

CITATION: Condoman Developments v. Cannect International Mortgage, 2024 ONSC 1641

COURT FILE NO.: CV-24-00723170-0000

DATE: 20250314

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, LOOKOUT CONDOMAN DEVELOPMENTS INC., THEODOPOLIS DEVELOPMENT CORP., 2638169 ONTARIO INC., 2638170 ONTARIO INC. and MARCUS TZAFERIS, Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Denna Jalili*, for the Plaintiffs/Defendants by Counterclaim

Matthew Gottlieb, Philip Underwood, and Dantae Gagnier, for the Defendants/Plaintiffs by Counterclaim, Cannect International Mortgage Corporation, Cannect Mortgage Investment Corporation and Marcus Tzaferis

HEARD: March 5, 2025

REASONS FOR DECISION

I. Background

[1] The Plaintiff, Howard Youhanan, and his companies, Condoman Developments Inc. and 1808176 Ontario Inc. (“Condoman”), are real estate developers and investors who owe over \$46,000,000 to the Defendant, Marcus Tzaferis, and his companies, Cannect International Mortgage Corporation and Cannect Mortgage Investment Corporation (“Cannect”). The loan has been in default since early 2023.

[2] Tzaferis and/or Cannect have been enforcing their rights by selling under Power of Sale properties belonging to Youhanan and/or Condoman on which they have registered mortgages. In

this motion, Youhanan and Condoman seek to enjoin that mortgage enforcement, arguing that the loans are not really loans and are not enforceable as such.

[3] Howard Youhanan is a successful real estate broker and developer who has been in business for over 20 years. He promotes himself as “Howard the Condoman, the #1 condominium broker in Toronto”, and advertises having sold over 3,000 condo units in his career. He and/or Condoman or related companies own real estate in Ontario, Quebec, and Florida, and have developed several properties in Toronto.

[4] In his sworn evidence, Youhanan readily concedes that he is knowledgeable about mortgages and real estate lending/finance. His website, images from which were put to him in cross-examination and are in the record, credits him as having a “vast knowledge of condominiums”. It goes on to explain:

Howard leads a team including planning, engineering, building, marketing, and sales. He can help take your project through from beginning to end including business planning and sales projections, rezoning, site plan, sales, marketing, and construction.

[5] There is no doubt that Youhanan understands the real estate industry; in fact, he would be the first to tell you so. He understands its physical and design aspects, he understands its financial aspects, and he understands its documents. Moreover, he knows how to get into a mortgage, and, as he told another business associate, Elie Soberano, in 2023, he knows how to try to get out of one.

[6] In April 2023, with the Condoman loans in default and the debt mounting, Cannect issued a Notice of Sale for a number of the mortgaged properties. Several have already been sold under that process.

[7] On July 3, 2024, Youhanan and Condoman issued a Statement of Claim alleging that the mortgages were not enforceable because they are contrary to a partnership that the pleading alleges exists between the parties. They contend that Cannect’s mortgages are not real or enforceable as mortgages, that Tzferis and Cannect made equity investments in the projects rather than loans, and that no consideration was given for the mortgages. They move for an interlocutory injunction to prevent the sale of the properties pending a full adjudication of their claim.

[8] In response, Tzferis and Cannect state that the challenge to the mortgages is contrived, and that the injunction motion is a delay tactic to put off enforcement of their rights under the loans and security they hold. They submit that every assertion by Youhanan is contradicted by evidence in the record, including signed agreements and registered mortgages, affidavit evidence from Tzferis and several non-party witnesses, and correspondence from and cross-examination testimony by Youhanan himself.

[9] In short, Youhanan deposes that he was unaware of the mortgages that he signed and thought that Tzferis was an equity investor, while Tzferis points to a combination of documentary evidence and witness testimony to the contrary.

II. The mortgages

[10] The Plaintiffs and related entities own three development properties in Toronto on which Cannect has registered mortgages: (a) 1245–1249 Queen St. East (the “Queen Property”), (b) 31 and 39 Gladstone Ave. (the “Gladstone Properties”), which are owned by two other companies controlled by Youhanan, 2638169 Ontario and 2638170 Ontario, and (c) 507, 509 and 511 Kingston Rd. (the “Kingston Property”), which is owned by Youhanan’s company, Lookout Condoman.

[11] Cannect has issued Notices of Sale in respect of the Gladstone Properties and the Queen Property. Cannect International also has a \$30 million charge over the Kingston Property, which was registered on October 11, 2023, but it has not issued a notice of sale for that property. After Youhanan/Condoman defaulted on the Kingston Property, Cannect took it over in order to complete the development and sell the condominium units to recoup some of its losses.

