CITATION: Yasin v. Ottawa Community Housing Corporation, et. al. 2025 ONSC 4586
COURT FILE NO.: CV-24-94531
DATE: 2025 08 06

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: SUMAYA YASIN, by her litigation guardian ZEINAB MOHAMED, Plaintiff

AND:

OTTAWA COMMUNITY HOUSING CORPORATION and CITY OF OTTAWA, Defendants

BEFORE: C. MacLeod RSJ

COUNSEL: David P. Taylor and Joseph Rucci, for the Plaintiff

Shawn O'Connor, for the Defendants

HEARD: August 6, 2025

ENDORSEMENT

[1] There are two motions before the court. The first is a motion by the defendants to strike portions of the plaintiff's claim pursuant to Rule 25.11. The second is a motion by the defendants to compel the plaintiffs to produce further and better affidavits of documents.[1]

[2] The motions are interrelated since the pleadings define the scope of relevance. I deal firstly with the pleadings motion and then the production motion.

Background

[3] This is a personal injury action arising from an unfortunate set of circumstances in which the plaintiff (who was 12 years old at the time) leapt from a balcony in the apartment rented by her family from Ottawa Community Housing Corporation ("OCH"). The premises in question are part of a community housing project owned by OCH.

[4] City of Ottawa is the sole shareholder of OCH which is a local housing corporation and housing provider pursuant to the *Housing Services Act.*[2], The City is a "service manager" under the Act and responsible for overseeing the proper administration of OCH as set out in that legislation.

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[1] Both of these motions fall squarely within the jurisdiction of an Associate Judge but this was an additional motion day made available before me to address a shortage of motion dates. Counsel are not to be faulted as they properly indicated that these were motions "to the court".
[2] *Housing Services Act, 2011*, S.O. 2011, c. 6, Sched. 1

[5] OCH is also a landlord under the *Residential Tenancies Act*[3] and has the duties of an occupier under s. 3 of the *Occupier's Liability Act*.[4] The plaintiff argues that the latter status is shared with the City and that both may also be held negligent at common law.

[6] The incident which led up to the plaintiff leaping from the balcony is said to have begun with a guest of another tenant who had been using cocaine and alcohol on the premises. Apparently, this individual (Mr. White) was roaming the halls in a state of paranoia and panic during which he forced his way into the plaintiff's apartment and barricaded himself inside. Only the plaintiff was in the apartment and in fear for her own life she states that she leaped off the balcony and fell 10 metres. She suffered significant physical and psychological injuries.

[7] The plaintiff alleges that the tenants of OHC such as she and her family are a particularly vulnerable population wholly dependent on community housing and unable to easily find alternative places to live. It is alleged that OHC and the city knew that their housing projects such as the building in which the plaintiff lived were dangerous, home to drug users, criminal activity and violence. It is the thesis of the plaintiff's case that this combination of heightened risk and a vulnerable population gave rise to a duty to put enhanced security measures in place. As the defendants failed to do so, the plaintiff alleges, it was foreseeable that an event such as this would occur. In addition, it is contended that the defendants gave assurances to tenants in general and the plaintiff's family in particular. This, it is said, is an assumption of a duty that the defendants failed to discharge.

[8] The plaintiff seeks compensatory and punitive damages. Both OHC and the City have defended. OHC has also launched a third party proceeding against Mr. White and the tenant he was visiting. The defendants deny any liability to the plaintiff in the circumstances described in the statement of claim.

[9] While the defendants also dispute the extent of the damages claimed by the plaintiff and put her to the proof thereof, the central question in the litigation will be liability. Specifically, the question is defining the duty of care and whether that duty was fulfilled. As I will discuss, the argument that a provider of low income or community housing has a private law duty to take measures to prevent criminal behaviour in its community housing projects, may be novel but it does not require new theories of tort liability.

[10] In general, tort liability in Canada imposes liability where "the defendant is the factual cause of what has happened to the plaintiff and the defendant is considered blameworthy due to his or her inattention or lack of care."[5] Fundamental to that analysis are the principles of causation and fault where fault depends primarily on a duty of care on the one hand and foreseeability and risk analysis on the other. In simplest terms, a defendant who owes a duty of care must take reasonable steps to avoid foreseeable harm to individuals who might be harmed. It should be added

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[3] *Residential Tenancies Act, 2006*, S.O. 2006, c. 17
[4] *Occupiers' Liability Act*, R.S.O. 1990, c. O.2
[5] Pitel, Stephen, "The Foundations of Liability" in *Fridman's The Law of Tort in Canada, Fourth Edition*, 2020 Thomson Reuters, @ page 15

that liability will exist even if the defendant is not the sole party at fault and not the sole cause of the damage. Our system allows for apportionment of fault.[6]

[11] The duties imposed upon a landlord may, in appropriate circumstances include a duty to take reasonable care to prevent damage caused by the acts of third parties, even if those acts are criminal.[7] This is not a novel proposition. It was firmly established by two Ontario cases in the 1980s.[8]

The pleadings motion

[12] The defendants move to strike several portions of paragraphs in the statement of claim. They seek removal of sentences or phrases which they argue are irrelevant and inserted to invoke sympathy or to colour the pleadings. They object to some pleadings as referring to issues involving other parties or other properties which they argue are overly broad and introduce the potential of overly broad discovery. In other instances, the complaint is against pleading evidence.

