0H 1G0

SOLICITOR: Emilio Bisceglia
9100 Jane Street, 2nd floor,
Concord, Ont L4K 0A4

I, Paul Ditta, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner See Schedule Name and address of person to whom lien claimant supplied services or materials See Schedule Time within which services or materials were supplied from 2020/03/26 to 2023/11/15 Short description of services or materials that have been supplied : The supply of services and materials for miscellaneous metals and related matters. Contract price or subcontract price \$2,792,021.97 (H.S.T. included) Amount claimed as owing in respect of services or materials that have been supplied \$519,319.76 (H.S.T. included)

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: See Schedules

Signed By

Anne Scott	85 Rosebury Lane Woodbridge L4L 3Z1	acting for Applicant(s)	Signed	2023 12 01
------------	---	----------------------------	--------	------------

Tel 905-264-1632

Fax 905-264-1059

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

SUMMIT SEARCH LIMITED	85 Rosebury Lane Woodbridge L4L 3Z1	2023 12 01
-----------------------	---	------------

Tel 905-264-1632

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 3

Submitted By

Fax 905-264-1059

Fees/Taxes/Payment

Statutory Registration Fee	\$69.95
Total Paid	\$69.95

File Number

Claimant Client File Number : 714/23

Name of Owner:

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

The One – 1 Bloor St. West, Toronto, Ontario

189 Forest Hill Road, Toronto, Ontario, M5P 2N3

Name of person to whom lien claimant supplied services or materials:

MIZRAHI INC.

189 Forest Hill Road, Toronto, Ontario, M5P 2N3

125 Hazelton Avenue, Toronto, Ontario, M5R 2E4

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

The One – 1 Bloor St. West, Toronto, Ontario

189 Forest Hill Road, Toronto, Ontario, M5P 2N3

MIZRAHI DEVELOPMENTS

126 Hazelton Avenue, Toronto, Ontario, M5R 2E5

125 Hazelton Avenue, Toronto, Ontario, M5R 2E4

189 Forest Hill Road, Toronto, Ontario, M5P 2N3

MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

125 Hazelton Avenue, Toronto, Ontario, M5R 2E4

17

CULT IRON WORKS LIMITED
Plaintiff

v.

**MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., ET
AL.**
Defendants

Court File no.

ONTARIO

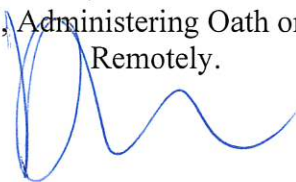
**SUPERIOR COURT OF JUSTICE
IN THE MATTER OF THE *CONSTRUCTION ACT*
PROCEEDING COMMENCED AT TORONTO**

STATEMENT OF CLAIM

**BISCEGLIA & ASSOCIATES
PROFESSIONAL CORPORATION**
Barristers-At-Law
9100 Jane Street, Bldg. "A",
Suite 200 Vaughan, Ontario L4K 0A4
Emilio Bisceglia – LSO No. 34568Q
Tel: 905 695- 3200
Email: ebisceglia@lawtoronto.com

Lawyers for the Plaintiff

*This is **Exhibit "F"** referred
to in the Affidavit of **Paul Ditta***
sworn before me, by video conference,
at the Town of Whitchurch-Stouffville,
in the Province of Ontario, this
3rd day of June, 2024 in accordance with O.
Reg.431/20, Administering Oath or Declaration
Remotely.



A Commissioner for Taking Affidavits, etc.

R. Battista Frino
Barrister-at-law

Properties

PIN 21109 - 0244 LT

Description FIRSTLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; SECONDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; THIRDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; FOURTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 163R658; SUBJECT TO AN EASEMENT AS IN AT5101384; FIFTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; SIXTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; SEVENTHLY: FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, SAVE AND EXCEPT PART 2 ON PLAN 66R-32221; SUBJECT TO AN EASEMENT AS IN AT5101384; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 AND 8 ON PLAN 66R-32221 AS IN AT6077647; SUBJECT TO AN EASEMENT OVER PARTS 4, 5 AND 6 ON PLAN 66R-32221 AS IN AT6077654; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT OVER PART 3 ON PLAN 66R-32221 IN FAVOUR OF PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT AS IN AT6227322; CITY OF TORONTO

Address TORONTO

Source Instruments

Registration No.	Date	Type of Instrument
AT6471408	2023 12 01	Construction Lien

Applicant(s)

The applicant applies to delete the selected lien and/or certificate of action.