[12] The security for Cannect’s mortgages was also registered against title to a number of condominiums owned (or formerly owned and subsequently sold) by Youhanan personally or through 1808176 Ontario Inc. Youhanan pledged these properties as security for the development loans made to him or his companies by Cannect. These include: (a) 741 Richmond St. West (sold), (b) 2611-8 Park Rd. (sold), (c) 1803-381-Front St. West (sold), (d) 2102-55 East Liberty St. (sold), (e) 608-38 Cameron St., (f) 3609-397 Front St. West, (g) 5102-65 Bremner Blvd., (h) 2203-25 Telegram Mews (sold), (i) 208-10 Navy Wharf Court, and (j) LW1-90 Broadview Avenue.

[13] Counsel have confirmed that the properties that are already sold are not at issue in this action. In addition, properties owned by Condoman or related entities in Quebec and Florida that are subject to Cannect mortgages are being addressed by courts in those jurisdictions and are not at issue here.

III. The Gladstone Properties

[14] Youhanan and Tzaferis are long time friends and business associates. In 2018, Youhanan approached Tzaferis with an investment opportunity in the Gladstone Properties, which appeared to be a promising development prospect. Since Youhanan did not have the necessary funds, he turned to Tzaferis for financing. The infusion of funds for the Gladstone Properties turned out to be a combination of equity investments and mortgage loans.

[15] Youhanan and Tzaferis, or their related entities, agreed to each contribute \$2 million of equity financing for the project. It was Youhanan’s assessment that this amount, along with a \$4 million first mortgage from Firm Capital, would suffice to get the development going until it could secure construction financing. On July 18, 2018, the parties entered into a written agreement reflecting these terms.

[16] Tzaferis then brought in another friend and business associate, Elie Soberano, who contributed \$1 million in equity, thereby reducing Tzaferis’ own equity investment in the Gladstone Properties to \$1 million. Further, Youhanan did not have the funds available to make his \$2 million investment. Accordingly, Tzaferis arranged for Cannect to lend Youhanan \$2

million, which was then secured by a \$2 million mortgage against properties owned either by Youhanan personally or by his holding company, 1808176 Ontario Inc.

[17] Youhanan signed all of the documents for this loan from Cannect. He does not dispute the validity of those documents or the enforceability of the Gladstone mortgage.

IV. The Kingston Property

[18] As the parties tell it, the financing arrangements for the Kingston Property comprise a long story. For present purposes, however, one can cut to the chase. In his affidavit filed in the motion record, Youhanan is at pains to describe Tzaferis' contribution to the Kingston Property as equity rather than debt. In doing so, what he seems to overlook is that, unlike with the Gladstone Property, an equity component to the investment was not what the parties agreed to. The documentation for these loans call them loans, provide for a term and a rate of return, are secured on Youhanan's various properties, and were duly signed by Youhanan himself.

[19] In November 2018, Youhanan approached Tzaferis with another proposed condo development on Kingston Road in Toronto. As in his previous development, Youhanan lacked the funds to acquire the property. Tzaferis agreed to provide him with \$300,000 to cover the deposits on the land. Youhanan deposes in an affidavit that this was an "equity contribution". That characterization, however, is contrary to every document relating to the Kingston Property, including the loan agreement itself which was confirmed and signed by Messrs. Youhanan and Tzaferis on July 23, 2020:

KINGSTON ROAD PROJECT

q. CIMC [Cannect] to invest a maximum of \$400,000 in the Kingston Road Project. The interest rate earned on such investment shall be 15 per cent for the first year commencing on January 1, 2020, increasing by 2.5 per cent each calendar year up to a maximum of 40 per cent.

[20] In cross-examination, Youhanan acknowledged that the funds referred to in this clause are in fact Tzaferis' deposit monies for the Kingston Project:

Q: Perfect. And that \$400,000 was comprised of the \$300,000 that was forwarded for the deposits and then some ancillary amounts on top of that, correct?

A: That's right. And the deposits were given –

[21] Youhanan's tendency to mischaracterize debt financing as equity investment continued to the next stage of the Kingston Project. Despite having secured a first mortgage from Firm Capital to cover a portion of the purchase price, Youhanan was still short of funds for the acquisition. He again turned to Tzaferis, who, through his mortgage brokerage firm, Cannect, sought investors to contribute to a loan. In his reply affidavit, Youhanan exhibits an email dated February 1, 2019 in which Tzaferis is writing to potential investors, and which, remarkably, Youhanan says shows that Cannect was seeking equity investors despite its saying the exact opposite:

We are providing a loan to Howard Youhanan personally and his companies (1808176 Ontario Inc, Condoman Developments, and Condoman Realty). The purpose of this loan is to facilitate the development of “The Look Out”, a condominium development at 507-511 Kingston Road, Toronto, Ontario. In addition to being secured against the project this loan will also be secured against some of Howard Youhanan’s properties.

