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

MOTION RECORD RE MOTION TO EXPEDITE

June 30, 2025

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Court of Appeal File No. COA-25-CV-0659
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COURT OF APPEAL FOR ONTARIO

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

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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

NOTICE OF MOTION

The Receiver will make a Motion to a Judge on July 10, 2025 at 10:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

[ ] In writing under subrule 37.12.1(1) because it is;

[ ] In writing as an opposed motion under subrule 37.12.1(4);

[X] In person;

[ ] By telephone conference;

[ ] By video conference.

at the following location

Osgoode Hall, 130 Queen Street West, Toronto ON M5H 2N5

(Courthouse address for in person hearing or telephone conference or video conference details, such as a dial-in number, access code, video link, etc. if applicable)

THE MOTION IS FOR

(a) an order expediting the hearing of this appeal; and

(b) such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

(a) Mizrahi (128 Hazelton) Inc. is the registered owner of real property located at 128 Hazelton Avenue in Toronto, which is a nearly complete luxury condominium project;

(b) on June 4, 2024, the Superior Court of Justice appointed KSV Restructuring Inc. as the receiver and manager (the **"Receiver"**) of all the assets, undertakings and properties of the Respondents, including the condominium project;

(c) the Appellant, David Berry, was to be the purchaser of Unit 901 pursuant to an agreement of purchase and sale, but construction of Unit 901 is not complete;

(d) the Receiver determined that it was in the best interests of the Respondents' creditors to disclaim the agreement of purchase and sale for Unit 901 and market Unit 901 to the public;

(e) the Receiver brought a motion to the Superior Court of Justice for leave to disclaim the Unit 901 agreement of purchase and sale, which motion was heard on February 21, 2025;

(f) on May 15, 2025, the Court released its decision, granting the Receiver leave to disclaim that agreement of purchase and sale;

(g) Mr. Berry is appealing that decision and seeks an order directing the Receiver to transfer title of Unit 901 to him;

(h) the Receiver and Mr. Berry both support the hearing of the appeal being expedited;

(i) this dispute is occurring within the context of an ongoing court-supervised receivership, the progress of which will be delayed by this appeal;

(j) professional fees will continue to be incurred as the receivership continues, at the expense of recoveries to the creditors;

(k) until the appeal is determined, the Receiver cannot take steps to complete Unit 901 or market the property, which must occur in order for the receivership to be concluded;

(l) residents of the condominium, who have no stake or role in this litigation, have expressed frustration with the unfinished state of the building and the ongoing construction and are eager for the building to be completed;

(m) a single judge of the Court of Appeal for Ontario has jurisdiction to hear the motion, pursuant to s. 7(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C,43;

(n) the moving party estimates that it will require 10 minutes for oral argument of the motion; and

(o) such further and other grounds as the lawyers may advise.

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

(a) the Fourth Report of the Receiver, dated June 27, 2025; and

(b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 30, 2025

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Court of Appeal File No. COA-25-CV-0659
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CONSTANTINE ENTERPRISES INC.
Applicant (Respondent in Appeal)

-and-

MIZRAHI (128 HAZELTON) INC. et al.
Respondents (Respondents in Appeal)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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ksv advisory inc.

Fourth Report to Court of KSV Restructuring Inc. as Receiver and Manager of Mizrahi (128 Hazelton) Inc. and Mizrahi 128 Hazelton Retail Inc.

June 27, 2025

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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

FOURTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER
(COURT FILE NO. CV-24-00715321-00CL)

JUNE 27, 2025

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (the "**Court**") issued on June 4, 2024 (the "**Receivership Order**"), KSV Restructuring Inc. ("**KSV**") was appointed as the receiver and manager (the "**Receiver**") of (a) certain condominium units located at 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario (collectively, the "**Real Property**"); and (b) all of the assets, undertakings and properties of Mizrahi (128 Hazelton) Inc. ("**Hazelton**") and Mizrahi 128 Hazelton Retail Inc. (together with Hazelton, the "**Debtors**"), or either of them, acquired for, or used in relation to a business carried on by the Debtors, or either of them, including all proceeds thereof (together with the Real Property, the "**Property**").

2. Hazelton is the registered owner of the Real Property, which is a nearly complete nine-storey, 20-unit luxury condominium development project located in Toronto's Yorkville neighbourhood.

3. At the commencement of these proceedings, Hazelton was the registered owner of seven condominium units (201, 204, 403, 404, 801, 802 and 901), a commercial unit on the ground floor, and several parking spaces and lockers allocated to the respective units and the retail space. The Receiver completed the sale of units 201, 204, 403, the ground floor commercial unit and certain parking spaces and lockers during these proceedings.

4. At the commencement of these proceedings, construction had not been completed for units 801, 802 and 901 (the "**Unfinished Units**"). Gillam Communities Inc. was retained by the Receiver as the construction manager. Construction on units 801 and 802 is now complete and the Receiver is marketing both units, as well as unit 404.

5. As set out in the Receiver's third report to Court dated January 10, 2025 (the "**Third Report**"), the Receiver recommended that the Court issue an order authorizing the Receiver to disclaim all agreements between Hazelton and David Berry in respect of unit 901, including an agreement of purchase and sale between Hazelton and Mr. Berry dated August 16, 2019 (the "**901 Agreements**"). This motion was heard by the Court on February 21, 2025. A copy of the Third Report is provided in **Appendix "A"**, without attachments.

6. On May 15, 2025, the Court released its reasons for its decision (dated May 6, 2025) authorizing the Receiver to disclaim the 901 Agreements (the "**Decision**"). A copy of the Decision is provided in **Appendix "B".** The notice of disclaimer was not issued as Mr. Berry advised of his intention to appeal shortly after the release of the Decision.

7. On May 26, 2025, Mr. Berry filed a notice of appeal with the Court of Appeal for Ontario requesting, among other things:

   a) an order setting aside the Decision;

   b) an order authorizing and directing the Receiver to transfer title of unit 901 to Mr. Berry on "an as-is, where-is" basis;

   c) if necessary, leave to appeal pursuant to section 193(e) of the *Bankruptcy and Insolvency Act R.S.C. 1985, c. B-3, as amended*; and

   d) costs of the motion and appeal be awarded to Mr. Berry.

8. This report (the "**Report**") is filed by KSV in its capacity as Receiver.

1.1 Purpose of this Report

1. The primary purpose of this Report is to request that the Court of Appeal hear the appeal on an expedited basis.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon (i) discussions and information provided by representatives of Constantine Enterprises Inc. (**"CEI"**), the Debtor's largest secured creditor and a shareholder of Hazelton; (ii) documentation provided by Mr. Berry's legal counsel and discussions with Mr. Berry's legal counsel; (iii) contracts and other documents obtained from CEI and/or Hazelton; and (iv) the receivership application materials filed by CEI (collectively, the "**Information**").

2. To the extent applicable, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.

3. Additional background information regarding the Debtors and the reasons for the appointment of the Receiver is provided in the affidavits of Robert Hiscox sworn February 23, 2024 and April 16, 2024, as well as in the Receiver's First Report to Court dated June 14, 2024. Copies of the Court materials filed in these proceedings are available on the Receiver's case website at: https://www.ksvadvisory.com/experience/case/128Hazelton.

1.3 Currency

1. All currency references in this Report are in Canadian dollars.

2.0 Unit 901 Notice of Appeal

1. The Third Report provides background on the reasons that the Receiver believed it was appropriate to disclaim the 901 Agreement and accordingly, that discussion is not repeated in this Report.

2. This receivership commenced on June 4, 2024. One of the gating issues to completing this proceeding is determining whether the 901 Agreements should be disclaimed.

3. The Project has been delayed for many years and CEI has funded tens of millions of dollars in cost overruns. Mr. Berry initially entered into an agreement to purchase unit 901 on April 21, 2016 and has been dealing with uncertainty regarding this unit since that time. Both CEI and Mr. Berry believe that the issues concerning Unit 901 should be determined as soon as possible. Both CEI and Mr. Berry have advised the Receiver that they consent to the appeal being heard on an expedited basis. The Receiver is also of the view that having the appeal determined as soon as possible is beneficial as it will facilitate completing these proceedings.

4. Expediting the appeal will reduce the ongoing professional and other costs of this proceeding which continue to accrue to the prejudice of the financial stakeholders in these proceedings, including CEI. If the appeal is dismissed, the Receiver will still need to complete construction of unit 901, which will take several months. Given the uncertain timing related to the appeal, the Receiver is unable to finalize a contract to engage the construction manager to complete unit 901 as a construction manager cannot provide a fixed price contract with an open-ended start date. Upon completion of construction, the process of marketing and selling the condominium would commence. All of this must be competed before the receivership concludes. The Receiver's view is that it will be beneficial to minimize any additional delay caused by the appeal.

5. The Receiver has also been advised by the property manager retained by Hazelton’s condominium corporation that the residents of Hazelton are frustrated with ongoing construction in the building. The property manager recently sent a letter to the Receiver requesting that the motion be expedited as the residents are anxious to have construction completed. A copy of the letter is provided in **Appendix “C”**.

