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

FACTUM OF THE RECEIVER (RESPONDENT IN THE APPEAL)

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PART I - OVERVIEW - NATURE OF CASE AND ISSUES

1. Mizrahi (128 Hazelton) Inc. (**Hazelton**) is the owner of a luxury condominium project in Toronto's Yorkville neighbourhood. It has two equal shareholders: Constantine Enterprises Inc. (**CEI**) and Mizrahi Developments Inc., a company controlled by Sam Mizrahi. In addition to being a shareholder, CEI is also a substantial secured creditor of Hazelton.

2. The project is not complete. Hazelton defaulted on debts, including debts owed to CEI, and CEI successfully applied for the appointment of KSV Restructuring Inc. as receiver and manager over all of Hazelton's assets, including the project. At the time the Receiver was appointed, CEI was owed approximately $43 million on a secured basis, which amounts constitute the substantially all of Hazelton's secured debt.

3. The appellant, David Berry, was party to an agreement of purchase and sale for the project's penthouse unit, Unit 901. Construction of Unit 901 is not complete. Based on all of the facts and its duty to maximize recovery of assets, the Receiver determined that the best course

of action was to disclaim Mr. Berry's purchase agreement. It sought court approval for that disclaimer, which Mr. Berry opposed.

4. In opposing the disclaimer, Mr. Berry relied on a Supplementary Agreement dated June 2016. Mr. Berry had loaned $10 million to a company controlled by Mr. Mizrahi for purposes entirely unrelated to the Hazelton project, and the Supplementary Agreement addressed certain consequences if Mr. Mizrahi and his company failed to repay the loan. Mr. Berry argued that the Supplementary Agreement entitled him to receive title to Unit 901 without paying the balance owing, an amount close to $4 million.

5. Justice Osborne approved the disclaimer sought by the Receiver. He found that Mr. Berry was an unsecured creditor with no right to specific performance of the purchase agreement. He held that the Supplementary Agreement did not apply to the Unit 901 APS, finding:

(a) when the Supplementary Agreement was signed, Mr. Berry and Hazelton were party to an initial purchase agreement pursuant to which Mr. Berry was going to purchase both Unit 901 and Unit 802 as a single unit;

(b) in 2019, that initial purchase agreement was terminated and Mr. Berry entered into a new agreement to purchase Unit 901 separately from Unit 802;

(c) the new purchase agreement did not refer to the Supplementary Agreement and contained an "entire agreement" clause denying the existence of any collateral agreement or representation; and

(d) neither Mr. Mizrahi nor Mr. Berry disclosed the Supplementary Agreement to CEI, which was entirely unaware of it until the receivership.

6. Mr. Berry's primary argument on appeal is that the purchase agreement's entire agreement clause does not apply to the Supplementary Agreement. That is an attack on the Motion Judge's interpretation of the agreements and is thus reviewable on the palpable and overriding error standard. There is no such error and the appeal should be dismissed.

PART II - SUMMARY OF FACTS

i) The Project

7. Hazelton is the registered owner of property on Hazelton Ave in Toronto which is the site of a nine story, 20-unit luxury condominium development.

Reasons for Decision, at para. 9 **[Appeal Book, Tab 2, p. 20]**

8. Hazelton is jointly owned by CEI and Mizrahi Developments, the latter of which is controlled by Sam Mizrahi. Robert Hiscox of CEI and Mr. Mizrahi were Hazleton's two directors. Mizrahi Inc., another company controlled by Mr. Mizrahi, managed the development and construction of the condominium project.

Reasons for Decision, at para. 10 **[Appeal Book, Tab 2, pp. 20-21]**

9. CEI initially advanced $21 million in secured debt to Hazelton. Hazelton also took on secured debt advanced by DUCA Financial Services. In February 2024, CEI took an assignment of DUCA's debt, resulting in Hazelton owing CEI approximately $43 million.

Reasons for Decision, at paras. 11-12 **[Appeal Book, Tab 2, p. 21]**

10. CEI sought the appointment of the Receiver over Hazelton's property and assets. That application was granted, and the Receiver was appointed in June 2024. At that time, three of the residential condominium units in the project were incomplete, including Unit 901.

Reasons for Decision, at para. 9 **[Appeal Book, Tab 2, p. 20]**

ii) The Original Berry APS

11. In April 2016, Mr. Berry and Hazelton entered into an APS pursuant to which Mr. Berry agreed to purchase Units 802 and 901 together for $13,250,000.

