CITATION: OnePiece (WB) Developments Inc. et al. v. Cimberg Developments Inc., et al, 2026 ONSC 1132
COURT FILE NO.: CV-22-00679830-0000
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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
ONEPIECE (WB) DEVELOPMENTS INC. and KINGSBERG 9999 HOLDING INC. Plaintiffs	Howard Borlack and Maxwell Gill, for the Plaintiffs
– and –	
CIMBERG DEVELOPMENTS INC., KINGSBERG DEVELOPMENTS 2017 HOLDINGS INC., CIM HWY 7 HOLDING LP and TEPLITSKY COLSON LLP, as counsel for Cimberg Developments Inc. Defendants	Richard J. Wolford, for the Defendant CIM HWY 7 Holding LP Mahdi M. Hussein, for the Defendant Kingsberg Developments 2017 Holdings Inc.

HEARD: January 12, 13, and 14, 2026

AKAZAKI J.

REASONS FOR JUDGMENT

OVERVIEW

[1] This judgment resolves interpleader claims against a $2,857,831.58 portion of a $11,200,000.00 fund falling to trustee Cimberg Developments Inc. ("Cimberg"). The fund represented the remaining sale proceeds from certain development lands, after discharge of a $24,000,000 mortgage with DUCA Financial Services Credit Union ("DUCA") by power of sale and settlement of a piece of title litigation.

[2] In mid-2017, joint venturers Cimberg and Kingsberg Development Corporation[1] ("Kingsberg") acquired a 50% interest in the lands on Highway 7 East, Markham, held by

[1] Now renamed as Kingsberg 9999 Holding Inc., one of the plaintiffs.

the mortgagor, a holding company of the existing developer, Khurrham Shroff. The consideration for the purchase was Kingsberg's discharge of its $4,000,000 second mortgage and Cimberg's injection of $8,000,000 in new development money. These joint venturers divided beneficial ownership in the lands by forming a limited partnership, 6910 Hwy 7 LP ("6910"), with the Shroff company that guaranteed the first mortgage, the 2563111 Ontario Inc. ("256").

[3] Kingsberg acted more out of necessity than opportunity, to prevent or to stem anticipated losses on its second mortgage from the Shroff company's default under the first mortgage. The precarity of Shroff's situation required Kingsberg and the new investors, represented by Cimberg, to settle two trusts on Cimberg. Kingsberg hoped that, with further capital, the Highway 7 project would be profitable.

[4] The joint venturers appointed Cimberg, as their limited partner in 6910, to act as trustee for two subsidiary holding companies, CIM Hwy 7 Holding LP (55%) and Kingsberg Developments 2017 Holdings Inc. (45%). This was a proprietary trust through which the holding companies managed and funded the acquired interest in the lands.

[5] Cimberg's partnership with 256 was unequal from the start, because 100% of the existing equity was likely the combination of the discharged second mortgage and the new money. To protect their investment in priority to 256, the joint venturers also appointed Cimberg as trustee of two debt facilities securing the joint venturers' combined investment and attaching to the interest in the property of the Shroff limited partner. The purpose of this second trust was to overlay an effective equitable trust on the Shroff limited partner's other 50%, up to the first $10,857,831.58 realizable in any disposition of the property. This structure meant that the Shroff entity could participate in profits only after the Cimberg trust recouped $10,857,831.58.

[6] The essential link between the two trusts was that, on paper, the joint venturers did not pay Mr. Shroff's companies the combined $12,000,000 in consideration for the 50% interest in the lands, even though that is what they paid into the project. Rather, he required the deal to be documented as a $10,857,831.58 interest-free, instalment-free, and term-indeterminate loan, to defer capital gains tax liability on a deemed disposition through transfer of half the beneficial value of the property. Objectively, this structure was necessary for the feasibility of the deal. Thus, instead of securing priority recovery for the capital injection into the organization of the limited partnership, the joint venturers participated in Mr. Shroff's front of a "loan" to create a form of equitable charge on the Shroff limited partner's interest in the property.

[7] I use the word, "front," because the authors of the loan documentation did not get around to preparing the additional security instruments listed in the agreement. Certainly, none were available to be introduced at trial. Thus, the only security for the loan was the loan agreement itself, to the extent that it contained pledges and assignments of the Shroff company's interests in the limited partnership holding title the lands.

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[8] Between the joint venturers, for reasons that may appear self-evident but not spelled out in the evidence, they settled on Cimberg as trustee of the "loan" an amount representing Kingsberg's $4,000,000 of old money, discounted to $2,857,831.58 but standing in priority to Cimberg's $8,000,000. The rationale for the discount to such a precise figure and the countervailing priority were not directly material to the issues. I presumed they represented a negotiated quid quo pro for Cimberg's investment.