3.0 Conclusion

1. Based on the foregoing, the Receiver requests that the Mr. Berry’s appeal be heard on an expedited basis.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
MIZRAHI (128 HAZELTON) INC. AND
MIZRAHI 128 HAZELTON RETAIL INC.

Appendix “A”

January 10, 2025

Third Report to Court of KSV Restructuring Inc. as Receiver and Manager of Mizrahi (128 Hazelton) Inc. and Mizrahi 128 Hazelton Retail Inc.

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COURT FILE NUMBERS: 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

THIRD REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

JANUARY 10, 2025

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (the "**Court**") issued on June 4, 2024 (the "**Receivership Order**"), KSV Restructuring Inc. ("**KSV**") was appointed as the receiver and manager (the "**Receiver**") of (a) certain condominium units located at 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario and legally described by the PIN numbers listed in **Appendix "A"** (collectively, 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, or either of them, including all proceeds thereof (together with the Real Property, the "**Property**"). A copy of the Receivership Order is provided in **Appendix "B"**.

2. Hazelton is the registered owner of the Real Property, which is a nearly complete nine-storey, 20-unit luxury condominium development project located in Toronto's Yorkville neighbourhood and has approximately 1,993 square feet of ground floor commercial retail space (the "**Level 1 Unit**"), and three levels of underground parking.

3. At the commencement of these proceedings, Hazelton was the registered owner of seven condominium units (201, 204, 403, 404, 801, 802 and 901), the Level 1 Unit, and several parking spaces and lockers allocated to the respective units and the retail space. Units 201, 204, 403, the Level 1 Unit and certain parking spaces and lockers have been sold during these proceedings.

4. At the commencement of these proceedings, construction had not been completed for units 801, 802 and 901 (the "**Unfinished Units**"). Gillam Communities Inc. ("**Gillam**") was retained by the Receiver as the construction manager. Construction on units 801 and 802 is nearing completion. As of the date of this Report, and as discussed below, the Receiver has determined not to move forward with the completion of unit 901 at this time. Unit 901 is the subject of an Agreement of Purchase and Sale between Hazelton and David Berry.

5. This report (the "**Report**") is filed by KSV in its capacity as Receiver.

1.1 Purposes of this Report

1. The purposes of this Report are to:

   a) summarize the agreements between Hazelton and Mr. Berry concerning unit 901, as well as the related history;

   b) summarize the status of unit 901; and

   c) recommend that this Court issue an order authorizing the Receiver to disclaim all contracts between Hazelton and Mr. Berry concerning unit 901.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon (i) discussions and information provided by representatives of Constantine Enterprises Inc. (**"CEI"**); (ii) documentation provided by Mr. Berry's legal counsel and discussions with Mr. Berry's legal counsel; (iii) contracts and other documents obtained from CEI and/or Hazelton; and (iv) the receivership application materials filed by CEI (collectively, the "**Information**").

2. To the extent applicable, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.

3. Additional background information regarding the Debtors and the reasons for the appointment of the Receiver is provided in the affidavits of Robert Hiscox sworn February 23, 2024 and April 16, 2024, as well as in the Receiver's First Report to Court dated June 14, 2024 (the "**First Report**"). Copies of the Court materials filed in these proceedings are available on the Receiver's case website at: https://www.ksvadvisory.com/experience/case/128Hazelton.

1.3 Currency

1. All currency references in this Report are in Canadian dollars.

2.0 Background

1. The shares in the capital of Hazelton are owned 50% by Mizrahi Developments Inc. ("**MDI**") and 50% by CEI. MDI is controlled by Sam Mizrahi.

2. Mr. Mizrahi was the President of Hazelton and one of two directors of Hazelton until he resigned on May 13, 2024. Mr. Hiscox, a nominee of CEI, is the other director. Mr. Mizrahi is also the principal of the Mizrahi development group of companies, a condominium development group (the "**Mizrahi Group**"). The Mizrahi Group was CEI's operating and development counterpart in connection with the development of the Hazelton project (the "**Hazelton Project**"). Prior to these proceedings, the development and construction management of the Hazelton Project was performed by Mizrahi Inc.

3. Hazelton is the borrower under the DUCA Commitment, the 2015 Credit Agreement, the 2020 Grid Note and the 2021 Grid Note (each as defined in Section 3 of the First Report), each of which is owed to CEI. A copy of the First Report is provided in **Appendix "C"**, without attachments. Prior to these proceedings, CEI took an assignment of the DUCA Commitment.

2.1 Unit 901 APS and Related Agreements

1. On April 21, 2016, Mr. Berry and Hazelton entered into an agreement of purchase and sale for units 901 and 802. The total purchase price was $13,250,000. Mr. Berry was required to pay, and did pay, a deposit of $2,650,000. A copy of this APS is provided in **Appendix "D"**.

2. On May 15, 2017, Mr. Berry and Hazelton signed an amendment to the APS. Pursuant to that amendment, Mr. Berry issued Hazelton shares in Yappn Corp. ("**Yappn**") with an agreed value of $2,000,000 as of the date of issuance. That $2,000,000 value was treated as an advance against the purchase price. The shares were to vest on or before October 31, 2018, at which time Hazelton would become the owner of record of the shares and they would be held in escrow pending closing or termination of the APS. Depending on the value of the Yappn shares as of the vesting date, the purchase price of the APS could be increased by up to $1,000,000 or decreased by up to $2,000,000. A copy of the amendment is provided in **Appendix "E"**.

3. On August 16, 2019, Mr. Berry and Hazelton agreed to terminate the original APS and replace it with two separate agreements of purchase and sale, one for unit 901 (the "**901 APS**") and the second for unit 802 (the "**802 APS**"). Mr. Berry assigned the 802 APS to the purchaser of unit 801 but remained the purchaser under the 901 APS. The purchase price for unit 901 was agreed to be $6,250,000. $1,250,000 from Mr. Berry's original deposit of $2,650,000 was credited towards that price. The Yappn share amendment continued to apply to the 901 APS, but not to the 802 APS. A copy of the Mutual Release and Termination Agreement for the original APS is provided in **Appendix "F"**, a copy of the unit 901 APS is provided in **Appendix "G"** and a copy of the further Amendment dealing with the Yappn shares is provided in **Appendix "H"**.

4. On April 13, 2020, Mr. Berry and Hazelton agreed to increase the purchase price of Unit 901 to $7,142,244. A copy of the amending agreement that effected this increase is provided at **Appendix "I"**.

5. On October 2, 2022, Hazelton issued an invoice to Mr. Berry in the amount of $707,964.60 plus HST (for a total of $800,000) for extras and finishes to be installed in accordance with revised and final plans dated September 21, 2022. Mr. Berry signed this invoice. A copy of the signed invoice is provided at **Appendix "J"**. The Receiver understands that Mr. Berry subsequently paid this $800,000 in two installments of $450,000 and $350,000.

6. On November 7, 2022, Hazelton and Mr. Berry signed a new Statement of Critical Dates and Tarion Addendum, which changed the Outside Occupancy Date for unit 901 to December 29, 2023. A copy of this document is provided at **Appendix "K"**.

2.2 Side Agreements

1. On September 19, 2024, counsel for Mr. Berry provided the Receiver with additional documents that were not in the possession of the Receiver or CEI. The pertinent documents from that production are described below.

2. On June 6, 2016, through a Term Sheet, Mr. Berry agreed to loan a total of $10 million to Mizrahi Inc. by way of two loans of $4 million and $6 million. Mizrahi Inc. is a company controlled by Mr. Mizrahi. Mizrahi Development Group (1451 Wellington) Inc. (**Wellington**) guaranteed both loans and Mr. Mizrahi guaranteed the $6 million loan. A copy of the Term Sheet is provided at **Appendix "L"**.

3. The Term Sheet provided that Mizrahi Inc. would use the loan proceeds for purposes related to the construction of a condominium development at 1451 Wellington Street in Ottawa, another Mizrahi group development. The Wellington project is also now the subject of restructuring proceedings.

4. Section 19 of the Term Sheet references the Hazelton Project. It provided that if the closing date for Unit 901 occurred prior to Mizrahi Inc. repaying the $6 million loan under the Term Sheet, then Mr. Mizrahi would personally be responsible for paying all amounts payable by Mr. Berry on the closing of Unit 901, to a maximum of the amount owing under the $6 million loan. Such a payment by Mr. Mizrahi was defined as the "**Mizrahi Bridge Payment**". Mr. Berry was required to repay the Mizrahi Bridge Payment after the $6 million loan was repaid in full.

5. The Term Sheet was followed later that month by a Supplementary Agreement dated June 28, 2016 (the "**Supplementary Agreement**"), a copy of which is provided at **Appendix "M"**. The parties to the Supplementary Agreement were Mr. Berry, Mr. Mizrahi and Hazelton. For the purposes of this Report, its relevant terms were:

   a) Mr. Mizrahi agreed to pay the Mizrahi Bridge Payment to Hazelton, on the same terms and conditions as contained in the Term Sheet;

   b) Hazelton agreed that if closing of Unit 901 occurred prior to repayment of the $6 million loan, it would seek payment of amounts due at closing solely from Mr. Mizrahi, and would close on the sale to Mr. Berry "*notwithstanding that funds for said closing may not have been provided by Sam*"; and

   c) Mr. Mizrahi agreed, "*as a director and officer of*" Hazelton, that Mr. Berry would not be required to pay any further amounts in relation to Unit 901 if any amounts remained owing to him under either the $4 million or $6 million loan, and that closing of Unit 901 would occur notwithstanding any amounts remaining owing.

