

CITATION: Ebadi et al v. Foster et al, 2025 ONSC 2463
COURT FILE NO.: CV-22-88958
DATE: 2025/04/24

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Yusuf Ebadi and Hasina Ebadi, Plaintiffs

-and-

Mr. and Mrs. Foster and Oakwood (also known as Navan Realty Inc), Defendants

BEFORE: Justice Flaherty

COUNSEL: Self-Represented, Plaintiffs

Julius Dawn, for the Defendants

HEARD: April 22, 2025

ENDORSEMENT

[1] The plaintiffs bring this motion to amend their statement of claim. They wish to add a claim for loss of equity, for which they seek additional damages of \$610,000. The defendants do not object to the amendments, on the condition that the plaintiffs provide relevant disclosure, reattend at examinations for discovery, and pay the defendants' costs thrown away. The plaintiffs object to paying the defendants' costs thrown away.

[2] The plaintiffs have leave to amend the statement of claim, as requested. As set out below, the parties have agreed to a timetable for next steps, including further disclosure and discoveries. For the reasons that follow, I find that the defendants are entitled to costs thrown away in the amount of \$15,000.

OVERVIEW

[3] This proceeding arises from a failed real estate transaction. The original statement of claim, filed in April 2022, sought damages totalling \$315,456. In essence, there were two components to the claim: (a) \$50,000 for higher construction costs incurred because of the delay in closing the

agreement; and (b) \$265,456 for the higher cost of purchasing a similar lot, along with the legal and administrative fees related to those transactions. The defendants dispute this claim.

[4] In the three years since the statement of claim was filed, there has been considerable litigation between the parties. They have exchanged affidavits of documents and amended affidavits of documents. They have attended and re-attended at discoveries. There have been three motions for outstanding undertakings and three case conferences dealing with disclosure.

[5] With the amendments, the plaintiffs are advancing a new claim for loss of equity. In essence, they say the failed real estate transaction prevented them from selling certain properties they owned because of “situational uncertainty.” Because interest rates increased at this time, housing prices fell. As a result, the plaintiffs say they lost significant amounts of equity in their real estate investments. They seek \$610,000 for alleged loss of equity. This almost triples the total damages claimed by the plaintiffs.

COSTS THROWN AWAY

[6] The defendants seek their costs thrown away, which amount to \$29,500 on a substantial indemnity basis. Significantly, the amount sought does not include the costs of the three motions and three case conferences dealing with disclosure and undertakings.

[7] The plaintiffs state that the defendants are not entitled to costs thrown away. According to the plaintiffs, the amendments do not result in duplicate steps or unnecessary legal costs: extensive disclosure has already been provided, including about the plaintiffs’ financial circumstances. Moreover, the defendants have already had an opportunity to examine the plaintiffs about the entire construction project. The plaintiffs also submit that their claim for additional damages for loss of equity arises from questions the defendants posed of the plaintiffs during examinations for discovery, specifically about the costs of the entire construction project. In essence, they contend that the defendants bear some responsibility for the need to amend the claim.

[8] I find that the defendants are entitled to their costs thrown away.

[9] First, the amendments introduced a new claim and enlarged the scope of the pleadings. For the defendants, there are inherent costs in having to deal with a new claim at this stage of the litigation: *RBC Dominion Securities v. Kowal*, 2019 ONSC 1233 at para. 4.

[10] Amendments to the statement of claim mean that certain litigation steps must be duplicated and that costs have been incurred unnecessarily. Among other things, the defendants are entitled to seek disclosure beyond what has been provided to date. For example, the new claim raises issues about the value of the plaintiffs' real estate portfolio and the extent of any economic loss. It also raises issues about the plaintiffs' ability to sell other properties to finance the purchase of the original lot and the construction of a home.

[11] Much of what has been done in the past three years must now be revisited. Among other things, the defendants will need to prepare an amended statement of defence, prepare a revised affidavit of documents, and attend at discoveries a third time. These additional steps would not have been necessary had the plaintiffs claimed loss of equity at the outset of the action.

[12] It may be that some aspects of the disclosure and examinations for discovery conducted to date are relevant to the plaintiffs' claim for loss of equity. However, the defendants are entitled to explore that issue more fully. For example, the defendants say they are entitled to information about the value of the plaintiffs' equity before the failed transaction and what, if any, steps they took to sell the properties they owned to finance the project. In addition to this, certain existing aspects of the claim or defence may take on an enhanced significance and may need to be canvassed again or differently. All of this has cost consequences.

[13] Second, the delay in bringing the loss of equity claim cannot be attributed to the defendants or to the questions they posed in examinations for discovery. The plaintiffs are advancing a legal claim, and the scope and nature of that claim is not determined by the defendants. It may be that the plaintiffs wish to change their litigation strategy following examinations for discoveries. They are entitled to do so. However, the defendants are not required to bear the costs of the plaintiffs' decision to expand the scope of their claim three years into the litigation.

[14] I have reviewed the defendants' bill of costs, which itemizes areas that will require some duplication, including drafting the statement of defence, preparing the affidavit of documents, and

preparing for and attending discoveries. At this stage of the proceeding, it is difficult to gage costs thrown away. While some aspects of the legal work performed to date will need to be revisited, other elements may remain useful to the defendants as the litigation proceeds. In these circumstances, I award costs thrown away of \$15,000. This may be adjusted by the trial judge if, when the matters gets to trial, this award appears insufficient to indemnify the defendants for wasted costs.

Timetable for Disclosure and Discoveries

[15] Both parties have agreed to the following timetable:

- Within 48 hours, the plaintiffs will serve the defendants with an amended statement of claim that is consistent with Rule 26. It will be filed with the court within seven days.
- Within 30 days of receipt of the amended statement of claim, the defendants will serve and file an amended statement of defence.
- If necessary, under Rule 25.08, the plaintiffs may serve and file a reply within 10 days of receiving the amended statement of defence.
- Within 90 days of today, both parties will serve amended affidavits of documents. Each party has an obligation to provide every document in their possession, control or power that is relevant to a matter at issue in the proceeding, including (but not limited to) the plaintiffs' alleged loss of equity.
- To facilitate the disclosure process, within 60 days of today, Mr. Dawn will provide the plaintiffs with a list of the disclosure his client seeks. This list is not exhaustive in the sense that the plaintiffs have an independent obligation under the Rules to disclose all relevant documents, whether or not they are specifically requested by the defendants. The list from Mr. Dawn does not constitute legal advice to the plaintiffs, who may object to the disclosure he requests.
- Discoveries will be completed by no later than September 1, 2025.

DISPOSITION

[16] The plaintiffs have leave to amend the statement of claim, as proposed in the plaintiffs' motion record, except that the document must comply with Rule 26. The parties will adhere to the timetable set out in paragraph 15, above.

[17] The defendants are entitled to costs thrown away in the amount of \$15,000. This may be adjusted by the trial judge if, when the matters gets to trial, this award appears insufficient to indemnify the defendants for wasted costs.

[18] The final issue is the costs of this motion. If the parties are unable to agree on the costs of this motion, they may make brief written submissions not exceeding three pages, exclusive of the cost outline. These submissions are to be made within 30 days.

Justice Flaherty

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ENDORSEMENT

Flaherty J.

Released: April 24, 2025