

**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

RESPONDING MOTION RECORD OF MIZRAHI INC.

Volume 5

January 20, 2025

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A Response to Issues Log

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AFFIDAVIT OF NEMESIO PEREIRA

I, Nemesio Pereira, of the City of Toronto in the Province of Ontario SOLEMNLY AFFIRM:

- 1. I am the owner of Pereira Construction and Carpentry ("Pereira") and as such I have knowledge of the facts in this affidavit.**
- 2. Pereira contracted with Mizrahi Inc. ("Mi") to provide carpentry services and materials to the project at 1 Bloor West, Toronto (the "Project"). Pereira invoiced and was paid by MI \$204,417 (net of HST and a 10% holdback) to secure the pricing for Pereira's services to the Project. Pereira did rent a shop for millwork where it stored materials and equipment to complete the work on the Project.**
- 3. It is my belief based upon my experience in the industry that there are no other carpentry companies that could provide the services and materials required by the Project for a better price, as I had obtained an exemption from the union to bid and work on the Project, which results in millions of dollars of savings to the Project.**

4. On February 28, 2024, I spoke with a representative of SKYGRiD to discuss pricing on the Project and the schedule to undertake the work.
5. On March 15, 2024, I was provided with the reconfiguration plans for the top floors of the Project which were needed to finalize the pricing for the Project given the reconfiguration.
6. While SKYGRiD appeared interested in having Pereira provide its services to the Project given its ability to provide a lower price owing to the union exemption, Pereira was ultimately terminated from the Project by SKYGRiD.
7. Before Pereira was terminated, representatives of SKYGRiD began asking me whether Pereira had made any "side deals" with MI, including whether Pereira had billed the Project for any work that was actually provided to another MI development in Ottawa at 1451 Wellington. Matthew McCafferty of SKYGRiD suggested that Pereira and MI had acted improperly, although they advised he had only heard rumours.
8. I was very offended and uncomfortable with these questions and accusations. I advised SKYGRiD that there were absolutely no "side deals" and that the contract for Pereira with the Ottawa development are entirely separate and unrelated to Pereira's work on the Project.
9. I also had discussions with Andrew Sterling, who I understand works for the Receiver, Alvarez & Marsal. Mr. Sterling too suggested that Pereira and MI had "side deals" although he was more evasive in his questioning.
10. When it became clear that I would not agree with the false accusations that there were any side deals between Pereira and MI, Pereira was terminated from the Project. I believe Pereira was terminated because of my refusal to falsely accuse MI of acting improperly.
11. I attempted to discuss Pereira's contract to provide the Project services with Adam Marciniak. I attended the SKYGRiD offices to meet with him, although no meeting was scheduled. I was treated very poorly by him and he essentially refused to meet with me.

12. The termination of Pereira from the Project has caused Pereira hundreds of thousands of dollars of expenses in equipment and materials, which had been readied to start construction in April 2024.

AFFIRMED before me by video conference at the City of Toronto, in the Province of Ontario, this 17 day of January, 2025, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to be 'David Trafford', written over a horizontal line.

Commissioner of Oath

David Trafford (68926E)

A handwritten signature in blue ink, appearing to be 'Nemesio Pereira', written over a horizontal line.

NEMESIO PEREIRA

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Applicant

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

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF
NEMESIO PEREIRA**

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AFFIDAVIT OF JEFF MURVA

I, Jeff Murva, of the City of Toronto in the Province of Ontario SOLEMNLY AFFIRM:

1. From October 2020 to March 2024, I was the Director of Project Management for Mizrahi Inc. ("MI") and worked on the construction and development of the Project. As such, I have knowledge of the facts set out in this affidavit. Defined terms used in this affidavit are as defined in the Receiver's Fifth Report, dated October 11, 2024 (the "Fifth Report"), unless otherwise noted.
2. I am currently the President of J Murva Consulting Ltd, which provides construction consulting services to Hi-Rise Residential Developments. From 2013 to 2018 I was the President of FirstCon Group Ltd, part of the Freed Group of Companies, and Vice President of Construction at Freed Developments. Prior to that I worked for CBRE as a Director in Project Management. I have over 35 years of experience in managing the development, design and construction of award winning commercial, institutional, and residential high-rise building projects, particularly in Toronto.
3. I have reviewed Appendix 30 to the Fifth Report. My response the issues raised in these documents is found in the chart attached as **Exhibit A**.

