CITATION: The Mortgage Investments Group v. ADI Development Group Inc. et al, 2025 ONSC 4344
COURT FILE NO.: CV-25-738359-00CL
DATE: 20250724

SUPERIOR COURT OF JUSTICE – ONTARIO [Commercial List]

BETWEEN:

THE MORGAN INVESTMENTS GROUP INC.

Applicants

-and-

ADI DEVELOPMENT GROUP INC, TARIQ ADI and ADI MORGAN DEVELOPMENTS (LAKESHORE) INC.

Respondents

AND BETWEEN:

ADI DEVELOPMENT GROUP INC.

Applicants by Counterapplication

-and-

THE MORGAN INVESTMENTS GROUP INC. and NIGEL MORGAN

Respondents to the Counterclaim

-and -

1001259155 ONTARIO INC., and 1000185781 ONTARIO INC

Respondents to ADG's motion

BEFORE: Justice Jana Steele

COUNSEL: *Tanya A. Pagliaroli, Alexandra Grishanova & Sydney Bristoll,* for the Applicants

Justin Nasseri, Viktor Nikolov & Avi Bourassa, for the Respondents ADI Development Group Inc.

Michael Osborne, for the Respondents 1001259155 Ontario Inc & 1000185781 Ontario Inc.

HEARD: July 22, 2025

ENDORSEMENT

[1] ADG Developments Group Inc. ("ADG") and The Morgan Investments Group Inc. ("MIG") are 50/50 business partners in a condo development project, called Nautique Lakefront Residences (the "Project"). The Project is administered through a single purpose corporation, controlled by ADG and MIG: Adi Morgan Developments (Lakeshore) Inc. (the "Corporation").

[2] The two shareholders of the Corporation are embroiled in acrimonious dueling oppression applications, scheduled to be heard on August 20, 2025. At the hearing on the merits, the Court will be asked to rule on ADG's request to buy MIG out of the Project, and on MIG's request to replace ADG as sales agent, among other things.

[3] ADG brings this urgent motion seeking injunctive relief. Essentially, ADG asks the court to restore the *status quo* as much as possible. That is, ADG wants the parties to be placed in the position they were in before MIG took certain steps to assume, through a related entity, the Corporation's senior debt from KingSett Mortgage Corporation. Initially, ADG proposed to set aside the transaction with KingSett pursuant to which 100 Ontario assumed the loan. However, ADG determined that it would be more expeditious, and would not unnecessarily involve KingSett, if the relief sought restored the parties to the *ante status quo*.

[4] For the reasons set out below, the motion is granted.

Background

[5] Nigel Morgan is the principal of 1001259155 Ontario Inc. ("100 Ontario"), 1000185781 Ontario Inc. ("MIG Affiliate Lender"), MIG and its affiliates.

[6] MIG is the majority equity investor in the Corporation.

[7] Tariq Adi is a principal of ADG.

[8] ADG is the Project Manager and Exclusive Listing Agent under the Corporation's Unanimous Shareholder Agreement dated April 4, 2014, and amended in March 2020, October 2022, and March 2024 (the "USA").

[9] Each of MIG and ADG have nominees on the Corporation's board of directors.

[10] MIG Affiliate Lender, a company affiliated with MIG, holds the Corporation's Subordinate Loan, which has a principal owing of approximately $3.94 million. The loan to MIG Affiliate Lender matured on or about April 27, 2025. However, MIG Affiliate Lender cannot enforce on

the Subordinate Loan until the Senior Loan is repaid further to the terms of a Standstill and Subordination Agreement.

[11] Until recently, the Senior Loan was held by KingSett further to the terms of the August 5, 2022 commitment letter. After certain extensions of the Senior Loan, the loan is scheduled to mature on August 1, 2025.

[12] 100 Ontario was incorporated on or about June 5, 2025 by Mr. Morgan for the purpose of assuming the Senior Loan.

[13] On or about June 13, 2025, the Corporation's Senior Loan was assigned by KingSett to 100 Ontario. 100 Ontario paid the full amount due to KingSett as of June 10, 2025 when the loan was assigned.

[14] On or about July 8, 2025, 100 Ontario's counsel wrote to the Corporation providing notice that certain events of default had occurred under the Senior Loan. These defaults have since been cured.

