

COURT OF APPEAL FOR ONTARIO

B E T W E E N

CONSTANTINE ENTERPRISES INC.

Applicant

– and –

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

Respondents

SUPPLEMENTAL ORAL HEARING COMPENDIUM OF THE APPELLANT DAVID BERRY

October 6, 2025

TYR LLP
488 Wellington Street West
Suite 300-302
Toronto ON M5V 1E3
Tel: 416.477.5525

Jason Wadden (LSO#: 46757M)
Email: jwadden@tyrllp.com
Tel: 416.627.9815

Michael O'Brien (LSO#: 64545P)
Email: mobrien@tyrllp.com
Tel: 416.617.0533

Nick Morrow (LSO#: 87335T)
Email: nmorrow@tyrllp.com
Tel: 416.434.9114

Lawyers for the Appellant, David Berry

TO: NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000,
P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam (LSO#: 46735J)
Tel: 416.202.6707
Email: jennifer.stam@nortonrosefulbright.com

James Renihan (LSO#: 57553U)
Tel: 416.216.1944
Email: james.renihan@nortonrosefulbright.com

Lawyers for KSV Restructuring Inc., in its capacity as Receiver
(Respondent in the Appeal)

AND TO: CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Alan Merskey (LSO#: 41377I)
Tel: 416.860.2948
Email: amerskey@cassels.com

John M. Picone (LSO#: 58406N)
Tel: 416.640.6041
Email: jpicone@cassels.com

Lawyers for the Applicant, Constantine Enterprises Inc.
(Respondent in the Appeal)

Court of Appeal File No. COA-25-CV-0659
Court File No. CV-24-00715321-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N

CONSTANTINE ENTERPRISES INC.

Applicant

– and –

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

Respondents

I N D E X

Tab	Document	Cross Reference	Pg Nos. (PDF)
Key Documents			
1.	Mutual Release and Termination Agreement, dated August 16, 2019 (Appendix F to Third Report of the Receiver, dated January 10, 2025)	Appellant's Exhibit Book, Tab 1	05-07
2.	Agreement between D Beswick and D Berry re Unit 802, dated November 13, 2019 (Exhibit F to Affidavit of David Berry, affirmed January 29, 2025)	Appellant's Exhibit Book, Tab 2	09-10

TAB 1

Appendix “F”

PROJECT NAME: 128 HAZELTON (the "Project")

MUTUAL RELEASE AND TERMINATION AGREEMENT

BETWEEN:

MIZRAHI (128 HAZELTON) INC.

(hereinafter called the "Vendor")

-and-

DAVID BERRY

(hereinafter called the "Purchaser")

WHEREAS the Purchaser and the Vendor entered into an agreement of purchase and sale which was effective on 21st day of April, 2016 (the "Combined Suite 802/901 Purchase Agreement"), pertaining to the Purchaser's acquisition from the Vendor of the combined Residential Unit 1, Level 9 (Suite 901) and Residential Unit 2, Level 8 (Suite 802) to be redesignated as Residential Unit 1, Level 9 (Suite 901) in the Project, together with 3 parking units and 1 locker unit and together with an undivided interest in the common elements appurtenant thereto;

AND WHEREAS the Combined Suite 802/901 Purchase Agreement provides, *inter alia*, for the Purchaser's deposit monies to be payable to the firm of Harris Sheaffer, LLP in Trust (the "Escrow Agent");

AND WHEREAS the Purchaser desires to terminate the Combined Suite 802/901 Purchase Agreement save and except for the Amendment to Agreement of Purchase and Sale dated as of May 15, 2017, a copy of which is annexed hereto which shall form part of the Suite 901 Agreement as herein described (the "Yappn Share Amendment"), as an agreement to purchase the combined units as described as aforesaid, and upon and in connection with such termination to enter into further separate agreements to purchase Residential Unit 2, Level 8 (Suite 802) under the Combined Suite 802/901 Purchase Agreement (the "Suite 802 Agreement") and Residential Unit 1, Level 9 (Suite 901), together with 3 of the parking units and the 1 locker unit purchased under the Combined Suite 802/901 Purchase Agreement (the "Suite 901 Agreement") in the Project and in connection therewith desires to have all of the deposits paid under the Combined Suite 802/901 Purchase Agreement transferred and held as deposits on behalf of the Purchaser under the Suite 802 Agreement and the Suite 901 Agreement in the Project;