[9] Evidently, the parties had entered the transaction with their wires crossed, because it did not take long for the partnership to collapse. Mr. Shroff expected Cimberg to shoulder the whole financial burden going forward. He refused to contribute his company's 50% to the project. Despite the Cimberg backers' attempts for a while to keep the project going and to service the DUCA mortgage, it went into default. DUCA exercised a power of sale, leaving the mortgagor $16,200,000.

[10] Enter one Simion Kronenfeld, to whom Mr. Shroff had allegedly sold the Hwy. 7 property and accepted a deposit of $200,000. Hearing of the power of sale, he sued the Shroff entities and the Cimberg-Kingsberg entities. Remarkably, in early 2022, the parties settled the litigation by allocating $11,200,000 to Cimberg Developments Inc. and $5,000,000 to Kronenfeld. Out of these amounts, again for reasons not fully in evidence, Kronenfeld and Cimberg agreed to pay to charities $1,000,000 and $500,000 respectively.

[11] The catalyst for the instant lawsuit was a further complication of the joint venturers' dealings: Kingsberg's assignment to OnePiece Developments Inc.[2] ("OnePiece") of a 60% portion of its beneficial interest in the "loan" to the Shroff entity. The assignment served as collateral to OnePiece's acquisition of Kingsberg's interest in a different Shroff project (the "Villarboit" development). Once Cimberg, as dual trustee, settled for the $11,200,000 recovery, OnePiece sought to realize on this $1,714,698.95 collateral interest in the debt trust (60% of $2,857,831.58), lest it vanish in the distribution to the joint venturers' holding companies in the limited partnership trust. Kingsberg, as OnePiece's co-plaintiff, therefore, sought priority distribution of its 40%, representing $1,143,132.63, before the balance was divided 55/45 between the two holding companies as the beneficiaries of the debt trust for which Cimberg, as limited partner, acted as trustee.

[12] The Cimberg backers, represented through the agency of CIM Hwy 7, balked on the preferential distribution to the plaintiffs and denied the operation of the debt trust. Their immediate reaction to the claim was that Harvin Pitch, the lawyer who settled the Kronenfeld litigation, represented that the $10,700,000 fund after the $500,000 charitable donation would all go to Cimberg as trustee serving as limited partner. They also denied Cimberg's trust obligations over the "loan" instruments because the Shroff company, who owed the debt, received no proceeds from which it could repay it. They argued that nothing is due to Cimberg as trustee for 256's creditors, because the settlement excluded 256 from the sale proceeds.

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[2] Now renamed as OnePiece (WB) Developments Inc., the other plaintiff.

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[13] The $2,857,831.58 is currently held in trust by Teplitsky LLP, awaiting the court's disposition of this trial. The balance of the $10,700,000, being $7,842,168.42, has already been paid out to Cimberg and distributed to its beneficiaries 45-55.

[14] Cimberg undoubtedly received 50% of the net proceeds, in the amount of $5,350,000, as trustee for the two holding companies, representing its share as limited partner of the funds due to the mortgagor, pursuant to s. 27 of the *Mortgages Act*, R.S.O. 1990, c. M.40. However, it had no legal claim as 50% limited partner to the equivalent share due to 256.

[15] CIM Hwy 7's two technical arguments, relying on no funds reaching 256, did not establish legal entitlement to the other half due to the Shroff limited partner. Mr. Pitch testified that he settled the litigation with Kronenfeld without regard to the distribution once the funds came to Cimberg, as trustee. His assumption, based on the instructions from the principals of Cimberg, that the funds would then be distributed 55/45 to the holding companies, did not make him the arbiter of the issue. Nor did the arguments justify Cimberg's preference to observe the trust obligations as limited partner and to deny its obligations as trustee of the "loan" facilities operating as the joint venturers' hold on the Shroff company's share of the remaining limited partnership after the power of sale.

[16] Beyond the 50% interest in the limited partnership, the only valid justification for Cimberg's receipt of 100% of the funds due to the Shroff mortgagor in trust for the limited partnership was the loan documentation pledging 256's 50% interest up to the value of the $10,857,831.58 loan. Of that amount, $2,857,831.58 was held in trust by Cimberg for Kingsberg in priority to the $8,000,000 Cimberg also held in trust for itself. Pursuant to s. 44 of the *Partnerships Act*, R.S.O. 1990, c. P.5, the debt owed to Kingsberg also took priority to Cimberg's advances covering 256's obligations to the limited partnership, because Kingsberg was not a partner and Cimberg was.

