

CITATION: *Nepean Building Supplies v. Markelangelo's Inc.*, 2026 ONSC 5195
COURT FILE NO.: CV-25-102125
DATE: 2026/09/14

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Nepean Building Supplies

Plaintiff

Leonardo Camacho, for the Plaintiff

– and –

Markelangelo's Inc., Mark McSherry, and
Annick Lemay

Defendants

No one appearing for the Defendants

HEARD: July 21, 2026 (by videoconference)

REASONS FOR DECISION

CORTHORN J.

Introduction

[1] The plaintiff corporation brings a motion for default judgment. The claim against the defendant corporation (“Markelangelo’s”) is for liquidated damages, in the amount of \$185,423.97, alleged to be owing for the supply of building materials. The credit agreement upon which NBS relies stipulates an interest rate of 24 percent per year on all outstanding amounts.

[2] The individual defendants are both principals and owners of Markelangelo’s. Both individual defendants executed a Personal Guarantee in consideration of NBS extending credit to Markelangelo’s pursuant to the above-mentioned credit agreement. NBS relies on the terms of the Personal Guarantee in support of its claims against the individual defendants.

[3] Before determining the substantive issues, I set out a chronology of events prior to and during the litigation; address the manner in which the plaintiff corporation is named in the title of proceeding; and address the method of service on which NBS relies for service of the statement of claim on Markelangelo’s.

Chronology

a) Events Prior to the Commencement of the Proceeding

[4] In support of the motion for default judgment, NBS relies on an affidavit sworn by its Operations Manager, Shelly McSorley, on July 14, 2026 (“the McSorley affidavit”). NBS also relies on the admissions the defendants are deemed to have made based on their default in defending the proceeding: see r. 19(1)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[5] Based on the admissible evidence in the McSorley affidavit and on the deemed admissions, I make the following findings of fact:

- a) On August 5, 2025, NBS and Markelangelo’s entered into a credit agreement for the supply of building materials (“the Agreement”);
- b) The plaintiff corporation is described as “Nepean Building Supplies, a Division of 471021 Ontario Limited (“NBS”)” (as described in the Agreement);
- c) Accounts rendered by NBS to Markelangelo’s are “due ‘net’, by the 30th day of the month following”;
- d) Markelangelo’s agreed to a carrying charge of “24% per year on all overdue accounts”;
- e) Pursuant to the Personal Guarantee executed by the individual defendants, they each agree to,
 - i) be “jointly and severally liable with [Markelangelo’s], as principal debtors and not as sureties for the due payment of all financial obligations by Markelangelo’s”;
 - ii) fully guarantee Markelangelo’s obligation; and,
 - iii) indemnify and save harmless NBS arising from Markelangelo’s failure to fulfill its obligations;
- f) Between May 2, 2025, and October 31, 2025, accounts delivered to Markelangelo’s were not paid. The amount said by NBS to be owing as of October 31, 2025, is \$185,423.97;
- g) On November 10, 2025, NBS’ lawyers of record in this proceeding (“Gowlings”) sent each of the defendants a demand letter. In that letter, payment of the amount owing by Markelangelo’s pursuant to the Agreement was demanded by November 26, 2025;
- h) A Notice of Intention to enforce security, addressed only to Markelangelo’s, was enclosed with the November 10, 2025 letter sent to each of the defendants;

i) On November 11, 2025, Gowlings sent a letter to each of the individual defendants, in their respective capacities as a personal guarantor, confirming Markelangelo's indebtedness and demanding full payment, from the individual defendants (as guarantors), by November 26, 2025; and

j) The defendants did not respond at all to the November 10 and 11, 2025 letters.

[6] With Markelangelo's in default of payment, and given the lack of response to the November 10 and 11, 2025 letters, NBS commenced this action.

b) The Proceeding

[7] The timetable immediately below sets out the history of the proceeding to date:

December 1, 2025 - The statement of claim is issued.

December 10, 2025 - The statement of claim is served, by an alternative to personal service, on each of the individual defendants.

December 10, 2025 - A copy of the statement of claim is left with the defendant, Mark McSherry ("McSherry"), in his capacity as a principal of Markelangelo's. The address at which that event occurs is the residential address at which the individual defendants were served (i.e., not the business address for Markelangelo's identified in the Agreement).