AND WHEREAS the parties hereto, subject to the terms of this Mutual Release and Termination Agreement, now desire to terminate the Combined Suite 802/901 Purchase Agreement, other than the Yappn Share Amendment, and wish to release each other from any and all claims that they may have arising under (or in connection with) the Combined Suite 802/901 Purchase Agreement, other than the Yappn Share Amendment, and have accordingly entered into these presents in order to evidence same;

AND WHEREAS the Vendor and Purchaser acknowledge that in conjunction with the herein Mutual Release and Termination Agreement, that with the Vendor's consent, the Purchaser desires to assign the Suite 802 Agreement to the existing purchaser of Suite 801 (the "Suite 801 Agreement") in the Project and that pursuant to such assignment, the Vendor and the purchaser of the Suite 801 Agreement propose to enter into an amendment to in turn combine suite 801 with suite 802 (the "Combined Suite 801/802 Amendment/Agreement");

NOW THEREFORE THESE PRESENTS WITNESSETH that in consideration of the mutual release hereinafter set forth, and the sum of TEN (\$10.00) DOLLARS of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby covenant and agree to the following;

1. Subject to the terms herein, the Combined Suite 802/901 Purchase Agreement, together with any and all addenda thereto or amendments thereof, other than the Yappn Share Amendment, is hereby terminated and of no further force or effect.
2. Forthwith upon the execution of these presents by both parties hereto the Purchaser hereby irrevocably authorizes and directs the Vendor and the Escrow Agent to transfer the deposits in the sum of Two Million, Six Hundred and Fifty Thousand Dollars (\$2,650,000.00) representing the aggregate of all deposit monies heretofore paid by the Purchaser to the Vendor under the Combined Suite 802/901 Purchase Agreement (the "Suite 802/901 Deposits") to be held as deposit monies, together with any interest accruing thereon that the Purchaser is entitled to receive pursuant to the terms and provisions of the Combined Suite 802/901 Purchase Agreement and/or the *Condominium Act, 1998*, S.O. 1998, as amended (the "Act") as deposit monies under the Suite 802 Agreement and the Suite 901 Agreement in accordance with the terms thereunder with the Suite 802/901 Deposits being allocated thereunder as follows:

Suite 802 Agreement: \$1,400,000.00; and

Suite 901 Agreement: \$1,250,000.00.