Reasons for Decision, at para. 13 **[Appeal Book, Tab 2, p. 21]**

12. Shortly thereafter, in June 2016, Mr. Berry agreed to lend $10 million to Mizrahi Developments for an unrelated condominium project in Ottawa. The loan was broken into separate loans of $6 million and $4 million. Mr. Berry, Mizrahi Developments and Mr. Mizrahi signed a Term Sheet concerning that loan. Among other things, the Term Sheet provided that if the $6 million loan was outstanding when Mr. Berry closed on Units 901/802 then Mr. Mizrahi would be personally responsible for pay the balance owing to Hazelton for the units.

Reasons for Decision, at paras. 24-25 **[Appeal Book, Tab 2, p. 22]**

Term Sheet, s. 19 **[Appeal Book, Tab 16, pp. 453-454]**

13. The Term Sheet was followed by a "Supplementary Agreement" between Mr. Berry, Mr. Mizrahi and Hazelton. In that agreement, Mr. Mizrahi agreed, "as a director and officer of Hazelton", that if Mizrahi Developments had not repaid the $6 million and $4 million loans when Mr. Berry closed on Units 901/802 then Hazelton would seek payment of all amounts due at closing from Mr. Mizrahi personally and would transfer the units to Mr. Berry even if Mr. Mizrahi failed to pay.

Reasons for Decision, at para. 26 **[Appeal Book, Tab 2, p. 22]**

Supplementary Agreement, Article 2 **[Appeal Book, Tab 18, p. 462]**

14. Mr. Mizrahi signed the Supplementary Agreement both personally and on behalf of Hazelton. In handwriting next to the agreement's signature lines, a Mizrahi Developments employee affirmed that it was "the only copy of Supplementary Agreement."

Reasons for Decision, at para. 27 **[Appeal Book, Tab 2, p. 23]**

Supplementary Agreement **[Appeal Book, Tab 18, p. 465]**

15. Mr. Mizrahi and Mr. Berry also signed a Confidentiality Agreement in which they agreed to keep the Supplementary Agreement confidential. If Mr. Berry disclosed the agreement to a third party, he would forfeit repayment of any outstanding balance on the $10 million loan to Mizrahi Developments as a consequence.

Reasons for Decision, at para. 28 **[Appeal Book, Tab 2, p. 22]**

Confidentiality Agreement **[Respondent's Compendium, Tab 1]**

16. None of the Term Sheet, the Supplementary Agreement or the Confidentiality Agreement were disclosed to CEI or Mr. Hiscox. Although they purported to potentially relieve Mr. Berry of the obligation to pay Hazelton millions of dollars, neither Mr. Mizrahi nor Mr. Berry revealed the agreements to CEI. Both CEI and the Receiver learned of these agreements for the first time in September 2024.

Reasons for Decision, at para. 23 **[Appeal Book, Tab 2, p. 22]**

iii) The Subsequent Berry APS

17. Mr. Berry never closed on the Unit 901/802 APS. Mr. Berry and Hazelton agreed to terminate that agreement in August 2019. They replaced it with two new agreements- one for Unit 901 and one for Unit 802. Mr. Berry assigned the Unit 802 agreement to a third party but continued to be the buyer for Unit 901. The purchase price for Unit 901 was $6,250,000.

Reasons for Decision, at paras. 16-17 **[Appeal Book, Tab 2, p. 21]**

18. The Unit 901 APS contained an "entire agreement" clause that denied the existence of any collateral agreement or representation. The APS contained no reference to either the Supplementary Agreement or Mr. Berry's loans to Mizrahi Developments.

> Reasons for Decision, at paras. 46 **[Appeal Book, Tab 2, pp. 25-26]**
>
> Unit 901 APS, Article 33 **[Appeal Book, Tab 7, p. 123]**

19. Unit 901 was not yet complete when the Receiver was appointed and thus the Unit 901 APS never closed.

iv) Receiver Recommends Disclaimer of Unit 901 APS

20. After being appointed, the Receiver reviewed the status of Unit 901. Based on discussions with a construction manager, it estimated that it would cost approximately $3,215,000 plus HST to complete construction of the unit and that Mr. Berry would owe a balance of $3,892,244 for the unit if and when it was ready.

