Miz Forest Products Inc. v. Ayat Timbers International Ltd. 2025 NBKB 303

SJC-412-2022

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

B E T W E E N:

MIZ FOREST PRODUCTS INC.,

Plaintiff,

-and-

AYAT TIMBERS INTERNATIONAL LTD.,

Defendant.

BEFORE:	**Justice Arthur T. Doyle**
HEARING HELD:	**Saint John**
DATES OF MOTION:	**October 1 and December 3, 2025**
DATE OF DECISION:	**December 3, 2025**
SUBJECT MATTER:	**Motion for Partial Summary Judgment**

COUNSEL:

Edwin G. Ehrhardt, K.C., for Miz Forest Products Inc.

Michel J. Boudreau, for Ayat Timbers International Ltd.

DECISION

DOYLE, J. ***(Orally)***

I. BACKGROUND

[1] This is a decision in connection with a motion for partial summary judgment brought by Miz Forest Products Inc., as Plaintiff, against Ayat Timbers International Ltd., as Defendant, for the sum of $373,720.00, plus interest from November 3, 2022, plus costs on the basis that the Plaintiff had loaned and advanced money to the Defendant.

[2] This case involves an action brought by the Plaintiff against the Defendant for special damages in the amount of $485,808.28, together with interest and costs on the basis that the Plaintiff had loaned and advanced money to the Defendant. The Plaintiff maintains that it is only seeking $373,720.00, plus interest and costs in its motion for summary judgment because there are clear admissions by the Defendant that such amount is currently due and owing by the Defendant to the Plaintiff as of 2022.

[3] The Defendant contests the claim of the Plaintiff and filed a statement of defence and counterclaim. The Defendant is claiming the following special damages against the Plaintiff:

(a) Special damages in the aggregate amount of $101,752.16 CAD, plus ongoing accrued interest for electrical work;
(b) Special damages in the amount of $53,316.90 USD for unpaid Invoice #106, plus ongoing accrued interest;
(c) Special damages in the amount of $10,388.81 CAD for unpaid Invoice #101, plus ongoing accrued interest;

(d) Special damages in the amount of $8,952.75 CAD for unpaid Invoice #116, plus ongoing accrued interest;

(e) Special damages in an amount to be determined for the Defendant's loss of revenue; and

(f) Such further and other relief as this Court considers appropriate.

[4] The Defendant maintains that the agreement between the Plaintiff and the Defendant was a joint venture agreement, not a loan agreement, which was unilaterally terminated by the Plaintiff. The Defendant maintains that there is a genuine issue requiring a trial.

[5] The Plaintiff filed a reply and defence to counterclaim.

[6] The Plaintiff maintains that while an agreement was entered into between the Plaintiff and the Defendant in the fall of 2021, the agreement was not a joint venture agreement as alleged by the Defendant, and the monies paid by the Plaintiff to the Defendant were loans which have not been repaid.

II. THE RECORD

[7] For purposes of the record before this Court, I have listened to oral submissions by counsel to the Defendant and counsel to the Plaintiff on October 1, 2025 and December 3, 2025 and have reviewed and taken into consideration the following affidavit evidence:

(a) Affidavit of Ahmad Salman, sworn to on May 6, 2025;

(b) Affidavit of Service of Paula Gray, sworn to on September 23, 2025, served on Michel Boudreau with attached confirmation of receipt;

(c) Affidavit of Mohammed Javet, sworn to on September 23, 2025;

(d) Affidavit of Ahmad Salman, sworn to on September 25, 2025; and

(e) Affidavit of Service of Paula Gray, sworn to on September 26, 2025, for service on Michel Boudreau of Supplemental Affidavit with Exhibits.

[8] I have also reviewed legal briefs submitted by the Defendant on September 25, 2025 and the Plaintiff on September 23, 2025 and November 19, 2025.

III. LAW AND ANALYSIS

[9] The law in New Brunswick regarding summary judgments is clear.