[17] Although one can determine the interpleader in the plaintiffs' favour by a holistic legal analysis of the parties' transactional documents, what conclusively sealed that result was the unexpected testimony of the trial's only live witness, Harvin Pitch, that the joint venturers' investment for purchase of 50% of the project was organized as a loan to defer tax liability for a capital gain. The $12,000,000 consideration, the transfer of a 50% beneficial interest in the lands, and the $10,857,831.58 loan were, in fact, the same transaction. Considered together, and only together, the joint venturers controlled 100% of the equity in the property up to the face value of the loan. Only after the realization of $10,857,831.58 from any disposition could 256 contemplate receiving its first dollar of profit. The loan documentation therefore operated as a *de facto* equitable charge on 256's share. The loan provided the only juristic reason for diverting 256's share to Cimberg, in trust. Once in Cimberg's hands, it was then obligated to give effect to its trusteeship over the loan facilities.

[18] The plaintiffs are entitled to the escrowed $2,857,831.58. In coming to this conclusion, I rely on Cimberg's necessity to fulfil the two trusts to justify distribution of the whole net proceeds of $11,200,000. This conclusion does not require enforcement of the equitable rules requiring the trustee to act even-handedly and to avoid conflicts between self-interest

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and duty. It is simply the result of laying out all the transactions and following the entitlements. Nevertheless, the equitable rules would also result in the plaintiffs' priority right to the funds held in escrow.

[19] In finding for the plaintiffs and rejecting CIM Hwy 7's position, my analysis of these issues will be divided into these sections:

1. Entitlement to 256's share

2. CIM Hwy 7's arguments

[20] Before addressing these points, I will provide further background details explaining how the interpleaded funds came into existence.

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FURTHER BACKGROUND

[21] On May 5, 2017, Cimberg executed a $10,857,831.58 loan agreement as lender with 256 as borrower. Only it was not a loan but a purchase. There had been an original $4,000,000 loan by Kingsberg Development Corporation to 256's affiliate, 2334266 Ontario Inc. ("233"), secured by second mortgage. After 233's loan fell into default, Kingsberg agreed to convert the loan into a deposit on the purchase of a 50% stake in the project. Kingsberg introduced the backers of Cimberg, who injected $8,000,000 of new money into the project. On paper, however, the sole consideration for the 50% transfer was the $10,857,831.58 loan. 233 then transferred beneficial ownership of the property to the limited partnership, the units of which were allocated 50/50 between 256 and Cimberg. The "loan," bearing no interest or repayment obligation until completion of the development, enabled 256, controlled by Mr. Shroff, to defer the triggering of a deemed capital gain by offsetting the financial liability against the increased equity. The gain would therefore be taxable upon profitable completion of the development.

[22] On the Kingsberg-Cimberg side of the deal, they entered a joint venture with Cimberg acting as the 50% limited partner, in trust for two subsidiary holding companies:

Kingsberg Developments 2017 Holdings Inc. (45%)

CIM Hwy 7 Holding LP (55%)

[23] Between Kingsberg and Cimberg, they added a further allocative rule by leveraging the legal formality of the "loan" to 256 to give $2,857,831.58 priority over the remaining $8,000,000. As explained above, the rationale for discounting the $4,000,000 to $2,857,831.58 was not clear in the evidence. The loan itself purported to be secured by a General Security Agreement, pledges for the units and shares in the limited partnership entities, and other securities. The only one of these securities introduced in evidence was an Irrevocable Payment Direction directing to Cimberg all payments payable to 256, up to $10,857,831.58. This payment direction was part of 256's obligation under s. 12 of the loan

agreement, providing for the assignment of all of 256's interest and funds receivable from the partnership. In practical terms, the pledges and assignments memorialized in the agreement sufficed to give Cimber, in trust, full control over the partnership assets up to the stated values of the loan facilities.

[24] The "loan" consisted of two non-revolving Facilities. These were Facility #1 in the amount of $8,000,000 and Facility #2 in the amount of $2,857,831.58. Under the First Trust Declaration, Facility #2 had priority over Facility #1, meaning $2,857,831.58 of the "loan" to 256 would be repaid before the $8,000,000.