> Reasons for Decision, at paras. 31 & 33 **[Appeal Book, Tab 2, p. 23]**

21. Based on third-party appraisals of Unit 901, the Receiver determined that Unit 901 was worth approximately $7,685,000 "as is" and approximately $12,165,000 if completed to the contractual specifications.

> Reasons for Decision, at para. 32 **[Appeal Book, Tab 2, p. 23]**

22. Further to its duty to maximize recovery for creditors, the Receiver determined that the best course of action was to disclaim the Unit 901 APS. The effect of this would be to leave Mr. Berry an unsecured creditor for the deposits he had paid toward the unit but recover potentially $7,685,000 or more for creditors.

23. At the disclaimer hearing, Mr. Berry argued that he was not an unsecured creditor but instead had a proprietary claim to Unit 901. His position was that he had a constructive trust over Unit 901 because he had paid all amounts owing under the agreement and was thus entitled to specific performance.

24. There is no dispute that Mr. Berry never actually paid all amounts required under the Unit 901 APS. Instead, Mr. Berry relies on the Supplementary Agreement and asserts that he has been relieved of the obligation to pay the balance owing for Unit 901 because Mizrahi Developments and Mr. Mizrahi failed to repay the $10 million loan.

25. If the Supplementary Agreement does not entitle Mr. Berry to close on the Unit 901 APS without making any further payment, then Mr. Berry has no potential constructive trust claim and is a simple unsecured creditor. His arguments on appeal focus on the applicability of the Supplementary Agreement for that reason.

PART III - POSITION ON ISSUES

26. Mr. Berry alleges that the Motion Judge made two general errors:

(a) failing to apply the correct legal test when interpreting the entire agreement clause in the APS; and

(b) failing to consider certain relevant facts and consider incorrect facts when evaluating the equities.

27. As detailed below, a proper review of the reasons show that the Motion Judge made no error and that his findings are entitled to deference.

A. No Error in Application of Entire Agreement Clause

i) Motion Judge Applied the Correct Test

28. The Receiver agrees with Mr. Berry's submission that *Tercon* applies to the interpretation of an entire agreement clause. The three steps in that approach are:

(a) first, interpret the clause to determine whether it applies;

(b) second, determine whether the clause was unconscionable when agreed to; and

(c) third, determine whether public policy justifies refusing to enforce the clause.

Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), [2010] 1 SCR 69, at paras 122-123

29. Mr. Berry argues that the Motion Judge failed to apply this test and thus erred in law. His submission overlooks the substance of the Motion Judge's reasons. Although the Motion Judge did not expressly refer to *Tercon*, he engaged in the necessary analysis. Specifically:

(a) at paras. 45-52, he considered whether the entire agreement clause applied to the Supplementary Agreement;

(b) Mr. Berry did not argue that the clause was unconscionable, and does not do so on appeal, so there was no need for the Motion Judge to consider that part of the test; and

(c) at paras. 101-125, when considering whether disclaimer was appropriate, the Motion Judge thoroughly considered whether public policy supported enforcing Mr. Berry's purchase agreement despite the entire agreement clause.

30. The Motion Judge thus conducted the analysis required by *Tercon* and his findings are entitled to deference, reviewable on the palpable and overriding error standard normally applied

to matters of contractual interpretation. The mere fact that he did not refer to *Tercon* is not an error of law.

> *Sattva Capital Corp. v. Creston Moly Corp.*, [2014] 2 SCR 633, at para 52

ii) Motion Judge Found that Clause Applies to Supplementary Agreement

31. Based on his argument that the Motion Judge failed to apply *Tercon*, Mr. Berry asks this Court to interpret the entire agreement clause *de novo*. The Receiver disagrees for the reasons stated above. The Motion Judge's interpretation is entitled to deference and there is no palpable and overriding error that could warrant appellate intervention. Mr. Berry's first ground of appeal can be dismissed on that basis.

32. Even if *de novo* review was appropriate, the Motion Judge's interpretation was correct. The entire agreement clause states: "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." The Motion Judge considered this language and concluded that its "plain language" meant that the Supplementary Agreement had been excluded from the Unit 901 APS.

> Reasons for Decision, at para. 46 **[Appeal Book, Tab 2, p. 23]**

33. This is the only plausible reading of the entire agreement clause. If the Supplementary Agreement could modify the language of the Unit 901 APS, it would be a "collateral agreement" and thus be excluded by the entire agreement clause. There is nothing in the language of the entire agreement clause – or anywhere else in the Unit 901 APS – that exempts the Supplementary Agreement from the ambit of the entire agreement clause.