[10] Justice Morrison, at paragraphs 18 and 19 in ***Alphataho Inc., et al v. Maaco Canada Partnership LP, et al***, 2022 NBQB 25 (CanLII), aptly described the law for summary judgment as follows:

> [18] The Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, directed a "cultural shift" in the use of summary judgment. Courts are encouraged to use this summary adjudication tool as an alternative to conventional trials as a means to enhance access to justice. As Justice Gregory recently pointed out in *Edmondson v. Edmondson et al*, 2021 NBQB 53, courts are directed "to be open and bold when managing a case through its trajectory in the legal system". In *O'Toole v. Peterson*, 2018 NBCA 8, the Court of Appeal commented on the significance of the amendments to Rule 22 which came into force in 2017. No longer is summary judgment restricted to only those cases where there is "no merit" to the defence. The test is simply whether there is a genuine issue requiring a trial (para. 68).
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> [19] In *Russell et al v. Northumberland Co-Operative Ltd.*, 2019 NBCA 70, the Court of Appeal expanded on the import of the 2017 amendments. The key points from *O'Toole* and *Russell* can be summarized as follows:
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> 1. The only test for summary judgment is whether there is a genuine issue requiring a trial;

2. The burden of proof is on the moving party to establish there is no genuine issue requiring a trial and it is on the balance of probabilities;

3. The importance of the parties putting their best foot forward and leading trump or risk losing is more significant under the new Rule 22;

4. The Rule provides for a two-step process to determine whether there is a genuine issue requiring a trial;

5. In step one the judge must determine if the evidence presented reveals a genuine issue requiring a trial. If, on the filed evidence alone, the judge can fairly and justly adjudicate the dispute there will be no genuine issue requiring a trial and the judge must grant summary judgment;

6. If the judge cannot adjudicate the dispute on the filed evidence, he will proceed to step two. A judge only proceeds to step two if the assessment of the filed evidence leads to the conclusion that there may be a genuine issue requiring a trial. The judge will then determine if a trial can be avoided by resorting to the fact-finding powers of Rules 22.04(2) and (3) (the "mini-trial");

7. The guiding principle is that it will always be in the interest of justice for a judge to make use of the mini-trial where possible.

[Emphasis mine.]

[11] The issue before this Court must therefore be viewed through the lens of this two-step process. Step one is mandatory; while step two is discretionary.

[12] Our Court of Appeal has made it clear in ***Northumberland Co-Operative Ltd.*** that when a judge is considering whether to proceed with step two "it will always be in the interest of justice for the judge to make use of these fact-finding powers if, applying

the principles of timeliness, affordability and proportionality, the judge believes a trial can be avoided and a fair and just result can be obtained. The discretion vested in the judge under this second step will provide the flexibility required to fashion the appropriate course to follow."

[13] Justice Karakatsanis in ***Hryniak*** offers the following comment whereby summary judgment motions can not only save time and resources, they sometimes can slow down proceedings if used inappropriately:

> [32] This culture shift requires judges to actively manage the legal process in line with the principle of proportionality. While summary judgment motions can save time and resources, like most pre-trial procedures, they can also slow down the proceedings if used inappropriately. While judges can and should play a role in controlling such risks, counsel must, in accordance with the traditions of their profession, act in a way that facilitates rather than frustrates access to justice. Lawyers should consider their client's limited means and the nature of their case and fashion proportionate means to achieve a fair and just result.

[14] The Supreme Court of Canada in ***Hryniak*** also offered the following guidance when a Court is considering whether it is against the interest of Justice to use the new fact-finding powers:

> [48] The Court of Appeal did not explicitly focus upon when there is a genuine issue requiring a trial. However, in considering whether it is against the interest of justice to use the new fact-finding powers, the court suggested that summary judgment would most often be appropriate when cases were document driven, with few witnesses and limited contentious factual issues, or when the record could be supplemented by oral evidence on discrete points. These are helpful observations but, as the court itself recognized, should not be taken as delineating firm categories of cases where summary judgment is and is not appropriate. For example, while this case is complex, with a voluminous record, the Court of Appeal ultimately agreed that there was no genuine issue requiring a trial.
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> [49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for

summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[50] These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[51] Often, concerns about credibility or clarification of the evidence can be addressed by calling oral evidence on the motion itself. However, there may be cases where, given the nature of the issues and the evidence required, the judge cannot make the necessary findings of fact, or apply the legal principles to reach a just and fair determination.

(2) The Interest of Justice

[52] The enhanced fact-finding powers granted to motion judges in Rule 20.04(2.1) may be employed on a motion for summary judgment unless it is in the "interest of justice" for them to be exercised only at trial. The "interest of justice" is not defined in the Rules.

[…]

[57] On a summary judgment motion, the evidence need not be equivalent to that at trial, but must be such that the judge is confident that she can fairly resolve the dispute. A documentary record, particularly when supplemented by the new fact-finding tools, including ordering oral testimony, is often sufficient to resolve material issues fairly and justly. The powers provided in Rules 20.04(2.1) and (2.2) can provide an equally valid, if less extensive, manner of fact finding.