[22] The theory of this, as put forward by counsel for Condoman and Youhanan, is that, to put the matter at its most basic, Cannect and Tzaferis tried too hard to fund the Kingston Property to be mere lenders. Counsel put it to Tzaferis in cross-examination that he was “scouring” for investors in Youhanan’s project, and that must mean something other than seeking mortgage lenders. It is, frankly, a theory detached from the reality of the mortgage brokerage business in which Cannect is engaged, as Tzaferis explained in cross-examination:

Q: You agree that you undertook a series of efforts to secure financing while with – after the deposit was paid and before closing for Kingston, right?

A: Yes, I was trying to put together the second mortgage financing on the property.

Q: And at that point, is that something you typically do as a lender?

A: Yes.

Q: You –

A: That’s my job.

Q: You scour – and so you have no – you were not worried about your \$300,000 deposit?

A: No, I told you that we registered a second mortgage charge against all these properties. No one is going to come in behind that and effect my security.

My job is to put together mortgages. I’m scouring to put together a mortgage. I’m a mortgage broker and a mortgage lender. That’s my job.

Q: But that –

A: That’s my job.

[23] When Youhanan was cross-examined, he was asked about these efforts made by Tzaferis. He was compelled to agree that Tzaferis was “attempt[ing] to line up people to finance a mortgage loan to the project”.

[24] Counsel for Youhanan makes one more argument to the effect that the Kingston Property financing is not an enforceable mortgage; that is, he contends that Youhanan was coerced into signing the mortgage. This coercion, Condoman’s counsel argues, was a result of intense financial pressure. By mid-February 2019, Youhanan urgently required additional funding sufficient to close the deal before Firm Capital would advance its loan.

[25] Tzaferis again introduced Youhanan to an investor with whom he had worked in the past, Glen Gibbons, who Tzaferis indicated in a February 10, 2019 email was “prepared to do the whole loan for Kingston Road”. Gibbons has sworn that he and Youhanan independently negotiated and reached an agreement for Gibbons to lend the Kingston Property project \$6 million, at an interest rate of 43% for a term of one year and which would be secured against Youhanan’s personal properties.

[26] Lawyers representing Gibbons have deposed that there is no doubt that Youhanan understood the nature of the transaction as a loan that would be secured against his properties. On February 12, 2019, Youhanan sent an email confirming that he was waiving his right to independent legal advice. He also discussed details about the personal properties that would be used as security for the loan, leaving no doubt that he knew the terms and accepted them. Indeed, his email response to Gibbons’ lawyer indicates that he was relieved and anxious to accept the terms of this loan:

Re: Financing
howard condoman howardscondos@gmail.com
Tue, Feb 12, 2019 at 8:25 PM
To: Zahir Manek zahir@cannect.ca
Cc: Bank of marcus marcus.tzaferis@morcandirect.com

1. And 2. Will send tax bills
3. Sole signing offer
- 4 waiving
5. I won't have these quickly enough
6. I can not file in time for closing

From: zahir@cannect.ca
Sent: February 12, 2019 7:09 PM
To: howardscondos@gmail.com

Subject: Financing

Howard, We are putting together the documentation for the financing and have a few questions for you.

- 1) We can't locate the property at 101-90 Broadview, Toronto, ON M4M OA7. According to the City's records, the units start at 201; and
2. We can't locate the property at 65 Bremner, Unit 5102. Do we have the addresses correct? If we have the addresses correct, do you have tax bills for us to obtain the roll numbers?
- 3) We are assuming you are the sole signing officer for all of the corporate borrowers. Please confirm.

4) Do you have legal counsel or are you planning on waiving your right to ILA? If you are planning on using legal counsel please let us know who that is as we will have a very tight timeframe to turn the documents once they are prepared.

5) We will need Certificates of Location and Tax Statements for the 2 Quebec Properties; and

6) Our agent in Quebec has confirmed that the owner of the Quebec properties is registered at the Quebec Enterprise Register, but its filings are in arrears since 2016 so we require updated filings to be made asap.

Let me know if you have any questions...

[27] While Youhanan's responses are terse, they leave no doubt that he understood the details to which he was agreeing. But what his counsel argues is that this exchange demonstrates the financial pressure felt by Youhanan as the closing date for the purchase of the Kingston Property was approaching. It is Youhanan's position that this financial pressure amounted to a coercive situation in which he was given little choice but to sign the Gibbons mortgage.

