

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 20TH
)
JUSTICE CAVANAGH) DAY OF SEPTEMBER, 2024
)

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**

**APPROVAL AND VESTING ORDER
(Unit 403)**

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the **“Receiver”**) of (a) a certain condominium units located at 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario (as legally described in the Receivership Order of the Honourable Justice Cavanagh dated June 4, 2024); 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, for an order approving the sale transaction (the **“Transaction”**) contemplated by the 403 APS, the 403 Assignment Agreement, the 403 Consent and Amendment Agreement, and the 2nd Unit 403 Amending Agreement, as each term is defined in the Second Report of the Receiver dated August 20, 2024 (the **“Second Report”**), and vesting all of Hazelton’s right, title, and interest in and to (a) the assets described in the 403 APS and further described on Schedule “B” hereto (the **“Purchased Assets”**) in and to Fawzia Ahmed Gashut (the **“Purchaser”**); and (b) the parking spot identified under Schedule

“C” hereto (the “**Assigned Parking Spot**”, and together with the Purchased Assets, “**Unit 403**”) in and to Constantine Enterprises Inc. (“**CEI**”), was heard this day by Zoom videoconference.

ON READING the Second Report, the Supplemental Report of the Receiver dated August 29, 2024, and the Second Supplement to the Second Report of the Receiver dated September 13, 2024, and on hearing the submissions of counsel for the Receiver and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Lauren Archibald sworn August 20, 2024 and August 29, 2024 and the affidavit of service of Katie Parent sworn September 13, 2024.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Transaction is hereby approved. The Receiver is hereby authorized and directed to take such additional steps and execute such documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser and the Assigned Parking Spot to CEI.

3. **THIS COURT ORDERS** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Receiver's Certificate**”), all of Hazelton’s right, title, and interest in and to:

- (a) the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order of the Honourable Justice Cavanagh dated June 4, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other

personal property registry system; and (iii) those Claims listed on Schedule “D” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “E”); and

- (b) the Assigned Parking Spot shall vest in CEI free and clear of and from all Claims and Encumbrances;

and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to Unit 403 are hereby expunged and discharged as against Unit 403.

4. **THIS COURT ORDERS** that upon the registration in the Land Titles Division for the Land Registry Office of Toronto (No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter:

- (a) the Purchaser as the owner of the subject real property identified in Schedule “B” (the “**Purchaser’s Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Purchaser’s Real Property all of the Claims listed in Schedule “D” hereto; and
- (b) CEI as the owner of the subject real property identified in Schedule “C” (the “**CEI’s Real Property**”), and together with the Purchaser’s Real Property, the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the CEI’s Real Property all of the Claims listed in Schedule “D” hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of Unit 403 shall stand in the place and stead of Unit 403, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances

shall attach to the net proceeds from the sale of Unit 403 with the same priority as they had with respect to Unit 403 immediately prior to the sale, as if Unit 403 had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchaser, and the Assigned Parking Spot in CEI, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Schedule "A" – Form of Receiver's Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

Applicant

- AND -

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

Respondents

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF *THE COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the "**Court**") dated June 4, 2024, KSV Restructuring Inc. was appointed as the receiver (the "**Receiver**") of (a) a certain condominium units located at 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario (as legally described in the Receivership Order of the Honourable Justice Cavanagh dated June 4, 2024); and (b) all of the assets, undertakings and properties of Mizrahi (128 Hazelton) Inc. ("**Hazelton**") and Mizrahi 128 Hazelton Retail Inc.

