CITATION: Constantine Enterprises Inc. v. Mizrahi (128 Hazelton) Inc., 2026 ONSC 2781
COURT FILE NO.: CV-24-00715321-00CL
DATE: 20260512

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CONSTANTINE ENTERPRISES INC., Applicant

AND:

MIZRAHI (128 HAZELTON) INC. and MIZRAHI 128 HAZELTON RETAIL INC., Respondents

BEFORE: Cavanagh J.

COUNSEL: *James Renihan and Jennifer Stam*, for the Receiver

Alan Merskey, for Constantine Enterprises Inc.

David Trafford and Adam Beyham. for Mizrahi Inc. and Sam Mizrahi

HEARD: February 4, 2026

ENDORSEMENT

Introduction

[1] Mizrahi (128 Hazelton) Inc. ("Hazelton") is a joint venture between two shareholders formed for the purpose of developing a luxury condominium project in Toronto's Yorkville neighbourhood (the "Project"). The two shareholders are Constantine Enterprises Inc. ("CEI") and Mizrahi Developments Inc. ("MDI"), a company ultimately owned and controlled by Sam Mizrahi.

[2] Hazelton defaulted on its obligations before completing the Project. On the application of CEI, KSV Restructuring Inc. was appointed as the Receiver and Manager (the "Receiver") of Hazelton's property, assets and undertakings including the Project.

[3] The Receiver has identified two claims which Hazelton has against Mr. Mizrahi and Mizrahi Inc., another company owned and controlled by Mr. Mizrahi. On this motion, the Receiver seeks judgment against Mr. Mizrahi and Mizrahi Inc. ("MI") in the total amount of $1,564,322.

Background facts

The Hazelton Project

[4] Hazelton is owned 50% by CEI and 50% by MDI. Robert Hiscox and Edward Rogers are the principals of CEI. Sam Mizrahi is the principal of MDI.

[5] Each shareholder nominated a director: CEI nominated Robert Hiscox and MDI nominated Mr. Mizrahi. Mr. Mizrahi also served as Hazelton's president. Mr. Mizrahi resigned from his positions on May 13, 2024, shortly before the appointment of the Receiver.

[6] The Project, located at 126 and 128 Hazelton Avenue, is a nine-story luxury condominium, with retail premises on the ground floor. The Project was not finished at the time the Receiver was appointed.

[7] MI was the general contractor and developer for the Project. Mr. Mizrahi is also the principal of MI.

[8] Hazelton's known secured creditors include CEI, Aviva Insurance Company of Canada and various lien claimants. Hazelton's known unsecured creditors are owed approximately $4.2 million.

The Development Management Agreement

[9] Hazelton, Mizrahi Inc. and Mr. Mizrahi entered into a Development Management Agreement (“DMA”) on June 19, 2015. Pursuant to the DMA, Mizrahi Inc. agreed to "do all that is required to complete the Project through to the Project Completion Date." The Project Completion Date was defined as "final closing of the sale of all the Units and the completion of all other aspects of the Project."

[10] Hazelton paid MI $2 million as compensation for its work under the DMA. Half of that amount was paid in advance, deemed to be earned only upon completion of certain milestones. If those milestones were not met, MI was required to return any unearned portion of the fee. Mr. Mizrahi personally guaranteed the return of those amounts.

[11] Section 13 of the DMA provides that Hazelton "acting reasonably, may, at its election, declare this Agreement at an end" in the event of, among other things, the failure of MI. to perform any of its contractual obligations, subject to an opportunity to cure if applicable.

[12] The Receiver terminated the DMA on June 21, 2024. At that time, building permits had been issued and the Project was advanced but the Project Completion Date had not been achieved.

The Construction Management Agreement

[13] Hazelton and MI entered into a Construction Management Agreement (“CMA”) on March 13, 2017 pursuant to which MI was to manage the construction of the condominium project. The CMA sets out a long list of services MI was to provide as construction manager. Throughout all stages of the project, MI essentially acted as the general contractor for the project. MI ultimately retained a third party, CLM General Enterprises Ltd. (“CLM”), to provide some labour.

[14] As compensation for its services under the CMA, MI was to receive:

(a) a fee equal to 5% of the "construction cost" of the Project; plus

(b) agreed-upon monthly fees for certain specified MI employees.