AFFIRMED before me by video conference at the City of Toronto, in the Province of Ontario, this 20th day of January 2025, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

D Trafford

Commissioner of Oath

Jeff Murva

JEFF MURVA

The One - Issues Log

	Observation	Industry Standard Practice	Comments	MURVA RESPONSE
1	Procurement process is disjointed - Contracts are not immediately entered into and instead LOIs are issued while contracts continue to be negotiated and often modified from the boiler plate after award	Boilerplate is rolled up to the conditions of the CM contract, and completed after bid leveling and Owner approval and signed copies returned to the Owner within 10 business days	Demonstrates a lack of governance, control and fiscal responsibility by the CM Team	I was not involved in the award or negotiation of trade contracts nor the creation or management of the trades portion of the project budget nor the review / approval of trade extras or invoices.
2	Based on observations in the scheduling meeting there appears to be a disconnect, because of a lack of a single leader, with respect to the coordination of activities between the siloed Project Managers.	Standard practice is to have the SR. PM of Project Director be an umbrella over the PMs and a General Superintendent be the same over the Site Superintendents. This practice provides over all project direction and coordination and sequencing of the work.	Better high level management is required versus that date with a direct tie in of the Scheduler as well as trade buy-in on the scheduling.	The project managers were siloed. This organizational structure was adopted from Clark Construction's project organizational structure. There was a single project leader. That was the VP of Construction. Due to project manager personalities the coordination of some of them was challenging for the VP of Construction.
3	Based on our observations in the Uncommitted work meeting with Esteban it is evident he does not have a total understanding of the process in its fundamental terms. – No budget items listed within the document, with all left blank so there is no ability for comparative analysis against budget	Normally a project would have a Procurement Team (2-3 people) and a project accountant. This results in tighter controls and oversight as the Sr. PM or Project Director validates the work and the packages prior to the commitments being issued to the Owner for signature (creator and verifier are never the same person)	Team is not adequately structured and needs to be realigned and strengthened for a project of this size and complexity.	I was not responsible for the management of the budget line items nor the procurement of scopes of work.
4	No formal Change Management process appears to exist	Normally a commitments meeting is held every 1 or 2 weeks by the CM with the Owner to review change requests, RFIs requiring a change request, pending changes (including ones being priced) etc.	KDC and A&M are initiating this practice starting the week of November 20th however it requires the CM to be bound by it.	There was a Change Manage process. It was a modified version of the standard industry practice. The siloed project managers would distribute design documents which could potentially change the contracted scope of work to the respective trade contractors and suppliers. These potential change documents would initiate quotations for change in contract, by the respective trade contractor or supplier. These quotations would be reported to the VP of Construction by the respective project manager. The VP of Construction would evaluate these quoted changes and either contest them or agree to the quoted amounts. Because I was not involved in this process, but occasionally observed this process, I believe that the VP of Construction would advise Mr. Mizrahi of the recommended Change Order to seek authorization to issue the Change Order. I believe that, on some occasions, if a potential Change Order was associated with a Commitment that was not reported to the Lender, because there was not sufficient budget for the original commitment then the Change Order would not be disclosed to the Lender. If the original commitment has been previously approved by the Lender then the Change Order would be issued, subject to Mr. Mizrahi's prior approval. For most of all changes the above process was followed on this project. There were a few exception to this process. The duration of the processing of changes was often prolonged for various reasons. There was no regularly scheduled internal formal change review meeting.
5	Due to blurred lines between the Owner and the CM (result of the two being the same ownership structure) the consultants role has been diminished and there is less policing of the CM than expected	Standard practice is that the Consultants insulate the Owner from the CM on a day to day basis, regulate and instruct the CM, verify work underway and certify payments based on their observations	With the new structure and MI only being the CM and not the Owner, this is a perfect time to correct this as the consultants now are working for the Receiver. Suggest that certification of Payments be added to the Architects' (Core) scope of services.	The cited standard practice is not a reflection of how the high rise multi-family residential "self perform" industry practices. The large majority of the GTA high rise multi-family residential developers, who have their own in house Construction Management team, limit the project consultants involvement to providing design services and assist in the administration of the design as the project is being constructed. Frequently, in these types of projects, the consultants do not manage the contract or financial aspects of the project, nor do they oversee the Construction Manager. The consultants' involvement is limited to addressing design questions and clarification, which are through the instruments of RFIs and Site Instructions. The consultants will periodically review work on site to ensure conformance with the design drawings, review design issues, and, at the end of the project review the completed work for conformance and for the purposes of signing off on documents necessary for City authorized Occupancy. Often the consultants take direction from the Construction Manager, as agent of the Owner. This is a common practice by most well established developers in the GTA.

