

**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

**SUPPLEMENTAL REPORT TO THE THIRD REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.**

July 11, 2024

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1.0 INTRODUCTION AND PURPOSE OF THIS SUPPLEMENTARY REPORT

1.1 On October 18, 2023 (the “**Appointment Date**”), pursuant to an Order (Appointing Receiver) (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), Alvarez & Marsal Canada Inc. was appointed as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP (the “**Beneficial Owner**”), Mizrahi Development Group (The One) Inc. (the “**Nominee**”) and Mizrahi Commercial (The One) GP Inc. (“**GP Inc.**” and, together with the Beneficial Owner and the Nominee, the “**Debtors**”) acquired for, or used in relation to, a business carried on by the Debtors, including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower (the “**Project**”) located on the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (“**One Bloor**”).

1.2 This report is the supplemental report to the Third Report of the Receiver (the “**Supplemental Report**”).

1.3 In this Supplemental Report, the Receiver addresses:

- (a) MI’s agreement to produce the documents sought in the Receiver’s motion dated July 9, 2024 (the “**Receiver’s Production Motion**”) in exchange for certain confidentiality terms;
- (b) the partial resolution of MI’s motion for certain miscellaneous relief dated July 9, 2024 (the “**MI Miscellaneous Motion**”), and the Receiver’s reasons for opposing the remaining relief sought by MI; and

- (c) the current status of the MI Payment Motion, which has been substantially slowed by disputes about whether MI has to provide certain documents (which were the subject of the Receiver’s Production Motion) and delays in providing other documents.

2.0 RESOLUTION OF THE RECEIVER’S PRODUCTION MOTION

2.1 By letter dated July 3, 2024, and attached hereto as **Appendix “A”**, MI has agreed to produce unredacted copies of the MI Account Statements and the Ancillary Documents (both as defined in the Third Report) subject to certain confidentiality terms. The Receiver responded by letter dated July 10, 2024, and attached hereto as **Appendix “B”** with certain amendments to, and clarifications of, the proposed confidentiality terms. By e-mail dated July 10, 2024, and attached as **Appendix “C”**, MI accepted the Receiver’s proposed confidentiality terms.

2.2 Since MI has now agreed to produce the documents that were the subject of the Receiver’s Production Motion, that motion will no longer be required.

3.0 UPDATE ON MI MISCELLANEOUS MOTION

3.1 On June 21, 2024, Mizrahi Inc. (“**MI**”) served a motion seeking the following relief (the “**MI Motion**”):

1. An order that any claims for set-off advanced by the court appointed receiver, Alvarez & Marsal Canada ("A&M" or the "Receiver") be and are restricted to claims the Receiver identifies solely from a review of documentation provided by MI on or after May 27, 2024;
2. An order requiring the Receiver to increase the reserve set aside to address MI's claim for payment in its pending motion to enforce paragraph 17 of the Receivership Order to \$11 million;
3. An order requiring the Receiver to obtain and produce to MI all documentation referable to the approval and/or denial of payments to MI, the approval and denial of construction draw requests for Project funds by MI, the payment of all approved payments and any other related documentation within the possession of the Receiver, or the Secured Senior Lender (defined below); and
4. An order requiring the Receiver to produce to Mr. Sam Mizrahi copies of all quantity survey reports, the daily logs of the Project's general contractor, Skygrid, updated construction schedules and budgets for the Project.

3.2 A copy of MI's Notice of Motion is attached hereto as **Appendix "D"**.

3.3 The parties have narrowed their dispute with respect to the MI Miscellaneous Motion.

Specifically:

- (a) MI agreed to negotiate a new schedule for the MI Payment Motion instead of seeking to bar claims. In exchange, the Receiver provided a without-prejudice list of potential set-off claims that it is currently investigating. The Receiver specifically reserved the right to add or remove potential claims; and

- (b) MI and the Receiver agreed to a resolution of the reserve issues, which is documented in the e-mail dated June 30, 2024 and attached as **Appendix “E”**.

