

CITATION: 2498623 Ontario Inc. v. Macsai, 2025 ONSC 6801
COURT FILE NO.: CV-18-000000126
DATE: 2025/12/04

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
2498623 Ontario Inc. c.o.b. Genesys)	
Greenhouse Supplies & Services)	M. Harmes, for the Plaintiff
)	
Plaintiff)	
)	
– and –)	
)	
Adam Macsai)	
)	Appearing in person
Defendant)	
)	
)	
)	HEARD: November 20, 2025

2025 ONSC 6801 (CanLII)

REASONS FOR JUDGMENT

THE HONOURABLE JUSTICE A.D. HILLIARD

- [1] The Plaintiff, 2498623 Ontario Inc. c.o.b. Genesys Greenhouse Supplies & Services (Genesys) moves to note the Defendant, Adam Macsai, in default and obtain default judgment. In the alternative, the Plaintiff argues that there is no genuine issue for trial and even if I am not satisfied that Mr. Macsai should be noted in default, I should be satisfied that the issues can be determined summarily based on the evidence filed on this motion.

- [2] For the reasons that follow, the Plaintiff’s motion for summary judgment is granted with costs.

Background

- [3] Genesys is a privately held corporation that is in the business of constructing commercial greenhouses.

- [4] Mr. Macsai is an individual who was involved in the commercial cultivation of cannabis.

- [5] The parties were introduced through a third-party intermediary, Canadian Hydrogardens – a company engaged in the business of providing materials and services relating to commercial horticultural operations.
- [6] Mr. Macsai first contacted Genesys in December 2016 to obtain a quote for the construction of three (3) greenhouses that were to be used for growing cannabis. Mr. Macsai indicated to Genesys that his goal was to have his cannabis crop planted in the new greenhouses by the end of May 2017.
- [7] The President of Genesys, James Wiersma, advised Mr. Macsai that the greenhouses would likely take approximately ten (10) weeks to complete from the time that materials were delivered. Mr. Wiersma provided Mr. Macsai with a written quote for the proposed work on December 2, 2016. The quote provided a fixed price contract which set out the scope of work to be completed and items that were not covered under the contract that would be billed at an additional cost if requested.
- [8] Mr. Macsai did not accept and sign the terms of the contract until March 6, 2017. The contract stipulates that the estimated time for completion starts as of the date of receipt of the order with the deposit.
- [9] The fixed price of the contract was \$275,391.17 inclusive of HST. That price included the construction of the greenhouse structures, freight charges and the cost to build the greenhouses.
- [10] Materials for the greenhouses were delivered to the construction site on May 3, 2017. Despite a number of delays, including that the site was not properly levelled as required prior to construction and a slowdown due to electrical work, the greenhouses were completed the first week of July 2017. The time between delivery of materials and completion of the greenhouses was approximately ten (10) weeks.
- [11] Mr. Macsai made payments totaling \$184,241.99 under the fixed price contract and paid additional invoices for extra services rendered that were outside the scope of the contract in the amount of \$9,599.70. The balance owing under the fixed price contract is \$91,149.18.
- [12] The final invoice was rendered on August 8, 2017. Mr. Macsai has not made any payments on the amounts still outstanding, including the final invoice which was a reconciliation of everything paid and what was left outstanding after the work was complete.

Litigation History

- [13] This action has a long and tortured litigation history, despite the facts being relatively straightforward.
- [14] The Statement of Claim commencing this action was issued in late 2018. The original claim was then amended and Mr. Macsai filed a Statement of Defence as a self-represented party.

- [15] Examinations for discovery were not completed after pleadings were originally closed, despite orders being obtained compelling Mr. Macsai's attendance, and Genesys obtained an order striking Mr. Macsai's original Statement of Defence and default judgment.
- [16] Judgment-debtor examinations were commenced pursuant to the default judgment.
- [17] Mr. Macsai then retained counsel and successfully moved to set aside the default judgment.
- [18] With the assistance of counsel, Mr. Macsai filed a new Statement of Defence. Examinations for discovery were then completed and Undertakings given.
- [19] Mr. Macsai and his counsel then parted ways. Mr. Macsai did not retain new counsel.
- [20] The action was set down for a trial and a pre-trial was scheduled and held in the absence of Mr. Macsai as he did not appear despite being provided notice of the date.
- [21] A motion was argued before me for an order compelling Mr. Macsai to answer undertakings. Given the status of the action, undertakings having not been fulfilled, I struck the matter from the trial list and ordered that Mr. Macsai provide Answers to Undertakings in 30 days, failing which he would be noted in default. Mr. Macsai was present when that order was made.
- [22] Mr. Macsai did not comply with the Order regarding Answers to Undertakings. He did eventually provide his responses to the undertakings chart provided by counsel for Genesys by way of handwritten notes on the document. Most of the notations indicate that Mr. Macsai does not have the documents or information being requested. No formal response was ever provided by way of an affidavit or even an unsworn statement.
- [23] Genesys then brought the within motion to strike or in the alternative for summary judgment, which was served on Mr. Macsai in August 2025. As of the date of the hearing of the motion, almost three (3) months after service was effected, Mr. Macsai had not filed any responding materials.
- [24] Despite Mr. Macsai not filing a response to the motion and being in breach of my previous court order, I permitted Mr. Macsai to make submissions as a matter of procedural fairness, bearing in mind that he is not represented by counsel. I also accepted a paper copy of an affidavit sworn in December 2022 with the consent of counsel for Genesys.

