

**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

CASE CONFERENCE BRIEF OF THE RECEIVER

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

James Renihan LSO#: 57553U

Tel: 416.216.1944

james.renihan@nortonrosefulbright.com

Jennifer Stam LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO#: 87151U

Tel: 416.278.3787

lauren.archibald@nortonrosefulbright.com

Fax: 416.216.3930

Lawyers for the Receiver

TO: **THE SERVICE LIST**

CASE CONFERENCE BRIEF OF THE RECEIVER

1. The Receiver has commenced a motion seeking judgment within this proceeding against Mizrahi Inc. and Sam Mizrahi. Two forms of relief are sought:

- (a) Damages of \$1,064,322 in respect of amounts that Mizrahi Inc. billed to the respondent Mizrahi (128 Hazelton) Inc. (**Hazelton**). The claim arises from invoices that Mizrahi Inc. submitted in respect of work performed by a third-party contractor. From the information available to the Receiver, it appears that Mizrahi Inc. intentionally inflated the amounts the contractor charged by preparing invoices that falsely increased the hourly rates charged by the contractor. It appears that Mizrahi Inc. then pocketed the difference between the actual contractor invoices and the inflated invoices. Examples of the discrepancy between invoices are attached at **Tabs A and B**, which show the contractor charging rates of \$35-40 an hour but Mizrahi Inc. charging \$96.35-\$144.53 for the same individuals and times.
- (b) Damages of \$500,000 pursuant to a Development Management Agreement (**DMA**), which requires Mizrahi Inc. to repay this amount if the DMA was validly terminated prior to the Project Completion Date.

2. Mizrahi Inc. and Mr. Mizrahi have had significant notice of these claims:

- (a) on June 21, 2024, the Receiver terminated the DMA and first demanded payment of the \$500,000;
- (b) in December 2024, the Receiver provided Mizrahi Inc. with the documents underlying the improper invoice claim; and
- (c) on February 7, 2025, the Receiver advised that it intended to bring a motion for relief in respect of both issues, and invited Mizrahi Inc. and Mr. Mizrahi to provide

the Receiver with any additional documents they believed to be relevant to the issues, a copy of which is attached as **Tab A**.

3. Mizrahi Inc. and Mr. Mizrahi never provided the Receiver with any additional information.

The Receiver served its motion record on July 18, 2025.

4. On September 28, 2025, Mizrahi Inc. and Mr. Mizrahi advised that they intended to bring a motion to require the Receiver's claims to proceed by way of action. Although the Receiver's motion record was served more than two months ago, Mizrahi Inc. and Mr. Mizrahi do not propose to deliver a record for their motion until early November, 3.5 months after receipt of the Receiver's record.

5. As the Court of Appeal has confirmed, the "single proceeding model... favours litigation concerning an insolvent company to be dealt with in a single jurisdiction rather than fragmented across separate proceedings." This principle has permitted court-appointed receivers to bring motions for judgment within insolvency proceedings.

Mundo Media Ltd. (Re), 2022 ONCA 607, at para 6

6. Part of the test for whether the single proceeding model applies will require Mizrahi Inc. and Mr. Mizrahi to demonstrate "'sufficient cause' to have the proceedings fragmented across multiple jurisdictions." That determination is best done on a full record so the Court has a full appreciation of the evidence and issues.

Mundo Media Ltd. (Re), 2022 ONCA 607, at para 6

7. Rather than be heard as a preliminary motion, with all attendant delays, the Receiver's motion ought to be scheduled and Mizrahi Inc. and Mr. Mizrahi can dispute the applicability of the single proceeding model as part of their responding argument. This is the most efficient manner of resolving this dispute.

8. Mizrahi Inc.'s other issues can similarly be dealt with within the motion. It can challenge the admissibility of evidence and make limitation arguments. None of that is lost to it any more than it would be in any other motion or application. It is not a reason to refuse to schedule the motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of September, 2025.



James Renihan

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

James Renihan LSO#: 57553U

Tel: 416.216.1944

james.renihan@nortonrosefulbright.com

Jennifer Stam LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO#: 87151U

Tel: 416.278.3787

lauren.archibald@nortonrosefulbright.com

Fax: 416.216.3930

Lawyers for the Receiver



7611 Pine Valley Drive Unit #13, 2nd Floor
Vaughan, Ontario L4L 0A2
Tel: (905) 605-3000 or Fax: (905) 605-9300
e-mail: clmenterprises@rogers.com

Invoice No.

