

CITATION: Condoman Developments Inc. v. Cannect International Mortgage Corporation,
2025 ONSC 4529

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

DATE: 20250805

SUPERIOR COURT OF JUSTICE – ONTARIO

RE:

CONDOMAN DEVELOPMENTS INC., 1808176 ONTARIO INC. and
HOWARD YOUHANAN

Plaintiffs (Defendants by Counterclaim)

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 (Plaintiffs by Counterclaim)

BEFORE: Koehnen J.

COUNSEL: *Philip Underwood* and *Matthew P. Gottlieb*, for the defendants, plaintiffs by
counterclaim, Cannect International Mortgage Corporation, Cannect Mortgage
Investment Corporation, and Marcus Tzaferis

Howard Youhanan on his own behalf

HEARD: July 24, 2025

ENDORSEMENT

Procedural Background

- [1] The defendants, plaintiffs by counterclaim, Cannect International Mortgage Corporation, Cannect Mortgage Investment Corporation, and Marcus Tzaferis (collectively “Cannect”) move for default judgment against the plaintiffs, defendants by counterclaim, Condoman Developments Inc., 1808176 Ontario Inc., and Howard Youhanan (collectively “Condoman”).
- [2] The motion arises because Condoman’s claim and defence to counterclaim have been struck out. That arose out of the following circumstances: Condoman brought an injunction that was dismissed by Justice Morgan on March 14, 2025. Condoman filed a motion for leave to appeal from that dismissal on March 31, 2025. On April 16, Justice Morgan ordered Condoman to pay Cannect’s costs of the injunction on a full indemnity scale which he fixed at \$268,500. On May 5, 2025, Condoman amended its motion for leave to appeal to include an appeal from the costs order.
- [3] On June 25, 2025 Justice Morgan issued an order striking out Condoman’s statement of claim and its defence to the counterclaim for failure to pay the cost award and allowed Cannect’s counterclaim to continue. In doing so, Morgan J. noted that that Condoman had

not sought a motion to stay the cost order and that filing an appeal does not, on its own, stay a costs order.¹

[4] Counsel advises that the Divisional Court will decide the motions for leave to appeal in writing in September.

[5] Cannect now moves for default judgment on its counterclaim.

[6] At the outset of the hearing, Condoman asked that I stay the hearing until the appeals are disposed of. Cannect asks that I proceed with the matter as a matter of default judgment. I agreed to proceed with the hearing before deciding on the stay request.

The Motion for Default Judgment

[7] Cannect's counterclaim arises out of two loans both of which are secured by a number of real properties.

[8] The first loan has been referred to as the Cannect Mortgage Investment Corporation loan. The counterclaim states that the amount owing on that loan at the time the counterclaim was issued was \$7,740,967.29 bearing interest at 12.75% compounded monthly. In light of the defence to the counterclaim being struck out, this is now a deemed admission of fact. Cannect submits that the amount owing together with additional interest at the time of the hearing is \$8,720,788.66.

¹ *Condoman Developments v. Cannect International Mortgage*, 2025 ONSC 3752 citing *Conti v. Duca*, 2025 ONCA 356, at para 22.

- [9] The second loan has been referred to as the Cannect International Mortgage Corporation loan. The counterclaim states that the amount owing on that loan at the time the counterclaim was issued was \$30,141,480.61 bearing interest at 20% per year compounded monthly. In light of the defence to the counterclaim being struck out this is now also a deemed admission of fact. Cannect submits that the amount owing on the Cannect International loan at the time of the hearing is \$36,317,455.72.
- [10] In addition to principal and interest owing under the loans, Cannect also claims protective disbursements under both loans. Protective disbursements fall within the definition of “Costs” under both loans which includes costs incurred by the chargees for or incidental to “protecting, securing, completing, ensuring, repairing, equipping, taking and keeping possession of, managing, selling or leasing the Charged Property, including all protective disbursements and curing any defaults under or renewing any leasehold interests...”.
- [11] Protective disbursements are included in the amounts asserted to be owing in the counterclaim. As a result, protected disbursements that were incurred up to the date of the defence and counterclaim (August 16, 2024) are deemed to have been admitted by virtue of the statement of claim and the defence to counterclaim having been struck out. Disbursements after August 16, 2024 must be proven.
- [12] It does not appear that there were any further disbursements on the Cannect Mortgage Investment Corporation loan after August 16, 2024. The protective disbursements on that loan are included in the amounts set out in the counterclaim and come to \$2,750,000.