[28] With the greatest of respect, there is nothing coercive, and no display of duress, in the exchange between Youhanan and Mr. Gibbons' lawyer. It shows that Youhanan was entering the mortgage out of financial necessity – in fact, two days before the Kingston closing, Youhanan sent an email to Tzaferis urging him to expedite the process. The subject line was: "URGENT – 507,509 and 511 Kingston Road, Toronto. MONEY!!!!!!".

[29] But that is generally the case with commercial mortgages that the borrower has pressing financial imperatives. At some level, all borrowers 'need the money'. They would otherwise not be borrowing large sums and granting security against their property. If financial necessity were in and of itself a reason to undermine the enforceability of a mortgage loan, I dare say there would be no mortgage loans to real estate developers.

[30] In fact, counsel for Cannect points out that duress or coercion are not pleaded in Condoman's Statement of Claim. Instead, the claim is fashioned as one of oppression under section 248 of the Ontario *Business Corporations Act*, RSO 1990, c. B.16 ("OBCA"). That cause of action, however, is not applicable to borrowers and lenders; rather, it depends on the parties being co-equity investors and shareholders in a corporate enterprise. That is simply not the case here, although at an earlier stage of this action it seemed to be the position taken by Youhanan.

[31] In his initial motion record, Youhanan asserted that the Kingston Property was purchased by a company owned jointly by him and Tzaferis. However, it became apparent once Tzaferis served his responding affidavit that that is not the case. The Kingston Property was purchased by Condoman Developments and was then transferred to Lookout Condoman, both of which are solely owned by Youhanan. In his cross-examination, Youhanan conceded this point, stating that, "I was the only one on title on Kingston."

[32] Accordingly, not only is there no evidence of coercion or duress in the record, and not only is coercion or duress not pleaded in the Statement of Claim, but the related claim that is pleaded –

oppression under the OBCA – is not relevant to the parties’ relationship. They are not co-owners or co-equity investors; they are borrower/mortgagor and lender/mortgagee, and their legal relationship conforms with that arrangement. Tzaferis deposes in his affidavit that Youhanan insisted that the ownership of the Kingston Property is “100% Howard”, and there is nothing in the record that suggests otherwise.

[33] There is one more unusual twist to the dealings with Kingston Property. On June 11, 2020 – i.e. long after the purchase of the Kingston Property, the taking of title in the name of a company solely owned by Youhanan, and the making of the Gibbons loan – Youhanan and Tzaferis signed a “Kingston Management Agreement” naming Tzaferis as the “developer” of the project. The evidence shows, and Youhanan and Tzaferis both now concur, that Tzaferis is not, in fact the developer of the Kingston Property, but was put forward as the nominal developer for the purposes of satisfying the Tarion warranty program. Tarion had taken issue with the number of development projects that Youhanan had on the go, and had begun to indicate that it would not cover another Youhanan project in its home warranty program. Youhanan was aware that failure to obtain Tarion’s support threatened to derail the project.

[34] Tzaferis freely admits that the “agreement” of June 2020 identified him as “developer” in name only, and that it was done for one purpose only – to mislead Tarion regarding the parties’ roles on the project. For his part, Youhanan, after much initial posturing that included an incorrect claim that the Kingston Management Agreement was signed in July 2018 – i.e. two years earlier than it was actually signed – has conceded in cross-examination that the sole reason he entered into this agreement with Tzaferis was to convince Tarion to support the Kingston Property development project.

Q: And that agreement wasn’t signed until after the purchase of the Kingston Property, correct?

A: As far as I can see, that agreement wasn’t signed until after, yes.

Q: And that agreement was signed for the purposes of Tarion, correct?

A: The version that we attached was signed for the purposes of Tarion, yes.

Q: Okay. And that – sorry, when you say the “version” – but the version of – the agreement that was signed, as we said, of the Kingston partnership agreement on June 11, 2020, that was prepared for the purposes of Tarion, correct?

A: Yes, that agreement was. Yes.

[35] Youhanan effectively had no choice but to concede that there was no partnership with Tzaferis, and that the suggestion that Tzaferis was a developer rather than a mortgage lender and broker was done strictly to convince Tarion to stay with the Kingston Property project. Youhanan had himself advised others that this was the case all along. Thus, in October 2019, he wrote to an insurance broker that the development “could go under my name so Corp. is in Marcus name”. In September 2019, he was recruiting business associates to accompany Tzaferis to a meeting with Tarion, since Tzaferis was not the real developer. His email of September 13, 2019 reads:

Can one of you go with Marcus on this Tarion meeting?