6. On the signing page of the Supplementary Agreement, someone has handwritten, "*As representative of Mizrahi developments I acknowledge this is the only copy of supplementary agreement*." This appears to have been written by Josh Lax, VP Development of Mizrahi Developments.

7. Also on June 28, 2016, Mr. Mizrahi and Mr. Berry signed a Confidentiality Agreement which provided that Mr. Berry would forfeit his right to repayment of any amounts outstanding on the $6 million and $4 million loans if he disclosed the existence of the Supplementary Agreement to anybody, save for certain limited exceptions set out in the Confidentiality Agreement. A copy of the Confidentiality Agreement is provided at **Appendix "N"**.

8. On June 29, 2016, Mizrahi Developments Inc., Mr. Berry, Wellington and Mr. Mizrahi signed a comprehensive loan agreement, detailing the terms of Mr. Berry's $6 million and $4 million loans. The borrower was now Mizrahi Developments Inc., rather than Mizrahi Inc. The provisions regarding the Mizrahi Bridge Payment and Unit 901 closing remained the same. In addition, Mr. Mizrahi now personally agreed to give Mr. Berry an additional parking spot at the Hazelton project, bringing the total parking spots provided to Mr. Berry to four. A copy of the Loan Agreement is provided at **Appendix "O"**.

9. On April 16, 2020, Mr. Mizrahi, Mizrahi Developments, Hazelton and Wellington provided Mr. Berry with a letter confirming that he would receive four parking spaces at the Hazelton project, rather than the three provided for in the Hazelton APS. A copy of this letter is provided at **Appendix "P"**.

10. On October 12, 2021, Mr. Mizrahi, Mr. Berry, Mizrahi Developments and Wellington signed an amending agreement to the Loan Agreement. The amendments did not modify the provisions relating to the Hazelton project. A copy of this amending agreement is provided at **Appendix "Q"**.

11. CEI has confirmed that none of the agreements described in this section 2.2 were disclosed to it prior to September 19, 2024, even though Hazelton is a signatory to the Supplementary Agreement. It appears that Mr. Mizrahi concealed these agreements from CEI, its 50% partner in Hazelton.

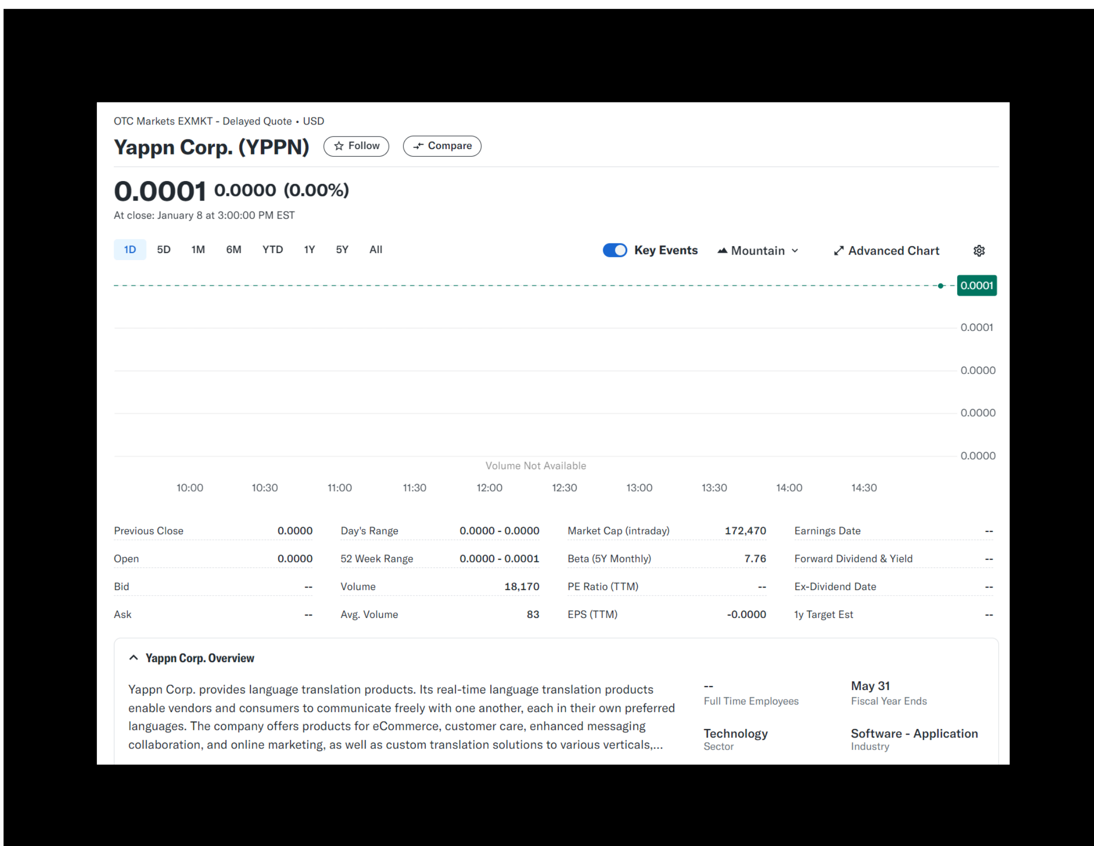
2.3 Current Status of Unit 901

1. Construction on Unit 901 had not been completed when the Receivership commenced.

2. The Receiver retained Gillam to provide an estimate of the cost to complete construction of Unit 901 based on the specifications under Mr. Berry's agreement. Gillam delivered a formal estimate on November 20, 2024. A copy of this estimate is provided at **Appendix "R"**.

3. As set out in the estimate, Gillam's opinion is that it will cost approximately $3,215,500 excluding HST, bonding, insurance, permits and certain other costs as set out in the estimate (the "**Excluded Costs**") to complete construction pursuant to Mr. Berry's specifications. As set out above, the final purchase price that Mr. Berry agreed to pay for Unit 901 is $7,142,244. Mr. Berry paid a deposit of $1,250,000 toward Unit 901, and also contributed the Yappn shares in a deemed amount of $2,000,000. This leaves a balance of $3,892,244 that would be payable on closing. As described above, the Receiver understands that Mr. Berry's position is that he is not required to pay any of this amount under the terms of the Supplementary Agreement.

4. The Receiver understands that it is Mr. Berry's position that the full $2 million for the Yappn shares should be deducted from the balance owing. However, based on the screen shot below taken on January 9, 2025, it appears that Yappn shares currently have nominal value.



5. Based on Mr. Berry's agreements and the Gillam estimate, it appears that completing Unit 901 might result in cash proceeds of up to $676,744 (the difference between the balance owing and Gillam's estimate). This amount is before the Excluded Costs, closing costs and professional fees. Alternatively, if Mr. Berry was not required to pay any further amounts due to the Supplementary Agreement, Hazelton would not generate any returns on the cost to complete Unit 901.

2.4 Appraised Value of Unit 901

1. The Receiver retained Heather Markoff of Simon & Associates to provide an appraisal of Unit 901 on three bases: (i) as finished, pursuant to the specifications in the Berry APS and accompanying documents; (ii) per specifications provided by Gillam (high end finishes consistent with a luxury condominium but not to the level in the Berry APS)[1] and (iii) in its current, unfinished state.

2. Ms. Markoff provided her appraisal on December 2, 2024. Based on a comparison of Unit 901 to comparable sales, Ms. Markoff appraised the value of Unit 901 if completed to Mr. Berry's specifications at $12,165,000. She determined the "as is" value of Unit 901 to be $7,685,000. A copy of this appraisal is provided at **Appendix "S"**.

3. It is important to note that, per Ms. Markoff, there have only been a few sales of luxury condominium units in downtown Toronto such as Unit 901 (which is a two-floor penthouse unit) in the past two years. As set out in Ms. Markoff's report, current asking prices for luxury condominium units in the Yorkville area range from $1,776 per square foot ("**PSF**") to $4,437 PSF. Ms. Markoff appraised Unit 901 at approximately $2,400 PSF. Given the range of asking prices for luxury condominiums in the downtown Toronto market, the Receiver views it as quite possible that Unit 901 could attract a significantly higher sale price than the appraised value that Ms. Markoff has identified.

3.0 Recommendation re Disclaimer of Unit 901 APS

1. The Receiver recommends that the 901 APS be disclaimed, as well as all related agreements concerning Unit 901.

2. As noted above, Gillam's estimated cost to complete Unit 901 is $3,215,500. CEI has advised the Receiver that it is not willing to fund completion of Unit 901 as per the specifications set out in the Unit 901 APS and accompanying documents. CEI has further advised that it is not willing to fund completion if the Receiver's intention is to transfer Unit 901 to Mr. Berry pursuant to the terms of the 901 APS, as there is effectively no benefit to the estate.

3. Even if the Receiver had the necessary funds to complete Unit 901, doing so would not be beneficial to the estate. Based on the records reviewed by the Receiver, Mr. Berry would owe approximately $3,892,244 at closing to purchase Unit 901. On that basis, the cash on closing would be approximately $676,744 (before the Excluded Costs, closing costs and professional fees).