Name ALVAREZ & MARSAL CANADA INC.
 Address for Service c/o Goodmans LLP
 Bay Adelaide Centre - West Tower
 333 Bay Street, Suite 3400
 Toronto, Ontario M5H 2S7
 Attn: Christopher Armstrong

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Document(s) to be Deleted

Registration No.	Date	Type of Instrument
AT6494706	2024/01/12	Certificate
AT6471408	2023/12/01	Construction Lien

Statements

The application is based on a court order See Schedules, discharging/releasing/vacating the lien. The court order is still in full force and effect.

There is no sheltering of another lien under Certificate of Action registered as number AT6494706 registered on 2024/01/12.

The application is based on a court order See Schedules, discharging/releasing/vacating the certificate of action. The court order is still in full force and effect.

Schedule: The Applicant ALVAREZ & MARSAL CANADA INC. is registering this Application in its capacity as receiver and manager of Mizrahi Development Group (The One) Inc. et al., and not in its personal or corporate capacity.

Signed By

Anthony Tyler D'Angelo

Bay Adelaide Centre 333 Bay
 Street Suite 3400
 Toronto
 M5H 2S7

acting for
 Applicant(s)

Signed 2024 01 16

Tel 416-979-2211

Fax 416-979-1234

I have the authority to sign and register the document on behalf of the Applicant(s).

LRO # 80 Application to Delete Construction Lien

Received as AT6496477 on 2024 01 16 at 10:21

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 12

Submitted By

GOODMANS LLP

Bay Adelaide Centre 333 Bay Street
Suite 3400
Toronto
M5H 2S7

2024 01 16

Tel 416-979-2211

Fax 416-979-1234

Fees/Taxes/Payment

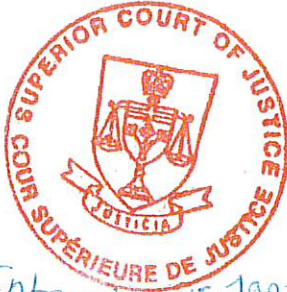
Statutory Registration Fee \$69.95

Total Paid \$69.95

File Number

Applicant Client File Number :

23.2285-APL DEL CONST LIEN



Court File No. CV-24-00712684-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

ASSOCIATE JUSTICE **WIEBE**

}
}
}

Friday, THE
12th DAY OF JANUARY, 2024

BETWEEN:

CULT IRON WORKS LIMITED

- and -

Lien Claimant

ALVAREZ & MARSAL CANADA INC., in its capacity as receiver and manager, without security, 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.

Receiver

ORDER

THIS MOTION, made by Alvarez & Marsal Canada Inc., in its capacity as receiver and manager, without security, 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. (the "**Receiver**"), on consent of the Lien Claimant, Cult Iron Works Limited, for an Order reducing the Construction Lien of the Lien Claimant and vacating the registration of the Construction Lien and Certificate of Action of the Lien Claimant upon the posting of security

-2-

into Court by the Receiver, by way of bank draft no. 73253720 dated January 12, 2024 was read this day at the Court House, Toronto, Ontario.

ON READING the Motion Record of the Receiver, including the Affidavit of Jill S. Snelgrove sworn January 12, 2024 and the exhibits thereto, and the Receiver having obtained security to post into Court with the Accountant of the Ontario Superior Court of Justice (the "Accountant") in the amount of \$494,669.05 being the reduced amount of the Construction Lien plus the sum of \$50,000.00 as security for costs, by way of bank draft no. 73253720 dated January 12, 2024 (the "Security"), and the consent of the parties,