[13] In paragraphs 3, for example, the defendants object to the sentence describing the plaintiff's parents as "born in Somalia" and immigrating to Canada "as adults" and becoming Canadian Citizens. The parents are not parties although the mother is the litigation guardian.

[14] Much more significant is the objection to paragraphs 7, 8, 9, 10, 20 and 24. Here, the primary objection is the reference to the defendants' alleged knowledge of "safety and security issues at the OCH premises and other OCH housing projects", to knowledge gained or imparted "through consultations with Ms. Mohammed and the Tenant Advisory Group" or undertakings allegedly made to "Ms. Mohammed and other OCH tenants". The defendants' objection is that these pleadings will give rise to wide demands for document production and make the litigation appear more like a class proceeding or a public inquiry into conditions in OCH housing.

[15] Rule 25.11 provides the court with discretion to strike all or part of a pleading or other document if it may: a) prejudice or delay the fair trial of the action; b) is scandalous, frivolous or vexations; or c) is an abuse of the process of the court. Rule 25.06 is the rule that provides the basic rules of pleading, in particular that a pleading contain "a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved."[9]

[16] It is not necessary for purposes of this motion to write a long exposition on the purposes of pleading or to analyze the jurisprudence under Rule 25.11.[10] It is reasonable to strike out pleadings that are simply prejudicial and are irrelevant.[11] Relevant pleadings should not be struck simply

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[6] *Negligence Act,* RSO 1990, c. N.1
[7] Linden, Felthusen et. al., *Canadian Tort Law, Twelfth Edition,* 2022 Lexis Nexis @ page 164
[8] *Allison v. Rank City Wall Canada Ltd.,* (1984) 45 O.R. (2d) 141, 6 D.L.R. (4th) 144 (HCJ) and *Q. v. Minto Management Ltd.,* (1985) 49 O.R. (2d) 531(HCJ); aff'd (1986) 57 O.R. (2d) 781 (CA)
[9] *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194, as amended *Elg v. Elg, et al.,* 2025 ONSC 82 and see my decision in *Li v. Barber,* 2023 ONSC 1679
[10] Some of the considerations found in the jurisprudence are summarized in
[11] *Huachangda Canada Holdings Inc. v. Solcz Group Inc.*, 2019 ONCA 649

because they are embarrassing or even scandalous except in the clearest of cases where the prejudice outweighs any likely probative value.[12] That is not the case here.

[17] The objection to paragraph 3 is not well founded. Within the limits provided by the rules, a statement of claim is an exercise in advocacy. The plaintiff is permitted to properly identify herself and her family. In addition, the nature of the tenants in the OHC premises is relevant to the plaintiff's argument for an enhanced duty of care – or a more robust standard of care.

[18] There is also no merit to the complaint that the paragraphs referring to non-parties or other properties are improper. When it comes to foreseeability and causation, necessary elements of the plaintiff's claim, it is artificial to try to put the evidence into silos. OCH is impressed with knowledge gained from all of its operations and while known risks in the particular building or unit will be the most relevant, risks known to exist in other places under OCH control will also inform the analysis.

[19] In addition, the pleading of systemic failures is relevant to the claim for punitive damages.[13] I also note the decision of the Supreme Court of Canada in *Rankin v. J.J.* in which the court has clearly held that foreseeability must be proven and not just assumed.[14] This, in my view makes facts establishing that a risk was foreseeable, material facts which are properly pleaded.

[20] Paragraph 20 (f) is perhaps a pleading of evidence but striking it would serve no purpose. The evidence is still discoverable and striking one subparagraph out of a 24 paragraph pleading would not significantly narrow the scope of production or discovery.

[21] To the extent that any of the allegations are overly vague or overly broad, the defendants will be entitled to obtain particulars through the discovery process and prior to trial. Moreover, as I will address below, some robust and focused discovery planning would be of assistance to ensure that the action can be conducted in a proportionate manner. Tinkering with the pleading will not accomplish this objective and there is no real prejudice to the defendant in leaving the pleading as it stands. As noted, both defendants have delivered statements of defence.