[1] This appraisal is not relevant to this Report and therefore the Receiver has not commented on it herein.

4. The estate would be worse off if the Supplementary Agreement was enforceable against Hazelton and entitled Mr. Berry to acquire Unit 901 at no further cost. In that case, completing the Unit 901 APS would cost the estate $3,215,500 plus the Excluded Costs and professional fees.

5. By contrast, based on Ms. Markoff's appraisal, if Unit 901 is marketed and sold as-is, the estate would generate proceeds of approximately $7,685,000. Alternatively, if the Receiver obtained funding to complete Unit 901, and sold it on the market, the estate would generate gross proceeds of approximately $12,165,000. After accounting for the estimated construction costs, the net gain to the estate would be approximately $8,950,000.

6. Given the above, completing the 901 APS and selling the unit to Mr. Berry would have the effect of preferring Mr. Berry's unsecured claim against Hazelton over the claims of other creditors, including secured creditors.

7. The Receiver also has significant concerns about the Supplementary Agreement, which appears to have been agreed between Mr. Berry and Mr. Mizrahi without the knowledge of CEI. The Supplementary Agreement did not provide any benefit to Hazelton, but purported to impose upon it the risk that it would have to transfer Unit 901 to Mr. Berry without receiving the full purchase price.

8. It appears that Mr. Mizrahi actively tried to conceal the existence of the Supplementary Agreement from CEI. First, the unusual handwritten note that there was only a single copy of the Supplementary Agreement. Second, the punitive consequences imposed on Mr. Berry if he disclosed the existence of the Supplementary Agreement. Third, when the Supplementary Agreement was signed, the original APS for both Units 801 and 901 was still in place. That agreement was subsequently terminated, and Mr. Berry signed the new Unit 901 APS. The Unit 901 APS does not contain any reference to the Supplementary Agreement, and contains an "entire agreement" clause in which Mr. Berry and Hazelton agreed that there was no "representation, warranty, collateral agreement or condition affecting this Agreement or the Property". The Supplementary Agreement benefited Mr. Mizrahi and is prejudicial to Hazelton.

9. In light of the above, the Receiver's view is that if the Supplementary Agreement is a valid and binding agreement, it is appropriate for Hazelton to disclaim that agreement as well. The Receiver does not view the Supplementary Agreement as providing Mr. Berry with a valid claim for specific performance of the Unit 901 APS.

4.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make orders granting the relief requested in this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
MIZRAHI (128 HAZELTON) INC. AND
MIZRAHI 128 HAZELTON RETAIL INC.

Appendix “B”

CITATION: *Constantine Enterprises Inc. v. Mizrahi (128 Hazelton) Inc. et al.*, 2025 ONSC 2073
COURT FILE NO.: CV-24-00715321-00CL
DATE: 20250506

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF AN APPLICATION UNDER SECTION 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

B E T W E E N:	)	
	)	*Jennifer Stam and James Renihan*, for KSV Restructuring Inc., in its capacity as Receiver
CONSTANTINE ENTERPRISES INC.	)	*John Picone*, for the Applicant
Applicant	)	*Jason A. Wadden, Michael O'Brien and Nick Morrow* for David Berry, Respondent
– and –	)	*David Trafford*, for Sam Mizrahi
MIZRAHI (128 HAZELTON) INC. AND MIZRAHI 128 HAZELTON RETAIL INC.	)	
Respondents	)	
	)	**HEARD:** February 21, 2025

OSBORNE J.

REASONS FOR DECISION

[1] The Court-appointed Receiver seeks an order authorizing it to disclaim the Agreement of Purchase and Sale (together with related agreements) between Mr. David Berry ("Berry") and

Mizrahi (128 Hazelton) Inc. ("Hazelton") in respect of Unit 901 of the condominium project at 126 Hazelton Ave. and 128 Hazelton Ave., Toronto.

[2] Unit 901 is not finished. The cost to complete is estimated to be approximately $3,215,000. The Receiver does not have the necessary funds to complete the work. The Receiver wishes to list and sell Unit 901 in the market, which it estimates would generate funds for creditors in the estate of between $7.7 million and $9 million.

[3] Berry opposes the proposed disclaimer. It is his position that equity entitles him to specific performance, that he is entitled to have the Agreement of Purchase and Sale completed, that he is entitled to receive title to Unit 901 without any further payment, and that he would rank as an unsecured creditor of Hazelton with respect to any deficiencies.

[4] The Receiver submits that the effect of simply transferring title to Unit 901 to Berry, an unsecured creditor, would be to rewrite the APS to give Berry's claim priority over all secured and unsecured creditors, a course of action to which the Receiver (on behalf of the creditors of the estate) is opposed.

[5] The relief sought by the Receiver is supported by the Applicant in this receivership proceeding, Constantine Enterprises Inc. ("CEI"), which submits that the Receiver has the duty to maximize recovery of Hazelton's assets for creditors. CEI is the senior secured creditor of Hazelton. It rejects the submission of Berry that equity should operate so as to elevate his priority ranking.

[6] Hazelton has more than $50 million in secured debt in addition to millions of dollars in unsecured debt.

[7] Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.

[8] For the reasons set out below, the motion is granted.

Hazelton, the Project, the Ownership and the Debt

[9] Hazelton is the registered owner of certain remaining real property at 126 and 128 Hazelton Ave. in Toronto, the site of a nine storey, 20-unit luxury condominium development. The Receiver was appointed on June 4, 2024, when the project was not quite complete. Three residential units were unfinished, including Unit 901. Multiple additional units remained unsold.

[10] Hazelton is co-owned equally by Mizrahi Developments Inc. and the Applicant, CEI. Prior to the receivership, Mizrahi Inc. was managing the development and construction of the Hazelton project. Both Mizrahi Developments Inc. and Mizrahi Inc. were at all relevant times controlled by Mr. Sam Mizrahi ("Mizrahi"). Mizrahi was also the President of Hazelton and one of its two directors. The other director was the nominee of CEI, Mr. Robert Hiscox ("Hiscox"). Mizrahi

resigned as President and director of Hazelton on May 13, 2024, approximately three weeks before the Receiver was appointed.

[11] CEI was and remains the major secured creditor of Hazelton. It originally advanced $21 million in 2015 by way of a non-revolving loan facility secured by the real property and other assets of Hazelton. In 2017, CEI subordinated its revolving loan facility to DUCA Financial Services Credit Union which had advanced credit facilities to Hazelton of approximately $33.5 million.

[12] DUCA commenced a receivership application against Hazelton, following which CEI took an assignment of DUCA's debt in February 2024. At that time, Hazelton owed CEI approximately $31 million under the original 2015 loan facility, together with an additional amount of approximately $13 million under the facility assigned to CEI by DUCA. That latter amount has been reduced during the receivership proceeding through the application of funds generated by the sale of condominium units.

The Agreements Relating to Unit 901/802

[13] Berry originally agreed to purchase Units 901 and 802 together as a single unit for a purchase price of $13,250,000. He entered into an Agreement of Purchase and Sale on April 21, 2016 (the "Unit 901/802 APS") and paid a deposit of $2,650,000.

[14] Just over a year later, on May 15, 2017, Berry and Hazelton signed an amendment to the Unit 801/902 APS pursuant to which Berry agreed to transfer shares in Yappn Corp. to Hazelton as an advance against the purchase price. The parties agreed to ascribe a value of $2 million to the shares, subject to changes if the trading value of the shares increased or decreased by a certain threshold as of October 31, 2018.

[15] The Yappn shares were to vest on or before that date, at which time Hazelton would become the owner of record and they would be held in escrow pending closing or termination of the APS. Depending on the value of the Yappn shares as of the vesting date, the purchase price of the APS could be increased (by a maximum of $1,000,000) or decreased (by a maximum of $2,000,000).

[16] A further two years later still, on August 16, 2019, Berry and Hazelton agreed to terminate the original APS and replace it with two separate agreements of purchase and sale, one for Unit 901 and another for Unit 802.

[17] Berry then assigned the 802 APS to the purchaser of the adjacent unit, Unit 801. He remained the purchaser under the Unit 901 APS.

[18] Pursuant to the Unit 901 APS, the purchase price was agreed to be $6,250,000. $1,250,000 from Berry's original deposit of $2,650,000 was credited against the purchase price. The Yappn

share amendment continued to apply to the 901 APS (but not to the 802 APS). The Unit 901 APS included an entire agreement clause (section 33).

[19] The parties entered into a Mutual Release and Termination Agreement on the same date.

[20] The following year, on April 13, 2020, Berry and Hazelton entered into an amending agreement to increase the purchase price of Unit 901 to $7,142,244.

[21] On October 2, 2022, Hazelton sent an invoice to Berry in respect of extras and finishes for Unit 901 in the amount of $707,964.60 plus HST, for a total amount of $800,000 inclusive of HST (the "Invoice"). Berry paid the Invoice in two instalments of $450,000 and $350,000, respectively. As further discussed below, this Invoice is an issue on this motion.