[15] On or about July 9, 2025, 100 Ontario served the Corporation with a Notice of Intention to Enforce Security.

[16] MIG commenced the litigation by way of application on March 4, 2025. MIG seeks an oppression remedy under s. 248 of the *Business Corporations Act* (Ontario) (the "OBCA"). In MIG's application, it seeks to replace ADG as the exclusive listing agent for the condos and replace ADG with In2ition. In addition, MIG seeks to control the Corporation's board of directors, among other things.

[17] ADG issued a counterapplication on May 8, 2025. ADG seeks an order under section 207 of the OBCA compelling MIG to sell its interest in the Corporation to ADG and a declaration that MIG and Mr. Morgan acted oppressively towards ADG.

[18] In ADG's amended relief, ADG seeks the following "Standstill Terms" on this motion, pending the hearing of the August 20, 2025 application and counterapplication:

a. 100 Ontario and the MIG Affiliate Lender would not take steps to enforce the Senior or Subordinate Loans pending a decision on the August Hearing;

b. The Corporation would comply with the terms of the Senior Loan. Any interest or other payments due under the loan will be paid to 100 Ontario pending a decision on the August Hearing;

c. 100 Ontario will comply with all terms of the Senior Loan, including funding holdbacks (up to the amount committed) pending a decision on the August Hearing;

d. If any party alleges a default of the Senior Loan, the parties will return to court to address the issue;

e. 100 Ontario, as Senior Lender, will cooperate in providing comfort letters for purchases of units between now and a decision on the August Hearing; and

f. MIG and any affiliates will not seek to change the nature, process, or frequency of Altus reporting pending a decision n the August 20 hearing. All communication that MIG and its affiliates have with Altus must involve ADG.

[19] Close to the motion date, 100 Ontario had agreed to some of the proposed standstill terms with the condition that 100 Ontario could bring a receivership application at the same time as the August 20, 2025 applications. ADG was not amendable to this condition. As I noted at the motion hearing, the court is already scheduled for a full day on August 20, 2025 to hear the two applications. Adding an additional contested receivership application to the already full day would not be possible in terms of timing in my view.

[20] The parties were before Conway J. on July 10, 2025. MIG had brought a motion for, among other things, access to certain information and the appointment of a monitor. The parties agreed to a consent order requiring ADG to provide MIG with certain financial disclosure, among other things.

Analysis

[21] ADG asks the court to grant the Standstill Terms pursuant to s. 101 of the *Courts of Justice Act* (the "CJA") and its powers under s. 248 of the OBCA.

[22] I have determined that the Standstill Terms should be granted. The Court, in less than a month, will hear the two applications on a full evidentiary record. In my view, the *status quo* that was in place before the Senior Loan assignment should be maintained as much as possible until such time. The Senior Loan assignment appears to have been done for the purpose of changing the *status quo*.

[23] Under section 248(3) of the OBCA the court has broad powers in connection with an oppression application to "make any interim or final order it thinks fit." Subsection 248(3) sets out a non-exhaustive list of orders the court may make. I am not making a finding of oppression at this interim stage. However, I am putting in place the Standstill Terms until the applications can be heard.

[24] The Court in *Waxman v. Waxman*, [2002] OJ No. 2528, 25 BLR (3d) 1, affirmed at 2004 CanLII 39040 (ON CA), noted the broad powers of the court under section 248, including setting aside transactions or contracts. The Court noted at para. 1739 that "it is clear that the court under s. 248(3) can also set aside other transactions to which the corporation is not a party." The Court further noted, at para. 1749, that "the remedies available to the Court [under s. 248] are virtually unlimited, provided that they have the effect of rectifying the offending behaviour."

[25] For an order under section 101 of the CJA, the court must be satisfied that ADG has met the 3-part test set out in *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paras. 334-335:

a. There is a serious issue to be tried[1];

b. ADG would suffer irreparable harm if the Standstill Terms are not granted; and

c. The balance of convenience favours the granting of the Standstill Terms.

[26] On the first prong of the test, I am satisfied that there is a strong *prima facie* case that Mr. Morgan, as a director of the Corporation, circumvented and breached the Corporation's USA.

