CITATION: 2264052 Ontario Inc. v. HarbourEdge Realty Administration Corporation, 2025 ONSC 5022
COURT FILE NO.: CV-21-86834, CV-15-66412, CV-18-77725
DATE: 20250903

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N: 2264052 Ontario Inc. Plaintiff **– and –** HarbourEdge Realty Administration Corporation and HarbourEdge Mortgage Investment Corporation Defendants	**COURT FILE NO.:** CV-21-86834 Charles Hammond, for the Plaintiff Colin C.G. Pye, for the Defendants
B E T W E E N: HarbourEdge Mortgage Investment Corporation Plaintiff **– and –** Orren James Louch Defendant	**COURT FILE NO.:** CV-15-66412 Colin C.G. Pye, for the Plaintiff/Defendants by Counterclaim Charles Hammond, for the Defendant/Plaintiff by Counterclaim
AND B E T W E E N: Orren James Louch Plaintiff by Counterclaim **– and –** HarbourEdge Mortgage Investment Corporation and HarbourEdge Mortgage Realty Administration Corporation	

Defendants by Counterclaim	)	
	)	
B E T W E E N:	)	**COURT FILE NO.:** CV-18-77725
	)	
HarbourEdge Mortgage Investment Corporation	)	Colin C.G. Pye, for the Plaintiff
Plaintiff	)	
	)	
– and –	)	
	)	
968275 Ontario Ltd. and 2264052 Ontario Inc.	)	Charles Hammond, for the Defendants
Defendants	)	
	)	
	)	**HEARD:** March 5, 6, and 7, 2025, written submissions received March 28, April 17 and 28, 2025

REASONS FOR JUDGMENT

RYAN BELL J.

Overview

[1] These three actions arise in respect of a joint venture and a mortgage. The joint venture was between 2264052 Ontario Inc. ("226 Ontario") and HarbourEdge Realty Administration Corporation ("HRAC") for the development of 14 homes at the Brockwoods subdivision in the west end of Brockville, Ontario. Orren Louch is the principal of 226 Ontario. Larry Dunn is the Chairman and Chief Executive Officer of HRAC and HarbourEdge Mortgage Investment Corporation ("HMIC"), a private mortgage lender. 226 Ontario and HRAC were engaged in the joint venture from February 2014 to August 2015.

[2] On August 16, 2015, HRAC terminated the joint venture. 226 Ontario maintains that HRAC forced 226 Ontario off the development properties after Mr. Louch pressed Mr. Dunn to execute a written joint venture agreement and to provide an accounting of home sales. HRAC says the joint venture had become fraught with disputes over the slow pace of construction, the terms of the joint venture agreement, demands by 226 Ontario for advances on profits, and the ongoing default on a blanket mortgage advanced by HMIC in December 2014 on properties owned by Mr. Louch in Elizabethtown and by 968275 Ontario Ltd. (of which Mr. Louch is a co-owner) in Mallorytown.

[3] Although the joint venture was terminated in 2015, it was not until 2022 that HRAC provided a profit statement for the joint venture. At that time, HRAC calculated the joint venture's profit to be approximately $5,500.

[4] 226 Ontario's position is that HRAC has not paid 226 Ontario the profit to which it is entitled under the joint venture. Instead, HRAC has minimized the joint venture's profit by deducting from net profit the value of the land HRAC contributed to the joint venture and by including in construction costs, costs that were never intended to be borne by the joint venture. 226 Ontario's claim for unpaid profit is the subject matter of court file no. CV-21-86834.

[5] The parties relied on expert opinion evidence regarding the calculation of the joint venture's net profit. HRAC's expert, Gwynne Potter of Baker Tilly Chartered Accountants, opined that the joint venture earned either $11,916.00 or $41,691.00 in net profit. 226 Ontario's expert, Cameron McQuaid of Matson Driscoll & Damico Ltd., opined that the joint venture earned between $277,595.00 and $838,865.00 in net profit. In contrast to Ms. Potter's calculations, Mr. McQuaid's "Scenario 1B" does not include $235,902 of construction costs and does not deduct from profit the value of the 14 building lots contributed to the joint venture by HRAC.