[15] MI was also entitled to reimbursement of certain specified expenses, supported by receipts or invoices, plus an administrative charge of 15%. MI was not entitled to an administrative charge on the amounts it paid to CLM.

[16] Section 5.1.3 of the CMA's General Conditions provided that any change to MI's compensation was to be recorded in writing. There is no written amendment to MI's compensation under the CMA.

MI delegates work to CCM

[17] In July 2017, MI retained Clark Construction Management (CCM) to provide construction management and labour services to the project. The services to be provided by CCM largely overlapped with the services to be performed by MI under the CMA. CCM was to be compensated by way of a fee equal to 2% of the "construction cost" (which came out of MI's 5% fee) plus time-based rates for a variety of classes of labourers.

[18] Mr. Hiscox's evidence is that although the CMA did not envision Mr. Mizrahi delegating its work to another entity in this manner, CEI agreed to it. Mr. Mizrahi told Mr. Hiscox that subcontracting construction management and labour to a third-party was MI's standard practice and would help meet timelines and budget. Mr. Hiscox thus agreed the engagement of CCM.

[19] During the project, MI invoiced Hazelton for amounts due to CCM as "reimbursable expenses" under the CMA, without any markup. MI provided Hazelton with complete copies of the CCM invoices as support for the reimbursement requests.

[20] In August 2020, MI proposed terminating the CCM agreement and having MI perform all of the construction management work itself. MI advised CEI that the goal was to reduce labour costs and accelerate the schedule. MI advised that it expected the change to save Hazelton approximately $1.1 million. CEI agreed, and CCM was terminated effective October 2020.

MI engages CLM

[21] Following CCM's termination, MI began contracting with CLM to provide general labour for the project. CLM invoiced MI for that work. Each of CLM's invoices attached time sheets showing the number of hours each labourer worked. MI paid CLM's invoices directly.

[22] Although MI had provided all of CCM's invoices to Hazelton when seeking reimbursement, it did not provide the CLM invoices to Hazelton. Instead, MI prepared its own versions of time sheets for the CLM labourers, without any reference to CLM, and ascribed hourly rates for each labourer that were larger than what CLM charged:

(a) CLM billed between $35 and $45 per hour for its employees, but MI billed $96.35 per hour for each CLM employee;

(b) CLM charged the same rate for its workers regardless of how many hours they worked, but MI applied an "overtime" rate of $144.53 when hours exceeded a certain threshold, resulting in 826 "overtime" hours, compared to zero overtime hours billed by CLM; and

(c) MI "estimated" the number of hours CLM's labourers would work, and ultimately billed for 41 more hours billed than CLM had actually worked.

[23] In total, MI billed Hazelton $1,064,322 more for CLM's work than CLM billed MI.

Analysis

[24] The Receiver submits that in keeping with the goals of a receivership, it is appropriate for it to have its claims against MI and Mr. Mizrahi determined by a motion brought within the receivership proceeding. The Receiver relies on the "single proceeding model" under which all litigation concerning an insolvent debtor be determined within a single proceeding, rather than fragmented across different proceedings. This principle applies not just to claims against a debtor, but also to claims a debtor has against a third party, so long as the third party is not a "stranger" to the insolvency. The determining factor in deciding whether a party is a stranger to the proceeding is the degree of connection of the claim to the insolvency proceedings. See *Mundo Media Ltd. (Re)*, 2022 ONCA 607, at paras. 25, 40-52.

[25] Mr. Mizrahi does not contend that he or MI are strangers to the Hazelton insolvency. They submit that even if this motion is properly brought, the Receiver's claims (to the extent the claim under the CMA is not held to be statute barred) should be adjudicated on a full record following production of relevant documents and oral discovery.

[26] I am satisfied that the Receiver's claims are properly brought by this motion within the receivership application.

Receiver's claim under the CMA

[27] The Receiver's first claim arises from the CMA between Hazelton and MI pursuant to which MI was to manage the construction of the condominium project. As noted, MI ultimately retained a third party, CLM, to provide some labour.

[28] The Receiver submits that MI inflated the actual cost of labour provided by CLM when billing Hazelton for expenses. The Receiver relies on evidence showing that CLM billed MI a total of $640,989 for labour it provided to the project, and MI billed Hazelton $1,705,310 for that work. The Receiver submits that MI made $1,064,322 by inflating CLM invoices.