1. **THIS COURT ORDERS** that the Construction Lien of the Lien Claimant, Cult Iron Works Limited, registered on December 1, 2023 as Instrument No. AT6471408 against the lands and premises more particularly described in Schedule "A" hereto, in the Land Titles Division of the Toronto Land Registry Office (No. 80) in the amount of \$519,319.76 is hereby reduced by \$76,650.71 to \$444,669.05.
2. **THIS COURT ORDERS AND DIRECTS** that the Accountant shall accept a copy of the fiat as signed by the Court, such that the originally-signed fiat shall not be required.
3. **THIS COURT ORDERS** that upon the posting of the approved Security, the Construction Lien of the Lien Claimant, Cult Iron Works Limited, registered on December 1, 2023 as Instrument No. AT6471408 against the lands and premises more particularly described in Schedule "A" hereto, in the Land Titles Division of the Toronto Land Registry Office (No. 80), be vacated.

-3-

4. **THIS COURT ORDERS** that upon the posting of the approved Security, the Certificate of Action of the Lien Claimant, Cult Iron Works Limited, registered on January 12, 2024 as Instrument No. AT6494706 against the lands and premises more particularly described in Schedule "A" hereto, in the Land Titles Division of the Toronto Land Registry Office (No. 80), be vacated.
5. **THIS COURT ORDERS** that a copy of the Order, together with a copy of the Accountant's receipt from posting the Security, be served on the lawyers for the Lien Claimant, namely Emilio Bisceglia at Bisceglia & Associates P.C., forthwith after entry.
6. **THIS COURT ORDERS** that this Order is effective upon signing.



Associate Justice C. Wiebe

-4-

SCHEDULE "A"

Description of premises:

PIN: 21109-0244 (LT)

Description: FIRSTLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; SECONDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; THIRDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; FOURTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 163R658; SUBJECT TO AN EASEMENT AS IN AT5101384; FIFTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; SIXTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; SEVENTHLY: FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, SAVE AND EXCEPT PART 2 ON PLAN 66R-32221; SUBJECT TO AN EASEMENT AS IN AT5101384; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 AND 8 ON PLAN 66R-32221 AS IN AT6077647; SUBJECT TO AN EASEMENT OVER PARTS 4, 5 AND 6 ON PLAN 66R-32221 AS IN AT6077654; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT OVER PART 3 ON PLAN 66R-32221 IN FAVOUR OF PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT AS IN AT6227322; CITY OF TORONTO

CW

CULT IRON WORKS
LIMITED

Lien Claimant

- and - ALVAREZ & MARSAL CANADA INC., in its
capacity as receiver and manager of MIZRAHI
DEVELOPMENT GROUP (THE ONE) INC. et
al.
Receiver

Court File No: CV-24-00712684-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the Construction Act, R.S.O. 1990, c. C.30

Proceeding commenced at Toronto

ORDER

GOODMANS LLP

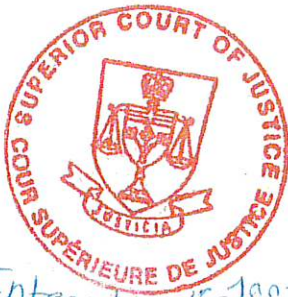
Barristers & Solicitors
Bay Adelaide Centre – West Tower
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Christopher Armstrong LSO#: 55148B
carnstrong@goodmans.ca

Jill S. Snelgrove LSO#: 67223G
jsnelgrove@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for Alvarez & Marsal Canada Inc., in its capacity as
receiver and manager of Mizrahi Development Group (the One)
Inc. et al.



Court File No. CV-24-00712684-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Entered on 15-Jan-24

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

ASSOCIATE JUSTICE **WIEBE**

}
}
}

Friday, THE
12th DAY OF JANUARY, 2024

BETWEEN:

CULT IRON WORKS LIMITED

Lien Claimant

- and -

ALVAREZ & MARSAL CANADA INC., in its capacity as receiver and manager, without security, 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.

Receiver

ORDER

THIS MOTION, made by Alvarez & Marsal Canada Inc., in its capacity as receiver and manager, without security, 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. (the "**Receiver**"), on consent of the Lien Claimant, Cult Iron Works Limited, for an Order reducing the Construction Lien of the Lien Claimant and vacating the registration of the Construction Lien and Certificate of Action of the Lien Claimant upon the posting of security

-2-

into Court by the Receiver, by way of bank draft no. 73253720 dated January 12, 2024 was read this day at the Court House, Toronto, Ontario.