[6] The day after HRAC terminated the joint venture, HMIC demanded immediate payment of the blanket mortgage. There is no dispute that the principal of $370,000 is due and owing under the mortgage. In addition to prejudgment interest, HMIC also claims "expenses" of $154,552.62 and "fees" of $118,100.00 under the mortgage. 226 Ontario and Mr. Louch dispute HMIC's entitlement to these expenses and fees. The claim in respect of the blanket mortgage is the subject matter of court file nos. CV-15-66412 and CV-18-77725.

[7] The applicable prejudgment interest rate is also in dispute. 226 Ontario and Mr. Louch's position is that the prejudgment interest rate on any awards of damages should be the same: either the contractual rate of 10 per cent, compounding semi-annually, as provided in the mortgage, or the "standard rate" as set out in s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[8] On consent, the actions were tried together. I commend counsel for the efficient manner in which the trial was conducted. The witnesses' affidavits served as their examinations in chief, and *viva voce* cross-examinations were conducted. The parties provided written closing submissions.

[9] For the following reasons, I find 226 Ontario is entitled to damages of $419,432.50 in the joint venture action, together with prejudgment interest at the rate of 10 per cent per annum, compounding semi-annually. I find HMIC is entitled to damages of $370,000 in the mortgage actions, together with prejudgment interest at the rate of 10 per cent per annum, compounding semi-annually.

Issue 1: 226 Ontario's profits under the joint venture

Preliminary discussions between the parties

[10] In late 2013, Mr. Louch saw an advertisement from a local realtor for vacant lots owned by HRAC. At the time, Mr. Louch was interested in buying three lots on which to build single-family homes.

[11] The realtor connected Mr. Louch with Mr. Dunn, and they engaged in preliminary discussions. HRAC owned 14 building lots and a large tract of raw development land (containing over 100 building lots) in Brockwoods.

[12] Mr. Dunn introduced the idea to Mr. Louch of building homes on the 14 building lots. There is no question that this would be a significant project for 226 Ontario. It was Mr. Louch's evidence that he would need to devote all his time and energy to the project if he agreed to participate (through 226 Ontario) in the project. On cross-examination, Mr. Dunn acknowledged that this is what transpired, with Mr. Louch devoting 100 per cent of his time to the first three quarters of the project.

[13] Mr. Dunn represented to Mr. Louch that the lots were of good quality and the parties would make significant profits. I accept Mr. Louch's evidence that, at the time, he was unable to independently ascertain the quality of the lots because they were covered in snow.

[14] The parties discussed being 50/50 partners in the development and agreed to share the profits equally. Mr. Dunn confirmed on cross-examination that, in addition to discussing the 14 building lots, he discussed with Mr. Louch the possibility of 226 Ontario participating as a builder in the undeveloped lots in Brockwoods.

The Letter of Intent

[15] Following these discussions, HRAC prepared and sent a Letter of Intent to 226 Ontario. The first paragraph of the Letter of Intent states that the document sets out "the terms and conditions, which, if accepted by the parties, will form the basis of a formal 50/50 joint venture (the "Joint Venture") between [226 Ontario] and HRAC with respect to the construction of homes on certain lands located in Brockville, Ontario."

[16] Section 2 of the Letter of Intent provides:

> HRAC shall acquire its 50% interest in the Joint Venture by contributing the Brockwoods Vacant Lots and [226 Ontario] shall acquire its 50% interest in the Joint Venture by managing the complete construction of the homes approved by the JV.

[17] The parties signed the Letter of Intent on February 10, 2014. No formal written joint venture agreement was ever executed.

Remediation of the joint venture lots

[18] When the snow melted around the end of April 2014, it became clear that the 14 joint venture lots would require remediation. The state of the joint venture lots is evident from the photographs taken at the time by Mr. Louch. The lots were partially covered by a swamp. Excess fill had been dumped on the lots and they were covered in boulders and rocks. According to Mr. Dunn, much of the construction debris and soil on the lots had been left by a previous builder.