B. Pursuant to an Order of the Court dated [**DATE**], the Court approved the sale transaction (the "**Transaction**") contemplated by the 403 APS, the 403 Assignment Agreement, the 403 Consent and Amendment Agreement, and the 2nd Unit 403 Amending Agreement, as each term is defined in the Second Report of the Receiver dated August 20, 2024 (the "**Second Report**"), and provided for (i) the vesting in Fawzia Ahmed Gashut (the "**Purchaser**") all of Hazelton's right,

title and interest in and to the Purchased Assets; and (ii) the vesting in Constantine Enterprises Inc. all of Hazelton's right, title and interest in and to the Assigned Parking Spot.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Second Report or the 403 APS.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for Unit 403 payable on the Closing Date pursuant to the 403 APS;
2. The conditions of closing set out in the 403 APS have been satisfied or waived by the Receiver the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV Restructuring Inc., in its capacity as Receiver of the assets, undertakings and properties of Mizrahi (128 Hazelton) Inc. and Mizrahi 128 Hazelton Retail Inc., and not in its personal capacity

Per: _____
Name:
Title:

Schedule "B" – Purchased Assets

PIN 76967-0011(LT)

UNIT 3, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0041(LT)

UNIT 9, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0065(LT)

UNIT 17, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

Schedule "C" – Assigned Parking Spot

PIN 76967-0034(LT)

UNIT 2, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

Schedule "D" – Claims to be Deleted and Expunged from Title to Real Property

PIN 76967-0011(LT)

Instrument Number	Date	Instrument Type	Parties From	Parties To
AT3921042	2015/06/19	Charge	Mizrahi (128 Hazelton) Inc.	Constantine Enterprises Inc.
AT3921043	2015/06/19	No Assign Rent Gen	Mizrahi (128 Hazelton) Inc.	Constantine Enterprises Inc.
AT4349872	2016/09/22	Charge	Mizrahi (128 Hazelton) Inc.	Aviva Insurance Company of Canada
AT4349873	2016/09/22	Postponement	Constantine Enterprises Inc.	Aviva Insurance Company of Canada
AT4349874	2016/09/22	Postponement	Constantine Enterprises Inc.	Aviva Insurance Company of Canada
AT4448519	2017/01/04	Postponement	Constantine Enterprises Inc.	City of Toronto
AT4448520	2017/01/04	Postponement	Aviva Insurance Company of Canada	City of Toronto
AT4608655	2017/06/27	Charge	Mizrahi (128 Hazelton) Inc.	DUCA Financial Services Credit Union Ltd.
AT4608656	2017/06/27	No Assign Rent Gen	Mizrahi (128 Hazelton) Inc.	DUCA Financial Services Credit Union Ltd.
AT4608657	2017/06/27	Postponement	Constantine Enterprises Inc.	DUCA Financial Services Credit Union Ltd.
AT4608658	2017/06/27	Postponement	Aviva Insurance Company of Canada	DUCA Financial Services Credit Union Ltd.
AT5646954	2021/02/10	Notice	Mizrahi (128 Hazelton) Inc.	DUCA Financial Services Credit Union Ltd.
AT5646956	2021/02/10	Postponement	Aviva Insurance Company of Canada	DUCA Financial Services Credit Union Ltd.

AT6244711	2022/12/12	Notice	Mizrahi (128 Hazelton) Inc.	Aviva Insurance Company of Canada
AT6429473	2023/09/28	Construction Lien	CEC Mechanical Ltd.	
AT6463361	2023/09/21	Certificate	CEC Mechanical Ltd.	
AT6511388	2024/02/09	Transfer of Charge	DUCA Financial Services Credit Union Ltd.	Constantine Enterprises Inc.
AT6511389	2024/02/09	No Assign Rent Gen	DUCA Financial Services Credit Union Ltd.	Constantine Enterprises Inc.
AT6579493	2024/05/28	Notice	Barakah Holdings Inc.	

PIN 76967-0034(LT)