I can't go (as I'm not supposed to be on the file).

[36] In fact, on June 11, 2020, the very day on which the Kingston Management Agreement was signed, Tzaferis received an email from another mortgage broker confirming that, since Tzaferis is not an equity partner in the Kingston Property, a new lender would not need any financial statements from him. The broker's email of June 11, 2020 states:

Marcus, I just spoke with Howard and I'll go back to Fiera again to tell them it's 100% Howard. Nothing needed from you at this time.

[37] Tzaferis is straightforward in his sworn testimony about the June 2020 agreement. He does not shy away from stating that it was done for the purpose of misleading Tarion into thinking that the Kingston Property was not another one of Youhanan's development projects. He explains that he did so in order to assist in advancing the project and in hopes that this would allow Youhanan's company to make pre-sales of condominium units and to thereby begin to service the Gibbons loan. It does not come off as a moment of which Tzaferis is particularly proud, nor should it. But it has the virtue of being honest.

[38] Youhanan's version, which at first attempts to paint Tzaferis as his real partner, is somewhat less forthright. He states that he and Tzaferis not only coordinated their efforts with respect to Tarion, but that they also shared resources. In his affidavit, he asserts:

Tzaferis' representations in his affidavit that I was independently pursuing the Kingston Project is inconsistent with the fact that we shared resources as we pursued the Kingston project together, including the same bookkeeper, lawyers, and office space.

[39] It is beyond me to comprehend how a lender sharing office space with a borrower turns the lender into something other than a lender, and Youhanan does not explain it. He simply leaves the suggestion dangling in the air that Tzaferis was somehow more than he says he was.

[40] Youhanan does the same thing in his reply affidavit, challenging Tzaferis' status as lender by describing how Tzaferis told him that "we need another lender", or that "these guys can't charge us 8.5%..." Youhanan's counsel took a similar approach at the hearing of the motion. He spent considerable time identifying instances where Tzaferis, a documented lender to Youhanan's real estate projects, referred to one or another of the projects as "we", and suggested that the language used is indicative of the legal relationship of co-owners.

[41] As I pointed out to counsel, a lender using the royal "we" to a third party in reference to a real estate project he is financing does not make him an equity owner. In much the same way, a corporate solicitor negotiating an acquisition for his client does not become a co-owner with the client if he or she says "we are making you an offer..." With respect, sharing a photocopy machine, or using a casual turn of phrase, must be understood with an air of reality. In the same vein,

advocacy is most helpful when it, too, reflects reality rather than when it overheats or strains to re-shape it.

[42] As Tzaferis' counsel points out, even on its face the June 11, 2020 agreement, while it calls Tzaferis the "developer" and indicates that he is an owner of the Kingston Property and project, does not prohibit or in any way prevent Cannect or Tzaferis himself from lending money to the project. The agreement sent to Tarion suggested that Tzaferis is a co-owner, whereas the evidence shows that he really was not. But even a co-owner can be a creditor to the enterprise; those two categories are not mutually exclusive. Nothing in the Kingston Management Agreement counters Cannect/Tzaferis' claim for return of overdue borrowed funds.

[43] Given that Youhanan had convinced Tzaferis to collaborate with him in the approach to Tarion, and given that Youhanan's own correspondence indicates that the supposed partnership between him and Tzaferis was not real, Youhanan's approach to the Kingston Management Agreement is disturbing. The way Youhanan tries to paint it is, in effect, a falsification of a falsification. One might think that, under the circumstances, there would be some "honour among thieves", as they say, but Youhanan's version of events shows that here there is not.

V. The November/December 2022 agreements

[44] Even with the Gibbons loan in place, Youhanan continued to incur financial difficulties. He sought and received a number of additional loans from Cannect from late 2021 to late 2022. The details of all of these loans are not germane to the issues on the injunction, as Youhanan and Condoman do not deny that they are loans or that they are due and payable (although they appear to dispute the amount owing). Indeed, the record is replete with correspondence and conversations with Youhanan in which he requests, negotiates, confirms, and refers to Cannect's financial contributions after acquisition of the Kingston Property as loans.

[45] More specifically, Youhanan has conceded that he agreed to the further loans from Cannect and that Cannect has advanced the agreed-upon funds. As he put it in cross-examination, "So I had no choice but to sign any loan that Marcus presented to me after the Glen Gibbons loan turned out to be, in fact, a loan". What he meant, of course, is that he "had no choice" due to his financial circumstances, but not because of any wrongful conduct by Tzaferis or Cannect.