[22] On November 7, 2022, Hazelton and Berry signed a new Statement of Critical Dates and Tarion Addendum, which changed the Outside Occupancy Date for Unit 901 to December 29, 2023.

The Undisclosed Side Agreements

[23] The agreements and amendments referred to above were not, as it turned out, the only agreements relevant to the purchase and sale of Unit 901. Certain other agreements were only recently disclosed. On September 19, 2024, Berry provided to the Receiver additional documents of which neither the Receiver nor CEI (the other 50% shareholder of Hazelton) had been previously aware.

[24] On June 6, 2016, just over six weeks after entering into the original Unit 901/802 APS in April 2016, Berry agreed to loan $10 million to Mizrahi Developments for an unrelated project pursuant to two loan agreements for $6 million and $4 million respectively. The funds were to be used in connection with the construction of a condominium project on Wellington St. in Ottawa. Berry and Mizrahi Developments signed a Term Sheet. Mizrahi personally and Mizrahi Development Group (1451 Wellington) Inc. ("Wellington") also signed as guarantors. That condominium project is now insolvent and is the subject of ongoing *CCAA* proceedings.

[25] The Term Sheet provided at section 19 that if the closing of the Unit 901/802 APS occurred before Mizrahi Developments had repaid the $6 million loan from Berry, then Mizrahi would pay the balance owing under the Unit 901/802 APS to a maximum of the principal and interest outstanding on the $6 million loan.

[26] Three weeks later, on June 28, 2016, Berry, Mizrahi and Hazelton entered into a Supplementary Agreement pursuant to which Mizrahi agreed "as a director and officer of Hazelton" that for such period as any amounts remained owing to Berry under either of the two Ottawa project loans, Hazelton would look to Mizrahi to pay any amounts that were owing by Berry for the closing of the Unit 901/802 APS. Hazelton would complete the sale to Berry even if Mizrahi failed to pay those amounts.

[27] On the signing page of the Supplementary Agreement, a handwritten note states: “As representative of Mizrahi Developments I acknowledge this is the only copy of supplementary agreement”. It is the position of the Receiver (not challenged by any party) that the handwriting is that of Mr. Josh Lax, the Vice President, Development of Mizrahi Developments.

[28] On the same day (June 28, 2016), Berry and Mizrahi signed a Confidentiality Agreement in respect of the Supplementary Agreement confirming that it was intended to be confidential and that, among other things, if Berry were found by a court to have disclosed the agreement to a third party, he would forfeit the right to repayment of any amounts still owing under the two Ottawa project loans with the aggregate principal amount of $10 million.

[29] The next day, on June 29, 2016, Mizrahi Developments Inc., Wellington, Berry and Mizrahi entered into another loan agreement, setting out the terms of Berry’s $10 million loans in respect of the Ottawa condominium project. However, the borrower was changed from Mizrahi Inc. to Mizrahi Developments Inc. In addition, Mizrahi (personally) agreed to give Berry an additional parking spot at the Hazelton Project, such that Berry would have four parking spots in total.

[30] It is in large part as a result of the undisclosed Supplementary Agreement that Berry submits he is entitled to Unit 901 without further payment.

Current Status of Unit 901 and Amounts Owing by Berry

[31] The Receiver commissioned a third-party estimate of the cost to complete Unit 901 in accordance with the contractual specifications, which is approximately $3,215,000 excluding HST, and certain other expenses. The Receiver does not have the funding to complete the Unit.

[32] The Receiver also commissioned a third-party appraisal of the value of Unit 901, both as is, and as finished per contractual specifications. The “as is” value of Unit 901 is $7,685,000, and the value is $12,165,000 if completed to Berry’s specifications.

[33] The final purchase price that Berry agreed to pay for Unit 901 is $7,142,244. If the Unit 901 APS to which Berry is a party were completed, and net of his deposit ($1,250,000) and other amounts credited towards the purchase price (the deemed value of the Yappn Shares at $2 million), he would still owe a balance of $3,892,244 to complete the purchase.

[34] If, as Berry submits, the undisclosed Supplementary Agreement entitles him to close the Unit 901 APS without paying anything further (leaving the obligation to pay any balance owing for the Unit to Mizrahi personally), then Berry would be entitled to receive title to Unit 901 without paying any further consideration.

[35] I pause to observe that in either case, Berry would be receiving full credit for the agreed value of the Yappn shares at $2 million, notwithstanding that they currently have nominal value. In other words, even though the shares are not worth anything today, the Receiver is prepared to

credit Berry for the full $2 million, being the agreed-upon deemed value of the shares at the time of transfer.

[36] As a result of all of the above, the Receiver submits that Berry has not performed all obligations under the Unit 901 APS since he still owes a balance of $3,892,244. Berry disputes that for three principal reasons. He submits that:

a. the APS, as amended by the Supplementary Agreement, and as further amended by an "as is, where is" offer in respect of the Unit that was accepted, entitles him to Unit 901 without any further payment since he is the beneficiary of an institutional constructive trust giving Berry an equitable interest in Unit 901 that predates the receivership and cannot at law be disclaimed by the Receiver;

b. equity favours his position, based in part on representations made to him by CEI that a receivership would result in the completion of Unit 901 and transfer of title to him; and

c. in any event, he is entitled to an additional credit against the balance of the purchase price owing of $800,000 which he paid pursuant to the additional Invoice.

[37] I will address each of these issues within the framework of the applicable test for the disclaimer of pre-sale contracts by a receiver.

The Duty of a Receiver to Maximize Recovery and the Power to Disclaim an Agreement

[38] A Court-appointed Receiver has the duty to maximize the recovery of assets under its jurisdiction. While doing so, it may affirm or disclaim contracts, including pre-sale purchase contracts. The criteria to be considered in determining whether such disclaimer should be authorized are:

a. the respective legal priorities of the competing interests;

b. whether the disclaimer would enhance the value of the assets, and if so, would a failure to disclaim amount to a preference in favour of a particular party; and

c. whether, if a preference would arise, the party seeking to avoid the disclaimer has established that the equities support such a preference.

See: *KingSett Mortgage Corporation et al. v. Vandyk-Uptowns Limited et al.*, 2024 ONSC 6205, at paras. 24 – 26, quoting with approval from *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 527, at para. 44, aff'd 2018 BCCA 25; and *2039882 Ontario Ltd. (Re),* 2024 ONSC 5541, at para. 19.

[39] The parties are agreed that this is the applicable test. They disagree on whether it has been met in the circumstances of this case. Berry submits that the first and third factors favour denying the motion. He (at least by inference) concedes that the second factor is met.

The Respective Legal Priorities

[40] The Receiver submits that Berry is an unsecured creditor in the Hazelton receivership. Unquestionably, he has an unsecured claim given the amounts he has paid towards the purchase price of Unit 901. He may also have recourse to deposit insurance in respect of those amounts, or a portion thereof, but there is unlikely to be sufficient assets in the receivership for a distribution to unsecured creditors.

[41] In any event, Hazelton owes in excess of $50 million to secured creditors which do not include Berry. The Receiver submits that Berry has no greater a claim to receivership assets than does any other unsecured creditor, of which there are many. Performance of the Unit 901 APS would require the Receiver to complete construction at an estimated cost of approximately $3,215,000, and it does not have those funds.

[42] As noted, Berry's position is that equity entitles him to receive a transfer of title to Unit 901 without further payment. He submits that this flows from the fact that title to Unit 901 is not receivership property at all since the Receiver has no better rights to the asset than did Hazelton, and that a constructive trust arises in his favour because the APS constituted a specifically enforceable contract for the purchase and sale of land entered into prior to the date of the receivership.

[43] Specific performance of the APS (as amended) according to its terms, however, would not entitle Berry to Unit 901 without further payment as is his demand. Subject to his submission that he is entitled to an additional credit of $800,000, even if he were entitled to specific performance, the Receiver submits that he would still owe the balance of $3,892,244.

[44] Berry's answer to that lies in two agreements on which he relies. The first is the Supplementary Agreement referred to above. The second is a further agreement that Berry submits was entered into and pursuant to which he would take Unit 901 "as is, where is", and have an unsecured creditor claim equal to the cost of any remaining deficiencies.

The Supplementary Agreement

[45] In my view, the Supplementary Agreement is not enforceable. It is said to have been entered into in secret on June 28, 2016. As at that date, the original Unit 901/802 APS was still in force. As noted above, that was not terminated until August 16, 2019, when it was, on Berry's own evidence, replaced and superseded by the Unit 901 APS.

[46] The Unit 901 APS includes an entire agreement clause at article 33 that provides that the "Vendor and Purchaser agree that there is no representation, warranty, collateral agreement or

condition affecting this Agreement or the Property or supported here by other than as expressed herein in writing". It follows from the plain meaning of that term that the Supplementary Agreement, even if otherwise enforceable, was at an end when the Unit 901/802 APS was formally and intentionally terminated by the parties.

[47] If the entire agreement clause is effective, it is fatal to Berry's argument that the Supplementary Agreement continues to apply so as to entitle him to title to Unit 901 but also relieve him from any obligation to pay the balance of the purchase price.

