CITATION: Morgan Investments Group Inc. v. Adi Development Group Inc., 2025 ONSC 5346
DIVISIONAL COURT FILE NO.: 665/25
DATE: 20250924

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: THE MORGAN INVESTMENTS GROUP INC., NIGEL MORGAN, 1001259155 ONTARIO INC. and 1000185781 ONTARIO INC., Appellants/Respondents on the Motion

AND:

ADI DEVELOPMENT GROUP INC. and TARIQ ADI, Respondents/Moving Parties

BEFORE: D.L. Corbett, Lococo and Matheson JJ.

COUNSEL: *W. Michael G. Osborne,* for the Appellants/Respondents on the Motion

Justin H. Nasseri, Avi Bourassa and Viktor Nikolov, for the Respondents/Moving Parties

HEARD: September 19, 2025, in Toronto (by videoconference)

ENDORSEMENT

[1] The moving parties seek to quash this appeal on jurisdictional grounds. Their position is that the order in question is interlocutory, there is no right of appeal without leave, and, in any event, the proposed appeal is moot. We agree.

[2] The notice of appeal seeks to challenge the decision of Steele J. dated July 24, 2025[1] (the "Order") arising from a motion for an urgent interlocutory injunction. As discussed below, that Order set terms pending the final disposition of competing oppression applications. Those oppression applications were decided a short time later, on August 27, 2025.[2] Both sides were found to have engaged in oppressive activities. The application judge found that the main issue was the mechanism for the parting of the ways that all agreed was needed and ordered a buyout.

[3] This appeal was commenced in between the above two decisions. Initially, there were four appellants. The appeal has since been abandoned by The Morgan Investments Group Inc. ("MIG") and Nigel Morgan. The remaining appellants, 1001259155 Ontario Inc. ("1001 Ontario") and

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[1] 2025 ONSC 4344
[2] 2025 ONSC 4903

1000185781 Ontario Inc., take the position that the Order is final and they have a right of appeal that is not moot.

Brief Background

[4] The underlying dispute relates to a condominium project. MIG and Adi Developments Group Inc. ("ADG") are 50/50 shareholders of the single purpose corporation incorporated to build and operate that project, specifically Adi Morgan Developments (Lakeshore) Inc. (the "Corporation").

[5] 1001 Ontario and 1000185781 Ontario Inc. are affiliated secured first and second lenders to the Corporation (the "affiliated lenders").

[6] Before the motion for an interlocutory injunction was brought, MIG and ADG were embroiled in what the motion judge described as "acrimonious dueling oppression applications."

[7] The injunction motion arose as a result of the assignment of the senior loan to the Corporation from an unrelated lender to 1001 Ontario in June 2025. 1001 Ontario was incorporated for that purpose. ADG then brought an urgent motion for interlocutory injunctive relief to restore the *status quo* pending the upcoming merits hearing in August, relying on s. 110 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "*CJA*"), and s. 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "*OBCA*"). In its motion, ADG proposed standstill terms pending the upcoming application hearing, some of which were agreed on. The motion proceeded on the disputed terms.

[8] In detailed reasons for decision, the motion judge found as follows:

(i) that the test for the interim injunctive relief was satisfied and the *status quo* that was in place before the senior loan assignment should be maintained as much as possible until the upcoming hearing on the merits; and

(ii) that among other relevant factors, it was less than a month until the hearing on the merits and 1001 Ontario was secured against the value of the unsold real estate inventory on the project.

[9] The resulting Order expressly states that it is a standstill order pending the final determination of the oppression applications, defined as the "Standstill Period." All but two of the terms of the Order are expressly limited to the Standstill Period. The two exceptions are not the focus of the proposed appeal. They are the costs order and a non-waiver provision that provides that the Order is not a waiver, admission or estoppel regarding the validity of the assignment.

Motion to Quash

[10] There are three issues on this motion to quash:

(i) whether the Order is interlocutory or final;

(ii) the impact of s. 255 of the *OBCA* on appeal rights, if any; and,

(iii) mootness.

[11] On the first issue, the affiliated lenders submit that because they are not parties to the oppression applications, the entire Order is final as against them. They then focus on paragraphs 6 and 9 of the Order, submitting that those paragraphs are final in any event.

[12] We are not persuaded that an order against a third party can never be interlocutory. The affiliated lenders' status as third parties is a relevant consideration, but not determinative. In this case, as discussed further below, the Order did not finally determine the substantive rights of these non-parties. The Order granted an interlocutory injunction. In doing so, it did not determine the real matter in dispute regarding the affiliated lenders, specifically the validity of the assignment of the senior loan. The Order expressly provides that it is not a waiver, admission or estoppel regarding the validity of the assignment. Further, all the operative provisions in the Order are time-limited to the Standstill Period.