3. The parties hereto hereby mutually release each other and each of their respective heirs, executors, administrators, successors and assigns, from and against any and all costs, damages, actions, proceedings, demands and/or claims whatsoever which either of the parties hereto now has, or may hereafter have, against the other party hereto, by reason of, or in connection with, the Combined Suite 802/901 Purchase Agreement and any and all addenda thereto or amendments thereof, other than the Yappn Share Amendment, and/or termination thereof pursuant to the foregoing provisions hereof. Notwithstanding anything contained herein, the terms of this Mutual Release and Termination Agreement are conditional until AUGUST 29, 2019, upon the Purchaser; (i) entering into the Suite 802 Agreement and the Suite 901 Agreement, with the Yappn Share Amendment forming a part of the Suite 901 Agreement thereof, and such agreements becoming firm and binding and there being no rescission thereof under the Act; (ii) the Purchaser assigning the Suite 802 Agreement to the purchaser under the Suite 801 Agreement (the "Suite 801 Purchaser"), including the amendments contained therein between the Vendor and the Suite 801 Purchaser relating to the combining of the Suite 802 Agreement and the Suite 801 Agreement between the Vendor and the Suite 801 Purchaser (the "Assignment/Amendment").
4. Without restricting the generality of the foregoing, it is expressly understood and agreed that the Purchaser shall not make or pursue any claim(s) or proceeding(s) with respect to the Combined Suite 802/901 Purchase Agreement and/or the Suite 802/901 Deposits against the Tarion Warranty Corporation, Aviva Insurance Company of Canada and any other issuer of Tarion Warranty Corporation bonds and any party acting as Escrow Agent nor against any other person or corporation which might claim contribution or indemnity from the Vendor in connection with the Combined Suite 802/901 Purchase Agreement or the termination thereof in connection with the Project.
5. Upon the execution of these presents by both parties hereto, all of the estate, right, title and interest of the Purchaser in and to the Combined Suite 802/901 Purchase Agreement (both at law and in equity, and whether in possession, expectancy or otherwise) shall be automatically released and quit-claimed to and in favour of the Vendor and its successors and assigns forever.
6. This Mutual Release and Termination Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, successors and assigns.
7. This Mutual Release and Termination Agreement shall be read and construed with all changes of gender and/or number as may be required by the context, and if more than one individual comprises the Purchaser, then all of the foregoing covenants and agreements of the Purchaser shall be deemed and construed to be joint and several covenants and agreements thereof.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals, or corporate seals, as the case may be, this

Dated this 16 day of August, 2019.

SIGNED, SEALED AND DELIVERED in the presence of:

Witness



DAVID BERRY

MIZRAHI (128 HAZELTON) INC.

Per:

Name: Sam Mizrahi

Title: Authorized Signing Officer

I have authority to bind the corporation.

TAB 2

This is **Exhibit “F”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025



Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

November 13, 2019

To: David Berry

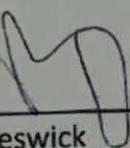
From: David Beswick

Re: Suite 802, 128 Hazelton Avenue

Further to our ongoing negotiations for the assignment of suite 802 at 128 Hazelton, I wish to make you an offer of \$2,234.00 per square foot for the space, paying deposits 1/3 on signing, 1/3 in 90 days, and 1/3 in 180 days.

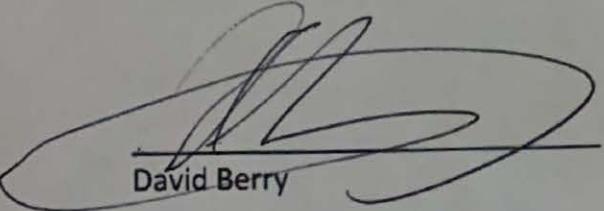
If you accept my offer, kindly acknowledge and agree and we can move forward with finalizing the assignment agreement.

Thank you,



David Beswick

Acknowledged and Agreed to by David Berry on November , 2019.



David Berry

TAB 3

CONSTANTINE ENTERPRISES INC. -and- MIZRAHI (128 HAZELTON) INC., ET AL

Applicant (Respondent on Appeal)

Respondents (Appellants)

Court of Appeal File No.: COA-25-CV-0659
Court File No.: CV-24-00715321-00CL

ONTARIO COURT OF APPEAL

Proceeding commenced at TORONTO

**SUPPLEMENTAL ORAL HEARING COMPENDIUM
OF THE APPELLANT DAVID BERRY**

Tyr LLP
488 Wellington Street West
Suite 300-302
Toronto, ON M5V 1E3
Fax: 416-987-2370

Jason Wadden (LSO#: 46757M)
Email: jwadden@tyrllp.com
Tel: 416.627.9815

Michael O'Brien (LSO#: 64545P)
Email: mobrien@tyrllp.com
Tel: 416.617.0533

Nick Morrow (LSO#: 87335T)
Email: nmorrow@tyrllp.com
Tel: 416.434.9114

Lawyers for the Appellant, David Berry