[27] As noted above, KingSett assigned the Senior Loan to 100 Ontario, which had been incorporated by Mr. Morgan just prior to the assignment for the purpose of the assignment. There is no dispute that KingSett was able to assign the loan. The issue is whether a company affiliated with Mr. Morgan/MIG could assume the Senior Loan.

[28] ADG submits that 100 Ontario, a corporation affiliated with MIG, could not assume the loan from KingSett unless the directors of the Corporation approved pursuant to the USA. Mr. Morgan controls both MIG and 100 Ontario.

[29] Section 4.6 of the USA provides:

> Except as otherwise contemplated by this Agreement, no Director, Officer or other authorized individual shall execute any instrument in respect of any transaction of the following nature or any amendment to such instrument without the prior unanimous approval and agreement of the Directors, in writing, unless the obligations of the Corporation in respect thereof are expressly stated in the instrument to be conditional upon the subsequent unanimous approval of the Directors, in each case together with any shareholder resolution or approval as may be required under the Act:
>
> [...]
>
> (b) the lease, sale, mortgage, pledge or subjection to any lien, charge, security interest or other encumbrance of all or substantially all of the assets of the Corporation;
>
> [...]
>
> (k) enter into or amend any material contract or commitment with a Shareholder or any Person not dealing at arm's length with the Corporation or with a Shareholder

[1] In the context of oppression cases, some decisions have required the moving party to show a strong *prima facie* case, but there is "no automatic application of the strong *prima facie* case standard in interlocutory oppression remedy cases" and "each case must be considered in the context of its own facts:" *Romijay Enterprises Ltd. v. 11 Yorkville Partners Inc.*, 2017 ONSC 2388, at paras. 23-24.

> out of the ordinary course of business or make any payment to a Shareholder or to any Person not dealing at arm's length with the Corporation or a Shareholder other than pursuant to any employment or retainer agreement with such Shareholder;
>
> [...]
>
> (o) the borrowing of money on the credit of the Corporation;
>
> [...] [emphasis added.]

[30] There was no unanimous approval of the directors of the Corporation to the assignment of the Senior Loan to an entity that is non-arm's length with one of the shareholders of the Corporation, MIG. In fact, the assignment appears to have been done surreptitiously.

[31] MIG submits that the parties to the USA are permitted to engage in competing business without seeking each other's consent. MIG directed the court to section 11.11 of the USA, which provides:

> Nothing in this Agreement shall be deemed in any way or for any purpose to constitute any Party the partner of any other Party. Nothing contained in this Agreement shall or shall be deemed to constitute the Shareholders as partners nor as agents of the other, nor any other relationship whereby either could be held liable for any act or omission of the other. No Shareholder shall have any authority to act for any other Shareholder or to incur any obligation on behalf of another Shareholder or of the Corporation save as specifically provided by this Agreement. Each Shareholder covenants to indemnify the other Shareholders from all claims, losses, costs, charges, fees, expenses, damages, obligations and responsibilities incurred by a Shareholder by reason of any action or omission of the others outside the scope of the authority specifically provided by this Agreement. Except as provided in this Agreement, each Shareholder may independently engage in any business endeavour, whether or not competitive with the objects of the Corporation, without consulting the other Shareholder and without in any way being accountable to the Corporation.

[32] Section 11.11 does not appear to assist MIG with regard to the assignment of the Senior Loan. The language in section 4.6(k) contemplates that material contracts with Shareholders or parties related to Shareholders of the Corporation are subject to the unanimous approval of the directors. It appears that 100 Ontario, a party related to MIG, could not have directly entered into a loan agreement with the Corporation without unanimous director approval pursuant to the USA. Following the assignment by KingSett, it appears that the Corporation would be contractually bound to an entity that does not deal at arm's length with a Shareholder (i.e., 100 Ontario). It would be illogical if section 4.6(k) of the USA could be circumvented by having an existing loan agreement assigned to a newly-incorporated party related to a Shareholder.