Instrument Number	Date	Instrument Type	Parties From	Parties To
AT3921042	2015/06/19	Charge	Mizrahi (128 Hazelton) Inc.	Constantine Enterprises Inc.
AT3921043	2015/06/19	No Assign Rent Gen	Mizrahi (128 Hazelton) Inc.	Constantine Enterprises Inc.
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AT4349873	2016/09/22	Postponement	Constantine Enterprises Inc.	Aviva Insurance Company of Canada
AT4349874	2016/09/22	Postponement	Constantine Enterprises Inc.	Aviva Insurance Company of Canada
AT4448519	2017/01/04	Postponement	Constantine Enterprises Inc.	City of Toronto
AT4448520	2017/01/04	Postponement	Aviva Insurance Company of Canada	City of Toronto
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AT4608657	2017/06/27	Postponement	Constantine Enterprises Inc.	DUCA Financial Services Credit Union Ltd.
AT4608658	2017/06/27	Postponement	Aviva Insurance Company of Canada	DUCA Financial Services Credit Union Ltd.
AT5646954	2021/02/10	Notice	Mizrahi (128 Hazelton) Inc.	DUCA Financial Services Credit Union Ltd.
AT5646956	2021/02/10	Postponement	Aviva Insurance Company of Canada	DUCA Financial Services Credit Union Ltd.
AT6244711	2022/12/12	Notice	Mizrahi (128 Hazelton) Inc.	Aviva Insurance Company of Canada
AT6511388	2024/02/09	Transfer of Charge	DUCA Financial Services Credit Union Ltd.	Constantine Enterprises Inc.
AT6511389	2024/02/09	No Assign Rent Gen	DUCA Financial Services Credit Union Ltd.	Constantine Enterprises Inc.
AT6579493	2024/05/28	Notice	Barakah Holdings Inc.	

PIN 76967-0041(LT)

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AT6511389	2024/02/09	No Assign Rent Gen	DUCA Financial Services Credit Union Ltd.	Constantine Enterprises Inc.
AT6579493	2024/05/28	Notice	Barakah Holdings Inc.	

**Schedule “E” – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

PIN 76967-0011(LT)

1. Instrument No. CT782576 is an Agreement registered on April 24, 1986 to the City of Toronto.
2. Instrument No. AT4448518 is a Notice regarding Section 37 Agreement registered on January 4, 2017 by the City of Toronto.
3. Instrument No. AT4864056 is a Transfer Easement registered on May 15, 2018 from Mizrahi (128 Hazelton) Inc. to Rogers Communications Inc.
4. Instrument No. AT5237797 is a Transfer Easement registered on September 16, 2019 from Mizrahi (128 Hazelton) Inc. to Enbridge Gas Inc.
5. Instrument No. AT5380642 is a Certificate of Requirement registered on March 4, 2020 by Her Majesty The Queen In Right Of Ontario As Represented By The Minister Of The Environment, Conservation and Parks.
6. Instrument No. AT5927857 is a Notice pursuant to Section 71 of the Land Titles Act regarding a Site Plan Agreement registered on December 2, 2021 by the City of Toronto.
7. Instrument No. TCP2967 is a Standard Condo Plan registered on February 15, 2023.
8. Instrument No. AT6281433 is Condo Declaration registered on February 15, 2023 by Mizrahi (128 Hazelton) Inc.
9. Instrument No. AT6296916 is a Notice pursuant to Section 71 of the Land Titles Act regarding Shared Facilities Agreement registered on March 16, 2023 by Mizrahi (128 Hazelton) Inc.
10. Instrument No. AT6296917 is a Condo ByLaw/98 registered on March 16, 2023 by the Toronto Standard Condominium Corporation No. 2967.
11. Instrument No. AT6296918 is a Condo ByLaw/98 registered on March 16, 2023 by the Toronto Standard Condominium Corporation No. 2967.
12. Instrument No. AT6296919 is a Condo ByLaw/98 registered on March 16, 2023 by the Toronto Standard Condominium Corporation No. 2967.
13. Instrument No. AT6296920 is a Notice pursuant to Section 71 of the Land Titles Act regarding Assignment and Assumption Agreement registered on March 16, 2023 from the Toronto Standard Condominium Corporation No. 2967 to Mizrahi (128 Hazelton) Inc.

PIN 76967-0034(LT)

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PIN 76967-0041(LT)

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PIN 76967-0065(LT)

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Applicant

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

Respondents

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

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(Unit 403)**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam, LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO#: 87151U
Tel: 416.278.3787
lauren.archibald@nortonrosefulbright.com

Lawyers for the Receiver