[25] Shortly after the First Trust Declaration, OnePiece Developments Inc. as trustee for a company to be incorporated, the plaintiff OnePiece (WB) Developments Inc.[3] acquired a 60% interest in Facility #2. OnePiece entered the Second Trust Declaration, whereby Kingsberg agreed to hold 60% for the benefit of OnePiece. OnePiece obtained the 60% interest in its purchase of Kingsberg's interest in another Shroff land development, Villarboit, for the sum of $1,650,000 (60% of $2,750,000).[4]

[26] The Second Trust Declaration effectively cross-collateralized the purchase of the interest in Villarboit, without a duty to account to Kingsberg for any upside gain. OnePiece required 60% of Kingsberg's $2,857,831.58 priority lender status in the Highway 7 project to offset the risks of partnering with Mr. Shroff in Villarboit—a risk Kingsberg transferred to OnePiece. Although there was little evidence on the point, the Villarboit project's fortunes apparently turned around, and OnePiece stands to realize on its investment. CIM Hwy 7 argued that OnePiece bought into the Second Trust Declaration as security for the amounts due from 256 in the Villarboit project. That restricted description of the Second Trust Declaration was inaccurate. The Second Trust Declaration described Facility #2 as the same facility held in trust by Cimberg under the First Trust Declaration.

[27] The fact that OnePiece's success in this action and a good return from Villarboit could result in recovery more than its payment to Kingsberg would not amount to unjust enrichment. The value of a debt is the legal right to recover the indebtedness from the debtor. The acquisition of 60% of Kingsberg's Facility #2 partly in exchange for the new money to Kingsberg to extricate Kingsberg from Villarboit should be considered a real-life equivalent of controlling spaces on a Monopoly board. Everyone in the piece wanted to earn profit. The fact that OnePiece might be the only one ultimately to do so does not affect the legal outcome of this case. The court can only trace its finger along the elements of the transactions and determine the outcome where it ultimately lands.

[28] The Highway 7 project soon stalled, because 256 refused to fund its half of the operating expenses of the limited partnership. After the limited partnership caused the mortgagor to default on the $24,000,000 DUCA mortgage, DUCA sold the Highway 7 land under a power of sale, leaving $16,200,000 in proceeds. Mr. Kronenfeld got wind of this and

[3] I will refer to the plaintiff as "OnePiece."
[4] Counsel for the plaintiffs suggested $2,750,000 was a typographical error for what ought to have been $2,857,831.58. There was no evidence of an error. I therefore construed the documentary evidence as tendered.

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launched his suit, alleging that Mr. Shroff had obtained a $200,000 deposit from him on an agreement to sell the lands.

[29] In keeping with the gap-filled nature of the pleadings and evidence, there was no cogent explanation for having settled so much of the net sale proceeds on Mr. Kronenfeld, if the consensus was that he was either a title troll or the victim of double-dealing by Mr. Shroff. Conceptually, there did not appear to be any damages for Mr. Kronenfeld to claim beyond his deposit, because there was no equity in the lands beyond Kingsberg's attempt to salvage its $4,000,000 second mortgage by brokering Cimberg's injection of new money. Even more perplexing was the parties' consent to an order requiring $1,500,000 in charitable donations.

[30] Between the payments to Mr. Kronenfeld and to the charities, there seemed to be enough in the pot to avoid the instant interpleader case and even pay something to 256 as profit. Beyond raising these unanswered questions, the court will take the facts as they were and leave the parties to ponder at their leisure how the financial outcome could have been different. I will now devote the balance of these reasons to my analysis for awarding the escrowed funds to the plaintiffs and for rejecting the arguments raised by CIM Hwy 7 against doing so.

1. ENTITLEMENT TO 256's SHARE

[31] Beyond claiming the $2,857,831.58, neither side's pleadings disclosed a complete case for entitlement to it. However, the court could not simply dismiss the claim and counterclaim to leave the funds escrowed in perpetuity.

[32] The proceeding had begun as an application under r. 14.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, for determination of rights based on the transactional documents. But for the form of the originating process, it had the trappings of a r. 43 interpleader motion. On November 18, 2022, Akbarali J. directed a summary trial of the issues and exchange of pleadings in the same manner as an action. The parties' pleadings revealed little substantive dispute over the transactions and events and differed only on the legal outcomes. The same could be said of the affidavits exchanged in the application before the November 2022 court order.

[33] The start of the trial was somewhat disorganized. Counsel for both sides suggested that the five-day trial could be adjourned mid-week after the calling of a single witness, to permit written closing arguments, and resumption later in the year for hearing oral submissions. I directed that the trial must proceed as scheduled and conclude with oral argument. However, the progression of the trial did not dispel the sense that the case had devolved back to a r. 14.05 documents case in which counsel pitched their competing legal interpretations of a collated pile of documents.

