

**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

REPLY APPLICATION RECORD OF CONSTANTINE ENTERPRISES INC.

April 16, 2024

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Jane Dietrich LSO #: 49302U
Tel: 416.860.5223
jdietrich@cassels.com

Jeremy Bornstein LSO #: 65425C
Tel: 416.640.6041
jbornstein@cassels.com

Stephanie Fernandes LSO# 85819M
Tel: 416.860.6481
sfernandes@cassels.com

Lawyers for the Applicant

TO: THE SERVICE LIST

**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

**SERVICE LIST
(As of April 16, 2024)**

TO:	<p>CASSELS BROCK & BLACKWELL LLP Suite 3200, Bay Adelaide Centre – North Tower 40 Temperance St. Toronto, ON M5H 0B4</p> <p>Jane Dietrich Tel: 416.860.5223 Email: jdietrich@cassels.com</p> <p>Jason Arbuck Tel: 416.860.6889 Email: jarbuck@cassels.com</p> <p>Jeremy Bornstein Tel: 416.869.5386 Email: jbornstein@cassels.com</p> <p>Stephanie Fernandes Tel: 416.860.6481 Email: sfernandes@cassels.com</p> <p><i>Lawyers for Constantine Enterprises Inc.</i></p>
AND TO:	<p>KSV RESTRUCTURING INC. 220 Bay Street Toronto, ON M5H 1J9</p> <p>Bobby Kofman</p>

	<p>Tel: 416.932.6228 Email: bkofman@ksvadvisory.com</p> <p>Jordan Wong Tel: 416.932.6025 Email: Jwong@ksvadvisory.com <i>Proposed Receiver</i></p>
AND TO:	<p>NORTON ROSE FULBRIGHT CANADA LLP 222 Bay Street Suite 3000 P.O. Box 53 Toronto ON M5K 1E7</p> <p>Jennifer Stam Tel: 416.202.6707 Email: jennifer.stam@nortonrosefulbright.com</p> <p>Katie Parent Tel: 416.216.4838 Email: katie.parent@nortonrosefulbright.com</p> <p><i>Counsel to Proposed Receiver</i></p>
AND TO:	<p>COZEN O'CONNOR LLP Bay Adelaide Centre - North Tower 40 Temperance Street, Suite 2700 Toronto, Ontario M5H 0B4</p> <p>Steven Weisz Tel: 647.417.5334 Email: sweisz@cozen.com</p> <p>Heidi Esslinger Tel: 236.317.6885 Email: hesslinger@cozen.com</p> <p><i>Counsel to the Respondents</i></p>
AND TO:	<p>MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p>

AND TO:	<p>CANADA REVENUE AGENCY c/o Department of Justice Ontario Regional Office 120 Adelaide St. W., Suite 400 Toronto, ON M5H 1T1</p> <p>Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</p>
AND TO:	<p>MIZRAHI DEVELOPMENTS INC. 189 Forest Hill Road Toronto ON M5P 2N3</p> <p>McCarter Grespan Beynon Weir PC 675 Riverbend Drive Kitchener, ON N2K 3S3</p> <p>Email: alavallee@mgbwlaw.com Email: cbryant@mgbwlaw.com</p>
AND TO:	<p>MORSE SHANNON LLP 133 Richmond St. West Suite 501 Toronto, Ontario M5H 2L3</p> <p>David Trafford Tel: 416.941.5850 Email: DTrafford@morseshannon.com</p> <p>Jerome Morse Tel: 416.941.5867 Email: jmorse@morseshannon.com</p> <p><i>Counsel to Sam Mizrahi</i></p>

EMAIL SERVICE LIST

(as of April 16, 2024)

jdietrich@cassels.com; jarbuck@cassels.com; jbornstein@cassels.com;
sfernandes@cassels.com; bkofman@ksvadvisory.com; Jwong@ksvadvisory.com;
jennifer.stam@nortonrosefulbright.com; katie.parent@nortonrosefulbright.com;
alavallee@mgbwlaw.com; cbryant@mgbwlaw.com; sweisz@cozen.com;
hesslinger@cozen.com; insolvency.unit@ontario.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; DTrafford@morseshannon.com; jmorse@morseshannon.com;

