

**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**

**MOTION RECORD OF THE APPLICANT
(RETURNABLE OCTOBER 13, 2025)**

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

November 10, 2025

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

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

Jeremy Bornstein LSO #: 65425C
Tel: 416.640.6041
jbornstein@cassels.com

Zach Flemming-Giannotti LSO #: 70292N
Tel: 416.869.5497
zflemming@cassels.com

Lawyers for the Applicant

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1.	Notice of Motion dated November 10, 2025
2.	Draft Order

TAB 1

**ONTARIO
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B E T W E E N:

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SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

NOTICE OF MOTION

The applicant, Constantine Enterprises Inc. ("**CEI**"), for itself and as authorized agent for CEC Mechanical Ltd. ("**CEC**"), will make a motion to before the Honourable Justice Cavanagh of the Superior Court of Justice (Commercial List) on Thursday, November 13, 2025 at 10:30 AM, or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING:

- ☐ In writing under subrule 37.12.1(1) because it is;
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location:

Video Link:

<https://ca01web.zoom.us/j/61804264297?pwd=MEpzRUtlUVB0UGc4eStsVGNTYmkxUT09#success>

THE MOTION IS FOR AN ORDER:

1 In the form attached as **Schedule “A”** to this Notice of Motion, with respect to a court action bearing court file no. CV-23-00710004-0000 (the “**CEC Lien Action**”), which has been stayed as part of the receivership proceedings, that:

- (a) with respect to the CEC Lien Action, the requirements of Rule 48.01 and Rule 48.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, be and hereby are dispensed with;
- (b) there be a trial of the CEC Lien Action and that the Registrar shall place the CEC Lien Action on the appropriate trial list, pursuant to Rule 48.05(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, at the request of any party to the CEC Lien Action;
- (c) the Order granted constitutes an order for the trial of an action in which the lien of the lien claimant, CEC Mechanical Ltd., may be enforced, and that section 37(1) of the *Construction Act*, R.S.O. 1990, c. C.30 (the “**Construction Act**”) is hereby deemed to be complied with; and
- (d) there be no order for costs of this motion; and

2 That the stay of proceedings be lifted solely for the purpose of granting the requested Order, and that the stay of proceedings continue in full force and effect subsequent to the granting of the requested Order; and

3 If necessary, abridging and validating the time for service and filing of this notice of motion and supporting material.

THE GROUNDS FOR THE MOTION ARE:

4 CEC, a lien claimant, registered a claim for lien against title to the property located at 128 Hazelton Avenue in Toronto, Ontario (the “**Property**”) on September 28, 2023 (the “**CEC Lien**”). CEC subsequently perfected the CEC Lien by commencing the CEC Lien Action on November 21, 2023;

5 On or about February 16, 2024, the Applicant, CEI, made a payment to CEC in respect of the CEC Lien and, pursuant to an agreement between CEI and CEC, became entitled to take assignment of the CEC Lien and the CEC Lien Action. Accordingly, CEI has an interest in the CEC Lien remaining valid and enforceable;

6 The CEC 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;

7 Pursuant to section 37(1) of the *Construction Act*, the CEC Lien expires following the second anniversary of the CEC Lien Action, being November 21, 2025, unless an order is made for the trial of an action in which the lien may be enforced or an action in which the lien may be enforced is set down for trial;

8 All parties to the CEC Lien Action have consented to the Order in the form attached as
Schedule “A” to this Notice of Motion;

9 The Receiver consents to a lifting of the stay of proceedings for the purpose of obtaining
the requested Order;

10 Rules 1.04(1), 1.05, 48.01, 48.02(1), 48.02(2), 48.03, and 48.05(1) of the *Rules of Civil
Procedure*, R.R.O. 1990, Reg. 194; and

11 Section 37(1) of the *Construction Act*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the
motion:

1 such evidence as counsel may advise and this Court may permit.

November 10, 2025

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amerskey@cassels.com

Jeremy Bornstein LSO #: 65425C
Tel: 416.640.6041
jbornstein@cassels.com

Zach Flemming-Giannotti LSO #: 70292N
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zflemming@cassels.com

Lawyers for the Applicant

SCHEDULE "A"

Court File No. CV-23-00710004-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

THE HONOURABLE

)

THURSDAY, THE 13TH

)

JUSTICE CAVANAGH

)

DAY OF NOVEMBER, 2025

B E T W E E N:

CEC MECHANICAL LTD.

Plaintiff

- and -

**MIZRAHI (128 HAZELTON) INC.,
CONSTANTINE ENTERPRISES INC.,
AVIVA INSURANCE COMPANY OF CANADA and
DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Defendants

ORDER

THIS MOTION, made by the plaintiff, CEC Mechanical Ltd., for an order dispensing with the requirements of Rule 48 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and for the trial of this matter, was heard this day at 330 University Avenue, Toronto, ON, M5G 1R7.

ON READING the materials filed in respect of the motion heard:

1. **THIS COURT ORDERS** that the requirements of Rule 48.01 and Rule 48.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, be and hereby are dispensed with.

2. **THIS COURT ORDERS** that there be a trial of this action and that the Registrar shall place this action on the appropriate trial list, pursuant to Rule 48.05(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, at the request of any party to this action

3. **THIS COURT ORDERS** that this Order constitutes an order for the trial of an action in which the lien of the plaintiff, CEC Mechanical Ltd., may be enforced, and that section 37(1) of the *Construction Act*, R.S.O. 1990, c. C.30 is hereby deemed to be complied with.

4. **THIS COURT ORDERS** that there be no order for costs of this consent motion.

Date of issuance

CEC MECHANICAL LTD.
Plaintiff

and **MIZRAHI (128 HAZELTON) INC. et al.**
Defendants

Court File No. CV-23-00710004-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c.
C.30

PROCEEDING COMMENCED AT TORONTO

ORDER

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Zach Flemming-Giannotti LSO #: 70292N
Tel: 416.869.5497
zflemming@cassels.com

Lawyers for the defendant
Constantine Enterprises Inc.

CONSTANTINE ENTERPRISES INC. -and-
Applicant

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

NOTICE OF MOTION

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
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Alan Merskey LSO #: 41377I
Tel: 416.860.2948
amerskey@cassels.com

Jeremy Bornstein LSO #: 65425C
Tel: 416.640.6041
jbornstein@cassels.com

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Lawyers for the Applicant

TAB 2

Court File No. CV-23-00710004-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

THE HONOURABLE

)

THURSDAY, THE 13TH

)

JUSTICE CAVANAGH

)

DAY OF NOVEMBER, 2025

B E T W E E N:

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Plaintiff

- and -

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4. **THIS COURT ORDERS** that there be no order for costs of this consent motion.

Date of issuance

CEC MECHANICAL LTD.
Plaintiff

and **MIZRAHI (128 HAZELTON) INC. et al.**
Defendants

Court File No. CV-23-00710004-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c.
C.30

PROCEEDING COMMENCED AT TORONTO

ORDER

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Toronto, ON M5H 0B4

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Tel: 416.869.5497
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Constantine Enterprises Inc.

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Applicant

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

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