6035

INVOICE

Customer

Name Mizrahi Developments
Address 125 Hazelton Avenue
City Toronto Prov. Ont M5R 2E4
Phone

Date 17/11/2020
BN 833006133

| Qty | Description | Unit Price | TOTAL |
|-----|---|------------|------------|
| | 128 Hazelton Ave | | |
| 1 | Skilled Labour provided for November 2 to 13, 2020 for a total of 210 hours at \$40.00 per hour | \$8,400.00 | \$8,400.00 |
| 1 | General Labour provided for November 12 and 13, 2020 for a total of 18.5 hours at \$35.00 | \$647.50 | \$647.50 |

Payment Details

Name _____
CC # _____

Expires

| | | |
|---------------------|--------------|--------------------|
| | SubTotal | \$9,047.50 |
| Shipping & Handling | | \$0.00 |
| Taxes | HST | \$1,176.18 |
| | TOTAL | \$10,223.68 |

Supervisor Signature

CLM General Enterprises
P.O. Box 2084
Richmond Hill, Ontario
Fax: 905-503-3629

TIME SHEET

Employee Name

Santiago Holguin

Job Desc.

Location:

128 Hazelton Ave

Employee signature:

Date

NOV 7 2020

Supervisor signature:

260

Nov 9 2020

Fax: 905-503-3629

P.O. Box 2084
Richmond hill, Ontario
Fax: 905-503-3629

Employee Name:

Emil Arante

Job Description

Location: 128 Hazleton Ave

Employee signature:

Date: Nov 7 2020

Supervisor signature:

Pedro

CLM General Enterprises
P O Box 2084
Richmond Hill, Ontario
Fax: 905-503-3629

TIME SHEET

THE END

Angelica Job done General Labour

324 Motivation

Locality

Mizrahi Inc.

125 Hazelton Ave.
Toronto, On.

Invoice

| Date | Invoice # |
|------------|-----------|
| 11/25/2020 | C896 |

Invoice To

Mizrahi (128 Hazelton) Inc
189 Forest Hill Road
Toronto, On. M5P 2N3

| P.O. No. | Terms | Project |
|----------|----------------|---------|
| | Due on receipt | |

Timesheet Summary

Mizrahi Inc.

Project: 128 Hazelton

Site Labour

For the period from:

02-Nov-20 To:

21-Nov-20

*cut off on Saturdays

Employee Name

Type

Hours

Rate

Amount

Total Period SUM

| Employee Name | Type | Hours | Rate | Amount | Total Period SUM |
|------------------|---------------|--------|--------|-----------|------------------|
| Amante Emil | Total Reg Hrs | 133.50 | 96.35 | 12,862.73 | 31,940.03 |
| | Total OT Hrs | 9.00 | 144.53 | 1,300.73 | |
| Angelica | Total Reg Hrs | 18.50 | 96.35 | 1,782.48 | 2,673.71 |
| | Total OT Hrs | - | 144.53 | - | |
| Holguin Santiago | Total Reg Hrs | 164.50 | 96.35 | 15,849.58 | 34,613.74 |
| | Total OT Hrs | 9.50 | 144.53 | 1,372.99 | |
| Marc Wijica | Total Reg Hrs | 7.50 | 96.35 | 722.63 | 700.00 |
| | Total OT Hrs | - | 144.53 | - | |
| | SUM | 7.50 | 722.63 | - | |
| Solomon Rumirez | Total Reg Hrs | 7.50 | 96.35 | 722.63 | 700.00 |
| | Total OT Hrs | - | 144.53 | - | |
| | SUM | 7.50 | 722.63 | - | |