34. Despite its plain language, Mr. Berry argues that he and Hazelton did not "intend" for the entire agreement clause to apply to the Supplementary Agreement. He advances four arguments

in support of that position. Tellingly, none of them rely upon or engage with the language of the Unit 901 APS. Mr. Berry does not offer any interpretation of the entire agreement clause that would exclude the Supplementary Agreement. This is a fatal defect in his argument.

35. Contractual intention is determined objectively by reference to the actual words of the contract. While the surrounding circumstances can inform the meaning of those words, they cannot overwhelm the language of the contract. Mr. Berry ignores this bedrock principle of contractual interpretation, effectively arguing that the entire agreement clause does not mean what it says.

> *Sattva Capital Corp. v. Creston Moly Corp.*, [2014] 2 SCR 633, at para 57

iii) Mr. Berry's Interpretation Arguments

36. Each of Mr. Berry's four arguments in support of his contractual interpretation argument are addressed below.

37. **Subsequent Conduct.** Mr. Berry submits that subsequent conduct evidence is admissible to interpret a contract. This is a misstatement of the law. As this Court held in *Shewchuk*, evidence of subsequent conduct is only admissible if the contract "remains ambiguous after considering its text and its factual matrix."

> *Shewchuk v. Blackmont Capital Inc.*, 2016 ONCA 912, at para 46

38. Mr. Berry did not and does not argue that the entire agreement clause was ambiguous and the Motion Judge did not find it to be so. Subsequent conduct evidence is thus inadmissible.

39. In any event, the evidence upon which Mr. Berry relies does not assist him. He points to an April 2020 letter from Mr. Mizrahi to Mr. Berry in which Mr. Mizrahi agreed to provide Mr. Berry with an additional parking spot at the Hazelton building. This promise of an additional parking spot had originally been part of Mr. Berry's loan agreement with Mizrahi Developments - though not

part of the Supplementary Agreement. Mr. Berry argues that the fact that Mr. Mizrahi recommitted to the additional parking spot in April 2020 means the parties must have intended to exclude the Supplementary Agreement from the scope of the entire agreement clause when they signed the Unit 901 APS in August 2019.

> April 16, 2020 letter re Additional Parking Space **[Appeal Book, Tab 17, p. 458]**

40. To the contrary, the fact that Mr. Mizrahi later committed to the parking spot agreement but did no such thing in respect of the Supplementary Agreement further indicates that the Supplementary Agreement had ceased to apply. Had the parties believed the Supplementary Agreement was still applicable, presumably that would have also been reduced to writing.

41. **Factual Matrix.** Mr. Berry argues that the factual matrix shows that the Supplementary Agreement was intended to be excluded from the entire agreement clause. This argument runs afoul of the rule that the factual matrix may not overwhelm the language of an agreement. Instead of using the factual matrix to interpret the words of the clause, Mr. Berry seeks to use it to change the language – to insert an exception that does not exist. This is not an appropriate use of factual matrix evidence.

42. Further, the "factual matrix" evidence upon which Mr. Berry relies does not assist him. He notes that there is no evidence that his attention was drawn to the entire agreement clause. However, there is also no evidence that Mr. Berry was unaware of the clause or that he understood it to mean something different from what its plain language suggests. He does not allege that anybody from Hazelton told him that the Supplementary Agreement would continue to apply. An absence of evidence that Mr. Berry read a clause is not "factual matrix" evidence capable of altering its plain language.

43. **Terms of Supplementary Agreement.** On the motion, Mr. Berry argued that s. 6.8 of the Supplementary Agreement precludes the application of the entire agreement clause. Section 6.8 states that the Supplementary Agreement applies notwithstanding any entire agreement clause in "any Loan Transaction document." The Motion Judge held that the Unit 901 APS is not a "Loan Transaction document" and thus s. 6.8 did not apply. Mr. Berry does not challenge that holding.

Supplementary Agreement s. 6.8, **[Appeal Book, Tab 18, p. 465]**

44. Instead, Mr. Berry advances new arguments. He now argues that s. 6.7 prohibits termination of the Supplementary Agreement prior to repayment the $10 million loan. That is a misreading of s. 6.7. The provision says that the Supplementary Agreement "shall automatically terminate" upon repayment of the loans but does not say that it cannot be terminated prior to that time.