[34] The defendant CIM Hwy 7 called the sole live witness: Harvin Pitch, the lawyer handling the Kronenfeld litigation on behalf of Cimberg. Mr. Pitch's evidence ended up

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undermining the CIM Hwy 7 position. He described the loan facilities and joint venture documents in terms of an elaborate code to give the acquisition of 50% of the lands the trappings of a loan to allow Mr. Shroff to defer capital gains. He also testified that he was instructed to distribute the residual proceeds to Cimberg and was unaware of the competing claims that would soon emerge in this suit.

[35] Mr. Pitch's evidence was helpful to make sense of the underlying documentation and transactions. However, as the lawyer acting for Cimberg in the Kronenfeld litigation, much of it was legal opinion; and much of that was further limited by the instructions Cimberg's principals had given him. He had not been involved in the parties' establishment of the limited partnership and loan facilities, or the drafting of the documents appointing Cimberg as trustee of these assets. Thus, much of his commentary on the deferral of the capital gains could have been inadmissible as hearsay, although counsel for the plaintiffs was content not to object.

[36] Mr. Pitch's testimony extracted the parties' historical or collective knowledge of their conduct in the Kronenfeld action that coincided with the realization of the $16,200,000 residual fund from the power of sale. As the lawyer acting for Cimberg, the corporation acting as trustee in the subject transactions, his evidence was like that of a corporate representative imparting institutional knowledge. In that limited aspect, I accepted Mr. Pitch's evidence on behalf of CIM Hwy 7 for the purpose of informing the court how the stakeholders had documented their relations in such a way that Mr. Shroff gave up on any claim to the fund in exchange for a release from parties coming after him for more. In the context of Mr. Pitch's evidence, I was able to draw the logical inference from Mr. Shroff's abandonment of 256's 50% net share of the settlement that Mr. Shroff knew the loan operated as an equitable second mortgage.

[37] This negotiated exclusion of Mr. Shroff from participation in the fund undermined CIM Hwy 7's simple reliance on the settlement as signifying that the funds from the sale bypassed 256 and did not engage the loan instruments or the payment direction. CIM Hwy 7's counsel had called Mr. Pitch to testify to bolster that message, but he undermined it. He also distanced himself from any issue regarding the competing trust obligations, by stating that he only assumed direct distributions at a 55/45 ratio to the holding companies because Cimberg's principals instructed him that way. This testimony should have been expected, because he would have been conflicted. He and his firm had also acted for Kingsberg in the Villarboit matter. The third rail for him to avoid took many turns around the witness box.

[38] Although he may not have been fully instructed on the scheme of the transactions, Mr. Pitch's evidence of his understanding of Mr. Shroff's tax planning served to fill in the context of the transactional documents impressed with Cimberg's trust obligations, as an interpretive aid described in *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 47. In answer to the important question, why Cimberg obtained 100% of the net funds instead of 50% going to 256, Mr. Pitch's understanding that the loan was not really a loan but intended to bind 256 to certain outcomes supported the conclusion that the purchase price for Cimberg's 50% and the "loan" were structured

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separately but involved the same money. In the context of Mr. Shroff's acceptance of no recovery by 256, he understood Mr. Shroff was aware that the loan agreement had to be repaid before 256 saw any money from the sale.

[39] I did not require Mr. Pitch's evidence on the meaning of the loan documentation. But it did help to make sense of the fact that the loan was not a loan, or at least that it was financially independent of the consideration for the establishment of the 50/50 limited partnership. By papering the deal as a loan, as opposed to a buy-in agreement for entering a partnership, 256 could arguably defer the capital gain. Following this framework, the joint venturers then drew the loan documentation to effect control over 256's share of partnership assets up to the face value of the loan, operating as an equitable charge. Without the loan having this effect, Cimberg's $2,855,253.21 overpayment to the partnership's creditors (as considered later in CIM Hwy 7's arguments), was insufficient explanation for 256 emerging from the litigation empty-handed despite being due a $5,700,000 share. It was the $10,857,831.58 paper loan that left nothing for 256.

[40] CIM Hwy 7 did plead that Cimberg, as trustee, had paid consideration to acquire the interest in the lands, although Mr. Shroff's company only purported to borrow the funds. The pleading therefore betrayed some recognition that the "loan" facilities were not really loans but, rather, instruments to protect the whole investment in priority to any pay-out to 256. Beyond inferences such as this, neither side's pleading completed the loop on the lasso for capturing a clear legal basis for claiming the half of the proceeds that Mr. Shroff had disclaimed. It therefore fell to the court to allocate it based on the parties' positions about outcome, at least to the extent of $2,857,831.58, if handing it to the Shroff company was not an option. The outcome must ultimately follow the legal trajectory of the money, from its origin in the sale under the DUCA mortgage.