[58] This inquiry into the interest of justice is, by its nature, comparative. Proportionality is assessed in relation to the full trial. It may require the motion judge to assess the relative efficiencies of proceeding by way of summary judgment, as opposed to trial. This would involve a comparison of, among other things, the cost and speed of both procedures. (Although

> summary judgment may be expensive and time consuming, as in this case, a trial may be even more expensive and slower.) It may also involve a comparison of the evidence that will be available at trial and on the motion as well as the opportunity to fairly evaluate it. (Even if the evidence available on the motion is limited, there may be no reason to think better evidence would be available at trial.)
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> [Emphasis mine.]

[15] The Plaintiff correctly notes that our Court of Appeal has determined that a "partial summary judgment" is a valid form of relief to be claimed under Rule 22. In that regard, the Defendant refers this Court to ***Edmondson et al. v. Edmondson et al.***, 2022 NBCA 4, where our Court of Appeal offered the following guidance:

> [40] Rule 22.01 clearly gives a plaintiff or defendant the right to move for summary judgment for all or part of the claim in the Statement of Claim. With respect, the motion judge was mistaken in suggesting there is no point to bifurcation under Rule 47.03(1) if a party can move for summary judgment without the consent of the other parties.
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> [41] She goes on to find it "peculiar" Rule 22.04(1)(a) refers only to granting summary judgment with respect to "a claim or defence," whereas Rule 22.04(1)(b) refers to summary judgment for "part of a claim" where there is "agreement between the parties." In my view, those provisions need to be interpreted in context. They are the "general provisions" on the manner by which a judge is to dispose of the motion. Rule 22.04(1)(a) states the court shall grant summary judgment if it is satisfied there is no genuine issue [Emphasis in original] requiring a trial with respect to a claim [Emphasis in original] or defence [Emphasis in original]. The phrase "genuine issue" relates to any claim or defence raised as contained in the Statement of Claim or Statement of Defence. Rule 22.04(1)(b) states the court shall grant judgment if the parties consent to have all or part of the claim so determined. Rule 22.04(1)(a), therefore, deals with cases where parties do not consent to having an issue determined by summary judgment because that is the only way to give meaning to Rule 22.01: *Babin*, at para. 33. On the other hand, Rule 22.04(1)(b) deals with situations where the parties consent. In either case, the judge will need to judicially exercise discretion to determine whether summary judgment should be granted. All of this is consistent with *Lange and O'Toole* as previously noted.

> [42] Although partial summary judgments may run the risk of duplication and inconsistent findings of fact, they are not precluded because of that, and *Hryniak* certainly supports this. These are factors a judge ought to consider in exercising discretion and determining whether it is "in the interests of justice" to exercise the powers given under Rule 22.04(2) or whether the matter should proceed to trial.
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> [Emphasis mine.]

[16] The Defendant notes that the Plaintiff required more supply of lumber than the Defendant could provide, so the Plaintiff began looking for additional ways it could accelerate the delivery of lumber.

[17] The Defendant notes that the Plaintiff proposed a new building should be built on the Defendant's property, larger than the existing Defendant production building, which would house the Defendant's sawmill and associated machinery. The Defendant notes that that "new building" would be used exclusively to supply the Plaintiff with the lumber it was seeking for its export business.

[18] The Defendant correctly notes that while part of the parties' agreement was put in writing in the fall of 2021, namely the provisions related to the sourcing and supply of wood products by the Defendant to the Plaintiff with partial exclusivity for 10 years, nothing was put in writing regarding the construction of the "new building" and the funding for that "new building".

[19] The Defendant notes that the parties disagree as to the nature of the arrangement regarding the "new building":

(a) the Plaintiff has pleaded and argues that the funds advanced by the Plaintiff were a loan to the Defendant, which then used those funds to build the "new building"; and

(b) the Defendant has pleaded and argues that it had no need for a "new building", that the "new building" was destined to supply wood products only to the Plaintiff and for the Plaintiff's benefit, and the arrangement between the parties was more in the nature of a joint venture than it was a debtor/creditor relationship.

[20] The Defendant contends that the issues in this litigation are more complex than revealed by the Plaintiff's Notion of Motion, and that the characterization of the relationship between the parties was not as clear-cut as alleged by the Plaintiff in its pleadings or in its motion documents. The Defendant submits that the motion for summary judgment should be dismissed on the basis that there are genuine issues requiring a trial. Further, the Defendant submits that the Defendant's filing of this motion:

(a) Does not allow this Court to reach a fair and just determination on the merits;
(b) Does not allow this Court to determine the issues before it, because the issues dividing the parties are heavily fact-driven and their determination will rely on fulsome oral testimony and cross-examination;
(c) A decision on this motion would not shorten a trial, as there remains at the very least a counterclaim by the Defendant which will require the rehearing of evidence, risking parallel evidentiary findings;
(d) Has slowed down the proceeding and delayed the end determination of the issues before this Court; and
(e) Is not a proportionate, more expeditious and less expensive means to achieve a just result.

