

COURT OF APPEAL FOR ONTARIO

CITATION: Alyousef v. Alyousef, 2026 ONCA 280

DATE: 20260415

DOCKET: COA-23-CV-1075

Roberts, Trotter and Dawe JJ.A.

BETWEEN

Abdul Razak Alyousef

Plaintiff (Respondent)

and

Anes Alyousef, Zainab Almelli, 2390247 Ontario Inc., Alyousef Brother's
2296411 Ontario Inc. and John Doe

Defendants (Appellants)

Omer S. Chaudhry, for the appellants

Abdul Razak Alyousef, acting in person

Heard: January 5, 2026

On appeal from the judgment of Justice Michael T. Doi of the Superior Court of Justice, dated August 28, 2023, with amended reasons released January 13, 2025, at 2023 ONSC 4899.

ADDENDUM

[1] On February 6, 2026, we dismissed the appeal and cross-appeal, subject to the determination of a further issue related to the calculation of the parties' partnership net profit figure for the purpose of determining the respondent's damages during the contract period with the Milkman Inc. between 2013 and 2017

("the contract period"). These reasons supplement the earlier reasons found at 2026 ONCA 78.

[2] The trial judge determined that, to calculate the partnership net profits to which the respondent was entitled, certain amounts should have been included in the income of 2390246 Ontario Inc. ("239") (those additional amounts being diverted wages, personal credit card charges, unreconciled cash, shareholder receivables and arrears of delivery invoices) and that the net income of 2296411 Ontario Inc. ("229"), as well as the respondent's \$63,000 of business income for the contract period, should also have been considered when determining the partnership net profits. The chart below summarizes the trial judge's calculation of the total net profit for the contract period and the respondent's 50% share of that total net profit for the contract period.

Amount¹	Description
\$274,777.00	239's net income (after income tax)
\$67,251.00	229's net income
\$130,000.00	Diverted wages
\$60,600.00	Personal credit card charges
\$18,492.00	Unreconciled cash
\$60,127.00	Shareholder receivables for 239
\$400,000.00	Arrears of delivery invoices
- \$63,000.00	Respondent's business income for the contract period
\$948,246.00	Total (Net Profit)
\$474.123.00	The respondent's 50% share

¹ For more detail on these amounts, see paras. 9-10 of the February 6, 2026 reasons.

[3] The 239 net income figure in the above chart is after the deduction of income taxes. However, the other figures set out in the above chart and included in the trial judge's calculation of net income for 239 did not take into account notional income taxes payable on those amounts to arrive at a net profit figure. This issue does not appear to have been expressly addressed at trial by the parties or the trial judge in his reasons.

[4] Likewise, the figures in the above chart for 229's net income and the respondent's business income are not net of income tax. Although the appellants asked to reduce 229's income by offsetting the taxes that they claimed to have paid over the years and were in "the income statements", the trial judge declined to do so because "no records were led at trial to substantiate any of their proposed tax offset amounts."

[5] As a result, we asked the parties to deliver additional written submissions, plus revised calculations, on whether, to arrive at a net after tax profit figure for each year during the contract period, further income taxes should be deducted from the net income figures of 239 once the amounts ordered by the trial judge are included in 239's income, as well as from the net income figures of 229, and the respondent's \$63,000 of business income for the contract period.

[6] We have received and reviewed the parties' submissions.

[7] The appellants argue that notional income taxes should have been taken into account to arrive at a net after tax profit figure and provided detailed revised net after tax profit calculations. They say that doing otherwise would leave the trial judge's decision "lopsided".

[8] The respondent submits that notional income taxes should not be taken into account. First, this would require the admission of fresh evidence on appeal that was not tested before and considered by the trial judge and that was not addressed in the expert evidence provided by the court-appointed inspector, Fuller Landau Group Inc. Second, there is no evidence that 239 paid income taxes on the new amounts that the trial judge ordered be included into income, including amounts that the trial judge found were diverted by Anes Alyousef for his and his family's personal use. It is therefore only fair that the respondent should receive an equal share of those amounts. Finally, he argues that his income of \$63,000 is not corporate income and should not be subject to corporate tax rates.

[9] In the circumstances of this case, we accept the respondent's position that notional income taxes should not be deducted from the amounts that the trial judge ordered to be included in 239's income.

[10] First, with respect to the amounts set out in paras. 10(i)-(iv) of the February 6, 2026 reasons – diverted wages, personal credit card charges, unreconciled cash and shareholder receivables – there is no evidence that the

appellants have remitted taxes on these amounts, and the appellants appear to have received the full benefit of them. Second, with respect to the \$400,000 amount, representing arrears of delivery invoices owing by the Milkman Inc. to 239, the trial judge found that these were satisfied by offsetting the invoice amount against the purchase price of a property that Anes Alyousef purchased from the Milkman Inc. following the contract period. It was therefore reasonable that the trial judge would not have deducted notional income taxes from that amount.

[11] To keep this calculation consistent, we would not deduct notional income taxes from the respondent's business income of \$63,000; there is no evidence that the respondent paid any income taxes on this income and therefore appears to have benefitted fully from the income earned.

[12] Finally, with respect to 229's income, as raised in the February 6, 2026 reasons at paras. 51 and 55, we asked for submissions as to whether amounts remitted for income taxes should be deducted from 229's net income figure to arrive at a new after-tax income figure.

[13] In costs submissions provided to the trial judge, the appellants provided amounts that they said were paid for income taxes over the relevant period, which they claimed were based on income statements. The trial judge declined to order the deduction because, notwithstanding the appellants' reference to 229's income

statements, he stated that “no records were led at trial to substantiate any of their proposed tax offset amounts.”

[14] The calculations provided in the appellants’ most recent submissions following the appeal are inconsistent with the amounts that the appellants referenced in their appeal factum. The figures in the appeal factum were consistent with those provided to the trial judge.

[15] We are unable to resolve these contradictions. If the appellants submitted 229’s income statements at trial, then the trial judge should have explained why they did not substantiate the claimed income tax remittances for 229. If 229’s income taxes were remitted, then there should not be any discrepancies between the amounts. The difficulty we have is that 229’s income statements do not appear to be included in the appeal record nor do we have any other documentation that would verify the actual amounts remitted for income taxes. The respondent claims that there is no evidence to support 229’s claimed income tax remittances.

[16] This is a simple factual issue that should be very easy to resolve. It is only fair that if the appellants did remit 229’s income taxes, those amounts should be deducted from 229’s net income, just as the trial judge did for 239’s net income. This would ensure consistency with the trial judge’s calculation of net profits and the respondent’s damages.

[17] Accordingly, the appellants are to provide 229's income statements and notices of assessment and reassessment from the Canada Revenue Agency ("CRA") that prove the remittance of 229's income taxes to CRA. These documents are to be exhibits and attested to by way of an affidavit. The affidavit with these exhibits shall be served and filed within seven days of the release of these reasons. The respondent shall have five days to provide any response to this affidavit in submissions of no more than two pages. There shall be no reply submissions.

Disposition

[18] Subject to the issue of the payment of 229's income taxes, we otherwise dismiss the appeal and cross-appeal in their entirety.

[19] We shall deal with the disposition of costs once the issue of 229's income taxes has been determined.

"L.B. Roberts J.A."
"Gary Trotter J.A."
"J. Dawe J.A."