Supplementary Agreement, s. 6.7 **[Appeal Book, Tab 18, p. 465]**

45. Mr. Berry also argues that the Supplementary Agreement could not be modified by the Unit 901 APS because any modification had to be signed by each of Mr. Berry, Hazelton and Mr. Mizrahi. Mr. Berry argues that the Unit 901 APS was not signed by Mr. Mizrahi, because he only signed on behalf of Hazelton and not in his personal capacity. The fact that Mr. Mizrahi was not personally a party to the Unit 901 APS is immaterial. He signed the agreement, which is all that s. 6.1 of the Supplementary Agreement requires.

Supplementary Agreement, s. 6.1 **[Appeal Book, Tab 18, p. 463]**

46. More importantly, Mr. Berry's focus on whether the Unit 901 APS could modify, amend or terminate the Supplementary Agreement ignores a more fundamental problem with his position. By its terms, the Supplementary Agreement potentially applied to amounts owing under the original APS between Mr. Berry and Hazelton. The Unit 901 APS was a separate and distinct agreement and did not even exist when the Supplementary Agreement was signed. Whether or

not the Supplementary Agreement was amended or terminated, it never applied to Mr. Berry's obligations under the Unit 901 APS and thus cannot relieve him of the obligation to pay for the unit. Even if the entire agreement clause did not apply to the Supplementary Agreement, it does not necessarily follow that the Supplementary Agreement modifies the Unit 901 APS. Mr. Berry has assumed that it does without explaining why the Supplementary Agreement would modify a contract that did not exist until years after the Supplementary Agreement was entered into.

47. **Subjective Understanding Evidence.** Finally, Mr. Berry relies on two alleged pieces of subjective evidence – the "understandings" of Mr. Mizrahi and himself. Subjective understandings do not form part of the factual matrix and are inadmissible for the purpose of interpreting a contract.

> *Kearns v. Canadian Tire Corporation, Limited*, 2020 ONCA 709, at para 41

48. Further, Mr. Berry misstates the evidence of Mr. Mizrahi. In Mr. Berry's factum, he submits that Mr. Mizrahi's "understanding and intention was that the Supplementary Agreement remained in effect… until such time as the Loan was repaid." Mr. Mizrahi did not say this. Rather, he observed that the Supplementary Agreement obliged him to pay monies owing by Mr. Berry on Unit 901 if the loans had not been repaid and then asserted that the loans had been repaid in full. This evidence does not assist Mr. Berry.

> October 22, 2024 Affidavit of Sam Mizrahi, para. 17 **[Appeal Book, Tab 23, pp. 569-570]**

iv) No Public Policy Reason Not to Enforce Entire Agreement Clause

49. Mr. Berry argues that there are public policy reasons not to enforce the entire agreement clause. The Motion Judge carefully considered the policy issues at play in determining whether Mr. Berry ought to be permitted to purchase Unit 901. He considered Mr. Berry's claim as

compared to the secured creditors, the priority sequence in insolvency proceedings, the impact on Mr. Berry personally and other matters. His findings are entitled to deference.

50. Mr. Berry argues that "public policy" precludes enforcing the entire agreement clause because: (i) he was "induced" to loan money to Mizrahi Developments by way of the Supplementary Agreement; and (ii) enforcement of the clause will cause Mr. Berry to "lose the guarantee" and allow Mizrahi Developments and Mr. Mizrahi to escape all liability for the loan. There are three problems with this submission.

(a) These are not matters of public policy but are instead matters concerning Mr. Berry's personal interests. *Tercon* distinguishes between unconscionability and public policy concerns. A party seeking to avoid an exclusion clause "must identify the overriding public policy that it says outweighs the public interest in the enforcement of the contract." Mr. Berry has identified no such public policy.

Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), [2010] 1 SCR 69, at para 120

(b) There is no evidence that anybody "induced" Mr. Berry to loan money to Mizrahi Developments. Mr. Berry did claim to have been induced. The use of this word in Mr. Berry's factum is simply an advocacy effort to solicit sympathy from the Court- it has no basis in evidence.