The motion for a further and better affidavit of documents

[22] There is no question that the affidavit of documents is insufficient. On the other hand, the demand letter sent by the plaintiff was lengthy, disproportionate and unreasonable. While in the factum, the plaintiff has indicated she is not seeking an order for the documents or categories of documents sought in the letter, it was not unreasonable for the defendants to assume that was the motion they had to meet.

[23] What was unreasonable was to "double down" on their position by delivering a sworn affidavit of documents with the same list of 8 documents contained in the draft unsworn affidavit. It is manifestly untrue that either OCH or the City have searched for and produced all relevant documents. The affidavits sworn in opposition to the motion indicate that it would cost millions

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[12] *Quizno's Canada Restaurant Corporation v. Kileel Developments Ltd.,* 2008 ONCA 644
[13] *Whiten v. Pilot Insurance Co.,* 2002 SCC 18, [2002] 1 SCR 595
, [14] *Rankin (Rankin's Garage & Sales) v. J.J.,* 2018 SCC 18, [2018] 1 SCR 587

of dollars to conduct the relevant searches for the documents sought by the plaintiff in the demand letter.

[24] The entire notion of an affidavit of documents listing all relevant documents both privileged and non privileged breaks down when faced with multitudes of documents of dubious probative value held by multiple document custodians. If a party complies with the obligation to list all relevant documents in such a situation, it inevitably results in delay, expense and over production. On the other hand, if necessary documents are not located and produced, any discovery exercise results in multiple undertakings and potentially further rounds of discovery.

[25] The Rules provide an answer to this. Rule 29.1 and 29.2 speak to discovery planning and proportionality. Those rules also incorporate the *Sedona Canada Principles* by reference.[15] Principle 4 speaks to cooperative discovery planning. No attempt has been made by counsel to craft such a plan and this case cries out for it. Rule 29.1.05 permits the court to refuse to grant relief or award costs if a motion such as this is brought before counsel have done the necessary collaborative work to fashion a workable plan.

[26] It is understandable that counsel are sometimes blinded to their obligations to work together in this fashion by the adversarial system and perhaps by the moral outrage expressed by their clients. Sometimes, as here, the plaintiff accuses the defendant of delaying and failing to take the production obligation seriously. A defendant faced with what they feel is an exaggerated claim which cannot or should not succeed is not readily motivated to seriously discuss with counsel for the plaintiff what documents or evidence are most pertinent and available. But this is precisely what is required by the Rules, the Sedona principles, the *Rules of Professional Conduct* and the *Principles of Advocacy and Civility*.

[27] In this case, for example, there are two allegations relating to knowledge possessed by the defendant. One of those is an assertion (in paragraph 10 of the claim) that the tenant population in OCH housing is a low income and vulnerable population who "do not have the economic means to move out of OCH housing projects, such as the OCH premises, or to otherwise protect themselves from safety and security issues". It is also alleged that the plaintiff and her parents along with OCH tenants more generally "have relied on the defendants to comply with their responsibilities to maintain safe and secure housing projects". Both parties may have documents relevant to these allegations. The plaintiff has produced some minutes of meetings, newsletters and other documents. It should be possible for counsel to agree on what type of documents the parties can easily access and for what time range it is reasonable to produce such documents.

[28] The other allegations relates to OCH knowledge of safety, security, criminal activity and violence issues in the premises and in OCH premises generally. Obviously, activities in the premises and units where the plaintiff resided, activities by Mr. White on the premises, activities in the unit rented by Ms. Gervais and other information which directly touches on the security of the plaintiff and her family are the most pertinent. Knowledge of risks, preventative measures and other information in relation to foreseeability and causation are also relevant but probably less

[15] *The Sedona Canada Principles, 3rd ed*, 2022 CanLIIDocs 1167

important. I would add that it is always possible to limit the need for production by admissions, stipulations or requests to admit.

[29] As discussed above, the plaintiff is no longer asking the court to order the defendants to produce all of the documents contained in the original demand letter. Rather, they now seek an order simply providing for a further and better affidavit of documents. This puts the onus back on the defendants to comply with production obligations which is fair enough as they have that onus, but the plaintiff does not propose any plan as to what documents are most important or what would be sufficient.

[30] Accordingly, I will order the defendants to serve further and better affidavits of documents in due course, but I am first directing counsel to meet and confer and to seek agreement on a production and discovery plan. If they are unable to reach agreement, they are to obtain a case conference with an Associate Judge and the court may impose a plan.

Conclusion

[31] In conclusion, the motion to strike pleadings is dismissed. The motion for further and better affidavits of documents is granted but first the parties are to comply with Rule 29.1.

Costs

[32] In light of the divided success on the two motions and pursuant to Rule 29.1.05, there will be no order as to costs.

Justice C. MacLeod

Date: August 7, 2025