

CITATION: Condoman v. Cannect, 2025 ONSC 248
COURT FILE NO.: CV-24-00723170-0000
DATE: 20250113

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CONDOMAN DEVELOPMENTS INC., 1808176 ONTARIO INC., and
HOWARD YOUHANAN, Plaintiffs

– and –

CANNECT INTERNATIONAL MORTGAGE CORPORATION, CANNECT
MORTGAGE INVESTMENT CORPORATION, and MARCUS TZAFERIS,
Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Wojtek Jaskiewicz and Ari Sorek (Quebec counsel)*, for the Plaintiffs

Matthew Gottlieb and Philip Underwood, for the Defendants

HEARD: January 13, 2025

ENDORSEMENT

[1] This appearance has been convened on an expedited basis in light of developments that have transpired subsequent to the matter being before me in a case conference on December 13, 2024.

[2] Counsel for the Plaintiffs and former counsel for the Defendants appeared at the December case conference to set a date for an injunction motion. Defendants have a blanket mortgage over a number of properties owned by the Plaintiffs. The case conference was convened at Plaintiffs' counsel's request to schedule a motion to enjoin the sale under Power of Sale of properties covered by the blanket mortgage. I understand that the Plaintiff's motion record was served on the Defendants on the day of the case conference, but it was not yet filed with the court and was not before me.

[3] I set down the injunction motion to be heard on July 24, 2025. I gather that the injunction was to be heard at the same time as a summary judgment motion. A full day was booked for the hearing.

[4] Toward the end of the case conference, counsel engaged in a discussion over terms leading up to the hearing date. I indicated in a brief endorsement that pending the return of the motion, the *status quo* is to remain in place and that the Defendants are to refrain from selling properties that are subject to their blanket mortgage, provided that the Plaintiffs keep current on all payments and expenses thereunder. As an exception to that temporary restraint, I stated that the Defendants are at liberty to exercise a Power of Sale over three specific properties in Ontario and also to proceed with a pending sale of a property at 25 Telegram Mews, unit 2203, Toronto, which I was advised was already under a contract of sale. I understood that those were the only properties realistically in play at the moment, and was not asked to exempt any other specific property from the standstill arrangement.

[5] During the course of the case conference discussion, I was asked whether any properties subject to the Defendants' mortgage in two other jurisdictions – Quebec and Florida – could be sold. In response, I questioned out loud whether I could or should make orders with respect to properties outside of Ontario. Frankly, I would not have been inclined to interfere with proceedings that might be before the courts in other jurisdictions where properties at issue are located. But that question did not seem pressing at the time, and so it was left unanswered in my endorsement.

[6] On December 17, 2024, I received correspondence from former counsel for the Defendants asking for a *corrigendum* indicating that the standstill direction in my endorsement was limited to Ontario. He submitted that, in his view, my direction does not apply to a property in Quebec since I have no jurisdiction outside of Ontario. He at first indicated there was some urgency to this question, but upon my further inquiry he advised me that there is no proceeding pending in Quebec which would compel an urgent response during the holiday week. Plaintiffs' counsel also wrote to me stating that he was on vacation, that there was nothing urgent pending anywhere, and that he would respond after returning from his holiday.

[7] Counsel for the Plaintiffs ultimately responded to the Defendants' request on December 24, 2024. He submitted, citing *Google Inc. v. Equustek Solutions Inc.*, [2017] 1 SCR 82, that an Ontario court does have *in personam* jurisdiction to issue a worldwide injunction. He further contended that my prohibition on any sales beyond those specifically authorized in my endorsement necessarily applies to any of the Plaintiffs' properties in any jurisdiction.

[8] Since I had been advised that nothing is pending and nothing is urgent in Quebec or elsewhere, I declined to issue a clarification or correction of my previous endorsement. In a brief addendum, I stated that the enforceability of my prohibition on sales pending the July 24, 2025 motion can be left to a court in the relevant jurisdiction if and when a party raises the matter in a proceeding before it.

[9] The Defendants then appointed new counsel, who wrote to me this past week. What I did not appreciate, but what has now been clarified to me, is that a property in Montreal that is subject to the Defendants' blanket mortgage is already under a firm contract of sale, and that this is a judicially authorized sale entered into pursuant to a Quebec court order dated July 18, 2024. It appears that the vendor of the sale of the Montreal property is, formally speaking, a bailiff acting under judicial authority and appointed by the Quebec court at the behest of the Plaintiffs' creditors.

[10] I am advised that the sale of the Montreal property is set to close later this month. I am further advised that last week, on January 7, 2025, the Plaintiffs brought an urgent motion in court in Quebec, returnable tomorrow, seeking to enjoin the sale of the Montreal property. I understand that the Plaintiffs' motion is based, at least in part, on an interpretation of my endorsement which would prohibit the sale of any of the Plaintiffs' properties worldwide – a prohibition which, I agree with Plaintiffs' counsel, I could theoretically have made, but which I did not make but rather on which I stayed silent.

[11] The implication of the Plaintiffs' interpretation is that my case conference direction regarding the sale of certain Ontario properties and non-sale of the rest has, at least temporarily, blocked a judicially approved sale in Montreal – i.e. that I have stayed the operation of a Quebec court order. With the greatest of respect to counsel, that is not the effect of my endorsement or of my direction regarding the properties at issue pending the return of the motion in Ontario.

[12] The Superior Court of Justice in Ontario does have *in personam* jurisdiction over a party appearing before it and so could, if it were so inclined, issue an order that restricts that party's dealing with assets in or out of Ontario. However, the court does not have direct authority over property located in another province, and in the ordinary course I would defer to an order of a court in that province that has authorized a sale.

[13] What the Plaintiffs' position amounts to would transform a standstill direction, issued as a non-controversial term of adjournment since it attempted to exempt any properties that could realistically be subject to sale over the course of the next months, into something even more far-reaching than an injunction over a pending sale of Quebec property. It would, in effect, turn a single sentence in a scheduling endorsement into a form of anti-suit injunction aimed at countering or pre-empting litigation in Quebec. And it would have done so based on no evidentiary record at all.

[14] That far reaching interpretation of my endorsement would represent a rather aggressive order that no one at the December case conference requested and that I did not grant. In fact, there was nothing before me that could have supported such an order, which would override principles of deference and comity and would have to meet a very high test: *Amchem Products Incorporated v. British Columbia (Workers' Compensation Board)*, [1993] 1 SCR 897, at 912-913.

[15] In short, my endorsement did not address properties outside of Ontario, and should not be interpreted as interfering with or impacting on any court process or transaction in any other jurisdiction. More specifically, it did not purport to block any court authorized sale in Quebec. Whether the sale of the Montreal property is permitted or prohibited is a question for the Quebec courts.

[16] Separately, and as indicated in my December 13, 2024 endorsement, the sale of the property at 25 Telegram Mews, Toronto, is not prohibited. I specifically permitted it to proceed to closing. I am advised that the closing is scheduled to take place tomorrow. The parties are encouraged to work cooperatively toward that closing. My endorsement cannot be interpreted as authorizing anyone to take any steps to block the sale of that property; in fact, my endorsement did the opposite and exempted 25 Telegram Mews from the standstill arrangement.

[17] Both sides' counsel have expressed a strong interest in expediting the hearing of the injunction motion scheduled for July. I indicated to them at the hearing this morning that I will make every effort to arrange an earlier date. I am hopeful that they will hear from the court shortly in that regard.

Date: January 13, 2025

Morgan J.