[33] MIG and 100 Ontario's submission that the assignment of the Senior Loan does not change the terms of the loan, or the borrower is correct. However, it overlooks the likely implication of

the assignment in the context of the pending oppression applications. The Senior Loan was previously held by a third party, which is in a very different position, with different priorities than MIG – a shareholder of the Corporation that has commenced an oppression application and is the subject of an oppression counterapplication. Although 100 Ontario is a separate entity, it was incorporated by Mr. Morgan (who is also the principal of MIG) for the purpose of assuming the Senior Loan. As noted by ADG, for some time following 100 Ontario's incorporation, MIG's counsel effectively treated both MIG and 100 Ontario as the client. In the context of soon to be heard oppression applications, it appears that MIG is trying to enhance its status by incorporating a related company to assume the Senior Loan to potentially give it advantages in the dispute that has been scheduled to be heard by the court in August. By contrast, when the Senior Loan was held by KingSett, KingSett had verbally agreed to wait for the applications to be heard before taking enforcement steps.

[34] I am also satisfied that ADG may suffer irreparable harm if the Standstill Terms are not imposed.

[35] Irreparable harm refers to harm that cannot be quantified or remedied by a damages award: *Sadlon Motors Incorporated v. General Motors of Canada Limited et al*, 2011 ONSC 2628, at para. 85.

[36] The moving party does not need to show that there will be irreparable harm "beyond doubt, or even, at this stage, on a balance of probabilities:" *Matrix Photocatalytic Inc. v. Purifics Environmental Technologies Inc.* 1994 CanLII 7433, 58 CPR (3d) 289, at para. 81. As noted at para. 86 of *Sadlon*: "Although evidence as to irreparable harm must be clear and not speculative, the court can draw reasonable inferences from the facts as to the harm that will result to the moving party if the injunctive relief is not granted."

[37] The parties negotiated for certain checks and balances in the USA, including requiring unanimous director approval for certain matters. It appears that MIG may have attempted to circumvent these checks and balances in order to gain leverage in these proceedings. When a contractual right related to decision making and control is breached, a dollar figure cannot be attached to the loss of control. It is highly improbable that ADG would have consented to the assignment of the Senior Loan to the MIG affiliated company just weeks before the applications are to be heard. In the instant case, 100 Ontario has indicated that when the Senior Loan matures on August 1, 2025, it intends to take enforcement actions including seeking the appointment of a receiver. If that were to occur prior to the hearing of the applications on the merits, it may make the relief sought impossible. Further, as noted by ADG, there is the risk of reputational harm to both the Project and ADG were this to occur. Reputational harm is harm that cannot be quantified.

[38] The final prong of the *RJR* test requires "a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits:" *RJR-MacDonald*, para. 62.

[39] The balance of convenience in this case favours the imposition of the Standstill Terms. The Standstill Terms place the parties in the *status quo* position as at the time the dueling applications were brought, pending a full hearing on the merits.

[40] ADG will suffer greater harm without an order requiring the Standstill Terms than MIG and 100 Ontario will if the order is granted. It is less than a month until the applications are heard on the merits on a full record. MIG and 100 Ontario are secured against the value of the unsold real estate inventory on the Project. I also note that MIG/100 Ontario was willing to consent to many of the Standstill Terms, but only on the condition that it could bring a receivership application at the same time as the other oppression applications. If the Standstill Terms are not in place, 100 Ontario and MIG will, among other things, commence enforcement proceedings on the Senior Loan that was purportedly assumed by 100 Ontario without compliance by the Corporation with the USA.

[41] I would also add that this acrimonious dispute has already consumed a significant amount of time for both the court and the parties. On the Commercial List, parties are expected to adhere to the 3 Cs – cooperation, communication, and common sense. With two urgent motions having been brought in the span of two weeks, when the applications are scheduled to be heard on August 20, 2025, one must question whether one or both of these parties have lost sight of these guiding principles.

Disposition and Costs

[42] The motion is granted. Order to go in the form provided by ADG, with paragraph 6 amended to clarify that the obligation to fund holdbacks during the Standstill Period shall be limited to the amount of the commitment under the loan and be consistent with the process established under the Commitment Letter.

[43] The parties agreed that the successful party was entitled to its costs fixed in the all-inclusive amount of $135,000. Accordingly, MIG and 100 Ontario shall pay ADG's costs fixed in the amount of $135,000 within 30 days.

J. Steele J.

Date: July 24, 2025