(c) The suggestion that Mizrahi Developments and/or Mr. Mizrahi will "escape" liability because of the Motion Judge's decision is wrong. They both remain liable for all provision of the loan agreement. Whether or not Mr. Berry can collect from them has nothing to do with the Motion Judge's decision. It is puzzling that Mr. Berry suggests that the Receiver has recourse to Mr. Mizrahi if the Supplementary Agreement is enforced but denies that he has the same recourse.

51. There is no basis to interfere with the Motion Judge's findings as regards public policy, the equities or the applicability of the entire agreement clause.

B. No Error in Consideration of Equities

52. As part of the test for determining whether disclaimer of the Unit 901 APS was appropriate, the Motion Judge considered whether the equities supported preferring Mr. Berry's debt over that of all other creditors by enforcing the Unit 901 APS. Mr. Berry concedes that the Motion Judge applied the right test but takes issue with his consideration of the evidence. This ground of appeal thus raises a question of fact, or at best mixed fact and law. It is reviewable on the palpable and overriding error standard.

53. Mr. Berry's first argument is that the Motion Judge improperly found that he still had amounts left to pay under the Unit 901 APS. This argument assumes that Mr. Berry is successful in arguing that the Supplementary Agreement applied to the Unit 901 APS, canvassed extensively above. If the Supplementary Agreement does not relieve Mr. Berry of the obligation to pay for Unit 901, this argument falls away.

54. Mr. Berry then argues that the Motion Judge erred in considering that the Supplementary Agreement was kept secret from CEI. This fact occupied one sentence in the Motion Judge's 19-paragraph consideration of the equities. Even if the secret nature of the Supplementary Agreement was wrong to consider, the error is far from overriding. The Motion Judge's reasons were focused on the normal priority sequence and alleged representations made by CEI.

55. In any event, the Motion Judge made no error in accounting for the secretive nature of the Supplementary Agreement. The facts were highly unusual. A single copy of the Supplementary Agreement existed, with this fact confirmed in writing. Mr. Berry agreed that if he disclosed the agreement to a third party, he would forfeit repayment of the $10 million loan. Mr. Berry's factum claims reliance on the indoor management rule, but the Supplementary Agreement only existed

because Mr. Berry was dealing with Mr. Mizrahi in a capacity well outside of his role as a director and officer of Hazelton. There was no palpable and overriding error in accounting for these unique circumstances.

56. Finally, Mr. Berry notes that CEI is a secured creditor and stands to benefit from the disclaimer and argues that CEI's "years of failed oversight" led to the project's failure, apparently justifying it losing its priority status. There is no evidence whatsoever to support the surprising claim that CEI failed to oversee the project or is responsible for its failure. As for representations made by Mr. Hiscox prior to the receivership, the Motion Judge considered these extensively and concluded that they did not provide any reason to disturb the normal priority sequence. Mr. Berry has not identified any error in this reasoning – he simply wants to reargue the point. That is not a basis for an appeal.

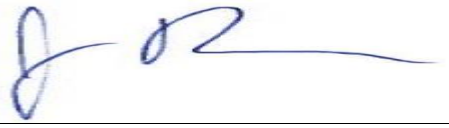
PART IV - ADDITIONAL ISSUES

57. The Receiver does not raise any additional issues.

PART V - ORDER REQUESTED

58. The Receiver respectfully requests that the appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of August, 2025.



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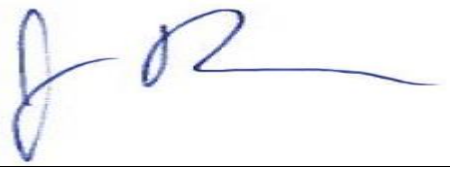
CERTIFICATE

I estimate that 1 hour will be needed for my oral argument of the appeal, not including reply. An order under subrule 61.09(2) (original record and exhibits) is not required. The factum complies with subrule (5.1). There are 4,347 words in Parts I to V.

The person signing this certificate is satisfied as to the authenticity of every authority listed in Schedule “A”.

DATED AT Toronto, Ontario this 15th day of August, 2025.



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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, [2010] 1 SCR 69

2. *Sattva Capital Corp. v. Creston Moly Corp.*, [2014] 2 SCR 633

3. *Shewchuk v. Blackmont Capital Inc.*, 2016 ONCA 912

4. *Kearns v. Canadian Tire Corporation, Limited*, 2020 ONCA 709

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date August 15, 2025

Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

1. None.

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

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

FACTUM OF THE RECEIVER
(RESPONDENT IN THE APPEAL)

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