[41] The pleadings did not refer to the sale provisions in the *Mortgages Act*, s. 27, although the parties proceeded on the assumption that the $11,200,000 fell to Cimberg, in trust, after the proceeds of sale discharged the first mortgage. Nor was there a pleading of the *Partnerships Act*, although they pleaded the *Limited Partnerships Act*, R.S.O. 1990, c. L.16, to describe CIM Hwy 7. I gleaned from the fact that the pleadings appeared to have been repackaged versions of the application affidavits that they lacked some of the niceties of a pleading of an action. The plaintiffs pleaded the loan facilities that Cimberg held in trust for them, to claim entitlement to the priority payment of $2,857,831.58 from the net proceeds. CIM Hwy 7's pleading denying that priority relied on Mr. Pitch's representations that the settlement, after legal fees and a $500,000 charitable donation, would be distributed to Cimberg as trustee for the two holding companies.

[42] The distribution of the $11,200,000 to Cimberg in the Kronenfeld settlement left out the intermediary steps starting with the mortgagor as the recipient of the net proceeds after sale, pursuant to s. 27 of the *Mortgages Act*. The mortgagor was 233, the original Shroff holding company for the lands. The entirety of that sum, as opposed to half, flowed to Cimberg and bypassed 6910, only because Mr. Shroff gave up the partnership distribution due to 256, which he had nominated as a 50% limited partner. Mr. Shroff must have known, of course, that the loan documentation that had allowed his company to defer tax liability

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also pledged his company's half interest in the partnership to Cimberg—as trustee for itself and Kingsberg as *lenders*. The quasi-fictional "loans," operating as *de facto* equitable mortgages, served a real advantage to the joint venturers as the leverage for receiving 256's portion of the funds owed to 6910 as recipient of the funds due to the mortgagor under s. 27.

[43] The direct payment of the whole residual funds to Cimberg, bypassing all three intermediary pockets (233, 6910, and 256), can only be justified as an exchange of 50% of the funds for discharge of the loan facilities. This was the only result legally consistent with all the transactional documentation, including the effect of the loan documentation on Mr. Shroff's agreement to the settlement. In contrast, Cimberg's only other grounds for a claim against 256's half of the funds, as the remaining partnership asset, was the alleged contractual set-off to equalize the limited partnership distribution on winding-up. As I will explain in the concluding section of these reasons, that set-off claim must be subordinated to the plaintiffs' entitlement to the escrowed funds.

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2. CIM HWY 7'S ARGUMENTS

[44] Between the beneficiaries of Cimberg acting as the partner, Kingsberg Developments 2017 Holdings Inc. agreed with the plaintiffs that the $2,857,831.58 must be distributed to the plaintiffs. CIM Hwy 7 disagreed, stating that 55% of it must be distributed to it. CIM Hwy 7's arguments can be summarized thus:

a. The settlement funds in question were derived solely from the proceeds of sale. The plaintiffs had no proprietary interest in the project. The documentation for the May 5, 2017, loan could not result in a priority payout to the plaintiffs, because they only secured a loan to 256. The court order dated January 13, 2022, just prior to the settlement, stated that 256 was not to receive any part of the settlement funds. Because no funds were paid to 256 from the mortgage proceeds and the settlement of the Kronenfeld suit, the proceeds could not be considered repayments of the loan.

b. Harvin Pitch presented the Minutes of Settlement of the Kronenfeld litigation for execution to all parties and specifically advised his clients that the payment after the charitable donation should be divided in accordance with the percentage interests in the joint venture: 55% to CIM Hwy 7 Holdings LP and 45% to Kingsberg Developments 2017 Holdings Inc.

c. Cimberg paid a disproportionate amount of the limited partnership's expenses, after the Shroff limited partner, controlled by 256, stopped contributing financially to the project. Cimberg, as limited partner, should be compensated for this overpayment out of the sale proceeds beyond its 50% entitlement.

[45] I will now address these arguments.

(a) Whether Any Part of the Proceeds Were Loan Repayments by 256

[46] CIM Hwy 7's main argument was that the trust attaching to 256's loan did not affect the distribution of the settlement funds from the litigation, because the settlement did not yield a payment to 256 in respect of its 50% interest in the limited partnership. Cimberg's trust obligation, under the First Trust Declaration, only prioritized repayment *from* 256:

> With respect to repayment, the parties hereto agree that Facility #2 shall have a higher priority over Facility #1. In the case of partial payment under the Loan Agreement, all proceeds will be applied first to reduce and/or repay Facility #2.