[48] Berry argues that the effect of this entire agreement clause is avoided entirely by operation of section 6.8 of the Supplementary Agreement. That provision in the undisclosed and secret Supplementary Agreement, entitled "Notwithstanding", provides in full, that: "[T]his Agreement shall be interpreted and enforced in accordance with its terms, notwithstanding any "entire agreement" or similar clause which may be contained in any Loan Transaction document".

[49] However, in my view, this provision does not assist Berry either.

[50] "Loan Transaction" is defined in the first recital of the Supplementary Agreement to refer to the Ottawa Loan transaction "whereby David [Berry] has agreed to loan MDI the aggregate amount of $10 million".

[51] Accordingly, even if section 6.8 of the Supplementary Agreement were held to be enforceable and to override and supersede the clear and unequivocal entire agreement clause in the Unit 901 APS (which I pause to observe was entered into by the parties subsequently), it applies only to Loan Transaction documents relating to the Ottawa Loan, and those do not include the Unit 901 APS.

[52] The entire agreement clause in the Unit 901 APS is fatal to Berry's reliance on the Supplementary Agreement which came to an end when the Unit 802/901 APS was terminated by the parties.

[53] Finally with respect to these Ottawa Loan agreements, I observe that Mizrahi (the counterparty) takes no position on this disclaimer motion, but submits that the Ottawa project Loans are not, as Berry submits, outstanding, but have (to the knowledge of Berry) been repaid. In any event, and while Mizrahi recognizes that he and Berry disagree on that fundamental point, that dispute is to be addressed in the context of the pending *CCAA* application in respect of the Ottawa project. Mizrahi references an affidavit from him filed in that proceeding sworn October 22, 2024 particularizing the repayment of the loans.

[54] Given my findings above, I do not need to make, and I do not make, any findings as to whether or not the Ottawa Loans have in fact been repaid.

The "As is, Where is" Agreement

[55] Next, I will address Berry's second submission, concerning the enforceability of the "as is, where is" agreement.

[56] According to his affidavit filed on this motion, Berry's evidence is that on or about January 11, 2024, he had a telephone call with Hiscox in which Hiscox offered (on behalf of CEI) to simply close the Unit 901 APS on an "as is, where is" basis with the estimated cost to complete the Unit to be deducted from the purchase price. Berry relies on a text message of that same date from Mizrahi where Mizrahi purports to confirm the CEI offer.

[57] Berry submits that he accepted this offer through a January 11, 2024 text message to Mizrahi, such that there was an enforceable contract.

[58] In my view, a review of the Record does not support the position of Berry that there was an accepted agreement to take Unit 901 on an "as is, where is" basis. I reach this conclusion for several reasons.

[59] First, the parties never reached agreement on all essential terms. Even on Berry's evidence, the offer was to reduce the purchase price by an amount equal to the cost to complete the Unit. However, the parties never agreed on what that cost and therefore the value of the abatement to the purchase price was to be.

[60] In fact, Berry's evidence is to the opposite effect: his acceptance was conditional on an accurate estimate of the cost to complete. Berry says that he memorialized his acceptance of the offer by sending Mizrahi a text message on January 11, 2024 in which he said (in relevant part): "Sam, subject to an accurate estimation on completion and other incurred costs I accept. Do I need to email Robert [Hiscox] as well? He made the offer over the phone."

[61] That the acceptance was conditional, and subject to terms still to be agreed, is clear from the very language of the text message on which he relies, and which is set out above: "*subject to an accurate estimation on completion and other incurred costs* I accept". [Emphasis added]. That never occurred. No such estimate was prepared, exchanged or agreed upon. No such schedule of other incurred costs (or even what those might include) was exchanged or agreed on.

[62] I accept the position of the Receiver that without a meeting of minds on that essential term, there can be no enforceable agreement, even if Berry had unconditionally accepted the offer. Even today, the terms of the agreement that Berry seeks to enforce are unknown. In such circumstances, and where a significant term of the alleged agreement is deferred, the contract is incomplete, there is no certainty as to terms and therefore there is no enforceable agreement: *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.* (1991), 79 DLR (4th) 97 (Ont. C.A.), at pp. 104-105.

[63] That alone is sufficient to dispose of this argument.

[64] Second, I accept the position of the Receiver that on the facts of this case, Berry rejected the offer, which was therefore no longer open for acceptance months later.

[65] The chronology of events set out in Berry's affidavit filed on this motion is slightly inconsistent with the chronology that Berry himself set out in an email dated February 7, 2024. There, Berry stated that it was Mizrahi who first made the proposal and that he originally refused the offer, following which Hiscox called him to discuss.

[66] Either way, it is Berry's position that there was an accepted offer for him to take Unit 901 on an "as is, where is" basis with the estimated cost to complete deducted from the purchase price.

[67] It is the position of the Receiver that no agreement was reached since Berry rejected the offer immediately after it was made. Berry himself concedes that it was not immediately accepted. However, he maintains that in a subsequent telephone conversation with Mizrahi on May 30, 2024, Mizrahi told Berry that CEI planned to terminate the Unit 901 APS after the Receiver was appointed. Berry says that he responded to that by accepting the proposal that had been made by Mizrahi (on behalf of CEI) on January 11, 2024.

[68] Berry says that he memorialized this acceptance by sending Mizrahi the text message on January 11, 2024 referred to above.

[69] Berry's evidence is that Mizrahi responded by advising that he (Berry) would have to speak with Hiscox, since by this time Mizrahi no longer had authority to transact for Hazelton. When Berry called Hiscox, Hiscox responded, according to Berry, that Berry could not close the transaction on Unit 901 and would now have to wait for the Receiver to be appointed before taking any further steps relating to closing on the unit.

[70] Accordingly, I find that even if the contract were not enforceable due to a lack of agreement on essential terms, the offer was not accepted by Berry. Again, even accepting Berry's version of events, the response from Hiscox was not to confirm acceptance of the offer and a resulting binding agreement, but rather that Berry would have to wait for a receiver to be appointed (which was then anticipated imminently) and address the issue within this receivership. It follows that there cannot have been (and I find that there was not), an agreement reached prior to the receivership.

[71] When an offer is rejected, it is no longer open for acceptance: *Smith v. Smith*, 2007 CanLII 17205 (ON SC), at para. 2. An offer may be accepted only within a reasonable period of time, determined by reference to surrounding circumstances (i.e., the factual matrix): *Gillevet v. Crawford and Co. Insurance Adjusters Ltd. (Ont. Dist. Ct.)* (1988), 66 O.R. (2d) 665.

[72] The court should examine the surrounding circumstances to better understand the mutual and objective intentions of the parties, as expressed in the text of the contract: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 57.

[73] By the time Berry submits that he accepted the offer, months later, he knew that CEI was seeking to appoint a receiver over the assets of Hazelton. In fact, Berry's acceptance of the offer was sent 17 days *after* the application to appoint the Receiver, and only four days before the Receivership Order was granted. Circumstances had clearly and materially changed since January 2024.

[74] I pause to observe that Berry appears to rely on these alleged representations of Hiscox made on behalf of CEI as part of his argument that equity ought to entitle him to the relief he seeks. In my view, such reliance does not assist Berry on this motion. First, and as I have concluded above, I find there was no enforceable agreement reached prior to the receivership, even if I accept that the representations were made: Hiscox confirmed that the issue would have to be dealt with in the receivership and that he was powerless to act (i.e., to confirm that an agreement had been reached). Second, the issue of whether or not the alleged representations are actionable is an issue between CEI and Berry beyond the scope of this motion and about which I make no determination.

[75] Finally in this regard, I accept the submission of the Receiver that even if I had found that the "as is, where is" agreement were enforceable, it would be subject to the clear authority of the Receiver to disclaim it. The same factors that apply to the disclaimer of the Unit 901 APS apply to the disclaimer of the "as is, where is" agreement.

Constructive Trust

[76] Next, I address Berry's argument that the agreement cannot be disclaimed because the interest is beneficially owned by Berry and not Hazelton as a result of the imposition of a constructive trust.

[77] Berry submits that the common law or recognizes equitable conversion in that a specifically enforceable contract for the purchase and sale of land gives rise to a constructive trust in favour of the purchaser. See, for example: *Simcoe Vacant Land Condominium Corporation No. 272 v. Blue Shores Developments Ltd.*, 2015 ONCA 378, 126 O.R. (3d) 39, at paras. 46 – 49 ("*Blue Shores*").

[78] Berry further submits that the constructive trust becomes enforceable at the point whereby all obligations (save for routine closing adjustments) under the contract have been discharged by the purchaser: Robert Chambers, "Constructive Trusts in Canada" (1999) 37:1, Alta LR, pp. 186-189; *Buchanan v. Oliver Plumbing & Heating Ltd.*, [1959] O.R. 238 (C.A.); and *Armadale Properties Ltd. v. 700 King Street (1997) Ltd.*, 2001 CanLII 28461 (ON SC), at paras. 11-12.

[79] Berry submits that such constructive trusts apply to condominiums (see *Blue Shores*, at para. 49) and that once a unit purchaser enters into an agreement of purchase and sale, he becomes an equitable owner of the unit even though the agreement cannot be closed until the condominium is registered (and registration occurred here in 2023): *York Condominium Corp. No. 167 et al v. Newrey Holdings Ltd., et al* (1981), 32 OR (2d) 458 (C.A.).