Timesheet Summary
Mizrahi Inc.
Project: 128 Hazelton
Site Labour

For the period from: **02-Nov-20** To: **21-Nov-20**

**cut off on Saturdays*

| Employee Name | Occupation | Type | Week of | | | Total Period SUM |
|----------------------|-------------------|---------------|-------------------|-------------------|-------------------|-------------------------|
| | | | 2020-11-07 | 2020-11-14 | 2020-11-21 | |
| Amante Emil | General Labour | Total Reg Hrs | 55.00 | 34.50 | 44.00 | 133.50 |
| | General Labour | Total OT Hrs | - | - | 9.00 | 9.00 |
| | | SUM | 55 | 34.5 | 53 | 142.5 |
| Angelica | General Labour | Total Reg Hrs | - | 18.50 | - | 18.50 |
| | General Labour | Total OT Hrs | - | - | - | - |
| | | SUM | 0 | 18.5 | 0 | 18.5 |
| Holguin Santiago | General Labour | Total Reg Hrs | 66.50 | 54.00 | 44.00 | 164.50 |
| | General Labour | Total OT Hrs | - | - | 9.50 | 9.50 |
| | | SUM | 66.5 | 54 | 53.5 | 174 |
| Marc Wijica | General Labour | Total Reg Hrs | - | - | 7.50 | 7.50 |
| | General Labour | Total OT Hrs | - | - | - | - |
| | | SUM | 0 | 0 | 7.5 | 7.5 |
| Solomon Rumirez | General Labour | Total Reg Hrs | - | - | 7.50 | 7.50 |
| | General Labour | Total OT Hrs | - | - | - | - |
| | | SUM | 0 | 0 | 7.5 | 7.5 |
| <calc> | | | Total | 121.50 | 107.00 | 121.50 |
| | | | | | | 331.50 |
| | | | | | | 18.50 |

| | | Total Period SUM | | |
|--|--|-------------------------|------------------|---------------|
| | | Hours | Rate | Amount |
| | | 133.50 | 96.35 | 12,862.73 |
| | | 9.00 | 144.53 | 1,300.73 |
| | | 142.5 | 14,163.45 | |
| | | 18.50 | 96.35 | 1,782.48 |
| | | - | 144.53 | - |
| | | 18.5 | 1,782.48 | |
| | | 164.50 | 96.35 | 15,849.58 |
| | | 9.50 | 144.53 | 1,372.99 |
| | | 174 | 17,222.56 | |
| | | 7.50 | 96.35 | 722.63 |
| | | - | 144.53 | - |
| | | 7.5 | 722.63 | |
| | | 7.50 | 96.35 | 722.63 |
| | | - | 144.53 | - |
| | | 7.5 | 722.63 | |

February 7, 2025

Sent By Email

Morse Trafford LLP
100 King St. West, Suite 5700
Toronto, ON M5X 1C7

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Attention: Jerome R. Morse

James Renihan
+1 416.216.1944
james.renihan@nortonrosefulbright.com

Dear Mr. Morse:

Mizrahi (128 Hazelton) Inc.

I write in response to your letter of January 28, 2025. I note that your letter is marked "without prejudice", but there is nothing in your letter that appears to warrant that designation. Please confirm whether your letter was intended to be delivered on a without prejudice basis.

Turning to the substance of your letter, if your clients are in possession of correspondence or other documents that they believe are relevant to the Receiver's motion for relief related to the Construction Management Agreement and Development Management Agreement, please provide those documents for the Receiver's review and consideration.

In particular, if your clients assert that the rates that Mizrahi Inc. charged to Mizrahi (128 Hazelton) Inc. in respect of work performed by CLM General Enterprises Ltd. were agreed to by Constantine Enterprises Inc., please provide any documents that your clients believe substantiate that assertion. The Receiver will review and consider any documents or information provided.

At this time, the Receiver does not agree that a statement of claim and/or separate action is required for the issues raised by the Receiver's motion to be resolved fairly. The matters are intimately connected to the Receivership and ought to be determined in that proceeding. We are available to discuss a procedure that will ensure fairness to all parties.

Yours very truly,



James Renihan

JR

Cop(y)ies to: Jennifer Stam, Norton Rose Fulbright Canada LLP
Bobby Kofman, KSV Restructuring Inc.

CAN_DMS: \1009404818

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Applicant

Court File No. CV-24-00715321-00CL
-and- MIZRAHI (128 HAZELTON) INC. et al.
Respondents

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SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
TORONTO

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222 Bay Street, Suite 3000
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James Renihan LSO#: 57553U

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Jennifer Stam LSO#: 46735J

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jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO#: 87151U

lauren.archibald@nortonrosefulbright.com

Tel: 416.278.3787

Tel: 416.216.4000

Fax: 416.216.3930

Lawyers for the Receiver