ON READING the Motion Record of the Receiver, including the Affidavit of Jill S. Snelgrove sworn January 12, 2024 and the exhibits thereto, and the Receiver having obtained security to post into Court with the Accountant of the Ontario Superior Court of Justice (the "Accountant") in the amount of \$494,669.05 being the reduced amount of the Construction Lien plus the sum of \$50,000.00 as security for costs, by way of bank draft no. 73253720 dated January 12, 2024 (the "Security"), and the consent of the parties,

1. **THIS COURT ORDERS** that the Construction Lien of the Lien Claimant, Cult Iron Works Limited, registered on December 1, 2023 as Instrument No. AT6471408 against the lands and premises more particularly described in Schedule "A" hereto, in the Land Titles Division of the Toronto Land Registry Office (No. 80) in the amount of \$519,319.76 is hereby reduced by \$76,650.71 to \$444,669.05.
2. **THIS COURT ORDERS AND DIRECTS** that the Accountant shall accept a copy of the fiat as signed by the Court, such that the originally-signed fiat shall not be required.
3. **THIS COURT ORDERS** that upon the posting of the approved Security, the Construction Lien of the Lien Claimant, Cult Iron Works Limited, registered on December 1, 2023 as Instrument No. AT6471408 against the lands and premises more particularly described in Schedule "A" hereto, in the Land Titles Division of the Toronto Land Registry Office (No. 80), be vacated.

-3-

4. **THIS COURT ORDERS** that upon the posting of the approved Security, the Certificate of Action of the Lien Claimant, Cult Iron Works Limited, registered on January 12, 2024 as Instrument No. AT6494706 against the lands and premises more particularly described in Schedule "A" hereto, in the Land Titles Division of the Toronto Land Registry Office (No. 80), be vacated.
5. **THIS COURT ORDERS** that a copy of the Order, together with a copy of the Accountant's receipt from posting the Security, be served on the lawyers for the Lien Claimant, namely Emilio Bisceglia at Bisceglia & Associates P.C., forthwith after entry.
6. **THIS COURT ORDERS** that this Order is effective upon signing.



Associate Justice C. Wiebe

-4-

SCHEDULE "A"

Description of premises:

PIN: 21109-0244 (LT)

Description: FIRSTLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; SECONDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; THIRDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; FOURTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 163R658; SUBJECT TO AN EASEMENT AS IN AT5101384; FIFTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; SIXTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; SEVENTLY: FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, SAVE AND EXCEPT PART 2 ON PLAN 66R-32221; SUBJECT TO AN EASEMENT AS IN AT5101384; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 AND 8 ON PLAN 66R-32221 AS IN AT6077647; SUBJECT TO AN EASEMENT OVER PARTS 4, 5 AND 6 ON PLAN 66R-32221 AS IN AT6077654; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT OVER PART 3 ON PLAN 66R-32221 IN FAVOUR OF PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT AS IN AT6227322; CITY OF TORONTO

CW

CULT IRON WORKS
LIMITED

Lien Claimant

- and - ALVAREZ & MARSAL CANADA INC., in its
capacity as receiver and manager of MIZRAHI
DEVELOPMENT GROUP (THE ONE) INC. et
al.

Receiver

Court File No: CV-24-00712684-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

Proceeding commenced at Toronto

ORDER

GOODMANS LLP

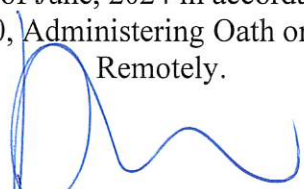
Barristers & Solicitors
Bay Adelaide Centre – West Tower
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Christopher Armstrong LSO#: 55148B
carmstrong@goodmans.ca
Jim S. Snelgrove LSO#: 67223G
jsnelgrove@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for Alvarez & Marsal Canada Inc., in its capacity as
receiver and manager of Mizrahi Development Group (the One)
Inc. et al.