[19] It was Mr. Louch's evidence that the remedial work required included pumping out the swamp, removing rocks and boulders, removing excess fill, and excavating swamp-like ground and replacing it with engineered fill. Mr. Louch's evidence that 226 Ontario removed approximately 1000 to 1200 truck loads of fill from the joint venture lots was not challenged on cross-examination.

Construction of the Adley Street extension and the berm

[20] As part of the broader Brockwoods subdivision, HRAC required additional work which included the construction of a berm at the rear of the development and an extension of Adley Street to access the berm for its construction. As Mr. Louch testified, it made financial sense to take the additional fill from the joint venture lots to the berm area instead of trucking it to a location further away.

[21] There is no question that the construction of the Adley Street extension and the berm benefitted the entire subdivision. 226 Ontario says that it completed this work without payment, based on representations made by Mr. Dunn to Mr. Louch that 226 Ontario would be the builder for the entire subdivision, not just the joint venture lots. HRAC agrees that the construction of the berm using the excess fill from the joint venture lots was a benefit to the entire subdivision, but Mr. Dunn denies he made any representations that 226 Ontario would become the builder for the entire subdivision.

Should HRAC be entitled to deduct $561,270 for its contribution of the joint venture lots?

[22] While the parties never executed a written joint venture agreement, there is no dispute that there was a joint venture agreement between HRAC and 226 Ontario.

[23] HRAC contributed the 14 joint venture lots to the joint venture, assigning a total value of $561,270 to these lots (approximately $40,000 per lot). HRAC takes the position that this amount should be deducted in calculating the joint venture's net profit.

[24] In interpreting contracts that are substantially or wholly oral, it is necessary to distill from the words and actions of the parties what they intended. Evidence of the parties' subjective intentions has no independent place in determining the terms of their bargain; the test of what the parties agreed to requires an objective determination. The contract must include the requisite elements of offer, acceptance, and consideration: *S&J Gareri Trucking Ltd. v. Onyx Corporation*, 2016 ONCA 505, at para. 7.

[25] On an objective determination, I find the parties did not intend or agree that HRAC would be entitled to deduct from the joint venture's profits, the value of the 14 joint venture lots.

[26] I consider first the language of the Letter of Intent. Section 2 of the Letter of Intent sets out how the parties would each acquire their 50 per cent interest in the joint venture – HRAC by contributing the 14 vacant building lots, and 226 Ontario by managing the complete construction of the homes approved by the joint venture. There is nothing in the Letter of Intent to suggest that, in calculating profit, HRAC alone should be entitled to deduct its contribution to the joint venture.

The plain language of section 2 reflects that the parties intended they would both be treated in the same fashion in acquiring their equal interests in the joint venture.

[27] In support of its position, HRAC relies on section 10 of the Letter of Intent. Section 10 provides:

> HRAC and [226 Ontario] will determine the cash available for distribution, after setting aside monies to cover the cost of construction and land cost, as per the approved budget contingent and current liabilities, with distributions to occur at the closing of each home sale.

[28] Section 10 does not assist HRAC. On a plain reading, section 10 deals with when the parties would be able to make cash distributions; it does not set out how profits are to be calculated. At trial, Mr. Dunn admitted the Letter of Intent did not specify how profit was to be divided between the joint venture partners; he acknowledged that although he could have used the word profit in drafting the Letter of Intent, he did not.

[29] Second, it was Mr. Louch's uncontroverted evidence that, before signing the Letter of Intent, he and Mr. Dunn discussed being "50/50" partners. Mr. McQuaid, 226 Ontario's expert witness, testified that the effect of deducting the cost of the building lots from net sale proceeds would result in HRAC receiving $582,116.50 in distributions ($561,116.50 in land value plus $20,864.50 in profit), while 226 Ontario would only receive $20,864.50. On its face, such a result would be inconsistent with a 50/50 joint venture arrangement or "50/50" partners.

