



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: CV-24-00715326-00CL & DATE: September 20, 2024
CV-24-00715321-00CL

NO. ON LIST: 1 & 2

TITLE OF PROCEEDING: CONSTANTINE ENTERPRISES INC V SAM M (180 SAW) LP INC
AND SAM M (180 SAW) INC & CONSTANTINE ENTERPRISES INC. v. MIZRAHI
(128 HAZELTON) INC. et al

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|------------------------------|------------------------|
| Jeremy Bornstein | Constantine Enterprises Inc. | jbornstein@cassels.com |

For Defendant, Respondent, Responding Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---|------------------|
| Steven Weisz | Sam M (180 Saw) LP Inc. Sam M (180) Inc. Sam Mizrahi Mizrahi (127 Hazelton Inc.) Mizrahi 128 Hazelton Retail Inc. | sweisz@cozen.com |

For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|------------------------|--|
| Jennifer Stam | KSV Restructuring Inc. | Jennifer.stam@nortonrosefulbright.com |
| Lauren Archibald | | lauren.archibald@nortonrosefulbright.com |
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| James Renihan | | james.renihan@nortonrosefulbright.com |
| Michael O'Brien | David Berry | mobrien@tyrllp.com |
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| Denise Bambrough | Aviva Insurance Company of Canada | dbambrough@blg.com |

ENDORSEMENT OF JUSTICE CAVANAGH:

[1] The Receiver moves for three orders in these receivership proceedings.

Second Floor Units

[2] The Receiver moves for an approval and vesting order in respect of transactions contemplated by (a) an agreement of purchase and sale between Hazelton and CEI dated December 8, 2016, as amended and (b) an agreement of purchase and sale between Hazelton and CEI dated December 8, 2016, as amended (the "Second Floor APAs") for the sale of Unit 201 and Unit 204 to CEI and vesting all of Hazelton's right, title and interest in and to the Second Floor Units to CEI.

[3] The transactions in respect of the Second Floor Units are described in the Receiver's Second Report at section 6.0.

[4] The Receiver and the Mizrahi parties are discussing the amount of occupancy payment to be made by CEI, which has occupied the Second Floor Units as office space. The order to be made does not affect the rights of the parties to return to court, if necessary, to address this issue.

[5] I have reviewed the Receiver's reports and heard submissions from counsel. I accept the recommendation of the Receiver at section 6.1 of the Second Report. CEI consents to the requested order. The Mizrahi parties do not oppose.

[6] The *Soundair* factors support the requested order.

[7] Order to issue in form of Order signed by me today.

Unit 403

[8] The Receiver seeks an order approving a transaction for the sale of Unit 403 located at the real property, together with two parking spots and one locker ("Unit 403") from Hazelton to CEI, as assigned by CEI to Murad Shibeli ("Shibeli") and subsequently assigned to Fawzia Ahmed Gashut ("Gashut"), and vesting all of Hazelton's right, title and interest in and to (a) the 403 Purchased Assets (as defined in the motion materials) to Gashut; and (b) the Assigned Parking Spot (as defined in the motion materials) to CEI.

[9] As partial consideration for the assignment of the 403 APS (as defined in the materials), it was agreed that one of the two parking spots would be assigned to CEI.

[10] This transaction is described in the Receiver's Second Report dated August 20, 2024 at section 7.0. The Receiver recommends that this transaction be approved for reasons set out at section 7.1 of the Second Report.

[11] I accept the Receiver's recommendation. CEI supports the Receiver's motion in this regard. The Mizrahi parties do not oppose.

[12] Order to issue in form of Order signed by me today.

180 SAW

[13] In the application with Court File No. CV-24-00715326-00CL, the Receiver seeks an order approving the agreement of purchase and sale dated June 14, 2024 between CEI and the Receiver (the "Stalking Horse APS") and the sale of the Purchase Assets (as defined in the Stalking Horse APS) to CEI and transferring and vesting all of the right, title and interest in and to the Purchased Assets to CEI free and clear of all liens, charges, security interests and encumbrances.

[14] On June 21, 2024 this Court approved the Sale Process including the Stalking Horse APS as the stalking horse bid in the Sale Process (the "Sale Process Order"). The purpose of the Sale Process was to market the Property (as defined in the motion materials) for sale, namely all of the interests and shares of Mizrahi Partner in the Partnership and the Mizrahi Shareholder in the General Partner.

[15] CBRE launched the Sale Process on June 25, 2024. Its marketing efforts are described in the motion materials. Pursuant to the Sale Process Order, the Receiver engaged CBRE to market the property for sale. Although a number of parties expressed an interest in participating in the Sale Process, no offers were submitted by the Bid Deadline and the Stalking Horse APS was deemed the successful bid in Sale Process.

[16] The purchase price for the Property under the Stalking Horse APS is \$8 million to be satisfied through a credit bid by CEI.

[17] I am satisfied that the *Soundair* factors are satisfied and that the requested order should be granted. In this respect, I accept the submissions made on behalf of the Receiver at paragraph 29 of its factum.

[18] Order to issue in form of Order signed by me today.

Hearing Date for motion

[19] Counsel for the Receiver and counsel for David Berry attended to seek a hearing date for a motion to be brought by the Receiver to disclaim an agreement of purchase and sale for a unit where the purchaser is Mr. Berry.

[20] This motion is scheduled to be heard on **January 17, 2025 at 10:00 for one day**. Counsel will agree on a timetable for this motion.

Justice Cavanagh

Date: September 20, 2024