January 7, 2026 - The defendants are noted in default.

[8] I turn next to the title of proceeding and then to the issue of service of the statement of claim on the defendants.

The Title of Proceeding

[9] It is unclear why the plaintiff corporation is named in the title of proceeding as "Nepean Building Supplies." In each of the Agreement, the Personal Guarantee, and the two November 2025 letters, the plaintiff corporation is described as "Nepean Building Supplies, a Division of 471021 Ontario Limited ("NBS")". In the Notice of Intention, described in para. 5(h), above, the plaintiff corporation is described as "Nepean Building Supplies".

[10] In paragraph 1 of the statement of claim, the plaintiff corporation is described as "471021 Ontario Limited, carrying on business as Nepean Building Supplies". Throughout the balance of the originating process, the plaintiff corporation is referred to as "NBS".

[11] I am satisfied that the defendants are aware that “Nepean Building Services” is an operating name for 471021 Ontario Limited; the defendants are not confused or prejudiced in any way by the improper naming of the plaintiff corporation in the title of proceeding.

[12] The plaintiff corporation is granted leave to amend the title of proceeding, by adding the phrase “471021 Ontario Limited, carrying on business as” the plaintiff corporation’s name as it currently appears in the title of proceeding. In all documents subsequent to the date of these reasons, the plaintiff corporation shall be named in the title of proceeding as “471021 Ontario Limited, carrying on business as Nepean Building Services” (whether in the capacity of plaintiff or of judgment creditor).

Service of the Statement of Claim

[13] Pursuant to r. 16.01(1)(a), an originating process may be served personally or by an alternative to personal service.

[14] I am satisfied that the method of service upon which NBS relies as an alternative to personal service for service of the statement of claim on the individual defendants is a valid method of service of an originating process on an individual: see para. 17, below, and rr. 16.01(1)(a) and 16.05(5)(a)-(b).

[15] For personal service of an originating process on a corporation, a copy of the document must be left “with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business”: r. 16.02(1)(c). The method of service upon which NBS relies for service of the originating process on Markelangelo’s does not comply with r. 16.02(1)(c).

[16] In the Agreement, Markelangelo’s address is listed as located on Old Montreal Road, Cumberland, Ontario. The November 10, 2025 letter, referred to above, is addressed to Markelangelo’s at that address, and to each of the individual defendants at a King Arthur Street address in Cumberland, Ontario. The November 11, 2025 letter is addressed to the individual defendants in their respective capacities as personal guarantors, at the King Arthur Street address.

[17] In his affidavits of service for service of the originating process on each individual defendant, the process server attests to leaving a copy of the document with an adult male (the individual defendants’ son), “who appears to be a member of the same household in which [the individual defendant] resides at [] King Arthur Street”.

[18] In his affidavit of service for service of the originating process on Markelangelo's, the process server (a) attests to leaving a copy of the statement of claim with McSherry at the King Arthur Street address, and (b) describes McSherry as "an adult person who appeared to be in control or management for [Markelangelo's], at the time of service" at the King Arthur Street. Yet, there is no evidence to support a finding that the King Arthur Street address is a "place of business" of Markelangelo's within the meaning of r. 16.02(1)(c).

[19] I find that Markelangelo's was not personally served with the statement of claim; nor was Markelangelo's served with the statement of claim by an alternative to personal service prescribed by the *Rules*: see r. 16.03(6).

[20] The relief requested on the motion does not include an order validating service of the statement of claim on Markelangelo's. NBS does, however, request "such further and other relief as this Honourable Court may deem just." An order validating service falls within a "catch-all" phrase of that kind.

[21] Subrule 16.08 sets out the circumstances in which the court may exercise its discretion to make an order validating service. The court may do so when it is satisfied that "the document came to the notice of the person to be served". For the following reasons, I am satisfied that the copy of the statement of claim left with McSherry came to the attention of Markelangelo's.

[22] From the outset of Markelangelo's dealings with NBS, McSherry represented himself as a principal of the defendant corporation. For example, with his signature on the Agreement, McSherry declares that he has authority to bind Markelangelo's to the terms of the Agreement.

