

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

**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**

**FACTUM OF KSV RESTRUCTURING INC.,  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

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**PART I - INTRODUCTION**

1. This factum is filed in support of a motion by KSV Restructuring Inc. ("**KSV**"), in its capacity as the Court-appointed Receiver (as defined below), seeking, among other things:

- (a) approval of a transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated July 15, 2025 (as amended, the "**APS**") among Jean Robitaille and Joanne Aubin, as purchaser (together, the "**Purchaser**"), and the

Receiver, as vendor, for the sale of Unit 801 (as defined below), and vesting all of Hazelton's right, title and interest in and to Unit 801 to the Purchaser;

- (b) authorizing the Receiver to distribute the net proceeds of the Transaction to Constantine Enterprises Inc. ("**CEI**"), Hazelton's senior secured creditor, on account of the CEI Priority Debt (as defined below);
- (c) approving the Sixth Report of the Receiver dated August 11, 2025 (the "**Sixth Report**") and the activities of the Receiver as set out in therein; and
- (d) such further and other relief as this Honourable Court may deem just.

## **PART II - SUMMARY OF FACTS**

2. Further background in these proceedings is set out the Sixth Report. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Sixth Report.

### **Background**

3. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on June 4, 2024 (the "**Receivership Order**"), KSV was appointed as receiver and manager (in such capacity, the "**Receiver**") of: (a) certain condominium units located at 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario (as legally described in the Receivership Order, defined below) (the "**Real Property**"); and (b) all of the assets, undertakings and properties of Mizrahi (128 Hazelton) Inc. ("**Hazelton**") and Mizrahi 128 Hazelton Retail Inc. ("**Retail**", together with Hazelton, the "**Debtors**"), or either of them, acquired

for, or used in relation to a business carried on by the Debtors (the “**Property**”), or either of them, including all proceeds thereof.<sup>1</sup>

### ***Hazelton***

4. At the time of the Receivership Order, Hazelton was the registered owner of the Real Property, which is a nine-storey, 20-unit luxury condominium development project located in Toronto’s Yorkville neighbourhood with approximately 2,000 square feet of ground floor commercial retail space and three levels of underground parking.<sup>2</sup>

5. Since the Receivership Order, units 201, 204 and 403 and the ground floor unit have been sold.<sup>3</sup> The remaining units include Unit 801, which was previously under construction but is now complete.<sup>4</sup>

### ***The Sale Process and the Transaction***

6. Unit 801 is a completed residential condominium, which includes two parking spots and one locker (“**Unit 801**”).<sup>5</sup> It has been marketed for sale periodically since September 2023 and, most recently, continuously for the last 6 months.<sup>6</sup>

7. The listing agent for Unit 801, Ms. Saghi Elahi (the “**Listing Agent**”), is familiar with Hazelton as she has sold 401, 402 and 601 prior to the receivership and unit 403 during the receivership.

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<sup>1</sup> Sixth Report of KSV Restructuring Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”), dated August 11, 2025 (the “**Sixth Report**”), Motion Record of the Receiver returnable August 15, 2025 (“**MR**”), Tab 2, at section 1.0, para 1, p. 10.

<sup>2</sup> Sixth Report, MR, Tab 2, at section 1.0, para 2, p. 11.

<sup>3</sup> Sixth Report, MR, Tab 2, at section 1.0, para 4, p. 11.

<sup>4</sup> Sixth Report, MR, Tab 2, at section 1.0, para 3, p. 11.

<sup>5</sup> Sixth Report, MR, Tab 2, at section 1.1, para 1(b), p. 11.

<sup>6</sup> Sixth Report, MR, Tab 2, at section 3.1, para 1(a), p. 14; see also Appendix “C” to the Sixth Report at p. 48.

8. On July 17, 2025, the Receiver finalized the APS with the Purchaser for Unit 801 for a purchase price of \$7,500,000, subject to certain conditions. On August 5 and 8, 2025, the Purchaser and the Receiver agreed to certain amended terms to the original APS and the Purchaser waived the remaining conditions, other than Court approval.<sup>7</sup>

9. In addition to the purchase price noted above, the APS provides, among other things:<sup>8</sup>

- (a) a deposit of \$500,000, being held by the listing agency;
- (b) the Receiver has agreed to hold back \$100,000, subject to certain release conditions to satisfy certain amount including for special assessments (which are not currently in the condo corporation's budget) for a period of 1 year;
- (c) all material conditions have been cleared, except for Court approval;
- (d) the closing date is no later than August 29, 2025, which may be extended by 30 days if further time is required to seek Court approval; and
- (e) the representations and warranties are standard for a condominium sale transaction, as amended to reflect that Unit 801 is being sold by a Receiver and the Transaction is subject to Court approval.