[29] The Receiver submits that MI is liable to return this overpayment on any of three bases: breach of contract, unjust enrichment and negligent or fraudulent misrepresentation. The Receiver submits that Mr. Mizrahi is personally liable for the amount of the Receiver's claim on the basis that he breached his fiduciary duty owed to Hazelton.

[30] MI denies that any improper billing occurred.

Is the CMA claim statute barred?

[31] MI raises as a threshold issue that the CMA claim is statute barred by operation of the *Limitations Act, 2002* (the "*Limitations Act*").

[32] The *Limitations Act* applies to claims pursued in court proceedings other than specified proceedings. The Receiver's claim is a claim pursued in a court proceeding. The *Limitations Act* provides in s. 4 that unless the Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.

[33] The *Limitations Act* provides, in s. 5(1):

> 5(1) A claim is discovered on the earlier of,
>
> (a) the day on which the person with the claim first knew,
>
> (i) that the injury, loss or damage had occurred,
>
> (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
>
> (iii) that the act or omission was that of the person against whom the claim is made, and
>
> (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
>
> (b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

[34] In *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, [2021] 2 S.C.R. 704, the Supreme Court of Canada held, at para. 42, that a claim is discovered when a plaintiff has knowledge, actual or constructive, of the material facts upon which a plausible inference of liability on the defendant's part can be drawn. This standard requires that the degree of knowledge needed to discover a claim is more than mere suspicion or speculation. The standard does not rise so high as to require certainty of liability. A plaintiff does not need to know the exact extent or type of harm it has suffered, or the precise cause of its injury, in order for the limitation period to run. See *Grant Thornton*, at para. 46.

[35] MI submits that as early as May 6, 2022, and no later than March 22, 2023, Hazelton discovered the CMA claim.

[36] MI relies on evidence given in an affidavit of Robert Hiscox affirmed on December 22, 2025. In this affidavit, at paras. 33 and 52, Mr. Hiscox deposes:

> 33. Although MI and CEI agreed in late October 2020 to replace CCM, MI did not disclose that it was marking up labour rates until May 2022, and only in response to outstanding MI invoices that MI said urgently needed to be paid and for which I required back-up to approve.

> 52. MI did not disclose its labour rates until May 2022, eighteen months post-transition, and the scale of the embedded mark-up was not revealed until March 2023 after repeated CEI requests; even then MI provided only one CLM invoice. As stated at paragraph 34 of the First Hiscox Affidavit, I learned the full extent of MI's mark-ups upon reviewing the Fifth Report.

[37] MI also relies on an email dated May 6, 2022 that was sent from CEI's Chief Financial Officer, Chris Donland, to MI and appended as an exhibit to Mr. Mizrahi's affidavit affirmed November 28, 2025. In this email, Mr. Donland writes:

> When you say that we've always paid these rates, you're missing my point. CEI trusted you the first few years and didn't challenge everything because we thought you were going to deliver a profitable project. Instead, we're on pace to lose a massive amount of money on this project. In that situation, every expense should be challenged and optimized. You won't engage on this particular expense because you make a profit here on the back of a project with epic losses. The conflict of interest is obvious. Diego's report shows 2 people spending a full day cleaning. We can bring in cleaners that will do it at 1/3 the cost from our other properties.

[38] Mr. Hiscox was cross-examined on his affidavits and he was asked questions about CEI's knowledge that MI was charging a markup on labour rates. He agreed that, according to the email from Mr. Donland, CEI knew by May 6, 2022 that MI was charging a markup on the labour rates. He testified that when he saw the CLM invoice in March 2023, he was surprised and shocked that there was a third party company involved. He testified that as soon as the invoice was provided, "we went home to investigate, back to our offices to investigate". It was put to Mr. Hiscox that it would have been a matter of arithmetic to determine the markup that MI was charging to 128 Hazelton by subtracting the amount of the MI invoice from the amount of the CLM invoice. He responded that that is what they had done.

[39] The Receiver submits that the claim in respect of the CMA was not discovered in May 2022.

[40] The Receiver relies on *Gillham v. Lake of Bays (Township)*, 2018 ONCA 667 where, at para. 22, the Court of Appeal held that for a claimant to discover a claim, the claimant must know that some non-trivial loss has occurred. The Court of Appeal confirmed that the common law acknowledges that trivial damages do not trigger a limitation period since a prudent plaintiff would not bring an action to recover a trivial loss.