3.4 **Production from Senior Secured Lenders.** MI has sought an Order compelling the Receiver to obtain “all documentation” relating to payment approvals from the Senior Secured Lenders. The Receiver believes that MI’s request is both unnecessary and overly broad, for several reasons:

- (a) the Receiver has never alleged that the Senior Secured Lenders did or did not approve advances made to the Debtors, including those that were used to pay MI’s fees. MI and the Receiver disagree about the relevance of the Senior Secured Lenders’ approval;
- (b) in any event, MI has claimed that the Senior Secured Lenders approved its payments and so (in the Receiver’s view) MI is responsible for producing the documents required to substantiate that allegation. In the event that there is any dispute about a specific issue or payment then the Receiver may decide that it is appropriate to request relevant information from the Senior Secured Lenders, but the broad disclosure requested is not necessary or appropriate; and
- (c) MI’s request is very broad and unnecessarily cumbersome. Responding to it would require that the Senior Secured Lenders review and produce a large number of documents spanning over the course of many years. Many of these documents are likely in Korean, and would need to be translated before production. This would impose significant costs on both the Senior Secured Lenders and the Receiver, and significantly delay the hearing of the MI Payment Motion. The Receiver does not

believe that these costs or delays are appropriate, particularly in light of the issues identified above.

3.5 **Production of construction reports.** Sam Mizrahi, in his capacity as an “owner” and guarantor of the Debtors, has also requested production of various construction related reports. In the Receiver’s view:

- (a) the information being sought is not relevant (and is not alleged to be relevant) to the MI Payment Motion;
- (b) Mr. Mizrahi has advised that he intends to participate as a bidder in the SISP. His entitlement to information about the Project as a bidder (apart from information directly relevant to the ongoing litigation) will be governed by the SISP. The Receiver does not intend to provide the level of detail requested by Mr. Mizrahi at this stage of the SISP; and
- (c) the information sought is confidential, and Mr. Mizrahi has not executed a non-disclosure agreement (“NDA”). Mr. Mizrahi and the Receiver are negotiating the terms of an NDA, and the Receiver does not intend to provide any confidential information to Mr. Mizrahi unless and until an appropriate NDA is executed.

4.0 UPDATE ON MI PAYMENT MOTION

- 4.1 As the Receiver reported in its Third Report, the Receiver has been unable to complete its investigation into issues relevant to the MI Payment Motion because of MI's failure to provide the MI Account Statements, Ancillary Documents and Project Records.
- 4.2 The Project Records are particularly important to the Receiver's investigation, because they provide a contemporaneous record (in the form of e-mails and other Project related documents) of issues relevant to virtually every aspect of the MI Payment Motion and the set-off claims that the Receiver may advance.
- 4.3 As described in the Third Report, the Project Records were produced by MI on June 9, 2024. The Receiver was not able to access the Project Records until June 12, 2024 (as MI did not provide the password required to access the file it produced until June 11, 2024), upon which the Project Records were subsequently uploaded to an electronic document review software database (the "**Database**") for document processing and review.
- 4.4 On June 27, 2024, counsel to the Receiver identified two important issues with the Project Records produced by MI:
- (a) potentially privileged information was included among the Project Records. Out of an abundance of caution, and in order to avoid any inadvertent review of privileged documents, the Receiver suspended access to the Database until it could confirm that no privileged information had been inadvertently included in the Project Records; and

(b) counsel to the Receiver identified a number of Project Records that had not been produced. By way of example, MI has asserted in support of the MI Payment Motion that various parties reviewed and approved certain fees that it charged. The Project Records included little or no correspondence about approval of MI's fees.

4.5 By e-mail dated June 27, 2024, and attached as **Appendix "F"** counsel to the Receiver wrote to counsel to MI to seek confirmation that no privileged documents had been included in the Project Records and to identify certain apparent deficiencies in the Project Records.

4.6 By responding letter dated July 3, 2024, and attached as **Appendix "G"**, counsel to MI advised that privileged communications had been inadvertently included in the Project Records and acknowledged the "missing information" identified by the Receiver.

4.7 By email dated July 9, 2024, and attached as **Appendix "H"**, counsel to MI wrote to identify approximately 2,000 allegedly privileged documents that had been inadvertently included in the Project Records. MI has not yet addressed the "missing information" or advised when that issue will be addressed.

5.0 CONCLUSION AND RECOMMENDATION

5.1 As set out above, the Receiver's Production Motion has largely been resolved. The Receiver expects to provide a consent Order to the Court addressing the production of Project Records by MI and agreed-upon confidentiality measures.

5.2 With respect to the MI Miscellaneous Motion, the Receiver has worked with MI to narrow the issues in dispute. To the extent that MI decides to proceed with the remaining aspects

of its motion, the Receiver respectfully requests that these aspects of MI's motion be dismissed.

All of which is respectfully submitted,

Alvarez & Marsal Canada Inc., in its capacity as receiver and manager of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc.