[46] In fact, in much the same way, Cannect's counsel states in their factum that, "Tzaferis and Cannect had little choice but to continue to advancing funds to Youhanan in the hopes that he would be able to complete the developments or otherwise raise funds to pay off the increasingly large amounts he owed to Cannect." Generally speaking, external financial need is not coercion or duress in the contract law sense of those terms.

[47] The series of incremental loans by Cannect in seeking to keep Youhanan's projects afloat included a \$12 million mortgage loan negotiated and granted in November 2021. However, as Tzaferis explains it, by October 2022 it was obvious to all that the \$12 million mortgage would not be sufficient to secure all of the funds Cannect had advanced, and was continuing to advance, to Youhanan and his companies in an effort to keep all of his mortgages current.

[48] In a loan commitment dated November 7, 2022 and signed November 14, 2022, Cannect agreed to make Youhanan and his companies a further loan of up to \$30 million at 20% interest, compounded monthly, secured again by a mortgage against all of Youhanan's properties. These funds were partially used to pay down the \$12 million loan already owed to Cannect.

[49] At the same time, Cannect also made a further loan in the amount of \$4.2 million pursuant to a loan commitment dated November 14, 2022. This loan was to be secured against the Queen Street Property. In entering into this new loan, Youhanan signed a direction confirming that the funds were being used to pay down a previous loan in favour of Cannect dated May 2020.

[50] The following month, on December 20, 2022, Youhanan (both personally and on behalf of his companies) entered into a Repayment and Buyout Agreement with Cannect. The Cannect parties are, quite naturally, referred to as "Lender" in this agreement, while Youhanan and his companies are referred to as "Borrower". It provides for certain events to occur upon full repayment of the loans by the Youhanan entities. It leaves no doubt that the matters being referred to are loans, that security over Youhanan's properties has been granted in respect of these loans, and that repayment is obligated and expected.

[51] The Repayment and Buyout Agreement recites the various loans made by Tzaferis and his corporate entities to Youhanan and his corporate entities, along with the various charges that Youhanan and his corporate entities have granted to Tzaferis and his corporate entities. It specifically states that, "The recitals hereto are true and form an integral part of this Agreement." The list of loans and charges particularized in the Repayment and Buyout Agreement presents itself as being a complete list of loan agreements in force between the parties. It was signed in their various capacities by Howard Youhanan and Marcus Tzaferis.

[52] In all of these late 2021 and 2022 dealings, in which the entire relationship between the parties was refinanced and restated with new agreements and new security, Youhanan was represented by legal counsel—Adam Dwek of Goldstein & Grubner. I have no hesitation whatsoever in concluding that those November-December 2022 agreements, including the Repayment and Buyout Agreement of December 20, 2022, are valid and enforceable, and that Youhanan knew what he was signing, was advised by counsel, and is obligated thereunder.

[53] In fact, a hallmark of the fact that the loans set out in those agreements are enforceable and the security for the loans is valid is that in his entire presentation at the motion, counsel for Youhanan did not mention them. He proceeded as if they do not exist, and that the correspondence back-and-forth in entering the Kingston Property deal is all that the financial relationship between the parties is really about.

[54] The reason for that is that the late November-December 2022 agreements between the parties summarize, clarify, restructure, and supersede all that came before them, and are irrefutably binding. While Youhanan makes some comment to the effect that there was no consideration for these agreements, that makes no sense. The agreements were for new loans and a re-packaging of existing loans, and were done not only to protect the lenders but to enable them to advance further funds in an effort to keep Youhanan and his companies afloat. Youhanan was advised by counsel

at all times throughout the making of these agreements and, in addition, is a longtime professional in the real estate industry and doubtless understood this himself.

VI. Notices of Sale

[55] In early January 2023, Youhanan and his companies defaulted on their payment obligations to Cannect. On April 14, 2023, Cannect issued Notices of Sale for a number of the Ontario properties, and commenced proceedings in Quebec and Florida.

[56] Cannect has already exercised its powers to sell a number of the Ontario properties that are subject to its security. Youhanan never objected to those sales. In fact, in April 2023 he brokered the sale of one of the condominium units. The proceeds of this sale were then used to partially pay down a loan from Cannect. This sale was followed up on May 8, 2023, when Youhanan wrote to Tzaferis and Mr. Soberano to provide a “sales schedule” for his properties. In his email, he stated that he was “selling my whole life” and asked that the sales be staggered. He also took the opportunity to promise them that “you’re going to get back everything you loaned on Kingston when the project is done.”

