



Court File No.: CV-24-00715326-00CL

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

FRIDAY, THE 20TH

JUSTICE CAVANAGH

)

)

DAY OF SEPTEMBER, 2024

CONSTANTINE ENTERPRISES INC.

Applicant

- AND -

**SAM M (180 SAW) LP INC. AND
SAM M (180 SAW) 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**

SAW APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of: (i) all partnership interests in Mizrahi Constantine (180 SAW) LP (the "**Partnership**") owned by Sam M (180 SAW) LP Inc. ("**Mizrahi Partner**"); and (ii) all shares in the capital of the Mizrahi Constantine (180 SAW) Inc. (the "**General Partner**") owned by Sam M (180 SAW) Inc. ("**Mizrahi Shareholder**", together with Mizrahi Partner, the "**Debtors**"), and in respect of both (i) and (ii) all dividends, distributions, and proceeds therefrom and substitutions therefor, for an Order, among other things, (i) approving the sale transaction (the "**Transaction**") contemplated by the Agreement of Purchase and Sale between Constantine Enterprises Inc. (the "**Purchaser**") and the Receiver dated June 14, 2024 (the "**Stalking Horse APS**"); and (ii) vesting in the Purchaser, all of the Debtors' right, title and interest in and to the Purchased Assets (as defined in the Stalking Horse APS), was heard via Zoom videoconference.

- 2 -

ON READING the Second Report of the Receiver dated August 20, 2024 and the 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 affidavit of Lauren Archibald sworn August 20, 2024 and the affidavit of service of Katie Parent sworn September 13, 2024.

THE TRANSACTION

1. **THIS COURT ORDERS** that the time for service of 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 and the execution of the Stalking Horse APS, *nunc pro tunc*, by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

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 the Debtors' right, title and interest in and to 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; and (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 (all of which are collectively referred to as the

- 3 -

“**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets upon the delivery of the Receiver’s Certificate.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, 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 the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

6. **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 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.

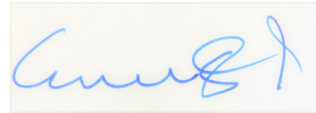
- 4 -

GENERAL

7. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order.



Schedule “A” – Form of Receiver’s Certificate

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

Applicant

- AND -

**SAM M (180 SAW) LP INC. AND
SAM M (180 SAW) 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) all partnership interests in Mizrahi Constantine (180 SAW) LP (the “**Partnership**”) owned by Sam M (180 SAW) LP Inc. (“**Mizrahi Partner**”); and (ii) all shares in the capital of the Mizrahi Constantine (180 SAW) Inc. (the “**General Partner**”) owned by Sam M (180 SAW) Inc. (“**Mizrahi Shareholder**”, together with Mizrahi Partner, the “**Debtors**”), and in respect of both (i) and (ii) all dividends, distributions, and proceeds therefrom and substitutions therefor.

B. Pursuant to an Order of the Court dated [DATE], the Court approved the sale transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale between Constantine Enterprises Inc. (the “**Purchaser**”) and the Receiver dated June 14, 2024 (the “**Stalking Horse APS**”), and provided for the vesting in the Purchaser all of the Debtors’ right, title

and interest in and to the Purchased Assets (as defined in the Stalking Horse APS), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions of closing set out in the Stalking Horse APS have been satisfied or waived by the Receiver and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Stalking Horse APS.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Stalking Horse APS;
2. The conditions of closing set out in the Stalking Horse APS have been satisfied or waived by the Receiver and the Purchaser, as applicable; and
3. The Transaction has been completed to the satisfaction of the Receiver.

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 Sam M (180 SAW) LP Inc. and
Sam M (180 SAW) Inc., and not in its
personal capacity**

Per: _____

Name:

Title:

CONSTANTINE ENTERPRISES INC. -and- SAM M (180 SAW) LP INC. AND SAM M (180
SAW) INC.

Applicant

Respondents

Court File No.: CV-24-00715326-00CL

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

Proceeding commenced at Toronto

SAW APPROVAL AND VESTING ORDER

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