Per:  Signed by:
841E30BD68C34C1...
Name: Stephen Ferguson
Title: Senior Vice-President

Per:  DocuSigned by:
FE876A642EF3427...
Name: Josh Nevsky
Title: Senior Vice-President

APPENDIX "A"

Jerome R. Morse
*Certified by the Law Society of Upper Canada
as a Specialist in Civil Litigation*
Direct Line: 416-941-5867
jmorse@morseshannon.com

July 3, 2024

**Delivered Via Email mdunn@goodmans.ca, carmstrong@goodmans.ca,
jlinde@goodmans.ca, boneill@goodmans.ca**

Mark Dunn
Christopher Armstrong
Jennifer Linde
Brendan O'Neill
Goodmans LLP
333 Bay Street, Suite 3400
Toronto ON M5H 2S7

WITH PREJUDICE

Dear Counsel:

**Re: Mizrahi Inc.
Our File No. 50960**

Further to our discussion yesterday, please see below proposed parameters for a confidentiality agreement between MI and the receiver to resolve the Receiver's motion for production of unredacted financial records. We seek to establish an agreement in principle on the terms of the confidentiality agreement to be formalized into a signed agreement by the parties.

1. MI will deliver the documents requested in the attached draft Order (the "Documents") to counsel for the receiver. The Documents will be kept strictly confidential and will not be disclosed to any third parties without an order of the court, which shall be obtained by the receiver on 10 days written notice to MI. Absent a court order permitting disclosure to a third party, access to the Documents will be strictly limited to receiver and its lawyers at Goodmans;
2. The Documents will be stored in a litigation support database, such as Relativity, with strict controls over the access to the database. Only the receiver and its lawyers at Goodmans will have credentials to access the database, absent a court order pursuant to paragraph 1 above;
3. The receiver agrees not to make a copy of the database which could be accessed offline and outside of the litigation support database;
4. The receiver and Goodmans agree to immediately advise MI of any inadvertent disclosure of the Documents to any third parties and the receiver

will support MI's motion to require the third party to destroy and not disseminate the Documents;

5. The receiver and Goodmans agree that it is accessing and reviewing the Documents for the purpose of examining and understanding Project related expenses and the use of Project monies. The receiver and Goodmans agree that Documents will not be used for any other purpose;
6. The receiver and Goodmans will give MI, through its lawyers, no less than 10 days written notice of an intention to rely upon any of the Documents in a court proceeding and will specifically identify what documentation they intend to rely upon and for what purpose;
7. The receiver and Goodmans agree that if the receiver intends to rely upon any of the Documents as part of a court proceeding, the Documents will be filed with the court under seal, pending the determination of the court as to whether it remains under seal and such request for a sealing order will be sought by the parties as a term of resolution of that aspect of the pending motion; and
8. The Documents, the database and all copies of any of the Documents will be completely destroyed upon the discharge of the receiver.

We look forward to any comments on this proposal and ask for a response as soon as possible.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT

cc: Steve Weisz
David Trafford

APPENDIX "B"

July 10, 2024

Our File No.: 232285

Via Email

Morse|Shannon LLP
133 Richmond Street West
Suite 501
Toronto, ON M5H 2L3

Attention: Jerome Morse

Dear Mr. Morse:

Re: Mizrahi Inc. (“MI”)

We write further to our correspondence dated June 30, 2024 and your request for a non-binding list of set-off claims that the Receiver is currently investigating. As we explained in our previous correspondence, the Receiver is providing this list without prejudice to its right to add or remove set-off claims.

To be clear, the Receiver has not made a final determination with respect to these claims. We expect a final determination after the issues identified with the electronic project records are addressed and the Receiver is able to review those records.

Capitalized terms not otherwise defined have the meaning ascribed to them in the Receiver’s First Report, Second Report and Third Report.

Subject to the qualifications set out above and in our previous correspondence, the Receiver advises that it is investigating the following potential set-off claims:

1. **MI may have been overpaid for its work.** As we have previously articulated, the Receiver has reviewed the contracts between MI and the Debtors. It has not identified any evidence that MI was contractually entitled to the fees that it charged. The Receiver is investigating whether MI was overpaid for the services that it provided to the Project.
2. **CERIECO payments.** The Receiver continues to investigate payments from CERIECO (as discussed in Sections 3 and 12 of the First Report) to MI that were subsequently paid to unknown third parties who do not appear to have been invested in the Project. The Receiver continues to investigate this issue, including whether it gives rise to any liability on the part of MI.

3. **Reserve funds.** According to the Mediator's Proposal dated November 26, 2019 (the "Mediator's Proposal"), MI was holding \$1.2 million partially in a non-segregated MI account and partially in a segregated MI account as a reserve against a specific liability (the "Reserve"). The Mediator's Proposal required that the Reserve be transferred into a joint trust account or used to purchase a GIC, to be held in trust in the event of an adverse CRA assessment.