[47] The obvious flaw in this claim to entitlement to 100% is that the proprietary claim is based on a 50% interest in the lands held through the limited partnership. The limited partnership being held 50/50 by the limited partners, Cimberg as one of the partners was entitled only to half the proceeds.

[48] Cimberg's role as the trustee of the 55/45 joint venture in the limited partnership was governed by a Joint Venture Agreement ("JVA"), undated apart from being drafted in April 2017. The JVA governed how Cimberg held 50% of the limited partnership with 256 and did not state how it acquired those partnership units. The JVA provided for contribution to carrying costs and other property development expenses, in proportion to the 55/45 split. The joint venturers elected to play along with Mr. Shroff's capital gain deferral and structure as a debt the consideration for transfer of the 50% interest *and* the protection of the investors' discharge of the $4,000,000 second mortgage and the injection of $8,000,000 in new money. Nothing in the JVA document provided any beneficial entitlement to the other half of the partnership units held by 256.

[49] Therefore, it would have been possible to turn CIM Hwy 7's argument on its head. Absent consideration for the transaction beyond the funds advanced as loans, Cimberg held 50% of the partnership assets as a resulting trust for itself and Kingsberg, as *lenders*, not for the two subsidiaries. The law presumes such a trust, because of the value contributed entirely by those who paid: *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 SCR 795, at para. 20. Had the parties treated or organized the $12,000,000 transaction with Mr. Shroff as a purchase instead of a loan, they would likely have needed to find another way to secure control over 256's 50% interest. The loan facilities constituted the method the parties chose. The ensuing legal result, however, would still favour awarding the interpleaded funds to the plaintiffs.

[50] Beyond the conclusory effect of the two final court orders in the Kronenfeld suit, there was no rational legal explanation for Cimberg's entitlement to receipt of 100% of the net proceeds of the sale of the property and liquidation of the limited partnership. The consent order involved no adjudication. The court did not adjudicate 256's lack of entitlement to a share of the proceeds of the sale. A judicial decision is a condition of issue estoppel:

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Danyluk v. Ainsworth Technologies Inc., 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 25; and *Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354, 145 O.R. (3d) 759, at para. 51, leave to appeal refused, [2019] S.C.C.A. No. 284. Accordingly, the order could not have created an estoppel regarding an issue arising from that non-entitlement beyond precluding 256 from later reclaiming it. Therefore, 256's empty-handed exit from the litigation and the distribution cannot guide what Cimberg was obligated to do with 256's 50% share of the proceeds. I have already cited Mr. Pitch's evidence that the loan dissuaded Mr. Shroff from claiming any portion of the fund on behalf of 256. The parties did not draw the loan documentation as pure formality and devised it to allow them to recoup their investment before Mr. Shroff shared in the profits. That structure also had the real practical effect of freezing Mr. Shroff out of any claim to the sale proceeds, in the event the property was sold at a loss or by power of sale.

[51] Finally, it was evident from the correspondence at the conclusion of the Kronenfeld settlement that the principals of Cimberg preferred the joint venture trust to the priority of Facility #2 in the debt trust. The settlement with Mr. Kronenfeld and the allocations to charity appear to have demonstrated either ignorance or disregard for ensuring that the beneficial creditors under the two facilities were made whole. There was insufficient evidence to determine whether this preference was intentional or derived from lack of perspective over the whole transactional structure they had organized.

[52] Nevertheless, it is trite law that a trustee must not act in a manner that creates a conflict between its duties and interests: *Pirani v. Pirani*, 2022 BCCA 65, 63 B.C.L.R. (6th) 232, at para. 94. Trust documents must identify the settlors' property: D. W. M. Waters, *Waters' Law of Trusts in Canada*, 5th ed. (Toronto: Thomson Reuters, 2021), at pp. 163-164. The residual interest did not lack certainty, as was the case in *Re Beardmore Trusts*, [1952] 1 D.L.R. 41, at pp. 46-47.

[53] Once 100% of the remaining proceeds fell into Cimberg's hands, the money was subject to its two trusts. There was no uncertainty of the property in the first trust, i.e., half of the remaining fund as the limited partner's interest, to be allocated 55/45 to the holding companies as beneficiaries. The fact that half of the net proceeds did not first land in 256's bank account before falling to Cimberg as trustees of the $10,857,831.58 did not make the money any less a repayment or settlement of the loan agreement in which 256 was the debtor. Because the interpleader must dispose of the 50% payable to 256 from the net proceeds, the court's duty is to follow the paper and award the sum to the plaintiffs. For the reasons dealing with CIM Hwy 7's argument about the partnership set-off, Cimberg as trustee and limited partner has no right to 256's portion in priority to the plaintiffs.