### ***Proposed Distributions***

10. Hazelton is indebted to CEI, Hazelton's senior secured creditor, pursuant to, among other things, the DUCA Commitment, which is the senior ranking mortgage on the Real Property. The current amount owing to CEI under the DUCA Commitment is approximately \$10.6 million (the "**CEI Priority Debt**"), including interest, but excluding costs and expenses and applicable interest thereon, in each case which continue to accrue before and after the date of the Sixth Report.<sup>9</sup>

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<sup>7</sup> Sixth Report, MR, Tab 2, at section 3.0, para 6, p. 13.

<sup>8</sup> Sixth Report, MR, Tab 2, at section 3.0, para 7(b) – 7(f), pp. 13 – 14; see also Appendix "D" to the Sixth Report at p. 50.

<sup>9</sup> Sixth Report, MR, Tab 2, at section 2.0, para 3, p. 12.

11. CEI has also advanced funds to the Receiver during the receivership proceedings under the Receiver's Borrowings Charge (as defined in the Receivership Order) – the current balance of the Receiver's borrowings is approximately \$1.43 million (the "**Receiver's Borrowings**"), plus interest and costs which continue to accrue.<sup>10</sup>

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

#### ***The Court has the Jurisdiction to Approve the Transaction***

12. Pursuant to Section 100 of the *Courts of Justice Act*,<sup>11</sup> as amended, and section 243(1) of the *Bankruptcy and Insolvency Act*,<sup>12</sup> as amended, the Court has the jurisdiction to grant the proposed vesting orders.

#### ***The Court Should Approve the Transaction***

13. The factors for the Court to consider in determining whether the Transaction should be granted are set out in *Royal Bank of Canada v Soundair* ("**Soundair**").<sup>13</sup> *Soundair* states that a Court should consider:

- (a) whether the receiver has made a sufficient effort to obtain the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers are to be obtained; and
- (d) whether there has been unfairness in the working out of the process.

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<sup>10</sup> Sixth Report, MR, Tab 2, at section 2.0, para 4, p. 12.

<sup>11</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, [s 100](#).

<sup>12</sup> *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended, [s 243\(1\)](#).

<sup>13</sup> *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#) at para 15 [*"Soundair"*].

14. Deference is to be afforded to the Receiver in regard to the Transaction. Unless there is a violation of the *Soundair* principles or other exceptional circumstances, the court should uphold the business judgment of the Receiver.<sup>14</sup> As affirmed by the Court in *Soundair*:

If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.<sup>15</sup>

15. In this case, there are no exceptional circumstances which would justify rejecting the Receiver's recommendation in respect to the Transaction. The Transaction should be approved for the following reasons:<sup>16</sup>

- (a) Unit 801 has been listed periodically since September 2023 and most recently for the last 6 months;
- (b) the Listing Agent has sold several Hazelton units and has other active listings in the building;
- (c) Unit 801 was listed using traditional methods to market a condominium, including on MLS, through social media, open houses and direct solicitation;

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<sup>14</sup> *Crown Trust Co. et al. v. Rosenberg et al.*, [1986 CanLII 2760](#) at para 83; *9-Ball Interests Inc. v. Traditional Life Sciences Inc.*, [2012 ONSC 2788](#) at para 28; and *Business Development Bank of Canada et al v. 1673747 Ontario Inc. et al.*, [2013 ONSC 286](#) at para 38.

<sup>15</sup> *Soundair* at para 21.

<sup>16</sup> Sixth Report, MR, Tab 2, at section 3.1, para 1(a) – 1(f), p. 14; see also Appendix "C" to the Sixth Report at p. 48.



- (d) the Purchaser has paid a material non-refundable deposit and the Transaction is only conditional on Court approval;
- (e) the marketing process to sell Unit 801 is substantially similar to the process used to sell unit 403, which was approved by the Court earlier in these proceedings;
- (f) the offer received by the Purchaser was the third offer received and provides for substantially greater value than prior offers, including verbal offers; and
- (g) CEI supports the Transaction.