[41] The Receiver submits that in May 2022, while Mr. Hiscox knew of some markup to MI's labour costs, he had no insight into the scale of those markups and he did not have knowledge that the harm caused by MI's actions was anything but trivial. The Receiver submits that Mr. Hiscox's knowledge in May 2022 was not more than mere suspicion of a claim. In support of the Receiver's submission in this respect, the Receiver relies on the doctrine of fraudulent concealment, an equitable doctrine that prevents limitation periods from being used as an instrument of fraud, as explained in *Pioneer Corp. v. Godfrey*, 2019 SCC 42, at para. 52. The Receiver submits that MI failed to disclose information in respect of the mark-ups when it was required to do so, and this wrongdoing concealed from the Receiver that its claim was not more than trivial.

[42] I disagree that the evidence supports a conclusion that the Receiver's knowledge in May 2022 was not more than a mere suspicion of a claim. In *Dass v. Kay*, 2021 ONCA 565, the Court of Appeal, at para. 43, rejected the appellants' submission that the commencement of the limitation period should be delayed where plaintiffs know they have been wronged or suffered damages at the hands of the defendants but doubt they will be able to marshal evidence to prove the claim and are unsure whether the scale of the eventual commercial loss will make an action remunerative. By May 6, 2022, CEI knew that MI was charging a markup on CLM's labour charges. CEI may not have known the exact amount of MI's charges in excess of CLM's charges, but it had knowledge that MI was marking up CLM invoices generally, which is more than mere suspicion of a trivial claim.

[43] I conclude that by May 6, 2022, Hazelton had knowledge of the material facts upon which a plausible inference of liability on MI's part could be drawn. This is the date that Hazelton discovered this claim.

[44] If I have erred in concluding that Hazelton discovered the claim against MI and Mr. Mizrahi in respect of the CMA by May 6, 2022, the evidence establishes that by no later than March 22, 2023, when the CLM invoice was provided to Mr. Hiscox, Hazelton, through Mr. Hiscox, had sufficient knowledge of the material facts upon which a plausible inference of liability on the part of MI and Mr. Mizrahi in respect of Hazelton's claim based on overcharges under the CMA could be drawn.

[45] The Receiver submits that it commenced this motion on December 16, 2024, within the limitation period, even if the claim was discovered in March 2023. In support of this submission, the Receiver relies on an email dated December 16, 2024 from counsel for the Receiver to counsel for MI and Mr. Mizrahi. In the email, counsel for the Receiver advises that the Receiver intends to make a claim related to the Hazelton receivership against MI and attaches a draft notice of motion, which, the email states, "is in substantially final form". The draft notice of motion includes a draft claim in respect of allegedly improper invoices pursuant to the CMA and includes a statement that, in total, MI billed Hazelton $1,064,322 more for CLM's services than CLM had billed MI, and Hazelton paid the entirety of that amount to MI.

[46] The Receiver refers to correspondence between its counsel and counsel for MI and Mr. Mizrahi ending on February 7, 2025. In a letter dated February 7, 2025, counsel for the Receiver advised counsel for MI and Mr. Mizrahi that the Receiver "does not agree that a statement of claim and/or separate action is required for the issues raised in the Receiver's motion to be resolved fairly", and that the issues should be determined in the receivership proceeding. The Receiver's notice of motion for this motion is dated July 18, 2025.

[47] The Receiver submits that under s. 4 of the *Limitations Act, 2019*, the "proceeding" in respect of the Receiver's claim in relation to the CMA commenced when its counsel sent the draft notice of motion to counsel for MI and Mr. Mizrahi on December 16, 2024.

[48] I disagree. The Receiver chose to make the claim against MI and Mr. Mizrahi in relation to the CMA by bringing a motion for judgment in the within receivership proceeding against them as responding parties to the motion. MI and Mr. Mizrahi are not named as respondents to this application. If, in an action, a plaintiff moves to amend the statement of claim to plead a new claim

based on a new cause of action, the relevant date for determination of whether the limitation period has expired is the date of service of the notice of motion. See *Philippine v. Portugal*, 2010 ONSC 956 (Div. Ct.), at para. 34. I regard this principle as helpful to determine when the Receiver's claim in relation to the CMA is made. If the Receiver had commenced a separate action against MI and Mr. Mizrahi as defendants to make its claim against them in respect of alleged overcharges under the CMA, the question of whether the limitation period had expired would have been determined by reference to the date on which the statement of claim was issued. This would be the relevant date regardless of whether the Receiver had earlier sent a letter attaching a draft statement of claim in an intended action.