The One - Issues Log

	Observation	Industry Standard Practice	Comments	MURVA RESPONSE
6	Use of Procore is not to the potential of the software programs and the data was found to be not up to date with documents waiting to be uploaded into Procore. (Currently still a work in progress)	Procore is used by most CMs and during its set up there is a lot of customization done to create all the CM specific forms, contracts, POs and LOIs, etc. This results in all documents being created within Procore and distributed through Procore.	It is too late in the project for MI to correct the ability to do everything in Procore directly, however increased diligence needs to be practiced by MI when documents are created that there is a seamless process of uploading all files to Procore that form part of the document.	Procore was not used to its full capability. The financial process was not managed through Procore. Therefore, Commitments, and associated Change Orders, were not entered or tracked in the financial portion of Procore. Because there were several trade and supplier contracts that we committed to the vendor via Lol , but not contract, for reasons explained above, then these commitments could not be entered into Procore. Therefore, the contract / commitments portion of Procore was knowingly incomplete and not current.
7	Esteban in addition to running the construction project is also pricing suite modifications.	This is normally carried out by a separate team who interface as required with the main CM team	Esteban is already over burdened and is the bottleneck on many issues. There needs to be an overall redistribution of his areas of control and responsibility as he does delegate when left up to his discretion	The VP of Construction was also responsible for overseeing the suite modifications, both design and pricing. Frequently, the VP of Construction would meet with the purchasers of larger units to coordinate the upgrades.
8	The CM team and specifically Esteban consistently does not meet deliverable requests, such as update budget information for the cost log, template of the standard sub- trade contract, schedule updates, etc.	a CM on a project of this size would have had a system in place to provide all of items requested by an Owner, and all standard contracts would have been submitted for Owner's review and compliance that the sub- trade contracts roll up to the terms and conditions of the CM contract related to, but not limited to schedule. Once	There needs to be a clear understanding that the role of Owner is now the receiver and that all requests for information, updates, and reporting needs to be met.	The observation was correct, for the reasons explained above, pertaining to contracts/commitments, and contract issuances and recording within Procore.
9	Inaccurate and out of date scheduling as was demonstrated on November 15th when just before the scheduling meeting it had to be cancelled due to the schedule being flawed and inaccurate as a result of the task link errors.	Standard practice is to issue a schedule update monthly, where the schedule includes a current level of completion for each task in the schedule. The schedule is generally driven by the Superintendents working with the trades to obtain feed back on the schedule.	Altus should take the Primavera schedule when available next week and do a detailed scrub of the P6 file versus a PDF copy and prepare a report on the accuracy of the schedule and the proficiency of the scheduler to determine if there is a competency issue.	This occurrence was correct. This was due to challenges with the project scheduler at the time. For a prolonged period of time the schedule was not being updated monthly because we could not find a replacement for the previous scheduler who had left the company. When we did hire a replacement scheduler it took a while for the schedule to be updated. I cannot recall exactly when the scheduler started on the project. I believe that it was shortly before the Receiver was appointed.
10	CM fees charged on top of CM staff costs (and on top of mark-up on actual staff costs). Staff Cost to date (per Altus report 51) is	CM fees charged cover all CM staff and management costs for the Works	The current practices related to CM Fees and their lack of alignment to industry practices needs to addressed and adjusted	Industry practice, for the majority of Construction Management agreements for high rise multi-family residential projects is that project staff costs are charged, at prescribed rates identified the the Construction Management Agreement. These are defined as components of the Cost of the Work. Typically, CM Fees are applicable to all Cost of the Work. The Receiver's statement that CM fees include, or cover, project staff costs is incorrect. On some occasions, it may be agreed , between the Owner and the CM, that the CM Fee may cover senior project management individuals such as Project Director or higher. Also, it is common industry practice, for most Construction Management agreements, in the GTA, for both ICI and residential high rise multi-family projects, that the prescribed staff charge rates are greater than the actual costs, as they include for indirect staff overhead and some corporate overhead costs associated with providing the construction management services, of the Construction Management service provider. This is typically common knowledge of the buyers of Construction Management services, and of larger Cost Consultants, involved with residential multi-family high rise projects, in the GTA.