[80] In short, Berry submits that he was already the beneficial owner of Unit 901 when the Receivership Order was granted and that: “Berry is a *bona fide* purchaser for value of Unit 901 as he is not required to pay any further amounts … for either of the following reasons: a) Article 5 of the Supplementary Agreement provides Berry does not have to pay any further amounts … (given the amounts owing on the Ottawa Loan); or b) he has paid more than he is required to having regard to payments made in adjustments to the purchase price. As such, he has fully performed his contractual obligations, and … his interest cannot be converted into an unsecured claim as the Receiver argues.”

[81] In my view, the fundamental issue here is whether Berry has in fact paid all amounts owing under the Unit 901 APS, as amended. All of the authorities on which he relies stand for the proposition, in relevant part, that a purchaser has a beneficial and equitable interest in title to a property (including a condominium unit) only where that purchaser has fully performed the agreement and, among other things, paid the purchase price in full.

[82] I find that Berry has not done that here for the reasons above, and also below in respect of the Invoice.

Proposed Additional Credit Against Purchase Price: The Invoice

[83] Finally in this regard, I address the Invoice and the proposed credit against the Purchase Price.

[84] As noted above, Berry submits that in any event of all the above, he is entitled to an additional credit against any balance of the purchase price owing as a result of his having paid the $800,000 Invoice referred to above.

[85] There is no dispute that the Invoice was rendered and was paid. The disagreement is about what the Invoice and payment were for. The Receiver’s position is that the Invoice related to additional upgrades and finishes not included in the APS, with the result that the Invoice and the fact that it was paid does not change the balance owing for the purchase of Unit 901 (i.e., Berry requested and paid for an additional $800,000 of upgrades that were not previously included in the specifications for unit 901 or the purchase price).

[86] Berry, on the other hand, takes the position that the Invoice was in effect an invoice for a further progress payment on the purchase of Unit 901, that the upgrades and finishes were already included in the APS, and therefore the payment of the Invoice constitutes an advance against the purchase price and must be credited in his favour.

[87] I find that the Invoice was for exactly what it states on its face it was for: “Upgrades and Extras”. The Invoice is dated October 2, 2022 in respect of “Suite 901”. Under the heading “Description of Change”, it states: “Suite to be completed with extras and finishes installed in accordance with revised and final plans (and accompanying information) submitted by Hudson

Kruse on September 21, 2022 … while incorporating and installing materials provided by the purchaser … for a price of $800,000 inclusive of HST."

[88] The Invoice goes on to describe the materials provided by the Purchaser, the fact that the Plans and the Purchaser's Materials are attached to "this amending agreement" and provides that 25% of the total cost ($200,000) is due within five business days, with the remaining amounts to be paid in five equal monthly instalments of $120,000 commencing on November 1, 2022.

[89] In my view, the plain language of the Invoice is entirely consistent with its title "Upgrades and Extras" and not with the interpretation suggested by Berry that it is simply a progress draw invoice by which Hazelton requested, and Berry agreed (apparently for no consideration), to accelerate the payment of a portion of the purchase price previously agreed to. The Invoice does not contain any such language at all.

[90] Moreover, if Berry's interpretation were to be accepted, all of the lengthy particulars referred to in the Invoice about the new materials, the selection thereof, the right of the vendor to substitute different materials of an equivalent quality and value, and all of the other terms, would have been unnecessary.

[91] So too would be the provision that provides that: "the vendor warrants that the work required to complete the purchaser suite as outlined herein (including the purchase of all necessary materials) shall commence immediately upon the execution of this agreement". If all of the enumerated items were already included in the agreement and in the purchase price, there would be no need for a provision confirming that the work would commence immediately.

[92] The interpretation submitted by Berry would require me to "write out" of the Invoice and render meaningless all of that language.

[93] Finally in this regard, if the Invoice was simply a progress draw invoice on the agreement, there is no explanation for why the Invoice would purport to ascribe a value to all of the enumerated items (separately from the balance of the cost of the Unit) of $707,964.60, an amount to which HST was then also separately applied in the amount of $92,035.40.

[94] Such an interpretation would also be inconsistent with the express terms of the Invoice that provide that the rooftop to the suite would be completed in accordance with [specified] construction drawings and "shall be completed at no additional cost to the purchaser". Such a term makes no sense in the context of an interpretation that all of the other work referred to in the Invoice was to be completed at no additional cost to the purchaser.

[95] On its face, the Invoice makes an exception for the completion of the rooftop in that, unlike all of the other items referred to in the Invoice, it shall be completed at no additional cost to the purchaser. No reasonable interpretation of the Invoice can reconcile that language with the submission of Berry that all of the items included in the additional work were to be completed at

no additional cost. The Invoice says just the opposite: the additional work will be completed, at a cost of $800,000 inclusive of HST.

For all of these reasons, I find that payment of the $800,000 Invoice does not operate as an additional credit against the balance of the purchase price owing.

Is Berry Otherwise Entitled to an Equitable Interest?

[96] Berry submits that the present case is more analogous to the facts in *Armadale* than to those in *C & K Mortgage Services Inc. v. Camilla Court Homes Inc.*, 2020 ONSC 5071, 82 CBR (6th) 289, ("*C&K*") on which the Receiver relies. I cannot accept this submission.

[97] In *C&K*, B. Dietrich J. considered a situation where, as here, the Court-appointed Receiver disclaimed a pre-receivership agreement of purchase and sale pursuant to which the purchaser had paid a significant deposit to the vendor which was the party subsequently put into receivership. However, the property was subject to a pre-existing first mortgage granted as security for loans advanced to the vendor. The loan had not been repaid, and the mortgage had not been discharged.

[98] When the receiver was appointed, the vendor could not complete the purchase and sale agreement, and the receiver sought to disclaim it. The purchaser opposed the disclaimer and sought an order compelling the receiver to complete the agreement of purchase and sale and a finding that he had an equitable or proprietary interest in the property equal to the full amount of the deposit paid. The Court declined, and found that the receiver was entitled to disclaim the contract in furtherance of its fiduciary duty to act in the best interest of all stakeholders in the debtor's estate.

[99] In that case, the purchaser relied on *Armadale*, as does Berry here. The court distinguished *Armadale* on the same basis as I do in the present case: there, the Court found that the equitable interest in the property had passed to the purchaser because he had paid the full purchase price and the property had been validly conveyed to him but for the delivery of the deed. As noted by B. Dietrich J., the purchaser in *Armadale* could have enforced the transfer of title by way of specific performance at any time prior to the receivership. The court in *C&K* stated:

> [45] I find that Mr. Tan has not met his burden to prove that the Receiver should prefer Mr. Tan over the secured creditor. The equities do not justify the subordination of the Applicant's legal priority. Such subordination is contrary to the terms of the APS and the Receivership Order.
>
> [46] I accept that Mr. Tan is a victim of the improper use of the $400,000 deposit he paid directly to Elite Homes in the belief that this payment would expedite the construction of the Mateo Property. However, the Applicant in no way participated in Mr. Tan's decision to make the improvident payment and was unaware that such payment had been made until Elite Homes requested a

partial discharge of the mortgage to permit a conveyance of the Mateo Property to Mr. Tan. I find that there is no basis in equity or in law that would permit this court to visit the consequences of Mr. Tan's unfortunate decision on the Applicant secured lender.

[47] This conclusion is consistent with leading jurisprudence. See, for example, *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 527. In *Forjay*, Justice Fitzpatrick ordered the receiver to disclaim agreements of purchase and sale and to remarket the subject residential units free of the buyers' interests. Justice Fitzpatrick found that the mortgagee had legal priority over the position of the buyers by virtue of a contractual provision in each buyer's agreement, similar to the provision found in Mr. Tan's APS, negating any interest in land. Justice Fitzpatrick also found that the buyers' interests were grounded in contract and that no equitable interests arose in any of the units.

[48] In *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, the Court of Appeal for Ontario held, at para. 109, that in considering whether an interest in land should be extinguished, a court should consider: (1) the nature of the interest in land; and (2) whether the interest holder has consented to the vesting out of their interest either in the insolvency process itself or in agreements reached prior to the insolvency. The Court of Appeal also held that if these factors prove to be ambiguous or inconclusive, the court may then engage in a consideration of the equities to determine if a vesting order is appropriate in the particular circumstances of the case.

[49] In *Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd.*, Justice Morawetz (as he then was) gave effect to a subordination clause in an agreement very similar to clause 41 of Schedule "A" to the APS. In that case, five buyers of condominium units paid the balance of the purchase price owing under their agreements directly to the debtor. The receiver moved for authorization to market and sell the condominium property and terminate the existing agreements. Justice Morawetz held that the mortgagee had legal priority over the interests of the buyers. His Honour then considered the equities and found that they did not justify overriding the first mortgagee's legal priority. His Honour observed that those purchasers whose deposits were not held in trust may have some remedy against the debtors or its advisors. Regarding those purchasers who paid the balance of their purchase price, notwithstanding the subordination clauses of their agreements, and the fact that they would not be receiving title at that time, Justice Morawetz observed that these purchasers ran the risk of losing those

> payments but may have recourse against other parties: paras. 27 and 31-38.
>
> [50] Mr. Tan too ran a risk when he paid $400,000 directly to Elite Homes. It appears that he may have recourse against Tarion Corporation, and he may also have recourse against others as well.
>
> [51] On the evidence, I am satisfied that the Receiver did not breach its fiduciary duty to take into account the interests of the various stakeholders in the Respondents' estate in its decision to disclaim the APS. In assessing whether a disclaimer of an agreement is appropriate, the priority of a secured interest registered under the Land Titles Act, while not determinative, weighs heavily.