[21] Regarding the Plaintiff's position that the parties are merely dealing with a loan of money as between the parties, the Defendant notes that the Plaintiff has produced no evidence of the actual loan agreement: no written agreement, no emails, no texts, no

demands for payment citing the loan, no payment schedule, no agreement as to interest terms or other terms of payment.

[22] The Defendant submits that the evidence in the record of this motion does not permit this Court to determine the main issue in this litigation, which is the nature of the agreement between the parties. The Defendant maintains that there is a clear discrepancy between the versions of the evidence given by the Defendant and the Plaintiff.

[23] Discovery is complete and most pre-trial proceedings have also been completed.

[24] Following discovery (where the Defendant gave various undertakings) and an order by this Court for the Defendant to disclose and produce various documents, the Defendant has produced and disclosed various documents to the Plaintiff.

[25] The Plaintiff correctly notes that the documents produced by the Defendant establish the following uncontradicted evidence:

(a) Financial statements of the Defendant show there was a "Promissory Note" showing an amount of $417,809.00 as at 2022, and $395,309.00 at 2023 (see page 24 of the Record);

(b) An email (see page 67 of the Record) from Sarah Hicks, CPA, accountant for the Defendant, as referred to in an email dated July 12, 2023 from the Defendant to its solicitor, as "email confirmation from our accountant" stating the following:

> "Regarding the MIZ Forest Advance payment ledger account in your preliminary trial balance. You had a balance of $323,720.00, we increased

> this by $50,000.00 to $373,720.00. The $50,000.00 adjustment we posted was a $50,000.00 overpayment, in the trade accounts receivable which we reclassified from a credit in current assets to a current liability, no impact on the total liability to MIZ. The adjusted balance of $373,720.00 is included in the current liability note payable balance of $417,809.00 on your April 30, 2022 Compilation engagement financial information."

The Plaintiff notes that email was sent to the Defendant on July 12, 2023. The Plaintiff notes that simply put, the Defendant, as confirmed by its accountant, stated in its financial statements that it had a current liability to the Plaintiff of $373,720.00 as far back as 2023;

(c) Those financial statements were utilized for the purposes of income tax filings with the Canada Revenue Agency; and

(d) Subsequent inquiries of the Defendant's solicitor confirmed that amounts received by the Defendant from the Plaintiff were utilized for a building constructed on lands owned by the Defendant and were entered into the accounting records as "advance payments for lumber". In particular, it was confirmed that the amount payable by the Defendant to the Plaintiff was $373,720.00 (see page 77 of the Record), which confirms the $373,720.00, as being an amount consisting of an original amount of $323,720.00, and then a further advance made by the Plaintiff of $50,000.00 in April or May of 2022.

[26] The Plaintiff further notes that there is never any mention of a "joint venture" in any document, or filing until such time as the Plaintiff sought to obtain reimbursement of the amounts it advanced by commencing this action – this is the first time the "joint venture" was ever mentioned. The Plaintiff also correctly notes that line 132 of Schedule

1 on the 2022 and 2023 Corporate Income Tax Returns of the Defendant does not indicate a joint venture.

[27] Further, Mr. Salman, in his Affidavit sworn to on January 31, 2023 (see page 9, paragraph 7 and 9 of the Supplemental Record), states that there was no joint venture or partnership, and the agreement was not that the Plaintiff would pay all the expenses of the Defendant. Mr. Salman states that the Plaintiff did agree to make loans on advances for the Defendant, not as an investment, and the amounts have not been repaid.

[28] I also note that there is no evidence before this Court that the "joint venture agreement" the Defendant claims to have had with the Plaintiff was ever reduced to writing.

[29] The Plaintiff claims that the uncontradicted evidence referred to above demonstrates that the Defendant treated at least $373,720.00 as advances, which were repayable to the Plaintiff (as shown in the financial statements and confirmation from the Defendant's accountant referred to above).

[30] The Defendant submits that there is insufficient reliable evidence before this Court regarding a loan agreement, yet there is considerably more evidence supporting the Defendant's contention that there existed a joint venture style agreement between the parties.

[31] The Defendant argues that the evidentiary record is lacking with respect to whether a loan agreement existed between the parties or there was an agreement to repay.