[49] In these circumstances, where the Receiver chose to make this claim through a motion for judgment in the receivership proceeding, I do not regard the email from the Receiver's counsel sending a draft notice of motion to have any legal significance in respect of the limitation period. I conclude that the date the proceeding in respect of the CMA claim was commenced, for the purpose of determining whether the limitation period under the *Limitations Act* has expired, is no earlier than the date of the notice of motion by which the motion is brought and the claim is made. This date is July 18, 2025.

[50] I conclude that the Receiver commenced a proceeding in respect of its CMA claim against MI and Mr. Mizrahi more than two years after the claim was discovered and, therefore, this claim is statute barred.

The DMA claim

[51] The DMA was made between Hazelton, MI, and Mr. Mizrahi. Pursuant to the DMA, MI was to manage the development of the condominium project.

[52] The DMA provides that MI shall be paid development fees in the amount of $2,000,000 ("Development Fees") in advance. The DMA also provides that in the event that the DMA is terminated for any reason prior to the "Project Completion Date", MI shall repay to Hazelton the sum of $500,000 representing the then unearned portion of the Development Fees. Under s. 16 of the DMA, Mr. Mizrahi personally guaranteed this repayment.

[53] The scope of the duties of MI under the DMA is provided for in s. 6 thereof which provides that the manager (MI) shall "do all that is required to complete the project through to the Project Completion Date".

[54] The Project Completion Date is defined in the DMA as "final closing of the sale of all of the Units and the completion of all other aspects of the Project". This date has not been reached.

[55] Section 13 of the DMA provides, in part:

> The Owner, acting reasonably, may, at its election, declare this Agreement at an end upon:
>
> i) the failure of the Manager to observe or perform any covenant or obligation hereunder, provided that if such default is capable of being cured within 30 days, the Manager fails to cure such default within the earlier of 30 days from the date:

(1) it has knowledge of the default; and

(2) the Owner delivers written notice of the default to the Manager;

[56] The DMA was in place when the Receiver was appointed on June 4, 2024. The Receiver terminated the DMA by letter dated June 21, 2024, prior to the Project Completion Date. The letter states:

> Pursuant to Section 13 of the DMA, the Receiver, on behalf of the Owner, hereby declares the DMA at an end on the basis that the Manager has failed to observe and perform the following covenants under the DMA, which are not capable of being cured, among other things:
>
> (a) the Manager has failed to perform its duties in an efficient manner consistent with the standard of an experienced and competent development manager of comparable development projects pursuant to Section 9 of the DMA;
>
> (b) the Manager has failed to exercise its duties in a reasonable commercial manner and in the best interest of the Owner pursuant to Section 7(a) of the DMA; and
>
> (c) the Manager has failed to exercise its duties such that all costs and expenses expended by the Owner are within the limits of, and in accordance with, the Budget (as defined in the DMA) pursuant to Section 7(b) of the DMA.

[57] The initial budget for the Project was $62.8 million. By July 31, 2021, the revised budget was $80.8 million. On cross-examination, Mr. Mizrahi agreed that after March 22, 2023, his invoices for site labour were not being paid because there was a lack of funding. Mr. Mizrahi agreed that the Project was not within its budget. Mr. Mizrahi deposes that MI was incapable of meeting its obligations under the DMA. He attributed this to the actions and conduct of CEI (and therefore Hazelton).

[58] The DMA was terminated by the Receiver prior to the Project Completion Date and, as a consequence, under the DMA, MI is required to repay to Hazelton the sum of $500,000 representing the then unearned portion of the Development Fees. Under s. 16 of the DMA, Mr. Mizrahi personally guaranteed this repayment.

[59] MI and Mr. Mizrahi rely on the doctrines of legal and equitable set-off as defences to the Receiver's claim under the DMA. They submit that the Receiver's claim under the DMA cannot be fairly adjudicated on this motion.