(b) Harvey Pitch's Formulation of the Settlement of the Kronenfeld Suit

[54] CIM Hwy 7 relied on advice from Mr. Pitch and approval by an officer of Cimberg of a direction to pay the funds out to the two holding companies, CIM Hwy 7 and Kingsberg Developments 2017 Holdings Inc., in the 55/45 proportion in the JVA.

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[55] Mr. Pitch testified that he was instructed to settle the Kronenfeld litigation with Cimberg as trustee. He was unaware of a potential dispute between the beneficiary groups of the two trusts. His retainer did not extend to resolving such disputes. Because he acted for both Cimberg and Kingsberg, he could not advise the parties on such a dispute.

[56] Ultimately, what Mr. Pitch said or did not say about the priority dispute in this action should be accorded little or no weight. His handling of the Kronenfeld litigation and the distribution of the proceeds of sale were but incidental events and signposts framing the funding of Cimberg with the $11,200,000. His evidence regarding the negotiation of the settlement, including Mr. Shroff's agreement to it, supported the plaintiff's entitlement under the loan facility, but it was ultimately unnecessary.

(c) Amounts Owed by 256 to Cimberg in the Limited Partnership

[57] CIM Hwy 7 pointed to $5,710,506.42 in expenditures Cimberg had made to third party creditors of the limited partnership for upkeep, carrying, and legal costs to which 256 made no reciprocal contribution. There was no rigorous accounting of this, but it was conceded that balancing the ledger by transferring $2,855,253.21 of the burden to 256 would not have amounted to half of the $11,200,000. Assuming the validity of the Cimberg limited partner's claim to set-off in the partnership distribution, the claim fell short of entitlement to all of 256's share by $2,744,746.79 (half of $11,200,000 less $2,855,253.21). But for the loan facilities, that difference would have been distributed to 256. Based on the position that the loan facilities could be realized only through repayment via 256, this argument effectively conceded the plaintiffs' entitlement to that $2,744,746.79.

[58] The legal flaw in this argument was that there was no agreement in evidence between the limited partners and no other basis to depart from the statutory distribution under the *Partnerships Act.* Pursuant to s. 10(2)(b) and s. 44, para. 1, of the Act, neither partner was liable for partnership debts to third parties. Cimberg's over-contribution must therefore be considered rateable advances to the limited partnership, as opposed to the breach of an obligation on the part of 256. Under s. 44, para. 2(a), debts and liabilities owed to "persons who are not partners" were higher in priority to advances made by partners under para. 2(b). Cimberg was the partner. Kingsberg, as trustee of Facility #2 for itself and OnePiece under the Second Trust Declaration, was not a partner. Therefore, any distribution of the assets of the partnership had to be paid out to the plaintiffs in priority to Cimberg's advance.

[59] I appreciate that the parties' pleadings did not fully disclose this point. However, by relying on an accounting of Cimberg's over-contribution to the project to justify a claim to 256's portion of the partnership distribution, CIM Hwy 7 necessarily put s. 44 in issue.

CONCLUSION AND COSTS

[60] I will award the plaintiffs the $2,857,831.58 held in trust by Teplitsky LLP, plus any accrued interest.

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[61] I encourage the parties to resolve the costs of the proceedings. If they cannot agree, I invite the plaintiffs to submit their bill of costs and costs submissions (the latter being no longer than two pages in length), within 20 days of the release of these reasons. Any responding submissions may be submitted within 14 days thereafter. In either case, the materials shall be both served and filed with the court and sent to my judicial assistant.

Akazaki J.

Released: March 23, 2026

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CITATION: OnePiece (WB) Developments Inc. et al. v. Cimberg Developments Inc., et al, 2026 ONSC 1132
COURT FILE NO.: CV-22-00679830-0000
DATE: 20260323

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ONEPIECE (WB) DEVELOPMENTS INC. and KINGSBERG 9999 HOLDING INC.

Plaintiffs

– and –

CIMBERG DEVELOPMENTS INC., KINGSBERG DEVELOPMENTS 2017 HOLDINGS INC., CIM HWY 7 HOLDING LP and TEPLITSKY COLSON LLP, as counsel for Cimberg Developments Inc.

Defendants

REASONS FOR JUDGMENT

Akazaki J.

Released: March 23, 2026