[23] There is no evidence to support a finding that, after the November 10 and 11, 2025 letters were sent to one or more of the defendants, any of the defendants disputed McSherry's role as a principal in Markelangelo's.

[24] NBS commenced this proceeding pursuant to Rule 76 – Simplified Procedure. One of the policies or goals behind Rule 76 is to reduce the cost of litigation of claims of modest amounts. In addition to that policy or goal, I consider the General Principle set out in r. 1.04(1), mandating that the *Rules of Civil Procedure* "be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits."

[25] Based on the existing record, the court is able to determine the motion for default judgment on the claims against the individual defendants as guarantors. It would not be cost-effective or efficient to determine that portion of the motion while adjourning the portion of the motion regarding the claims against Markelangelo's solely because how McSherry, in his role as a principal of Markelangelo's, was provided with a copy of the statement of claim.

[26] Service of the statement of claim on Markelangelo's, as set out in the December 10, 2025 affidavit of service of process server Matthew Soubliere is deemed to be good and sufficient service of that document on the defendant corporation.

[27] I turn to the substantive issues raised on the motion for default judgment.

The Substantive Issues

[28] The plaintiff corporation's claim is for a liquidated amount, based on the terms of a single-page credit agreement and a single-page guarantee. I am satisfied that NBS is entitled to judgment for the principal amount and that the individual defendants are jointly and severally liable with Markelangelo's for that amount. I am also satisfied that the defendants are liable to NBS for pre-judgment interest based on the rate prescribed by ss. 127 and 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("CJA").

[29] I start with determining the principal amount owing.

a) The Principal Debt

[30] In both November 2025 letters, referred to above, the amount said to be owing "under the Credit Agreement is \$185,423.97 inclusive of HST and interest." In Schedule "B" to those letters, the amount owing as of November 10, 2025 is set out as follows:

AMOUNT OF DEBT OWING AS OF NOVEMBER 10, 2025

\$185,423.97

The Debt as at any proposed date of payment will also include any fees, commissions, costs, expenses and other amounts that have been incurred by NBS for the account of the Debtor and accrued and unpaid interest from now to the date of payment at the rates set out in the credit agreement dated August 5, 2025 between NBS, as supplier, and Markelangelo's Inc., as Customer/Borrower, as amended, modified or supplemented.¹

[31] In paragraph 17 of the statement of claim, NBS alleges that, "As of November 10, 2025, Markelangelo's owed NBS the sum of \$185,423.97, exclusive of further accruing contractual interest and costs."

[32] The contents of the November 2025 letters and the above-quoted allegation in the statement of claim suggest that \$185,423.97 includes interest that had accrued, to November 10, 2025, on overdue amounts.

¹ The passage quoted as appears as it does in the original document.

[33] On the other hand, some of the documents before the court support a finding that the \$185,423.97 amount excludes any interest accrued prior to November 10, 2025. For example, there is nothing in the McSorley affidavit to support a conclusion that the \$185,423.97 includes pre-judgment interest.

[34] An exhibit to the McSorley affidavit is an Excel spreadsheet supporting the calculation of \$185,423.97 as the amount owing. On the face of it, the spreadsheet does nothing more than list each invoice and group the invoices into number of days overdue (from 30 or fewer to 90 and more). There is nothing in the spreadsheet to suggest that the amounts listed therein include pre-judgment interest.

[35] In sub-paragraph (k) of the grounds listed in the notice of motion, the amount owing, as of July 21, 2026, “for principal and contractual pre-judgment interest” is listed as \$216,269.63. In the same sub-paragraph,

- the principal debt is listed as \$185,423.97, and
- the contractual pre-judgment interest at the rate of 24 percent per year is said to be \$30,845.66 (based on the 253-day period from November 10, 2025, to July 21, 2026).

[36] In sub-paragraph (i) of the grounds listed in the notice of motion, NBS identifies interest as accruing at the rate of \$121.92 per day from July 21, 2026 forward. By my calculation, that amount reflects the rate at which simple interest accrues daily on \$185,423.97 based on an annual interest rate of 24 percent per year.