***The Distribution to CEI Should be Approved***

16. The Court has held that it is appropriate to authorize a receiver to make distributions of sale proceeds concurrently with the approval of such sale in order to “maximize efficiency and avoid the need for an additional motion to seek approval for a distribution.”<sup>17</sup>

17. After repaying the amounts owing to CEI under the Receiver’s Borrowing Charge, the Receiver intends, subject to the Court’s approval, to distribute the net Transaction proceeds to CEI as partial repayment of Hazelton’s indebtedness owing to CEI under the DUCA Commitment.<sup>18</sup> The proposed distribution is appropriate for the following reasons:

- (a) the CEI Priority Debt is Hazelton’s senior secured debt (subject only to the Receiver’s Borrowings and the Receiver’s Charge, as such term is defined in the Receivership Order);<sup>19</sup>

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<sup>17</sup> *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, [2015 ONSC 1173](#) at para 53.

<sup>18</sup> Sixth Report, MR, Tab 2, at section 4.0, para 2, p. 14.

<sup>19</sup> Sixth Report, MR, Tab 2, at section 2.0, para 3, MR, Tab 2, p. 12; see also Appendix “B” to the Sixth Report at p. 22.

- (b) the net proceeds of the Transaction will not be in excess of the current balance of the CEI Priority Debt;<sup>20</sup> and
- (c) the Receiver's legal counsel, Norton Rose Fulbright Canada LLP, has conducted a review of CEI's security, including the DUCA Commitment, and provided the Receiver with an opinion that the DUCA Commitment (and CEI's other security) is valid and enforceable.<sup>21</sup>

### ***The Activities of the Receiver Should be Approved***

18. It is well established that the court has inherent jurisdiction to review and approve the activities of a court-appointed receiver where the receiver demonstrates that it has acted reasonably, prudently and not arbitrarily.<sup>22</sup> Such approvals are commonly granted as part of orders in receivership proceedings.<sup>23</sup>

19. The activities of the Receiver described in the Sixth Report were necessary and undertaken in good faith pursuant to the Receiver's duties and powers as set out in the Receivership Order.

### **PART IV - ORDER REQUESTED**

20. For the reasons set out above, the Receiver respectfully requests that this Court:

- (a) grant the proposed approval and vesting order in respect of the Transaction;

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<sup>20</sup> Sixth Report, MR, Tab 2, at section 4.0, para 2, p. 14.

<sup>21</sup> Sixth Report, MR, Tab 2, at section 4.0, para 1, p. 14.

<sup>22</sup> [Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.](#), 2014 BCSC 1855 para 54; see also [Target Canada Co. \(Re\)](#), 2015 ONSC 7574 at para 23 and [Hanfeng Evergreen Inc. \(Re\)](#), 2017 ONSC 7161 at para 15.

<sup>23</sup> See the [Order of Justice Penny dated June 5, 2023](#), *Atrium Mortgage Investment Corporation and Dorr Capital Corporation v Stateview Homes (Nao Towns II) Inc. et al.*, Superior Court of Justice of Ontario (Commercial List), Toronto, Court File No. CV-23-00698395-00CL, at para 7.

- (b) authorize the Receiver to distribute the net proceeds of the Transaction to CEI;  
and
- (c) approve the Sixth Report and activities of the Receiver as set out therein.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 11<sup>th</sup> day of August, 2025.



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## **SCHEDULE “A”**

### **LIST OF AUTHORITIES**

1. *9-Ball Interests Inc. v. Traditional Life Sciences Inc.*, [2012 ONSC 2788](#)
2. *Business Development Bank of Canada et al v. 1673747 Ontario Inc. et al.*, [2013 ONSC 286](#)
3. *Crown Trust Co. et al. v. Rosenberg et al.*, [1986 CanLII 2760](#)
4. *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, [2015 ONSC 1173](#)
5. *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161](#)
6. *Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.*, [2014 BCSC 1855](#)
7. [Order of Justice Penny dated June 5, 2023](#), *Atrium Mortgage Investment Corporation and Dorr Capital Corporation v Stateview Homes (Nao Towns II) Inc. et al.*, Superior Court of Justice of Ontario (Commercial List), Toronto, Court File No. CV-23-00698395-00CL.
8. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
9. *Target Canada Co. (Re)* [2015 ONSC 7574](#)

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY – LAWS**

#### ***COURTS OF JUSTICE ACT***

**R.S.O. 1990, C. C.43**

##### ***Vesting orders***

**100** A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

#### ***BANKRUPTCY AND INSOLVENCY ACT***

**R.S.C., 1985, c. B-3**

##### ***Court may appoint receiver***

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a)** take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b)** exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c)** take any other action that the court considers advisable.

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