INDEX

Tab	Description
1.	Affidavit of Robert Hiscox sworn April 16, 2024

**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

**REPLY AFFIDAVIT OF ROBERT HISCOX
(sworn April 16, 2024)**

I, Robert Hiscox, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

I. OVERVIEW

1. I swear this affidavit in reply to the Affidavit of Sam Mizrahi sworn April 5, 2024 (the “**First Mizrahi Affidavit**”) and the Supplementary Affidavit of Sam Mizrahi sworn April 8, 2024 (the “**Supplemental Mizrahi Affidavit**”, together with the First Mizrahi Affidavit, the “**Mizrahi Affidavits**”), which were delivered in response to an application (the “**Receivership Application**”) brought by Constantine Enterprises Inc. (“**CEI**”) to appoint KSV Restructuring Inc. (“**KSV**”) as receiver and manager without security over the Property of Sam M (180 SAW) LP Inc. (“**Mizrahi Partner**”) and Sam M (180 SAW) Inc. (“**Mizrahi Shareholder**”, together with Mizrahi Partner, the “**Debtors**”). I have personal knowledge of the matters to which I hereinafter depose.

2. Unless otherwise indicated, capitalized terms used in this affidavit and not otherwise defined shall have the meanings given to them in the affidavit I previously swore in support of the Receivership Application on February 23, 2024 (the “**First Hiscox Affidavit**”).

II. REPLY TO MIZRAHI AFFIDAVITS

3. In reply to paragraphs 2-4 of the First Mizrahi Affidavit and the Supplemental Mizrahi Affidavit, if the amended statement of claim is served, which it has not been to date, the allegations in the amended statement of claim will be vigorously defended and the subject of a motion to strike. Neither Mizrahi nor the Debtors have submitted any evidence to support Mizrahi’s bald assertions. CEI denies carrying on the business of the 180 Steeles Project and the 128 Hazelton Project in a manner calculated to harm Mizrahi’s interests and the interests of the entities he controls and to enrich CEI to their detriment. CEI, Mr. Edward S. Rogers III, and I have at all times acted in good faith in our dealings with Mizrahi and the Debtors.

III. CONCLUSION

4. As of the date of this affidavit,

- (a) the total Indebtedness remains outstanding, which was \$28,978,911.51 as of February 29, 2024, being (i) \$15,547,985 in respect of the SAW Loan Indebtedness, (ii) \$10,758,137 in respect of the SAW Note Indebtedness, (iii) \$444,938.51 in respect of the Default Loan Indebtedness, and (iv) \$2,227,851 in respect of the SPV Indebtedness, in each case plus interest accruing from and after February 29, 2024 and fees, legal expenses and disbursements incurred and accruing before and after such date; and

- (b) no further funds have been received by Mizrahi Constantine (180 SAW) LP (the “Partnership”)¹ from Mizrahi Partner, including in respect of the Failed Contributions and the Go-Forward Contributions (described in paragraphs 48 and 49 of the First Hiscox Affidavit). The terms of the “Request for Contributions Amounts” delivered by CEI to Mizrahi Partner on February 5, 2024 require Mizrahi Partner to advance the applicable amount described therein no later than March 7, 2024, 31 days after delivery of the request. It has not advanced any amounts. As Mizrahi Partner failed to contribute its portion of the funds and because of the breakdown in the relationship between CEI and the Mizrahi Group (which has had an adverse impact on decision-making in relation to how the Partnership allocates funds), CEI elected to only contribute a portion of its portion of the funds in an amount necessary to deal with the interest obligations to the Partnership’s lenders;
- (c) I remain concerned that without the appointment of the Receiver,
- A. with Mizrahi as a partner, there is no path to monetize the Property for the benefit of CEI and 180 SAW’s other stakeholders in light of the breakdown in the relationship between CEI and the Mizrahi Group (which has and will continue to adversely impact decision-making in respect of the Partnership).
 - B. there is a significant risk to further delays in the advancement of the development of the 180 Steeles Project and enforcement steps being taken under the mortgages registered on title to the 180 Steeles Real Property by CWB and Trez (which indebtedness is described at paragraph 22 of the First Hiscox Affidavit). The occurrence of a default under either of the