The One - Issues Log

	Observation	Industry Standard Practice	Comments	MURVA RESPONSE
11	A Project Controls Manager does not exist	A Project Controls Manager is appointed to report on cost metrics (cost incurred, cost to complete, CPI index, SPI, variances)	Staffing of the project needs to be adjusted to reflect the current phase of the project and the correct positions added as well as redundant positions eliminated.	<p>The use of a Project Controls Manager, is not a common role in the residential multi-family high rise project industry in the GTA.</p> <p>Most sophisticated experienced Construction Management service providers have procurement, contracting, change management, invoicing, reporting processes and systems that preclude the need, and the cost, for a Project Controls Manager.</p> <p>I believe that the Receiver's replacement Construction Manager does not have a specific Project Controls Manager assigned to this project.</p>
12	Project Status progress data is unrealistic and unsupported by facts. The October 2023 report shows 83% progress. Site tours by third parties including Altus and KDC show progress is between 20-30%	Schedule and progress status reports are provided in monthly reports and are reasonable, useful and reliable to assess project status	Monthly reports need to be re-designed to include a financial snapshot of the current project budget and projected cost to complete as well as a variance report from the previous month	<p>The project status was reported based on the costs invoiced to date versus the budget at the time.</p> <p>Because the project budget was incorrect and lower than the eventual projected final cost the ratio of cost paid to date versus the budget at that time reflected a larger percent complete than what was observed on site.</p> <p>I had frequently pointed this out to the VP of Construction and the CFO.</p> <p>I was advised that this would be corrected when the project budget was augmented in the future.</p>
13	Monthly reports issued by MI contain a section (1.2.1) in the monthly reports that have empty cells and no information on forecast start dates of finish dates for milestones	Milestone Tracking is performed on a monthly basis, reporting on root causes for delays and mitigation actions	The monthly reports need to include a monthly schedule update including any variances in the schedule from the previous month.	<p>If this was an observation of the October 2023 monthly report, the observation statement is incorrect. See attached snapshot of the October 2023 Monthly Report section 1.2.1. As the Lender did not permit the commencement of the Hotel nor KSFC Fitouts, those forecasted start and end dates were reported as TBD.</p> <p>I have checked all Monthly Reports, section 1.2.1, from the time that the Receiver was appointed to the time that Mizrahi was removed from the project, considering that there was a 1 month lag for reporting progress after month end.</p> <p>In all those reports, section 1.2.1 did not have any empty cells that should have contained data.</p> <p>The reporting of root causes, for delays identified in this section, was not a requested reporting requirement of the Lender nor the loan monitor.</p>
14	A list of Change Orders exists in Procore, however the column titled "Designated Reviewer" shows many "Unassigned" Designated Reviewers.	Change Orders for contracts are tracked against budget to ensure before a Change is approved the overall commitment is still within budget. There are assigned reviewers and approvers within the Project Management Team for reviewing costs and change orders.	The use of Procore needs to be addressed in terms of the features and reports available and the accuracy of reporting increased.	<p>I was not involved in the management of awards, contracts, changes order, or invoices. Therefore, I did not review the contract commitments nor change orders in Procore, and as a result I cannot comment on this observation.</p>
15	Section 1.3 of monthly report is not updated to show delays in 2023. There are multiple and accumulating delays in 2023, including delays by Gamma on the curtain wall work that are not reported	Status of delays and root causes of delays are analyzed on an ongoing basis by the Construction Manager and the Project Controls Manager. The delays caused by subtrades are quantified and subtrades are held accountable for delays, with cost of delays off-set from their invoices	The monthly report needs to include a risk registry as well as a summary oof any claims, delays (cause and impact) and documented back charges	<p>If this was an observation of the October 2023 monthly report. The observation statement is correct. This section only reports on the information provided by the VP of Construction.</p> <p>For numerous reasons, this section did not report or quantify on the impact of ongoing delays experienced, at the time on the project.</p> <p>Any significant trade delays were reported in Section 6, Owner Issues, on the Monthly Report.</p>