[100] I agree with and adopt the same approach and analysis here. For the reasons set out above, Berry has not paid the purchase price in full for Unit 901, and was not remotely in the position of a purchaser to whom the property had been validly conveyed but for the transfer of a deed. It follows that the authorities on which Berry relies do not assist him.

Whether a Disclaimer Would Enhance Asset Value and/or amount to a Preference

[101] As noted above, Berry does not seriously contest the Receiver's position that this second factor in the disclaimer test has been met. Based on the uncontradicted evidence in the form of the appraisal obtained by the Receiver, a disclaimer will enhance the assets of the estate since the sale of Unit 901 on the open market, even on an "as is basis", is estimated to generate proceeds of approximately $7,685,000.

[102] In contrast, Barry seeks an order that title be conveyed to him without making any further payment, with the necessary corollary result that the asset value to the estate and its creditors would be decreased by the same amount - $7,685,000.

[103] Accordingly, the second factor is satisfied.

[104] Moreover, I accept the submission of the Receiver that even if the Unit 901 APS was performed according to its terms (which is not what Berry seeks), asset recovery for creditors would still be reduced and not enhanced. Under that hypothetical scenario, Berry would pay the balance of the amount owing under the Unit 901 APS of $3,892,244 which is still less than the anticipated proceeds to be realized if Unit 901 was marketed for sale to the public.

[105] Accordingly, performance of the Unit 901 APS, or the "as is, where is" offer, would decrease and not enhance asset value for creditors and would amount to a preference in favour of Berry.

Whether the Equities Support a Preference if Such Arises

[106] As to the third factor, in my view, the equities do not support the completion of the Unit 901 APS and the transfer of title to Berry without further payment.

[107] A consideration of the equities is necessarily fact-specific to each case. In my view, such a consideration here overwhelmingly favours the position of the Receiver that it is entitled to disclaim the Unit 901 APS to maximize asset value for creditors.

[108] The secured creditor, CEI, is owed millions of dollars in secured debt from Hazelton. That security, and its first priority ranking, is not challenged (other than, in the indirect sense that Berry says that title to Unit 901 does not form part of the receivership property).

[109] The practical reality is that it is highly unlikely that CEI will recover its principal, let alone any interest and will suffer a shortfall. Unsecured creditors are unlikely to recover anything. It is therefore important for the Receiver to fulfil its duties to maximize the value of all receivership assets and therefore maximize recoveries and minimize shortfalls.

[110] Berry's entire position rests on the Supplementary Agreement, which was intentionally undisclosed to, and kept secret from, both CEI and the Receiver, neither of which was aware of the Supplementary Agreement until it was produced well into the receivership proceeding.

[111] None of Berry's various complaints and allegations can be visited upon the Receiver. Put differently, nothing in the conduct of the Receiver rebalances the equities against it.

[112] The same is true with respect to CEI, the first ranking secured creditor, subject to one additional argument advanced by Berry. His evidence is to the effect that CEI represented to him that a receivership would lead to the completion of unit 901 and the transfer to him, with the result that a disclaimer is inappropriate.

[113] I cannot give effect to this argument for number of reasons.

[114] Even if CEI did make such a representation and Berry were entitled to place reliance on it, the Receivership Order does not obligate the Receiver to complete any units or close any sale agreements. Nor did any party (i.e., Berry) argue at the time the Receivership Order was made that it should. One might have expected Berry to challenge the proposed scope of the receivership at that time, based on the arguments he now advances. Instead, the Supplementary Agreement was kept secret.

[115] The Receivership Order was not appealed and nor did Berry seek to subsequently vary or amend it. It follows that the powers and duties of the Receiver are clear. The Receiver, as a Court officer, is not bound by any representations made prior to the receivership by a secured creditor or any other party. The Receiver is not the agent of CEI.

[116] To the extent that Berry has a claim based on the alleged representations, that is an issue between Berry and CEI on which the Receiver takes no position. I note that CEI also submits that such an allegation is a matter between those two parties, and concedes that Berry is at liberty to pursue such relief in a separate proceeding should he decide to do so.

[117] I pause to observe here that Berry places reliance upon the endorsement of Cavanagh J. setting out the reasons for granting the Receivership Order in which the Court noted that the "appointment of a receiver will allow for the completion of the sale of units already subject to agreements of purchase and sale". Berry argues, if I understand the submission, that in making that observation, Cavanagh J. was expressing a view that the Unit 901 APS should be completed, and title should be transferred to Berry.

[118] In my view, such a conclusion is untenable for two reasons. First, the Receiver was <u>permitted</u> to complete the sale of units already subject to agreements, not <u>required</u> to do so. Second, the conclusion has no merit considered in the context within which the Receivership Order was made - the secret Supplementary Agreement and Confidentiality Agreement had (intentionally) still not been disclosed to the Receiver or CEI.

[119] CEI strongly supports the position of the Receiver. I accept its submission also with respect to the relative equities here. CEI has incurred significant costs and has suffered significant losses in connection with the Hazleton project. The priority scheme in a receivership proceeding applies for good reason, and there is no basis in equity to further prejudice the position of CEI here.

[120] I reject the submission of Berry that CEI purchased the debt of DUCA specifically (and, as Berry argues, improperly) to improve its position as against Berry. The receivership application was already pending, and had been commenced by DUCA when CEI bought out its debt so as to rank in first position. There is nothing improper about that, and it is routinely done in receivership scenarios.

[121] Moreover, it is overwhelmingly likely that the very same disclaimer motion now before the Court would have been brought in the receivership proceeding had DUCA remained as the first ranking secured creditor, so the situation is no different in any event.

[122] In any event, and even prior to purchasing the DUCA debt, CEI was already a secured creditor (and by far the largest secured creditor) with priority over Barry's interest.

[123] Finally, CEI denies making the representations as alleged by Berry. While Berry (secretly) recorded the telephone conversations with the representative of CEI, none of the recordings in the record include such representations. As noted above, Berry can pursue a claim related to the alleged representations if he wishes to do so, but the record on this motion does not reflect equities that favour Berry here.

[124] In balancing the equities, I fully recognize the unfortunate effect of the result on Berry. Without question, he has paid a substantial sum towards the purchase of Unit 901. However, his

position is no different from that of other unsecured creditors who advance money, goods or services to a debtor who subsequently becomes insolvent and is put into receivership. The ordinary hierarchy of creditor interests applies, and there is nothing in the evidence here to justify a departure from that hierarchy.

[125] This is precisely the same result reached by B. Dietrich J. in *C&K*, in which the Court observed that while the outcome was unfortunate for the purchaser, it was consistent with the priority scheme and there was no legal basis to prefer the interests of the purchasers over those of the creditors for whose benefit the Receiver sought to disclaim the agreement.

Result and Disposition

[126] For all of these reasons, the motion of the Receiver is granted, and it is authorized to disclaim any and all sale are related agreements between Hazelton and Berry for Unit 901.

Osborne J.

Appendix “C”

One Twenty Eight
HAZELTON AVENUE
Private Residences

June 6, 2025

KSV Advisory
220 Bay Street, 13th Floor, PO Box 20,
Toronto, Ontario, M5J 2W4

Attention: Bobby Kofman, Managing Director
Jordan Wong, Director

Dear Sirs,

RE: Request for Expedited Appeal

I write on behalf of Toronto Standard Condominium Corporation No. 2967, which is, as you know, the condominium corporation for the condominium located at 128 Hazelton Avenue, Toronto. I am sending this letter on the instructions of the condominium corporation's board of directors.

The purpose of this letter is to formally request that you do everything possible to have the appeal of the recent court decision relating to unit 901 expedited.

Our residents have been enduring significant disturbances due to construction activities for an extended period. This situation has lasted much longer than anticipated, and it is increasingly unfair to expect our residents to continue living under such conditions. We firmly believe that any further delay in resolving this matter is inequitable to our community. Our primary concern is to ensure the completion of the construction at the earliest possible date, thereby allowing our residents to reclaim their peaceful living environment. We are confident that expediting the appeal process will facilitate a prompt resolution and minimize the ongoing disruption.

Accordingly, we respectfully urge you to consider the implications for our residents, who have exhibited remarkable patience throughout this ordeal. Their quality of life is at stake, and timely intervention is imperative. We appreciate your understanding and cooperation in addressing this critical issue with the urgency it warrants.

Thank you for your attention to this matter. We look forward to your favorable and prompt response.

Sincerely,

Jeff Stevenson

Jeff Stevenson
Agent on behalf of Toronto Standard Condominium Corporation No. 2967

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

CONSTANTINE ENTERPRISES INC. -and- MIZRAHI (128 HAZELTON) INC. et al.
Applicant (Respondent in Appeal) Respondents (Respondents in Appeal)

COURT OF APPEAL FOR ONTARIO

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