[30] Third, draft joint venture agreements were exchanged between the parties. Two of the drafts were prepared by HRAC. Both contained a formula for calculating the profit to be split between the parties. Neither included a deduction for the value of the building lots contributed to the joint venture by HRAC. For example, s. 9 of the first HRAC draft provided:

> Division of Profits 50/50 and Timing
>
> (a) The parties agree that from the sale proceeds of each home shall be deducted the usual costs of sale including real estate commissions and expense, legal costs, usual adjustments and HST to determine the gross sale proceeds.
>
> (b) HRAC will determine the net profits available for Member division after setting aside monies to cover the cost of development charges, permit costs, and all construction costs, as per the approved budget and contingent and current liabilities, with divisions to occur at the closing of each home sale and per home basis.
>
> (c) Following the deduction of the amount in a & b above the net profits shall be shared 50/50 between the members.

[31] Section 3 of the HRAC drafts reiterated that HRAC would acquire its 50 per cent interest in the joint venture by contributing the building lots.

[32] When questioned about the HRAC drafts' failure to include a deduction for land costs in the formula for determining net profit, Mr. Dunn testified that this was a mistake in the document, and that the mistake was clarified in a subsequent meeting with Mr. Louch. Mr. Dunn's evidence on this point was not credible, and I do not accept it for two reasons. First, Mr. Dunn failed to mention this critical piece of evidence in his affidavit. Second, when asked if he had ever advised Mr. Louch of the alleged mistake, Mr. Dunn was evasive, responding that Mr. Louch "was aware" of how profit would be calculated.

[33] 226 Ontario also delivered two drafts of the joint venture agreement – the first in October 2014 and the second in May 2015. These drafts were consistent with those prepared by HRAC in that they included a formula for determining net profit which did not include a deduction of land costs.

[34] HRAC relies on Mr. Dunn's handwritten notations in the formula for determining net profit of $40,000 per lot. I place little weight on this evidence. The notation was not provided to 226 Ontario until February 2015, after the parties had been engaged in the joint venture for a year. While Mr. Dunn testified at trial that he met with Mr. Louch to discuss his revisions to the draft agreement, Mr. Dunn proffered no credible explanation as to why he omitted this important fact from his affidavit. As for the amount of $40,000, Mr. Louch was clear in his testimony that the "agreement" of $40,000 per lot was for his marketability study to determine the selling price for the home.

[35] Fourth, contrary to HRAC's submission, the budgets exchanged between the parties do not support HRAC's position that it is entitled to deduct $561,270 for HRAC's contribution of the joint venture lots. HRAC relies on a March 20, 2014 email from Mr. Louch in which Mr. Louch states that "the profit of the houses is based on the following formula: Sale Price + HST Rebate – Lot Cost – Building Cost – Real Estate Cost" and a March 24, 2014 budget delivered by 226 Ontario which includes a line item for "suggested lot price." It was Mr. Dunn's evidence that these represented an agreement as to the calculation of profits between the parties and a determination and agreement of lot costs.

[36] However, it was Mr. Louch's evidence that the purpose of the email and the budget was to compare different models of homes for profitability and to come up with a sales price for those potential models. Mr. Louch was not moved off his explanation on cross-examination. I disagree with HRAC's assertion that Mr. Louch was not able to explain how marketability of the houses and setting a sale price was materially different from how profit from the sale of the houses was to be determined in the joint venture. As Mr. Louch explained, the marketability calculation was to determine the proper sales price of the house. Mr. Louch had to consider all aspects of costs to determine the appropriate sales price for each house model. When determining profit, however, some contributions, such as 226 Ontario's management fee and HRAC's lot costs, were removed as they were considered contributions to the joint venture.

[37] I disregard HRAC's attempt in its written submissions to impeach Mr. Louch based on prior testimony given in 2016 because the 2016 prior statement was never put to Mr. Louch at trial. I also disregard HRAC's attempt in its written submissions to impeach Mr. Louch based on an email sent by Mr. Louch on January 16, 2025 in which Mr. Louch provides a breakdown of

profit to be earned on the sale of lot 33. The email was not put to Mr. Louch at trial and HRAC did not advance any evidence on this issue.