[57] In September 2024, with Youhanan’s debt mounting, Tzaferis took over the Kingston Property project in an effort to stop the leakage of funds and to progress with the development work. It is now two years since Youhanan and his companies have been in default under the mortgage loans owed to Cannect. According to Cannect’s calculations, Cannect International Mortgage Corporation was, as of the date of the motion materials in late January 2025, owed over \$34.6 million, while Cannect Mortgage Investment Corporation was owed more than \$8 million.

[58] There is also interest accruing on these amounts as well as protective advances, especially in the ongoing Kingston Property development. The first mortgage payments and taxes over the development properties apparently total more than \$140,000 per month, which does not account for the interest charges on the loans, which apparently amount to more than \$500,000 per month.

[59] The total amount owed to Tsaferis/Cannect by Youhanan/Condoman, and related companies has now ballooned to some \$46 million. In his reply affidavit, Youhanan has admitted that if the various properties were sold, he would likely have to declare bankruptcy – indicating, in other words, that there is insufficient equity in the properties to cover the outstanding loans.

VII. The injunction request

[60] In 2023, when the various mortgages went into default, Tzaferis and Youhanan engaged in negotiations using Elie Soberano as a middle man to facilitate communication. In his affidavit filed in the record, Mr. Soberano deposes:

During these discussions, I recall Youhanan threatening that, if Tzaferis did not agree to his demands, he would tie Tzaferis and Cannect up in litigation and would interfere with Cannect’s exercise of its power of sale against the properties.

[61] I have no way of assessing the truth of Mr. Soberano's hearsay statement, except that the injunction motion before me seems to be a fulfillment of Youhanan's reported statement.

[62] As a matter of law, the motion before me turns on the application of the three-part test in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311. As the Court of Appeal has pointed out, the three criteria are not "watertight compartments"; the force of one of them can potentially compensate for the weakness of another: *Circuit World Corp. v. Lesperance*, 1997 CanLII 1385 (ON CA).

[63] In general, courts are loathe to interfere with the lawful enforcement of mortgages. Justice Nordheimer described this approach in *National Bank of Canada v. Guibord*, 2021 ONCA 864, at para. 6: "The enforcement of security validly given by a party, who is in default, should not be interfered with absent compelling reasons. Otherwise, the essential functioning of these type of commercial arrangements would be undermined." The principle is a venerable one. As Cotton L.J. put it in *Macleod v. Jones* (1883), 24 Ch.D. 289, at 299:

This is an application to restrain a mortgagee from exercising his power of sale. Now under ordinary circumstances the Court never interferes unless there is something very strong...

[64] Moreover, even where there are compelling reasons to restrain an exercise of a power of sale, an injunction is only granted "[u]pon payment into Court of the principal amount, accumulated interest and costs": *Arnold v. Bernstein*, [1971] 1 OR 467, at 470. That approach is still operative today, such that "[a] mortgagee who is acting in good faith and without fraud will not be restrained from a proper exercise of his or her power of sale rights unless the amount owing is paid into court": *Pembroke Developments Inc. v. Singh*, 2024 ONSC 5428, at para. 12.

[65] The debt owed by Youhanan and his entities has grown to a size where it is impossible to envision the amount at issue being paid into court. That said, the question of funds being paid into court is moot. Not only is there no "compelling reason" to interfere with the enforcement of security for loans entered into by him, there is no serious issue to be tried with respect to the enforceability of the security held by Tzaferis and associated entities.

[66] The evidence, including numerous admissions and pieces of correspondence from Youhanan himself, establishes that he agreed to obtain loans from Cannect and related entities and that he agreed to secure those loans with charges against his properties. Youhanan, an experienced real estate professional in his own right, was fully knowledgeable and advised as to the nature and details of the loan and security documents that he signed and to which he agreed.

[67] The loans were made, the money was advanced and accrued, and the mortgages were registered. Youhanan freely consented to it all; there was nothing coercive or oppressive about any of the mortgage loans. Some of the loans, such as the Gibbons loan, have been paid off and/or restructured through other loans which are also undeniably enforceable. And after all of that, Youhanan defaulted on the loans now outstanding. There is simply nothing here that needs to be tried.

[68] Separately, there is no evidence that Youhanan will suffer irreparable harm if an injunction is not granted. The Supreme Court has been clear that irreparable harm is harm that cannot be quantified in monetary terms or compensated through an award of damages: *RJR-MacDonald*, at para. 64. Mortgage loans such as those at issue here are by definition all about money; if Cannect realizes on its security by selling off more than it is rightly owed, then Youhanan and Condoman have a remedy in damages.