*This is **Exhibit "G"** referred
to in the Affidavit of **Paul Ditta**
sworn before me, by video conference,
at the Town of Whitchurch-Stouffville,
in the Province of Ontario, this
3rd day of June, 2024 in accordance with O.
Reg.431/20, Administering Oath or Declaration
Remotely.*



R. Battista Frino
A Commissioner for Taking Affidavits, etc.
Barrister-at-law

Rob Ditta

From: brian@mizrahidevelopments.ca
Sent: June 27, 2023 5:26 PM
To: Naveed Mahmood; Paul Ditta; Rob Ditta
Cc: 'Esteban Yanquelevec'; 'Icaro Pratti'
Subject: The One - Cult Contract Discussion
Attachments: Comments to Draft Cult Subcontract - 2023-06-23.xlsx; 1 Bloor - Escalation - 12-Apr-23 (R2) (MIZ COMMENTS 2023-06-26).xlsx

Hi Naveed/Rob/Paul,

We have reviewed the information that you had previously sent over. Further to our phone conversation on June 13, see attached for two Excel sheets consisting of our review along with a summary below of key points.

Attachment #1 – Comments to CCA1 Contract

1. See attached spreadsheet breaking down the specific contract clauses that were commented on in your latest review. I believe that the majority of these can be agreed upon. I would like to go through these with you one by one to make sure that we are on the same page and believe the Excel document is the easiest way to do that.
2. *Subcontract Price*. A key comment was with regards to the contract price. As per our phone conversation, the way forward is to keep the contract price the same as the LOI (\$1,690,520.00 + \$675,000.00 cash allowances) and resolve the escalation costs through a change order.
3. References to CCM will be replaced with Mizrahi.
4. *Holdback from 2019 to March 2023 to be paid*. This could be completed with two contracts – Contract #1 up to Level 18 and Contract #2 from Level 19 to Roof. Please advise.
5. *Schedule*. Updated schedule to be sent with the contract.
6. *Paid when paid terms*. This is a typical clause that is included in our contracts. We can discuss this further in our subsequent meetings.

Attachment #2 – Escalation Change Order

1. Refer to the second tab – MIZ REVIEW 2023-06-26 – for our review. I have broken down the varying line items based on the percentage of scope remaining and projected completion dates.
2. **In total, we have arrived at an escalation cost of \$404,239.50.**
3. Shop drawings, Fabrication, Delivery, Installation and Equipment were escalated at 3% per year based on remaining scope percentage.
4. Material was escalated 25% per year if it was reasonable that it could not be completed within the original schedule.
5. Material was escalated 0% per year if it was reasonable that it could have been completed within the original schedule.
6. No escalation was applied to change orders or new scope items.

Proposed Line-Item Breakdown

1. Original Contract Amount = \$1,690,520.00.
2. Cash Allowances = \$675,000.00.
3. LOI Value/CCA1 Value = \$2,365,520.00.
4. Change Orders (Pending + Approved) = \$728,567.00 + \$443,009.00 = \$1,171,576.00.
5. New Scope Items = \$306,638.00.
6. Escalation Change Order = \$404,239.50.

Next Steps

1. Please review this email and the documents attached. I think further discussion is warranted on several of these items and I would like to incorporate "Contracts" as an agenda item to our weekly Thursday calls until this is resolved.

Thanks,



Brian Kester
Project Manager, Structural

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200

M. 437.239.6334

F. 1.866.300.0219

E. Brian@MizrahiDevelopments.ca

**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**

v.

**MIZRAHI COMMERCIAL
(THE ONE) LP, et al.**

Respondents

Applicant

Court File No. CV-23-00707839-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

Proceeding Commenced at Toronto

**RESPONDING MOTION RECORD
(Returnable June 6, 2024)**

**BISCEGLIA & ASSOCIATES
PROFESSIONAL CORPORATION**

Barristers-At-Law

9100 Jane Street, Bldg. "A",

Suite 200 Vaughan, Ontario L4K 0A4

Emilio Bisceglia – LSO No. 34568Q

Tel: 905 695-3200

Email: ebisceglia@lawtoronto.com

Lawyers for the Respondent,
Cult Iron Works Ltd.