[38] Mr. Louch's explanation for the March 2014 email and budget documents is also supported by the estimate sent by 226 Ontario on April 30, 2014 for one of the lots. The April 30, 2014 estimate was sent specifically to determine how profit was to be split. The estimate of the profit to be split did not include a deduction for lot cost.

[39] I find Mr. Louch's evidence that the purpose of the March 2014 email and budget was to come up with a sales price for potential models of homes (not to calculate joint venture profit) credible and reasonable. I accept Mr. Louch's explanation.

[40] For these reasons, I conclude that HRAC was not entitled to deduct $561,270 – the ostensible value of the land it contributed to the joint venture – in determining the joint venture's net profit.

Are construction costs overstated in HRAC's calculation of the joint venture's net profit?

[41] 226 Ontario argues that HRAC has overstated construction costs (and therefore reduced the joint venture's net profit) as follows:

The Adley Street extension and the berm:	$61,030
Additional excavation work:	$240,554
Costs excluded by HRAC	($65,683)
Total	$235,902

[42] 226 Ontario submits that construction costs relating to work completed on the Adley Street extension and the berm were costs the parties agreed would not be borne by the joint venture because the work would benefit the whole of the subdivision. 226 Ontario also submits the parties agreed the additional costs required to remediate the joint venture lots over the $17,400 budgeted excavation and site preparation costs per lot would not be included in the joint venture construction costs.

[43] I agree with 226 Ontario that HRAC has overstated construction costs in determining the joint venture's net profit.

Costs associated with the Adley Street extension and the berm

[44] It was Mr. Louch's evidence that there was a verbal agreement between the parties that the costs to create the Adley Street extension and the berm were not to be borne by the joint venture because the work would benefit the entirety of the Brockwoods subdivision. This was not disputed by HRAC.

[45] Mr. Louch provided evidence that costs totalling $61,030.76, in respect of nine separate invoices (eight from Jack VanDusen and one from LaFarge Canada Inc.) were costs associated

with the Adley Street extension and the berm. These costs were included by HRAC's expert, Ms. Potter, in her calculation of the joint venture's net profit.

[46] During the course of construction, Mr. Louch provided HRAC with a breakdown of the invoices showing what portion of the invoice was to be allocated to the Adley Street extension and the berm. On cross-examination, Mr. Dunn admitted that HRAC agreed the costs being allocated to the Adley Street extension and the berm would not be costs borne by the joint venture. Mr. Dunn also agreed that throughout the joint venture, HRAC never took issue with Mr. Louch's allocation of expenses between the joint venture-related expenses and the expenses associated with the construction of the Adley Street extension and the berm.

[47] Mr. Louch's evidence at trial in respect of the allocations was the same as the allocations he made between May and July 2014 in respect of the invoices. Mr. VanDusen, the excavator on site, provided evidence that Mr. Louch's allocation of the work completed for the joint venture and the work completed on the Adley Street extension and the berm was reasonable.

[48] The only reason given by Mr. Dunn for challenging the allocations made by Mr. Louch was that "it is unclear why 226's allocation has changed as the invoices do not have enough detail to determine, at this later date, why the allocation should change from 226's original allocation." However, on cross-examination, Mr. Dunn agreed that Mr. Louch's allocations for all the invoices had not changed from 2014 to 2025.

[49] Accordingly, the costs associated with the construction of the Adley Street extension and the berm should not be included in the calculation of the joint venture's net profit. The parties agreed these costs would not be borne by the joint venture.

Excavation costs to remediate the joint venture lots

[50] The second category of disputed construction costs relates to additional excavation costs (beyond the budgeted amount of $17,400 per lot) required to remediate the joint venture lots. Mr. Louch provided detailed evidence in respect of these additional excavation costs totalling $240,554.55 in respect of 45 invoices (one from Jack VanDusen, 37 from L.A. Knapp, and seven from LaFarge Canada Inc.).