[32] In my view, based upon the Defendant's own admissions, own financial documents, tax filings, and implicit agreements with its accountant's position, there was clearly an amount due, owing and payable by the Defendant to the Plaintiff.

[33] In my humble opinion, whether the monies advanced by the Plaintiff to the Defendant are referred to as "loans" or "advances" or were not specified in the only written agreement as between the parties (namely, the agreement of November 1, 2021 found at page 96 in the Record, which deals with the provision of a sawmill, and buying production) is not determinative. In my view, the Defendant correctly submits that:

(a) what is determinative is the fact that both the Plaintiff and the Defendant agree that monies were advanced from the Plaintiff to the benefit of the Defendant, and the Defendant confirms that there was a payable, i.e. a debt owing by the Defendant to the Plaintiff;
(b) the Defendant's own financial statements and accountant have termed the payable as a current liability; and
(c) the monies are due, payable and have been since 2022.

[34] In my view, the uncontradicted evidence before this Court demonstrates that the Defendant treated at least $373,720.00 as advances, which were payable to the Plaintiff.

[35] Accordingly, based on my observations and conclusions outlined above, in my judgment, there is no genuine issue with respect to the liability or quantum of the $373,720.00 debt owing by the Defendant to the Plaintiff.

[36] The Defendant correctly notes that if the Plaintiff is successful in its motion for partial summary judgment, that would not bring the action to an end.

[37] Recall, however, our Court of Appeal has determined that a partial summary judgment is a valid form of relief to be claimed under Rule 22.

[38] I am obliged to actively manage the legal process in line with the principle of proportionality (see ***Hryniak***). In my view, granting partial summary judgment in favor of the Plaintiff at this stage in the litigation would save time and resources. Further, granting partial summary judgment in favor of the Plaintiff will reduce the number of issues that the trial judge has to address at the trial proper. The Plaintiff maintains that the granting of partial summary judgment in favour of the Plaintiff may significantly shorten the trial as the Plaintiff may or may not decide to pursue any balance owing over and above the $373,720.00 – in other words, if the Plaintiff obtains judgment for that amount that may be the end of the Plaintiff pursuing its claim against the Defendant, as obviously if it is not able to collect that amount, there would be no sense in pursuing its action further. The trial judge may only have to deal with the counterclaim if partial summary judgment is granted in favor of the Plaintiff at this time. In my judgment, it is "in the interests of justice" to exercise the powers given to this Court pursuant to Rule 22.

[39] Based upon my review of the evidence before this Court, there does not appear to have been any agreement on the payment of interest regarding the $373,720.00 debt owing by the Defendant to the Plaintiff. The Plaintiff correctly notes that 7% simple interest per annum is specified under the *Judicature Act* for post-judgment interest and the Plaintiff submits that it is an appropriate rate for pre-judgment interest as well - as simple interest, not compounded as interest would normally be on a commercial debt. I agree with the Plaintiff's submission in that regard. In my view, the appropriate amount to use for pre-judgment interest is 7% simple interest per annum.

[40] As the Plaintiff has been successful in its motion for summary judgment as against the Defendant, the Plaintiff is entitled to an award of costs. In that regard, the Plaintiff

notes that it has filed three motions in order to obtain information and documentation that should have been provided through an affidavit of documents, at discovery, or certainly without having to take out motions. The Plaintiff notes that even under the minimal scale 1 in tariff "A" as provided for under Rule 59, given the amount involved of $373,720.00, costs would be $8,162.20, plus disbursements.

[41] The Plaintiff submits that because it was required to proceed to discovery, as well as take out various motions to obtain the information and documentation which clearly confirm the amount owing by the Defendant to the Plaintiff, costs in the amount of $10,000, plus disbursements would be appropriate in this case.

[42] I accept the Plaintiff's submissions that it was required to proceed to discovery, as well as take out various motions to obtain the information and documentation which clearly confirm the amount owing by the Defendant to the Plaintiff. I do not, however, believe that a cost award in the amount of $10,000.00 is appropriate in this case. In my opinion, based upon the unique and fact-specific circumstances of this case, I believe a cost award in the amount of $5,000.00 is appropriate.

IV. CONCLUSION AND DISPOSITION

[43] Accordingly, it is hereby ordered that:

(a) the Plaintiff have partial summary judgment as against the Defendant in the amount of $373,720.00, plus interest in the amount of 7% simple interest per annum, from November 3, 2022; and

(b) the Defendant shall pay costs to the Plaintiff in the amount of $5,000.00, plus disbursements, to be payable forthwith.

Arthur T. Doyle
Judge of the Court of King's Bench
of New Brunswick