The Receiver understands that the Reserve was not transferred into a trust account, used to purchase a GIC, or paid to the CRA. The Receiver has not been able to locate the Reserve. It is investigating MI's liability in connection with this issue.

4. **Commissions on defaulted units.** MI owes \$1,816,012.85 to the Debtors pursuant to the terms of the Exclusive Listing Agreement dated July 12, 2017 (the "ELA"). The Receiver has previously articulated the basis for this set-off claim;
5. **Overpayment of commissions and marketing expenses.** Pursuant to the terms of the ELA, MI was responsible for all marketing costs. This responsibility was specifically affirmed in the Mediator's Proposal.

Despite these terms, MI charged a marketing fee of \$100,000 plus HST every month. In the event that the Receiver determines that MI was not entitled to the \$100,000 fee in addition to the other fees paid to it then the Debtors may be entitled to a refund of the fee.

MI entered into a Marketing Agency Agreement (the "MAA") with Magix Technologies LLC ("Magix"). Pursuant to the MAA, Magix received a non-refundable retainer of \$368,000 to act as sales agent for MI and a 5% commission on Unit sales. To date, Magix has been paid \$190,000 in commissions with \$381,000 remaining payable in respect of two Units. This is in addition to the \$368,000 in commissions paid to MI for the same Units.

Although the MAA is between MI and Magix, the Receiver understands that the Debtors paid the commissions to Magix.

MI also entered into a Listing Agreement with Royal LePage. Pursuant to the Listing Agreement, Royal LePage received a 2.5% to 5% commission on Unit sales. To date, Royal LePage has been paid \$334,000 in commissions with \$353,000 remaining payable in respect of three units. This is in addition to the \$545,000 of commissions paid to MI for the same Units.

Although the Listing Agreement is between Royal LePage and MI, the Receiver understands that the Debtors paid the commissions to Royal LePage.

The Receiver is investigating whether MI is liable to the Debtors for these payments.

- 6. Invoices for work not performed.** The Receiver has identified certain invoices that do not appear to accurately reflect work performed by certain contractors. In particular:
- a. 1118741 Ontario Limited o/a Irpinia Kitchens (“Irpinia”) invoiced MI for \$555,555.56 for “Early Procurement of Material”. Irpinia has advised SkyGrid the Receiver that it did not procure any material. It subsequently advised that the payment was compensation for meetings with MI;
 - b. Pereira Construction and Carpentry (“Pereira”) invoiced MI for \$204,417 as a “deposit for material”. Pereira has advised SkyGrid that it did not purchase any materials for the Project. It claims that the payments related to the rental of a shop for millwork; and,
 - c. Mar-Tec Woodworking Ltd. (“Mar-Tec”) invoiced the Debtors \$110,000 for “Shop Drawings for Commercial Retail Fitout”. Mar-Tec has advised SkyGrid that it did not prepare shop drawings.

As you know, the Receiver continues its investigation and reserves the right to advance further claims.

Yours truly,

Goodmans LLP



Mark Dunn
Partner
MD/es

cc: Christopher Armstrong, Brendan O’Neill, Sarah Stothart and Jennifer Linde, Goodmans LLP

Stephen Ferguson, Joshua Nevsky, Melanie MacKenzie, Fiona Mak, Andrew Sterling and Ethan Krieger, Alvarez & Marsal Canada Inc.

APPENDIX “C”

From: [David Trafford](#)
To: [Dunn, Mark](#)
Cc: [Armstrong, Christopher](#); [Jerome Morse](#); [Linde, Jennifer](#); [Weisz, Steven J](#); [O'Neill, Brendan](#); [Stothart, Sarah](#); [Veronica Stasolla](#)
Subject: RE: Mizrahi Inc.
Date: Wednesday, July 10, 2024 2:06:39 PM

Hi Mark,

Thank you for your letter. Our client accepts these revised confidentiality terms. If there is anything else to discuss, let us know and we can schedule a call for tomorrow.

Please confirm we have agreement on the settlement of your client's redaction motion on the basis of the confidentiality terms set out in your letter of July 9. Once confirmed I can provide a batch of unredacted banking statements from November 2016 to October 2023.

David Trafford

Partner

Direct Line: [416-941-5850](tel:416-941-5850)



133 Richmond St. West, Suite 501, Toronto, Ontario M5H 2L3
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PLEASE NOTE OUR NEW ADDRESS ABOVE!