[51] Mr. Louch's evidence is that the parties agreed any amounts over the $17,400 budgeted amount for excavation and site preparation costs would not be included in the joint venture's construction costs. Mr. Dunn's evidence is that "the lots were far from being in the dire condition alleged by 226", "226 would not have had to incur additional costs to remove the debris, rocks, and boulders", and "at no time did HRAC represent to 226 that it would pay to clean up excess material."

[52] I prefer Mr. Louch's evidence to that of Mr. Dunn on this issue. Mr. Louch's evidence as to the condition of the lots and the parties' agreement was clear and consistent throughout his testimony. His evidence as to the condition of the joint venture lots – which only became apparent when the snow melted in the spring – was consistent with the photographs in the record. Mr. Louch's evidence as to the condition of lots was also consistent with the evidence of Jack VanDusen, the excavator on site. It was Mr. VanDusen's evidence that his work involved a "high

degree" of moving materials that were typically not found on a construction site, moving large rocks and massive boulders, and using engineered fill.

[53] By contrast, Mr. Dunn's evidence as to the condition of the joint venture lots evolved. He first testified that, although the joint venture lots "had some debris left over. They had some garbage on them", they were "fully serviced, building permit ready." Confronted with the photographs showing large amounts of fill and large rocks and boulders on the lots, Mr. Dunn initially maintained the photographs showed only debris and garbage. Ultimately, however, Mr. Dunn acknowledged that this was a significant issue.

[54] Mr. Louch's evidence regarding the agreement between the parties is consistent with the reports and emails between Mr. Dunn and Mr. Louch about the dumping on the lots, estimates provided by Mr. Louch to remediate the lots, and the retention of counsel by HRAC to consider brining a legal claim against the developer who had engaged in the dumping. In particular, in Mr. Dunn's July 3, 2015 email to Mr. Louch, Mr. Dunn stated that unless Mr. Louch provided HRAC's lawyer with evidence regarding the dumping, Mr. Dunn would "assume all earth moving costs will be an expense shared between the 6 homes you have built for us." Mr. Dunn's ultimatum to Mr. Louch would be meaningless if the additional site preparation costs (beyond what the parties had budgeted) were already intended to be attributed to the joint venture lots.

[55] With respect, Mr. Dunn's attempt to explain these additional costs – that these expenses were already meant to be shared – is no explanation at all. I agree with 226 Ontario and Mr. Louch that Mr. Dunn attempted to minimize the problems with the joint venture lots to support his position that there was no agreement between the parties. Mr. Dunn's evidence on this point was not credible and I reject it.

[56] Accordingly, the additional excavation costs over and above the $17,400 budgeted cost per lot should not be included in the calculation of the joint venture's net profit. The parties agreed that these costs would not be borne by the joint venture.

Summary:226 Ontario's profits under the joint venture

[57] The joint venture's net profit is therefore to be calculated by (i) not deducting $561,270 in respect of the joint venture lots; and (ii) excluding construction costs of $235,902. I accept Mr. McQuaid's evidence that, calculated on this basis, the joint venture's net profit is $838,865.

[58] 226 Ontario's 50 per cent share of the joint venture's net profit is $419,432.50.

Issue 2: The amount due and owing under the mortgage

[59] HMIC seeks to recover the following amounts under the mortgage:

Principal:	$370,000
Expenses:	$154,552.62
Fees:	$118,100
Prejudgment interest:	$617,000.99

Total:	$1,259,653.61

[60] 226 Ontario and Mr. Louch do not dispute that the principal of $370,000 is due and owing under the mortgage. However, they say there is no evidence to support the claimed expenses, and there was no agreement to pay the claimed fees.

Expenses claimed by HMIC

[61] Despite commencing the mortgage enforcement action in 2015 and repeated requests by 226 Ontario and Mr. Louch to provide a breakdown of the costs in the mortgage statement, HMIC waited ten years – the day before the trial commenced – to provide any indication of the expenses it claims under the mortgage.

[62] Almost all the $154,522.62 claimed by HMIC as expenses are legal costs.[1] Although HMIC was in possession of the relevant invoices, in breach of its disclosure obligations, HMIC did not provide any supporting documentation for the legal expenses it seeks to recover.

