

**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 SUBSECTION 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 THE RESPONDENT/CREDITOR  
PENEGAL TRIM & SUPPLY LTD.**

**APPEARANCE TO SEEK ORDER ON CONSENT PURSUANT TO SECTION 37(1) OF THE  
CONSTRUCTION ACT, R.S.O. 1990, C. C.30**

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Lawyers for the Respondent/Creditor  
*Penegal Trim & Supply Ltd.*

1. This appearance is for the purpose of obtaining an Order for the trial of a lien action bearing court file no. CV-24-00722234-0000 (the “**Penegal Lien Action**”), and dispensing with the requirements of Rule 48.01 and Rule 48.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “**Rules**”), solely for the purpose of complying with section 37(1) of the *Construction Act*, R.S.O. 1990, c. C.30 (the “**Construction Act**”).
2. All parties to the Penegal Lien Action consent to the Order sought.
3. All parties to the herein Commercial List Action, also consent to the Order sought in the Penegal Lien Action.

**Background:**

4. The lien claimant, Penegal Trim & Supply Ltd. (“**Penegal**”), registered a claim for lien against title to the property located at 128 Hazelton Avenue in Toronto, Ontario (the “**Property**”) on May 10, 2025 (the “**Penegal Lien**”). Penegal subsequently perfected the Penegal Lien by commencing the Penegal Lien Action on June 17, 2024.
5. The Penegal Lien Action was stayed pursuant to paragraph 9 of the Order of Justice Cavanagh dated June 4, 2024, appointing a receiver pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and, among other things, staying all proceedings in respect of the Property.
6. Due to the stay of proceedings, none of the defendants in the Penegal Lien Action have served Statements of Defence and no other steps have been taken to advance the Penegal Lien Action since its commencement.

**Application of Section 37(1) of the Construction Act:**

7. Pursuant to section 37(1) of the *Construction Act*, a lien expires immediately following

the second anniversary of the commencement of the action that perfected the lien, unless: (a) an order is made for the trial of an action in which the lien may be enforced; or (b) an action in which the lien may be enforced is set down for trial.<sup>1</sup>

7 Typically, to comply with section 37(1), a lien claimant will simply serve and file a trial record in accordance with Rule 48.02(1) of the *Rules*. That is not possible in this instance because:

- a. a trial record may only be passed “after the close of pleadings” pursuant to Rule 48.01;<sup>2</sup>
- b. due to the stay of proceedings, no defendant in the Penegal Lien Action has served a Statement of Defence; and
- c. due to the lack of defences, and since none of the defendants have been noted in default, pleadings are not and cannot be “closed” within the meaning of Rules 25.05<sup>3</sup> and 48.01.

8 Trial records that are ostensibly passed without actual compliance with the *Rules* may not be sufficient for the purpose of complying with section 37(1) of the *Construction Act*.<sup>4</sup>

9 Accordingly, an Order from this court is required to, among other things, lift the current stay of proceedings and order the trial of the Penegal Lien Action for the purpose of ensuring that section 37(1) of the Construction Act has been complied with, and to avoid expiry of the Penegal Lien immediately following the second anniversary of the commencement of the Penegal Lien Action (which will occur on June 17, 2026).

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<sup>1</sup> [S. 37\(1\)](#), *Construction Act*.

<sup>2</sup> [Rule 48.01](#), *Rules*.

<sup>3</sup> [Rule 25.05](#), *Rules*.

<sup>4</sup> See *1475707 Ontario Inc. v. Foran*, 2013 ONSC 6882 [at paras. 13-14](#) (Ont. Div. Ct.).

**Consent and Jurisdiction:**

10 The Receiver has consented to a lifting of the stay of proceedings for the purpose of this court granting the requested Order. Additionally, as noted above, all parties to the Penegal Lien Action have consented to the Order being sought. To be clear, once the Order is granted, the stay of proceedings will immediately be effective again, and no further steps shall be taken in the Penegal Lien Action without further Order this court.

11 This court has express jurisdiction to grant the requested Order pursuant to Rule 1.05 and Rule 48.02(2) of the *Rules*.<sup>5</sup> Rule 48.02(2) specifically contemplates an order for the trial of an action where no defences have been served.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of May, 2026.

*Jonathan Piccin*

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**PICCIN BOTTOS PROFESSIONAL CORPORATION**  
**PER: JONATHAN PICCIN (LSO# 68973J)**

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<sup>5</sup> [Rule 1.05](#), *Rules*; [Rule 48.02\(2\)](#), *Rules*.

CONSTANTINE ENTERPRISES INC.  
Applicant

and

MIZRAHI (128 HAZELTON) INC., et al  
Respondents

Court File No. CV-24-00715321-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at **TORONTO**

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**AIDE MEMOIRE**

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