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Tuesday, July 9, 2024 6:44 PM
To: Jerome Morse <jmorse@morseshannon.com>; David Trafford <DTrafford@morseshannon.com>; Weisz, Steven J <SWeisz@cozen.com>
Cc: Armstrong, Christopher <carmstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>; O'Neill, Brendan <boneill@goodmans.ca>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:ssothart@goodmans.ca)>
Subject: RE: Mizrahi Inc.

Counsel,

Please see attached correspondence with respect to the proposed confidentiality terms. I would suggest that we set up a time to speak either tomorrow or Thursday to discuss and address any concerns so that we can finalize this.

Thanks,
Mark

APPENDIX "D"

**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

NOTICE OF MOTION

Mizrahi Inc. ("**MI**") will make a motion before Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on August 9, 2024 as soon as it can be heard at the Courthouse at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally in-person.

THE MOTION IS FOR:

1. An order that any claims for set-off advanced by the court appointed receiver, Alvarez & Marsal Canada ("A&M" or the "Receiver") be and are restricted to claims the Receiver identifies solely from a review of documentation provided by MI on or after May 27, 2024;
2. An order requiring the Receiver to increase the reserve set aside to address MI's claim for payment in its pending motion to enforce paragraph 17 of the Receivership Order to \$11 million;

3. An order requiring the Receiver to obtain and produce to MI all documentation referable to the approval and/or denial of payments to MI, the approval and denial of construction draw requests for Project funds by MI, the payment of all approved payments and any other related documentation within the possession of the Receiver, or the Secured Senior Lender (defined below); and
4. An order requiring the Receiver to produce to Mr. Sam Mizrahi copies of all quantity survey reports, the daily logs of the Project's general contractor, Skygrid, updated construction schedules and budgets for the Project.

THE GROUNDS OF THE MOTION ARE AS FOLLOWS:

1. MI is a corporation beneficially owned by Mr. Sam Mizrahi. MI provides construction and development management services in Ontario.
2. Mr. Mizrahi (and related entities) have a 50% ultimate indirect voting interest in the beneficial owner of the Project, Mizrahi Commercial (The One) LP (the "Owner"). The other 50% indirect voting interest in the Owner is held by Ms. Jenny Coco (and related entities) (the "Coco Parties"). The registered owner of the Project is Mizrahi Commercial (The One), GP Inc.
3. On October 18, 2023, Justice Osborne granted an order appointing the Receiver (the "Receivership Order") over the Owner and related entities.

MI's Payment Motion and the Need to Increase the Amount Reserved by the Receiver

4. MI has brought a motion to enforce paragraph 17 of the Receivership Order seeking payment by the Receiver for fees and costs owed to MI by the Project for post-receivership work (the "Payment Motion").

5. To address potential prejudice to MI due to non-payment of its claim at issue in the Payment Motion, on or about March 7, 2024, the Receiver undertook to the court to reserve \$6 million to protect MI's claim for payment under the Payment Motion.
6. Since that time, MI's claim for non-payment at issue in the Payment Motion was increased substantially to \$10,911,766.25. As such, MI is again faced with significant prejudice of non-payment of its claim at issue in the Payment Motion. The amount claimed by MI in the Payment Motion is subject to interest at a per diem of \$3,040.02.
7. MI's claim at issue in the Payment Motion in the sum of \$10,911,766.25 includes \$4,529,644.83 referable to unpaid hard costs owed to third parties. The Receiver has not provided any response to MI's requests for information on why these third party hard costs remain unpaid.
8. MI is prejudiced by the potential of non-payment to its claim for fees and expenses owed pursuant to paragraph 17 of the Receivership Order for post-receivership work.
9. The Receiver has a practice of maintaining a reserve sufficient to pay unpaid costs claimed against the Project and should be required to maintain that practice to address the claims advanced by MI in the Payment Motion.
10. The reserve set aside by the Receiver to address the prejudice to MI due to the potential for non-payment should be increased given the increase in MI's claim for non-payment at issue in the Payment Motion to \$11 million.

The Receiver has Failed to Comply with the Timetable for the Payment Motion

11. In an Endorsement, dated March 18, 2024, Justice Osborne directed that the Receiver deliver its Responding Motion Record for the Payment Motion by May 31, 2024. This date was proposed by the Receiver over the objection of MI which sought a tighter timeline. The Receiver advised the court that it required time to investigate and consider potential claims for set-off against MI's claim for payment of fees and costs for post-receivership work required to be paid to MI pursuant to section 17 of the Receivership Order.
12. To date, the Receiver has only identified one claim for an alleged set-off.
13. On May 28, 2024, MI's counsel wrote to counsel for the receiver indicating MI required the delivery of the Receiver's Responding Motion Record by May 31, 2024, but agreed the record could be supplemented by any claims or evidence subsequently identified by the Receiver revealed in materials recently delivered or to be delivered.
14. The Receiver did not respond to this communication and did not deliver a Responding Motion Record by May 31, 2024 or at all.
15. The Receiver should be precluded from advancing any claims for a set-off, except for claims that are identified by the Receiver arising from documentation reviewed after May 27, 2024 as a result of its failure to comply with the timetable it proposed and as endorsed by Justice Osborne.