[63] There is no evidentiary basis to support HMIC's claim for expenses under the mortgage. As Mr. Dwyer, HMIC's President and Chief Operating Officer, admitted on cross-examination, there is no way to determine if the legal fees claimed even relate to prosecuting the mortgage actions.

Fees claimed by HMIC

[64] HMIC claims $1,000 per month for the last ten years for a "late fee/NSF." However, as Mr. Dwyer admitted on cross-examination, the mortgage does not contain a term that would allow HMIC to charge a "late fee/NSF." 226 Ontario and Mr. Louch did not agree to such charges.

[65] In any event, even if 226 Ontario and Mr. Louch had agreed to these charges, they would not be recoverable under the mortgage, as they would constitute a fine or a penalty which has the effect of increasing the rate of interest charged on payments in default beyond that which is chargeable under the mortgage on the principal which is not in default: *Interest Act*, R.S.C. 1985, c. I-15, s. 8; *Beauchamp v. Timberland Investments Ltd.* (1983), 44 O.R. (2d) 512 (C.A.), at 516.

[66] Where there is no evidence of the administrative costs incurred by the missed payments, late fees and default fees will be found to be a penalty, and not recoverable under a mortgage: *Nesci v. Ramrattan*, 2009 CanLII 5153 (ON SC), at para. 28. Mr. Dwyer agreed on cross-examination that no administrative costs had been incurred in relation to the fees claimed by HMIC.

Issue 3: The prejudgment interest rate

[67] 226 Ontario and Mr. Louch request that the prejudgment interest rate on any damages awarded in their favour in the joint venture action be at the rate of 10 per cent per annum, compounding semi-annually, the same rate as provided for in the mortgage. In the alternative, they submit the prejudgment interest rate as set out in s. 128 of the *Courts of Justice Act* should apply to awards made in both the joint venture action and the mortgage actions.

[68] Section 130(1) of the *Courts of Justice Act* provides that the court may, where it considers it just to do so, allow an interest rate higher than provided in s. 128 of the *CJA*, subject to the

[1] Legal costs claimed as expenses total $154,383.59.

factors outlined in s. 130(2). The factors are: changes in market interest rates, the circumstances of the case, the fact that an advance payment was made, the circumstances of medical disclosure by the plaintiff, the amount claimed and the amount recovered in the proceeding, the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding, and any other relevant consideration: *CJA*, s. 130(2).

[69] The legislative policy underlying the statutory interest scheme is to seek fair compensation for a plaintiff, having regard to all relevant circumstances: *Henry v. Zaitlen*, 2024 ONCA 614, at para. 29.

[70] In *MDS Inc. v. Factory Mutual Insurance Company*, 2021 ONCA 594, at para. 105, the Court of Appeal saw no error in principle in the trial judge's exercise of her discretion to award prejudgment interest at the actual cost of borrowing. The trial judge concluded that,

> To order otherwise means that the Insurer, though losing the lawsuit on all fronts, has won. It breached the Policy with the Plaintiffs, has had the benefit of the use of the Plaintiffs' funds totalling millions of dollars over the years. To order otherwise allows the Insurer to make a considerable profit on the amounts withheld in breach of the Policy, at their client's expense: *MDS*, at para. 104.[2]

[71] Exercising my discretion under s. 130 of the *CJA*, I award prejudgment interest at the rate of 10 per cent, compounding semi-annually. I have determined that it is just to do so in the circumstances of this case for the following reasons.

[72] The mortgage was granted by HMIC (HRAC's mortgage investment arm), after 226 Ontario and HRAC had been involved in the joint venture for about ten months. HMIC was aware that 226 Ontario and Mr. Louch were engaged full-time in the joint venture and in default of their monthly payments to their previous lender.

[73] 226 Ontario and Mr. Louch intended to use their profits from the joint venture to pay the mortgage. It was Mr. Dwyer's evidence that 226 Ontario signed an undertaking to assign its receivables under the joint venture agreement once that agreement was "produced." While no joint venture agreement was ever executed, I find that HMIC and HRAC were aware 226 Ontario and Mr. Louch were relying on their share of the joint venture's profits to pay the mortgage.

