

CITATION: Ferguson v. Yorkwest Plumbing Supply Inc., 2025 ONSC 5866
COURT FILE NO.: CV-18-602946-0000
DATE: 20251017

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JAN FERGUSON, Plaintiff

AND:

YORKWEST PLUMBING SUPPLY INC., Defendant

BEFORE: Parghi J.

COUNSEL: *Gurlal S. Kler*, for the Plaintiff

David Morawetz, for the Defendant

HEARD: October 14, 2025

ENDORSEMENT

- [1] This Endorsement supplements my previous Endorsement of September 23, 2025.
- [2] The Plaintiff, Jan Ferguson, moves for default judgment in a wrongful dismissal action against her former employer, Yorkwest Plumbing Supply Inc. (“Yorkwest”). In my September 23, 2025 Endorsement, I granted default judgment in the amount of \$170,415.42, plus \$6,879 in costs and disbursements, inclusive of HST.
- [3] For the reasons below, I temporarily vacated that Endorsement, but now reinstate it.
- [4] Ms. Ferguson was terminated in March 2017. She issued her Statement of Claim in August 2018. Various issues arose between the parties in respect of scheduling and sequencing the examinations for discovery and Yorkwest was found by the courts on more than one occasion to have engaged in delay and “putting up roadblocks”. These roadblocks included repeatedly failing to respond to Ms. Ferguson’s counsel’s repeated communications and cancelling scheduled discoveries at the last minute. The roadblocks are summarized in various court judgments and I will not reiterate them here. It suffices to say that Yorkwest has not distinguished itself through its conduct in this litigation.
- [5] The Statement of Defence was struck in August 2022 by Associate Justice Jolley, as a result of Yorkwest’s delaying tactics and other misconduct. Yorkwest appealed the order striking the Statement of Defence before Justice Leiper, without success. It sought leave to appeal Justice Leiper’s decision before the Court of Appeal for Ontario, without success. It sought leave to introduce new evidence at trial before Associate Justice La Horey, without success.

- [6] By Endorsement dated September 23, 2025, I granted default judgment. By that time, it was more than seven years after the action was commenced and eight and a half years after Ms. Ferguson was terminated.
- [7] After the Endorsement was released, counsel for Yorkwest emailed my judicial assistant to advise that he had attempted to file a factum responding to the motion for default judgment and had been unable to do so successfully. Counsel expressed that he was concerned, based on the wording of the Order and Endorsement, that Yorkwest’s factum was not before me at the time I decided the motion. Counsel provided the factum, in which Yorkwest sought leave to make submissions on the default judgment motion notwithstanding that its Statement of Defence had been struck, and made its submissions on the merits of the default judgment motion in the event that I granted leave.
- [8] Counsel was correct that Yorkwest’s materials were not before me at the time I decided the motion. I was unaware that any materials responding to the motion had been served. None were on Case Centre and none were provided to me separately.
- [9] I emailed both counsel to advise that my endorsement and order were vacated pending a further case conference, which has now been held. During the case conference, I heard from both parties and advised that I would provide my Endorsement once I had had a chance to consider their submissions, their case conference briefs, and Yorkwest’s factum, together with the previously filed and reviewed motion materials from Ms. Ferguson.
- [10] Having now considered all the materials and submissions, I dismiss Yorkwest’s request for leave to make submissions on the motion and reinstate my Endorsement of September 23, 2025.
- [11] In seeking leave to make submissions in the motion for default judgment, Yorkwest relies on *Park v. Park*, 2011 ONSC 4234 (at para. 24) and *Doldo v. 1497601 Ontario Ltd.*, 2012 ONSC 4833 (at paras. 5-9). Yorkwest submits that these cases hold that rule 19.02 does not operate to deprive counsel for a defendant noted in default from making submissions in response to a motion by the plaintiff. Making submissions does not fall within the scope of the prohibition against a party “tak[ing] another step” in rule 19.02(1)(b). The court in *Doldo* suggested that an exception to this general rule arises where permitting the defendant to make submissions would amount to an abuse of the court’s process (at para. 9).
- [12] In my view, those cases have limited application here. In both *Park* and *Doldo*, the fairness considerations weighed far more in favour of the defaulting defendant than they do here, such that it was appropriate in those cases, but not in this one, to allow the defendant to make submissions.
- [13] *Park* involved a defendant whose Statement of Defence had not been struck. The defendant had been noted in default and had expressed a wish to move to set aside the noting in default. From a fairness perspective, the defendant therefore had a compelling argument that it was entitled to make submissions. By contrast, Yorkwest’s defence was struck years

ago as a consequence of its own delaying tactics and misconduct. Its argument that it ought to be allowed to make submissions is far less compelling.

- [14] Likewise, *Doldo* involved a defendant whose Statement of Defence had been struck, but who had commenced an appeal of the order striking the defence. The appeal had not yet been heard. By contrast, Yorkwest has exhausted all avenues of appeal of the order striking its defence. Its claim to an entitlement to make submissions is therefore far less persuasive.
- [15] In any event, under *Doldo*, abuse of process concerns are relevant in determining whether to grant leave to a defaulting defendant to make submissions. I find, viewing the procedural history of this matter and Yorkwest's conduct as a whole, that it would be an abuse of process to allow Yorkwest to make submissions.
- [16] Yorkwest states that if it were allowed to make submissions, it would not be engaging in an abuse of process, because it "raised an arguable point of law with respect to the order of examination for discovery under the *Rules*" in the motion to strike its Statement of Defence. It then "pursued this point of law to the Divisional Court and Court of Appeal (albeit unsuccessfully)."
- [17] I reject this argument altogether. The issue is not Yorkwest's perception of the merits of its arguments before various levels of court. The issue is whether it would be an abuse of process to allow Yorkwest to now make submissions on the motion for default judgment, after having had its Statement of Defence struck due to its delaying tactics and improper conduct, having lost at all attempts to appeal the order striking its defence, and having been denied leave to tender evidence.
- [18] In my view, it very clearly would be. Yorkwest had an opportunity to engage with the litigation on the merits. It squandered that opportunity through its delay and misconduct. It now seeks to re-insert itself into the litigation at the eleventh hour and have yet another kick at the can. It has been duly, and repeatedly, told by the courts that cannot do so. By asking to make submissions, Yorkwest seeks to sidestep the consequences of those court orders and its own conduct, and to achieve through the back door what the courts have consistently said it can no longer do through the front door.
- [19] Granting leave would most certainly be an abuse of process.

Conclusion

- [20] My Endorsement of September 23, 2025 is reinstated.

Date: October 17, 2025