Production of Documentation Referable to the Approval of Payments to MI

16. The Receiver has suggested that it has concerns over the flow of money from the Project to the MI, but has refused to specify any of its concerns. There is no doubt that MI received significant sums of Project funds as fees, and to pay Project costs,

including amounts owed to third parties, such as subcontractors. In addition, one of the Project's lenders required its funds for the Project to be deposited into MI's bank accounts, before the funds were either directed to third parties as approved, directed to Project bank accounts, kept by MI as consideration for fees and expenses owed to it by the Project, or directed by MI to third parties for the payment of Project costs.

17. To date, the Receiver has not provided any particulars or information on the nature of its concerns. The records in the Receiver's possession reveal that all money received by MI from the Project was approved by the Senior Secured Lender, its administrative agent, and the quantity surveyor, Altus and for a period of time the Coco parties.
18. Furthermore, the Receiver has not identified any discrepancies with respect to the payment of MI or the payment by MI of third party costs, with one minor exception arising in February 2024, which was addressed by the Receiver and MI and resolved by agreement that the Receiver pay the third parties directly with the balance paid to MI.
19. Given the unspecified allegations of the Receiver of concerns with respect to payments made to MI from Project funds, MI seeks production of all documentation in the Receiver's possession concerning the approval and/or denial of Project payments to MI as the Receiver obtained from the Senior Secured Lender. If the Receiver has not obtained this information, MI seeks an order compelling the Receiver to obtain such information as it is empowered to do under the Receivership Order.

20. MI requires this information to adequately respond to any potential claims the Receiver may advance, even though no such claims have been identified by the Receiver.

Production of Quantity Survey Reports, Skygrid Daily Logs, Updated Budgets and Schedules for the Project

21. Mr. Sam Mizrahi is a 50% beneficial owner of the Project and is the principal of MI. Mr. Mizrahi is also a guarantor under the Project's outstanding debts, which has resulted in the Receivership Order.

22. Mr. Mizrahi, as owner of the Project and guarantor, is entitled to production of the quantity survey reports of the Project, the daily logs of the general contractor to the Project, Skygrid, updated budgets and schedules for the Project.

23. This production of this documentation to Mr. Mizrahi is relevant to his interests in the Project as owner and guarantor to the Project's debts.

24. The production of this documentation is subject to the implied undertaking rule and will be kept confidential by Mr. Mizrahi and his counsel.

25. Sections 4.2(1)(2) and 243 of the *Bankruptcy and Insolvency Act*.

26. The inherent and equitable jurisdiction of this Court.

27. Rules 1.04, and 37 of the *Rules of Civil Procedure*.

28. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE RELIED UPON:

1. The affidavit of Veronica Stasolla, affirmed June 21, 2024;
2. The affidavit of Mark Kilfoyle, affirmed June 21, 2024; and

3. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 21, 2024

MORSE SHANNON LLP

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Toronto ON M5H 2L3

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Lawyers for the Moving Party,
Mizrahi Inc.

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

-and-

MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., and MIZRAHI COMMERCIAL (THE ONE) GP INC.

Applicant

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

MORSE SHANNON LLP

133 Richmond Street West Suite
501
Toronto ON M5H 2L3

Jerome R. Morse (21434U)
jmorse@morseshannon.com

David M. Trafford (68926E) dtrafford@morseshannon.com

Tel: 416.863.1230
Fax: 416.863.1241

Lawyers for the Respondents

APPENDIX "E"

June 30, 2024

Our File No.: 232285

Via Email

Morse|Shannon LLP
133 Richmond Street West
Suite 501
Toronto, ON M5H 2L3

Attention: Jerome Morse

Dear Mr. Morse:

Re: Mizrahi Inc. ("MI")

We are writing in response to your letter dated June 20, 2024. Our responses to the issues that you raised are set out below.