[74] There was evidence that on one occasion, 226 Ontario's profits under the joint venture were directed from HRAC to HMIC to "clean up the arrears" (Mr. Dwyer's words) on the mortgage. Mr. Dwyer acknowledged on cross-examination that it would not be typical for HMIC to take payments for mortgage arrears in this fashion and that this was a "special circumstance."

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[2] In the result, the Court of Appeal decided there was no coverage for the losses. Had the Court of Appeal decided there was coverage for the losses, it would not have interfered with the trial judge's exercise of her discretion: *MDS*, at para. 105.

[75] Despite HRAC's unilateral termination of the joint venture on August 16, 2015 and its threat to have Mr. Louch charged with trespassing, HRAC did not produce a joint venture profit statement for another seven years. Further, the day after HRAC unilaterally terminated the joint venture, HMIC called in the mortgage and demanded full payment of outstanding principal and interest. Mr. Dwyer's evidence that the termination of the joint venture and the decision to call the mortgage were unrelated and that he could not remember whether Mr. Dunn informed him of the breakdown in the relationship is not credible; it runs counter to logic and common sense. Mr. Dunn is the Chairman and Chief Executive Officer of both HRAC and HMIC. The joint venture and the mortgage were clearly related, which is why this was a "special circumstance" according to Mr Dwyer. Indeed, HRAC and HMIC acknowledge the connection between the joint venture and the mortgage in taking the position that the joint venture had become "fraught", in part, due to 226 Ontario's ongoing default on the mortgage.

[76] The mortgage has continued to accrue interest at a rate of 10 per cent, compounding semi-annually, while 226 Ontario has been endeavouring to be paid its share of the joint venture profits. There has been delay in the prosecution of the mortgage actions, to the point where the 2015 action was administratively dismissed on October 1, 2024.

[77] In these circumstances, it would be unjust to order prejudgment interest on the damages awarded to 226 Ontario at a rate other than that provided for in the mortgage. HRAC breached its joint venture agreement with 226 Ontario in failing to pay 226 Ontario its share of the joint venture profits. HRAC has had the benefit of the use of 226 Ontario's share of the joint venture profits over the years. To order a prejudgment rate of interest different than the mortgage rate would mean that HRAC, although losing the joint venture action, has won.

Conclusion

[78] In the joint venture action, I award 226 Ontario damages in the amount of $419,432.50, together with prejudgment interest at the rate of 10 per cent per annum, compounding semi-annually, from August 16, 2015 to date. In the mortgage actions, I award HMIC damages in the amount of $370,000, together with prejudgment interest at the rate of 10 per cent per annum, compounding semi-annually, from August 17, 2015 to date.

[79] The parties have requested set off. I therefore order that the damages and prejudgment interest in the mortgage actions be set off against the damages and prejudgment interest in the joint venture action. Post-judgment interest will be paid on the "balance" owing to 226 Ontario in accordance with s. 129 of the *CJA*.

[80] I also order that the mortgage registered on title to the properties in Elizabethtown and Mallorytown be discharged.

[81] In the event the parties are unable to agree on costs of the actions, they may provide their submissions in writing. 226 Ontario and Mr. Louch are to provide their submissions by September 17, 2025. HRAC and HMIC are to provide their responding submissions by October 1, 2025.

Written submissions are not to exceed three pages. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs as amongst themselves.

Justice R. Ryan Bell

Released: September 3, 2025

CITATION: 2264052 Ontario Inc. v. HarbourEdge Realty Administration Corporation, 2025 ONSC 5022
COURT FILE NO.: CV-21-86834, CV-15-66412, CV-18-77725
DATE: 20250903

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

2264052 Ontario Inc.

Plaintiff

– and –

HarbourEdge Realty Administration Corporation and HarbourEdge Mortgage Investment Corporation

Defendants

REASONS FOR JUDGMENT

Ryan Bell J.

Released: September 3, 2025