[69] In his Notice of Motion, Youhanan contends:

(t) Youhanan would suffer irreparable harm if the injunctive relief is not granted as some of his personal properties for himself and/or his family, while the sale of his investment properties would damage his reputation as a skilled developer and undermine future deals with other lenders in the industry.

(u) The balance of convenience favours the granting of the injunction, as Tzaferis is a well-capitalized private lender that is not in immediate need of the proceeds of sale, while Youhanan will lose the entirety of his lifelong investments should they be liquidated.

[70] With the greatest of respect, neither the irreparable harm test nor the balance of convenience test is meant to be a bar to enforcing debts validly entered into or loans due and owing. The fact is that Youhanan entered into loan agreements which he agreed to secure against his properties. It is not harmful, or inconvenient, for his lenders to realize on security that he knowingly and consensually granted. The loss of those properties would only amount to irreparable harm, or would only tip the balance of convenience in Youhanan's favour, if there were a serious issue to be tried with respect to whether the loans were really loans and whether the mortgages are really enforceable. But there is not.

[71] As for Youhanan's pleading that Tzaferis is "a well-capitalized private lender", there is little, if any relevance to that point. The balance of convenience test is not a contest of personal attributes at large. It therefore does not ask which party is taller and which is shorter, or which side of a dispute is the wealthier side.

[72] The relative convenience of the parties has to be with specific reference to the transaction in issue. Here, the relevant question is whether it is the borrower (regardless of who or what he otherwise is) or the lender (regardless of who or what he otherwise is) who, in the context of these mortgage loans, will be more inconvenienced by an injunction?

[73] Not only is there no evidence supporting Youhanan's assertion that Tzaferis and Cannect are "well-capitalized", but the entire argument is off point. A well capitalized lender needs to be repaid just like an under capitalized lender needs to be repaid. There really is not one law for the rich and one for the poor, as the cliché goes. A party cannot obtain an injunction to stop the other party from collecting a debt by saying that the creditor, while owed the money, doesn't really need it that badly.

[74] If anything, the evidence in the record is to the contrary – i.e. that Youhanan and Condoman are so far under water that an injunction would just put off until later what they otherwise have to pay now, but that Tzaferis and Cannect need to cut their losses while they still can by selling the secured properties before more debt accumulates. Without putting too fine a point on it, having taken millions of dollars from a lender by granting as security what he describes as “the entirety of my lifelong investments”, it is not for Youhanan to say that he needs an injunction so that he does not lose those lifelong investments.

[75] There are two further issues which undermine the supposedly urgent need for an injunction putting a halt to Cannect’s mortgage remedies. First, there was significant delay on the part of Youhanan and his companies in bringing this motion.

[76] The motion was brought almost 20 months after the Notices of Sale were issued. As this court stated in *HJ Sutton Industries Ltd. v. Assured-Packaging Inc.*, 2011 ONSC 3567, at para. 26, quoting R.J. Sharpe, *Injunctions and Specific Performance* (Toronto: Canada Law Book, November 2005),:

The very fact of delay by the plaintiff, quite apart from any question of prejudice to the defendant, may often serve as evidence that the risk is not significant enough to warrant interlocutory relief.

[77] Under the circumstances, I am inclined to agree with Justice Farley that “[d]elay while knowledgeable of the alleged threat to one’s economic interest...is a telling factor against granting interlocutory injunctive relief”: *Berkshire Funding Initiatives Ltd. v. Trinity Capital Corp.*, 2002 CanLII 19464, at para. 2 (SCJ).

[78] Second, and equally important, is the fact that Youhanan has given a hollow undertaking for damages. He has acknowledged – indeed, it is part of his argument on the balance of convenience – that the security for the mortgages to Cannect encompasses all of his properties.

[79] The evidence from Cannect indicates that there is insufficient equity in the properties to satisfy the amounts owing. Since Youhanan declares that he may be bankrupt if Cannect is permitted to carry on with its sale of the properties, it is evident that Youhanan’s undertaking has no value that can be relied upon. All of his assets are already pledged and are already insufficient.

[80] In sum, none of the tests for an injunction under *RJR-MacDonald* have been made out by Youhanan/Condoman. There is no reason to stop Tzaferis/Cannect from exercising their power of sale or from pursuing any of their contractual or mortgage remedies.

VIII. Disposition

[81] The motion by Youhanan/Condoman for an interlocutory injunction is dismissed.

[82] The parties may make written submissions on costs.

[83] I would ask counsel for Tzaferis/Cannect to email my assistant with brief submissions within two weeks of today, and for counsel for Youhanan/Condoman to email my assistant with equally brief submissions within two weeks thereafter.

Date: March 14, 2025

Morgan J.