Reserve for the Payment Motion

Without conceding that it is obliged to retain any reserve, the Receiver is prepared to agree that it will retain an amount sufficient to satisfy the invoices listed in my letter dated June 19, 2024, on the following terms:

- With respect to the amount claimed by MI in the MI Payment Motion, the Receiver will hold a reserve in the amount of \$10,911,766.25, inclusive of the third party invoices addressed below until the earlier of: payment of any part of the reserve amount (as described below); the release of a decision of the Court on the MI Payment Motion; an agreement between MI and the Receiver with respect to the reduction or elimination of the reserve; or, an Order of the Court authorizing the Receiver to reduce or eliminate the reserve; and,
- With respect to third party subcontractor invoices, to the extent that any of these invoices are paid by the Receiver (including payment pursuant to an agreement with the subcontractor or following a dispute resolution process) then the Receiver shall reduce the reserve to reflect the payment. The Receiver will provide notice to MI if and when payments are made to subcontractors.

Kindly confirm that these terms are acceptable, and that your client will withdraw its motion as it relates to the reserve.

Revised Timetable for Payment Motion

We are prepared to provide a list of claims that the Receiver is currently investigating, and a preliminary list of the primary documents relevant to those claims, as part of a revised timetable for the payment motion. To be clear, the Receiver will reserve the right to amend both the matters being investigated and the documents being relied on. Kindly confirm that this is acceptable, and we can arrange a time to discuss the timetable.

Production of payment documentation

I can confirm that the Receiver has not received any payment approval communications from the Senior Secured Lenders. The Receiver does not believe that production of these documents from the Secured Lenders is necessary or appropriate at this time. As we previously advised, any payment approval communicated by the Senior Secured Lenders is, by definition, in MI's possession.

In any event, and without derogating from the foregoing, if MI believes that the Senior Secured Lenders are obliged to provide documents then it should seek production of those documents from the Senior Secured Lenders.

Mr. Mizrahi's request for production

The Receiver is not prepared to produce the documents requested by Mr. Mizrahi at paragraph 4 of your Notice of Motion, for at least the following reasons:

- The information sought is confidential, and Mr. Mizrahi has refused to execute a non-disclosure agreement;
- Mr. Mizrahi has advised that he intends to participate as a bidder in the SISP. His entitlement to information about the Project as a bidder (apart from information directly relevant to the ongoing litigation) will be governed by the SISP.
- the information being sought is not relevant (and is not alleged to be relevant) to the MI Payment Motion;
- The information sought by Mr. Mizrahi would be onerous to collect, particularly since the daily logs are prepared on an ongoing basis.

I trust that the Receiver's position on these issues is clear, and look forward to hearing from you.

Yours truly,

Goodmans LLP



Mark Dunn
Partner
MD/es

cc: Christopher Armstrong, Brendan O'Neill, Kirby Cohen and Jennifer Linde, Goodmans
LLP

Stephen Ferguson, Joshua Nevsky, Melanie MacKenzie, Fiona Mak, Andrew Sterling
and Ethan Krieger, Alvarez & Marsal Canada Inc.

1406-8374-0941

APPENDIX "F"

From: [Dunn, Mark](#)
To: [Jerome Morse](#); [David Trafford](#); [Weisz, Steven J](#)
Cc: [Armstrong, Christopher](#); [Linde, Jennifer](#); [O'Neill, Brendan](#); [Cohen, Kirby](#)
Subject: RE: Mizrahi Inc.
Date: Thursday, June 27, 2024 4:46:49 PM

Counsel,

I am writing to address two issues relating to the e-mail records produced by MI on June 9, 2024.

In the course of reviewing the records, we identified an e-mail between MI and one of its former lawyers, Ms. Campion at Lax O'Sullivan. We did not read the e-mail. We conducted a search for Ms. Campion's name (again, without reading the e-mails or any metadata relating to the e-mails) and noted that she seems to have sent or received several e-mails in the database.

The Receiver seeks to avoid inadvertently accessing privileged information. In order to address this issue, and out of an abundance of caution, we have temporarily paused access to the e-mail database. **Please confirm that your client has not produced any privileged documents or that it has waived privilege over any documents that it has produced.**

As you know, the Receiver requires access to the e-mail database in order to carry out its mandate and respond to the MI Payment Motion. It is therefore essential that we hear from you immediately on this issue.

In addition, we have a more general concern about the sufficiency of the e-mail productions. By way of example, MI has alleged that the payments it received were specifically approved by the Senior Secured Lenders and Altus. The documents evidencing these approvals, together with the related e-mails, ought to be in the database. But the database does not, for example, appear to include payment approvals from the Senior Secured Lenders for most of the relevant months, and it includes almost no correspondence with Altus about the monthly cost approval or periodic budget adjustments.

Please note that we have not had an opportunity to review and identify all relevant information that may be missing from the database. We are raising the issue now so that errors in the production process can be addressed expeditiously and the Receiver's investigation can continue.

I look forward to hearing from you, and would be pleased to discuss these issues with you.