[37] I find that \$185,423.97 is the principal amount of the debt.

b) Pre-Judgment Interest

[38] The terms of the Agreement stipulate that “Payment of all accounts is due ‘net’ by the 30th day of the month following”², with interest to accrue on overdue amounts at the rate of 24 percent per year.

[39] There is no evidence as to the interest that has accrued on all overdue amounts if the terms of the Agreement were applied. NBS appears to forego a strict application of the terms of the Agreement, specifically interest to which it would be entitled at the rate of 24 per cent per year on overdue amounts from as early as June 2025 forward.

² This term appears in all upper case letters in the original document.

[40] In the notice of motion and in its factum, NBS acknowledges that a pre-judgment interest rate of 24 percent exceeds the statutorily-prescribed pre-judgment interest rate: see ss.127 and 128 of the *CJA*.³ NBS asks the court to award pre-judgment interest at the contractual rate or, in the alternative, at the rate prescribed by the *CJA*.

[41] NBS' approach to calculation of pre-judgment is such that the amount claimed for interest is based on a rate that falls below the 24 percent rate stipulated in the Agreement. There is no evidence to (a) explain why NBS chose to deviate from the contractual rate; (b) identify what the effective rate is when considered in light of the contractual definition of an overdue invoice; or (c) support of a finding that the effective rate is reasonable.

[42] NBS did not provide the court with any case authority to support deviation from the statutorily-prescribed rate, including to the effective rate proposed by NBS.

[43] The court declines to award pre-judgment interest based either on the contractual rate or the effective rate upon which NBS relies. NBS is entitled to pre-judgment interest as prescribed by ss. 127 and 128 of the *CJA*.

Disposition

[44] NBS is granted judgment against the defendants (a) for the principal amount of \$185,423.97; (b) pre-judgment interest at the statutorily-prescribed rate and in accordance with ss. 127 and 128(3) of the *CJA*; and (c) post-judgment interest in accordance with ss. 127 and 129 of the *CJA*.

[45] NBS is entitled to rely on the Personal Guarantee in enforcing the judgment against the individual defendants.

[46] When enforcing the judgment, it will be incumbent upon NBS to provide the defendants with information and, if necessary, the court with evidence, in support of the amount said to which it is entitled for pre-judgment interest.

Costs

[47] In the costs outline filed, NBS asks the court to award costs on the full indemnity scale in the amount of \$7,964 for fees and \$487.61 for disbursements. Both amounts are exclusive of HST.

[48] Also in its costs outline, and when addressing the factors listed in r. 57.01(1), NBS asks the court to consider that the defendants could reasonably have expected that they would be asked to pay costs on either the substantial or partial indemnity basis. NBS does not point to any term of the Agreement that entitles NBS to its costs on the full indemnity scale.

³ In the notice of motion, NBS incorrectly describes the contractual interest rate as two (2) percent per month.

[49] The court declines to award costs on the full indemnity scale. The costs outline does not identify the amount NBS seeks based on the substantial indemnity scale.

[50] In the costs outline, NBS requests that the fee portion of costs on the partial indemnity scale be fixed in the amount of \$4,778.40. The disbursements claimed are said to be particularized in an appendix attached to the costs outline. The copy of the costs outline uploaded to Case Center does not include that appendix. A bill of costs uploaded to Case Center includes an appendix in which disbursements claimed are itemized. Taxable disbursements are therein identified as \$168.66 and non-taxable disbursements as \$318.95.

[51] Relying on the costs outline, the court is satisfied that the time docketed and the hourly rates of the timekeepers are reasonable. Based on that finding and the other factors in r. 57.01, as addressed in the costs outline, the court fixes costs of the motion and the action, on the partial indemnity scale, in the total amount of \$5,935. That amount is calculated as follows:

Fees, incl. HST	=	\$8,000 x 0.6 x 1.13	\$	5,424.00
Disbursements, incl. HST	=	\$168.66 x 1.13 + \$318.95	\$	<u>509.54</u>
Total			\$	5933.54 ⁴

[52] The defendants shall pay NBS its costs of the motion and the action, on the partial indemnity scale, in the total amount of \$5,935.

Madam Justice Sylvia Corthorn

Released: September 14, 2026

⁴ When fixing the amount awarded for costs, this total is rounded to the next highest monetary amount ending in 5 or 0.

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