- [13] The protective disbursements under the International Mortgage Corporation loan come to \$16,358,854.57. That amount is more contentious.
- [14] Cannect delivered affidavits from its principal, Marcus Tzaferis (“Mr. Tzaferis”), in support of the motion. In his affidavit of January 30, 2025, Mr. Tzaferis attached as Exhibit 70 a list of protective disbursements made under the Cannect International loan. They are broken down into line items with a description for each line item and the property to which the line item relates. It lists protected disbursements up until October 15, 2024.
- [15] As noted, those disbursements incurred up to August 16, 2024 are deemed to have been admitted. Exhibit 70 to Mr. Tzaferis’ affidavit of January 30, 2025 lists additional disbursements to October 15, 2024 broken down by line item and property. That list comes to \$10,253,160.91. I am satisfied that those disbursements have been proven on a balance of probabilities.
- [16] On this motion, however, Cannect claims protective disbursements of \$16,358,854.57 on account of the Cannect International loan.
- [17] Mr. Tzaferis delivered an additional affidavit on this motion dated April 8, 2025. It contains a general statement to the effect that the expenses listed on Exhibit 8 to the affidavit are protective disbursements. Exhibit 8 is simply a list of entries with each one being described as a “protective advance” with no further detail. The list includes the initial disbursements of \$10,253,160.91, but then adds 5 more pages of disbursements coming to an additional \$6,105,693.66.

- [18] In my view, Cannect has not proven those additional disbursements of \$6,105,693.66 on a balance of probabilities. A five-page list of line items that are described only as “protective advance” with no further detail about the nature of the advance or the property to which they relate does not constitute sufficient evidence of protective advances to warrant default judgment. I therefore disallow the additional claim of \$6,105,693.66 of protective disbursements pursuant to the Cannect International loan.
- [19] Given the amount of the default judgment at issue, I also considered the defences that Condoman raised even though its defence to the counterclaim had been struck out. This motion was originally conceived as a motion for summary judgment in respect of which Condoman delivered an affidavit of Howard Younahan (“Mr. Younahan”). Mr. Younahan appeared at the hearing and I heard submissions from him.
- [20] The essential defence of Condoman is that the advances Cannect made were intended to be equity injections rather than loans. At some point Mr. Younahan says someone wrongfully applied his signature to a loan agreement which provided for annual interest rate of 43%. Approximately a year later Condoman consolidated various outstanding debts under the two Cannect loans that are at issue here. Mr. Younahan signed the documentation for both of those loans. Mr. Younahan says he entered those two loans under economic duress and had no choice because he was faced with imminent enforcement of the loan which charged 43% annual interest, and which was consolidated into the two loans at issue.
- [21] In my view that does not provide a defence to the mortgages. Condoman and Mr. Younahan were represented by counsel when they signed the two loans at issue. If in

fact the earlier loan at 43% was fraudulent, that defence ought to have been raised as soon as the document was discovered. Condoman's agreement to consolidate the 43% loan with the two loans at issue now would appear to belie any suggestion of fraud. Similarly, to the extent that Cannect's advances were intended to be equity, that is something that ought to have been raised before agreeing to the two loans at issue. While I am not agreeing that Condoman had the right to raise a defence or make submissions on this motion given Justice Morgan's decision to strike out its defence to counterclaim, I nevertheless wanted to hear what the defence would have been given the considerable size of the judgment sought and the motions for leave to appeal.

- [22] It strikes me that the most appropriate result in the circumstances is to grant judgment but to stay the enforcement of the judgment until after the Divisional Court has ruled on the motions for leave to appeal. At this point, it is only one month before the Divisional Court proposes to decide on those motions as a result of which any prejudice arising from the stay should be minimal. If the Divisional Court dismisses the motions, the judgment shall be enforceable immediately. If the Divisional Court grants the motions, it may be appropriate to stay this judgment further. As I understand it, any such further stay can be ordered by the Divisional Court or by this Court. The most expeditious use of judicial resources may be to have the Divisional Court rule on any further stay if it grants leave to appeal. I am not, however, binding anyone to that process. If the parties cannot reach agreement on that point, they can contact me for a case conference to resolve that issue.

[23] As a result of the foregoing, I grant judgment on the two loans but reduce that judgment by the principal amount of \$6,105,693.66 on account of the unproven protected disbursements plus any interest on account of those disbursements. If the parties cannot agree on the proper calculation they can attend before me on a case conference to resolve that issue.

Date: August 5, 2025

Koehnen J.