APPENDIX "G"

July 3, 2024

**Delivered Via Email mdunn@goodmans.ca, carmstrong@goodmans.ca,
jlinde@goodmans.ca, boneill@goodmans.ca**

Mark Dunn
Christopher Armstrong
Jennifer Linde
Brendan O'Neill
Goodmans LLP
333 Bay Street, Suite 3400
Toronto ON M5H 2S7

Dear Counsel:

**Re: Mizrahi Inc.
Our File No. 50960**

We write further to your letter of June 30, 2024.

The Reserve for the Payment Motion

I confirm that our clients have resolved the issue of the amount set aside by the Receiver to address MI's claim in the Payment Motion on the terms set out in your letter. MI will withdraw its motion as it relates to the reserve.

Revised Timetable for Payment Motion

As discussed during our call today, our client is prepared to resolve this aspect of its motion on the understanding the receiver will deliver a list of issues that it is investigating as set-off claims against MI and the receiver will provide the primary documents relevant to those claims. Our client acknowledges that this list would be preliminary and may be amended as the receiver reviews further documentation. During our call you suggested the list could be provided within a week or two. We do not understand why the receiver cannot provide the list of claims it is investigating forthwith with an undertaking to advise in the future when it has decided to add or delete any items from the list (again with the production of primary documents relevant to new claims). An understanding of the potential claims MI will be responding to is vital to our ability to craft a timetable for the Payment Motion that maintains a September motion date. Waiting two weeks to provide this list will serve no purpose as the delay eliminates the intended efficiency of an agreed upon timetable and reduces MI's time to be in a position to adequately respond to any potential claims. Since the list is provided on a without prejudice basis, we see no reason

to wait. Please advise if your client is prepared to provide the list of potential claims tomorrow with the primary documents to be produced by the end of the week.

We agree that a final timetable for the Payment Motion cannot be made until the issue of the production of project documents (addressed below) is dealt with.

MI Request for Production

I confirm our client is prepared to revisit the signing of an NDA so he can obtain the information on the progress of construction as requested. We understand the receiver is nonetheless unwilling to produce Skygrid's daily logs, the updated construction schedule, an updated budget or the quantity survey reports to our client in his capacity as owner and/or guarantor. Please advise if any of this information is included in the SISP database as we may be able to narrow this issue or resolve it if it is rendered moot given our client's present intention to participate in the SISP.

We do not understand why the receiver has not requested payment approval information from the Senior Secured Lender and reiterate that it should do so. MI will seek production of that documentation in its motion.

Redaction of Banking Records

As discussed, our client is prepared to consider resolving the receiver's motion for the production of banking and financial documentation if the parties can agree upon strict confidentiality terms that govern the use and disclosure of MI's documentation. A proposal will follow in due course. We have asked our client how long it will take to produce the unredacted records if the parties reach agreement and will advise in due course.

The Ricoh Production and Project Records

We confirm that any inclusion of email communications involving Nadia Champion were produced inadvertently and the production does not constitute a waiver of solicitor-client privilege. Ricoh was given strict instructions on the exclusion of privileged communication and efforts are underway to understand how this inadvertent disclosure occurred and to determine whether there were any further errors concerning privileged communication. We have received confirmation that there was missing information in the Ricoh documents produced and we are working with the consultant to remedy those deficiencies and will report back as soon as possible on the expected timeline.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT

cc: Steve Weisz
David Trafford

APPENDIX "H"

From: [David Trafford](#)
To: [Dunn, Mark](#)
Cc: [Veronica Stasolla](#); [Armstrong, Christopher](#); [Linde, Jennifer](#); [O'Neill, Brendan](#); [Jerome Morse](#); [Weisz, Steven J](#)
Subject: RE: Mizrahi Inc.
Date: Tuesday, July 9, 2024 6:50:41 AM
Attachments: [HHLTMIZ List of DocIDs in Prod01 for Clawbacks Either Priv Hit or Fam of Priv Hit 20240705.xlsx](#)

Good morning,

Ricoh has identified various privileged communications included in the production of project records. Enclosed is a list identifying these documents by document ID. Please confirm your service provider will exclude these documents, permitting your firm to continue its review.

Our client advises that it can deliver the unredacted records sought by the receiver in the redactions motion within 2 weeks, but with rolling production. We have asked them to start that process in the event the parties reach an agreement on confidentiality.

David Trafford

Partner

Direct Line: [416-941-5850](tel:416-941-5850)



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PLEASE NOTE OUR NEW ADDRESS ABOVE!

**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**

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

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

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**THIRD REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.
July 11, 2024**

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