

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

Applicant

- and -

MIZRAHI (128 HAZELTON) INC. AND MIZRAHI 128 HAZELTON RETAIL INC.

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) 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**

AIDE MEMOIRE OF MIZRAHI INC. AND SAM MIZRAHI

(9:30 Returnable October 1, 2025)

September 29, 2025

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(As of November 4, 2024)

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AIDE MEMOIRE OF MIZRAHI INC. AND SAM MIZRAHI

1. The court-appointed Receiver has brought a motion seeking leave from the court to seek judgment for breach of contract and breach of fiduciary duty against Mizrahi Inc. and Mr. Sam Mizrahi.
2. Mizrahi Inc. was the general contractor and developer for the 128 Hazelton Project (the “Project”) pursuant to a Construction Management Agreement, dated March 31, 2017 (the “CMA”), and a Development Management Agreement, dated June 19, 2015 (the “DMA”). The Receiver’s claim against Mizrahi Inc. is for breach of contract of both the CMA and the DMA. The Receiver also seeks leave to seek damages against Mizrahi Inc.’s principal, Mr. Sam Mizrahi, for breach of fiduciary duty and breach of contract.
3. It is unclear what authority the Receiver relies upon to for “leave to seek judgment” against Mizrahi Inc. and Mr. Mizrahi within the receivership application. It is also unclear what authority the Receiver relies upon to seek leave to proceed with a summary proceeding in what will be a hotly contested action with significant and material facts in dispute.
4. The only fair adjudication of the Receiver’s claim is through an action. Mr. Mizrahi and Mizrahi Inc. intend to bring a motion to challenge the proposed manner of proceeding for the Receiver’s claims.
5. The Receiver’s claim referable to the CMA alleges that Mizrahi Inc. overcharged the Project for the cost of labour. The Receiver alleges that this claimed overpayment also gives rise to a breach of fiduciary duty by Mr. Mizrahi, who was a director of the Project.
6. Mizrahi Inc. and Mr. Mizrahi strongly deny these accusations. There will be material facts in dispute material to the fair adjudication of the CMA claim, including facts about the actual costs for labour, and, among other things, the knowledge and acquiescence of labour rates by the applicant, Constantine Enterprises Inc. (“CEI”), which is 50% owner of the Project and also its senior lender.
7. CEI and Mr. Mizrahi are already litigating in two separate proceedings the very issues raised by the Receiver’s motion. Mr. Mizrahi has a civil action against CEI and its principals, Mr. Ed Rogers and Mr. Robert Hiscox. CEI, meanwhile, has brought a proceeding to enforce guarantees, including a guarantee with respect to a credit facility provided for the 128 Hazelton Project. There are material facts in dispute in both of these proceedings.

8. The Receiver's claim and its effort to proceed with a summary proceeding for claims that are directly relevant to extant litigation raises significant risks of inconsistent factual findings and avoidable and unnecessary duplication of costs.
9. Not only is the Receiver's CMA claim brought after the expiry of the applicable limitation period, but it is also inconsistent with CEI's knowledge and agreement with the labour rates charged to the Project by Mizrahi Inc.
10. The Receiver's motion relies on hearsay and double-hearsay to advance its position, particularly as it concerns the 'evidence' of CEI – provided to the Receiver in a letter from CEI's lawyer, insulating Mr. Mizrahi's adversaries from cross-examination on material facts. Mr. Mizrahi and Mizrahi Inc. not only seek to bring a motion to challenge the Receiver's attempt to proceed with these claims in a motion, but also to strike inadmissible evidence in the Receiver's motion record.
11. Like the CMA claim, the DMA claim will also require the court to consider material disputed facts. The Receiver's claim pursuant to the DMA is premised on an alleged contractual requirement by Mizrahi Inc. to return development fees paid under the DMA when the contract is terminated for any reason prior to the Project's completion (as defined in the DMA).
12. The fact is that much of the delay, associated costs and inability to complete the construction of the last condominium units in the Project was due to the actions of CEI, which refused reasonable attempts to close on units and to refinance the Project. This factual dispute is at the centre of Mr. Mizrahi's civil action against CEI.
13. Presumably, the Receiver relies on the doctrine of the single-proceeding model to argue that its proceeding for leave to seek judgment against Mizrahi Inc. and Mr. Mizrahi, who are not parties to the receivership application, should proceed as a motion.
14. The single-proceeding model, while designed to promote efficiency to address the claims of stakeholders in insolvency proceedings, does not allow for rough justice. It does not override the procedural protections of the *Rules of Civil Procedure*. It does not allow the court to ignore the substantial risks of inconsistent factual findings raised by other related litigation.
15. Mr. Mizrahi and Mizrahi Inc. are entitled to the procedural protections of an action, which include a pleading, an opportunity to deliver a statement of defence, affidavits of documents, and examinations for discovery. Rule 14 of the *Rules of Civil Procedure* specifically contemplates that an action by way of Statement of Claim is the norm, unless

there are no material facts in dispute or otherwise a specific right created by the *Rules* or a statute to proceed with a claim on a summary basis.

16. The single-proceeding model does not eliminate the need to adduce admissible evidence or set aside the law of hearsay.
17. The policy goals of the single-proceeding model can be met with the Receiver bringing its claim as an action, case-managed in Toronto by the Commercial List. Receivers routinely bring claims by Statement of Claim.
18. Mizrahi Inc. and Mr. Mizrahi therefore seek to schedule a motion to challenge the Receiver's proposed mode of proceeding with the CMA and DMA claims. In addition, Mizrahi Inc. and Mr. Mizrahi will seek an order striking portions of the 'evidence' relied upon by the Receiver as inadmissible.
19. Mizrahi Inc. and Mr. Mizrahi can deliver their motion record by November 3, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of September 2025.

CONSTANTINE ENTERPRISES INC.

-and-

MIZRAHI (128 HAZELTON) INC. AND MIZRAHI 128
HAZELTON RETAIL INC.

Applicant

Respondents

Court File No. CV-24-00715326-00CL

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PROCEEDING COMMENCED AT
TORONTO

**AIDE MEMOIRE OF MIZRAHI INC. AND SAM
MIZRAHI**

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