[13] The affiliated lenders then focus on paragraphs 6 and 9 of the Order, submitting that they are final even if the whole order is not final.

[14] Paragraph 6 required that 100 Ontario fund holdbacks under the senior loan during the Standstill Period, limited to the amount and process in the commitment letter. The affiliated lenders submit that this changed the terms of the commitment letter, albeit for a short period of time, and suggests that those funds might not be recoverable. There is no adequate foundation for this argument in the record before this Court. The motion judge expressly found that the loan was effectively secured. Further, a term requiring the payment of money may and often does form part of an interlocutory order. It is not necessarily final.

[15] Paragraph 9 provided that any notices of default and notices of intention to enforce security under the senior loan were "null and void and/or frozen (i.e. any time period triggered by or running pursuant to these documents is suspended) for the duration of the Standstill Period."

[16] The affiliated lenders submit that this paragraph is illogical because it says that something is null and void only for a certain time period, after which is it no longer null and void. The affiliated lenders then focus on the phrase "null and void" in isolation. However, in oral argument, the affiliated lenders accepted that that this Order could be read in two ways, only one of which would have a permanent effect.

[17] In our view, it is clear that the Order was meant to be temporary, not permanent. While the choice of the phrase "null and void" may be inapt taken out of context, it must be placed in context. This was an urgent interlocutory injunction motion with the reasons for decision giving rise to the Order released with impressive speed. The proposed reading of that one phrase in isolation is not borne out on a full consideration of that term of the Order, or the entire Order, or the reasons for decision. Like the rest of the terms, it is temporary.

[18] We therefore conclude that the Order is interlocutory and under the *CJA* leave to appeal would be required. Leave has not been sought and the time to do so has passed.

[19] On the second issue, the affiliated lenders submit that even if the Order is interlocutory, they have a right of appeal by virtue of s. 255 of the *OBCA*, which provides that an appeal lies to this Court from an order made under the *OBCA*.

[20] It has long been established that s. 255 does not provide an appeal as of right from an interlocutory decision under the *OBCA*.

[21] In the seminal case of *Watkin v. Open Window Bakery Ltd.* (1996), 28 O.R. (3d) 441 (Div. Ct.), this Court considered the issue in like circumstances and held that s. 255 applied to final orders only. We reiterate the following observations from *Watkin*. The list of possible orders that can be made under the *OBCA* is endless. The affiliated lenders' position would amount to innumerable appeals as of right from any interlocutory order made under the *OBCA*, clogging this Court. This would also cause potential disruption of the ongoing commercial proceedings.

[22] Since *Watkin*, multiple courts have confirmed that leave to appeal is required even if the *OBCA* (or like statutes) is invoked. Those cases need not be listed here. The affiliated lenders rely on a brief *obiter* phrase in a single decision, specifically *Foglia v. Grid Link Corp*., 2024 ONSC 588 (Div. Ct.).

[23] There are multiple decisions in *Foglia*, which make it clear that the decision at issue was final. First, there is the Court of Appeal decision at 2023 ONCA 560, quashing an appeal to that Court. The Court of Appeal held that the order at issue was a substantive order and the appeal was to the Divisional Court. The final nature of the order in *Foglia* is also apparent in the appeal decision of this Court on the merits of that appeal, at 2024 ONSC 5715.

[24] The affiliated lenders rely on an endorsement of this Court before the appeal hearing, which confirmed that leave to appeal was not required. As a final order, leave to appeal would not be required. That short endorsement includes the sentence, "Given the plain wording of s. 255 of the [*OBCA*], leave to appeal the decision on the motion is not required": 2024 ONSC 588, at para. 8. Since the order at issue in *Foglia* was final, we do not agree that this sentence, or the endorsement as a whole, stands for the proposition advanced by the affiliated lenders. If read more broadly, it is *obiter* and does not displace considerable established jurisprudence requiring leave if an order is interlocutory.

[25] There remains the mootness issue. As found above, the Order is interlocutory and time limited. The time period has passed. The terms of the Order that are challenged on the proposed appeal are spent. We therefore conclude that this proposed appeal is, in any event, moot.

[26] The motion is therefore granted. The proposed appeal is quashed. The secured lenders shall pay the moving parties the agreed amount of $20,000 for costs, all inclusive.

D.L. Corbett J.

Lococo J.

Matheson J.

Date: September 24, 2025