[60] MI and Mr. Mizrahi submit that the DMA was terminated and the Project was not completed at the time of termination because CEI blocked all reasonable efforts to finance the construction of the Project. MI and Mr. Mizrahi seek to defend the DMA claim, in part, based on CEI's refusal to close a financing with a third party lender which, they submit, amounted to bad faith and prevented MI from completing the Project prior to the termination of the DMA. In this regard, MI and Mr. Mizrahi rely on the claims made in a civil action brought against CEI and its principals (the "Mizrahi civil action"). MI and Mr. Mizrahi submit that if the Mizrahi civil action succeeds, there is a strong likelihood that the DMA claim will be defeated as well. They submit

that the DMA claim should be converted to an action and tried together with or following the Mizrahi civil action.

[61] MI is not a party to the Mizrahi civil action. Hazelton is not a party to this action. The claims made against CEI in the Mizrahi civil action do not give rise to a defence of legal or equitable set off by MI. I do not accept the submission by MI and Mr. Mizrahi that the allegations in the Mizrahi civil action give rise to a defence to the Receiver's claim under the DMA or, for this reason, that the Receiver's motion should be converted to an action and tried together with the Mizrahi civil action.

[62] In his affidavit in response to the Receiver's motion, Mr. Mizrahi deposes that MI has a claim against Hazelton for unpaid invoices for site labour which formed the basis for the termination of the CMA by MI. He attaches as an exhibit to his affidavit copies of the MI invoices. Based on this evidence, MI asserts that it is owed $453,847.56 for the outstanding invoices and that it is entitled to set-off against the Receiver's $500,000 claim any amounts found owing by Hazelton to MI in respect of these invoices. MI relies on the defences of legal set-off and equitable set-off.

[63] The Receiver submits that the evidence tendered by Mr. Mizrahi in support of MI's claim against Hazelton for unpaid invoices is insufficient to establish the defence of set off. The Receiver submits that Mr. Mizrahi has not provided evidence confirming what work was performed in respect of the invoices and whether it was properly done. The Receiver notes that the invoices are disputed on the basis that MI inflated the labour charges under the CMA by adding a substantial mark-up to its own labour costs when it invoiced Hazelton.

[64] I conclude that the evidence before me is insufficient for me to adjudicate MI's claim for payment of its invoices for site labour and decide whether, or to what extent, a defence of set off is available to MI. MI and Mr. Mizrahi do not ask that the validity of MI's defence of set off be decided on this motion. They submit that there are material facts in dispute which require documentary and oral discovery and that it would be unfair to grant judgment in favour of the Receiver on the DMA claim without deciding the merit of MI's set off defence because a claim by MI in the receivership will not result in any recovery to MI, given the secured claims.

[65] MI and Mr. Mizrahi submit that the material facts in dispute include whether Hazelton knew that MI was charging a mark-up when it sent invoices for site labour, whether CLM used unionized or non-unionized labour, and whether MI knew about the unionized status of CLM's labour.

[66] In these circumstances, I decline to grant judgment to the Receiver on this motion for its claim under the DMA. I exercise my discretion to direct that the issue of whether MI, as a defence to this claim, is entitled to set off the amount, if any, that is owed by Hazelton to MI in respect of the invoices appended as an exhibit to Mr. Mizrahi's affidavit, be determined following production of relevant documents and oral discovery, at a trial or on a motion for summary judgment.

Disposition

[67] For these reasons:

(a) Leave is granted for the Receiver to seek judgment within this proceeding against MI and Mr. Mizrahi for damages as claimed in the Receiver's notice of motion;

(b) The Receiver's motion for judgment in respect of its claim against MI and Mr. Mizrahi in the amount of $1,064,322 for allegedly improper charges under the CMA is dismissed because this claim is statute barred;

(c) With respect to the Receiver's motion for judgment for payment of $500,000 under the DMA, I direct that the issue of whether, as a defence, MI is entitled to set off against this claim the amount, if any, that is owed by Hazelton to MI in respect of the invoices referenced in Mr. Mizrahi's affidavit and appended as an exhibit to thereto be determined in this proceeding at a trial or on a motion for summary judgment following production of relevant documents and oral discovery.

[68] I ask counsel to confer about the procedures to give effect to my direction for the defence of set off to be adjudicated. I ask counsel to provide me with an approved from of order in this regard. If no agreement on the form of order is reached, a case conference with me should be arranged by counsel.

[69] If costs are not agreed upon, written submissions may be made according to a timetable agreed upon by counsel (with reasonable page limits) and approved by me.

Cavanagh J.

Date: May 12, 2026