The One - Issues Log

	Observation	Industry Standard Practice	Comments	MURVA RESPONSE
16	No updates on level of progress for design activities by discipline in the monthly reports	Design status and progress is updated on a weekly and monthly basis	The weekly and monthly reports need to be expanded to include a detailed summary on current design issues and where there is a potential delay to the schedule associated with the issue it should also be included in the risk registry	If this was an observation of the October 2023 monthly report. The observation statement is incorrect. The design status and progress was reported, on a monthly basis, in Section 3 - Design Status, of the Monthly Reports. Albeit, sometimes the information reported, in a particular month, which was provided by Mizrahi Inc. support staff, was incorrect. However, it was almost always, corrected in the subsequent Monthly Report.
17	No holdback applied on key vendor invoices	Statutory Holdback of 10% applied per Construction Act in Ontario, in order to provide security over defects in the warranty period as well as an additional 3% hold back for deficient work	Hold back practices need to be adjusted to meet the industry standard including the additional 3% hold back as a separate hold back for repair of deficient work	I was not involved in the management of awards, contracts, changes order, or invoices. Therefore, I did not review the invoices, and as a result I cannot comment on this observation.
18	No budget management or cost control on the project. The accounting is done externally and the budgets are also done externally. As a result a project cost and financial management ERP system is not being used.	Cost accounting performed by project staff embedded in the project. The cost accounting (invoices and accruals incurred) informs quarterly and annual budgeting efforts by the project team. The Project Director and the Project CFO or Commercial Director are in charge of implementing standard cost	There is a need for an immediate change in reporting in terms of Cost Logs, Change Order Logs, FRI Logs, SI Logs, etc. al focusing on accuracy of reporting and up to date information	I was not involved in the management of awards, contracts, changes order, or invoices. Therefore, I cannot comment on this observation.
19	Micro-management of small supplies leading to lack of control and tracking as well as taking on unnecessary risk in the interface with the trades for late supplies	Supply of small tools and materials included in key trade subcontracts to benefit from buying power from trades and avoid micro- managing small items directly	This needs to be reviewed based on the sub-trade bidding, and in new sub-trade contracts it must be included to avoid double costs.	This practice, on this project, was adopted from Clark Construction's operational practice on this project.
20	No formal procurement plan and strategy documentation, no procurement dates in schedule, no consideration of procurement delay risk in schedule	A Commercial / Procurement Manager is appointed to prepare a Procurement Strategy and Plan, call for tenders, negotiate and execute contracts with all subtrades and suppliers	Staffing of the project needs to be adjusted to reflect the current phase of the project and the correct positions added as well as redundant positions eliminated, especially related to procurement and the creation of a procurement team	I was not involved in the management of awards, contracts, changes order, or invoices. Therefore, I cannot comment on this observation.
21	No quality management program, leading to risk of cost overruns	A Quality Assurance Manager is appointed to prepare a full QA/QC plan that includes inspection and test plans (ITP's) for all key materials, including concrete , rebar, curtain wall, steel, etc.	The need for a QA/QC Manager is a key part of the project controls as this person within a CM organization also tracks corrective measures and remedial work and assurance that all items noted as need resolution have been closed out to the satisfaction of the Owner (receiver in this case)	Mizrahi Inc. chose to rely on the project consultants to review workmanship Quality on site, in combination with Mizrahi Inc. site supervision staff to monitor and ensure quality. There was testing procedures and processes in place, to comply with Bulletin 19 requirements. These testing activities were conducted, and reported with the necessary frequency, by EXP. an industry leader in GTA.

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