¹ An organizational chart showing the relationship between CEI, the Partnership, Mizrahi Partner and Mizrahi Shareholder is set out at paragraph 19 of the First Hiscox Affidavit.

mortgages would entitle CWB and Trez, as applicable, to take enforcement action in respect of the 180 Steeles Real Property and the Partnership in accordance with the terms of their respective security, including seeking the appointment of a receiver. The breakdown in the relationship between the Mizrahi Group and CEI specifically enhances the likelihood of these risks being realized as it prevents CEI from finding a partner in the 180 Steeles Project who can make the Go-Forward Contributions (as Mizrahi Partner is unable to make those contributions) and work cooperatively with CEI to make decisions in respect of the Partnership; and

- C. there is no reasonable prospect of completing a sale of the 180 Steeles Project in short order that would result in CEI being repaid its Indebtedness in full from the proceeds receivable therefrom by Mizrahi Partner. On February 21, 2024, Core Architects Inc. registered a construction lien in the amount of \$1,472,446.90 on title to the 180 Steeles Real Property which constituted a breach under the credit facilities with CWB. On March 27, 2024, CWB advised by way of email that CWB would require that on or before May 31, 2024 either (a) the lien be removed from title, or (b) the Partnership pay 100% of the lien value to CWB to be held as cash security until the lien is removed from title. Either option will require a cash injection to the Partnership of \$1,472,446.90 by its partners. Given the Failed Contributions, Mizrahi Partner's failure to satisfy its obligations to date in respect of the Go Forward Obligations, the quantum of the Indebtedness, and Mizrahi Partner's inability to repay the Indebtedness since it became due on August 31, 2022, there is no reasonable expectation that Mizrahi

Partner will make the contributions required to fund its share of these obligations.

5. I believe continued development delays and/or enforcement by CWB or Trez of their respective mortgages in connection with the 180 Steeles Project creates a significant risk that the value of the Property will be materially diminished because of the significant costs associated with either of those outcomes (and the resulting lesser proceeds receivable by Mizrahi Partner from a sale of the 180 Steeles Projects which could be used to repay the Indebtedness to CEI).

6. Any further delay in the appointment of a Receiver with the power to monetize the Property in a timely manner for the benefit of the Debtors' creditors and other stakeholders would materially increase the risk of development delays and/or enforcement by CWB or Trez of their respective mortgages which are both likely to cause material prejudice to CEI.

7. I swear this reply affidavit in response to the Mizrahi Affidavits, and in support of the Receivership Application.

SWORN BEFORE ME by videoconference on April 16, 2024 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent and I were located in the City of Toronto in the Province of Ontario.



Laura Cloutier, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law. Expires May 29, 2025

*Commissioner for Taking Affidavits
(or as may be)*

Laura Cloutier, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires May 29, 2025.



ROBERT HISCOX

CONSTANTINE ENTERPRISES INC.

Applicant

- and -

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF ROBERT HISCOX

Cassels Brock & Blackwell LLP

Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Jane Dietrich LSO #: 49302U

Tel: 416.860.5223
jdietrich@cassels.com

Jeremy Bornstein LSO #: 65425C

Tel: 416.640.6041
jbornstein@cassels.com

Stephanie Fernandes LSO #: 85819M

Tel: 416.860.6481
sfernandes@cassels.com

Lawyers for the Applicant

CONSTANTINE ENTERPRISES INC.

Applicant

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

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

**REPLY APPLICATION RECORD OF CONSTANTINE
ENTERPRISES INC.**

Cassels Brock & Blackwell LLP

Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Jane Dietrich LSO #: 49302U

Tel: 416.860.5223
jdietrich@cassels.com

Jeremy Bornstein LSO #: 65425C

Tel: 416.640.6041
jbornstein@cassels.com

Stephanie Fernandes LSO #: 85819M

Tel: 416.860.6481
sfernandes@cassels.com

Counsel for the Applicant