Analysis

Striking the Statement of Defence

- [25] Mr. Macsai has a legal obligation to provide answers to undertakings based on the Rules of Civil Procedure. There is also a court order requiring Mr. Macsai to provide his answers to undertakings within a specified time period.

- [26] The efforts Mr. Macsai did make to answer undertakings were woefully inadequate and after the expiration of the time provided by Court Order. Handwritten responses on an undertakings chart prepared by opposing counsel does not constitute a meaningful attempt to comply with his legal obligations.
- [27] I have the authority to strike Mr. Macsai’s defence based on his failure to answer undertakings pursuant to Rule 34.15(1)(b).
- [28] Rule 60.12 provides that I may strike a party’s defence for failure to comply with an interlocutory order.
- [29] However, I am mindful that striking a defence is an extreme remedy and should only be used as a last resort.
- [30] In *Eloro Resources Ltd. v. Sovereign Capital Group (Ont) Limited*, the Court notes that striking a party’s defence “should only be ordered when the defence of the action is no longer viable and appropriate because the defendant has by its failure or refusal to be bound by the rules and orders of the court effectively abandoned its right to participate in the court process.”¹ Master Dash ultimately found that striking the defence was not appropriate as there were not repeated breaches and the period of delay had been relatively short.
- [31] The *Eloro* case was cited by Broad J. in *London Eco-Roof Manufacturing Inc. v. South River Developments Ltd.* along with a number of other decisions dealing with the issue of when it is appropriate for the Court to strike a party’s pleadings. In *London Eco-Roof*, Broad J. wrote, “there are two important policies underlying the *Rules of Civil Procedure*, namely the policy directed towards ensuring that cases are tried on their merits on the one hand, and the policy directed towards ensuring that cases are processed in an orderly, efficient and timely way on the other.”² Having considered the various cases that he was referred to and taking into account the competing policy interests, Broad J. similarly concluded that the facts before him did not meet the threshold for striking the Statement of Defence and Counterclaim.
- [32] As was succinctly stated by Gray J. in *Broniek-Harren v Osborne*, the “difficult issue [...] is to determine when non-compliance reaches the point that it can no longer be excused. The Court, and society as a whole, have an interest in ensuring that the system remains viable. If the *Rules* can be ignored with impunity, they might as well not exist.”³
- [33] In my view, despite the clear failure or refusal of Mr. Macsai to responding in a meaningful way to his undertakings, despite my court order that he do so, his non-compliance is not so flagrant and willful such that he is clearly in the category of litigants whose behaviour rises to the level of inexcusable. My review of the caselaw leads me to conclude that more is

¹ [2004] OJ No 387 at para 6.

² [2019] OJ No 862 at para 23.

³ [2008] OJ No 1690 at para 29.

required than a refusal to answer undertakings and a single incident of breaching a court order.

- [34] I am therefore not satisfied that this is an appropriate case for Mr. Macsai's pleadings to be struck.

Summary Judgment

- [35] Genesys argues that in the event that I find it is not appropriate to strike Mr. Macsai's pleadings, I should nevertheless grant summary judgment as there is no genuine issue for trial.
- [36] Summary judgment should be granted only if I am able to reach a fair and just determination on the merits base on the evidentiary record before me on the motion. If the record is sufficient to allow me to make the necessary findings of fact, apply the law to the facts, and is a proportionate, more expeditious and less expensive means to achieving a just result, judgment should be granted summarily.⁴
- [37] Mr. Macsai did not file any evidence responding to the request for summary judgment. At the hearing of the motion, Mr. Macsai indicated he was relying on the affidavit material previously filed in this matter. He argued that he is entitled to his day in court where he will bring witnesses to give evidence in support of his position.
- [38] The only evidence Mr. Macsai brought with him to the motion argument is the affidavit of Randy Hartog, sworn December 20, 2022. I was provided a copy of that affidavit by Mr. Macsai at the motion hearing and received it with the consent of counsel for Genesys.⁵
- [39] At the time the affidavit was sworn, almost three (3) years ago, Mr. Hartog deposed that he was employed by Canadian Hydrogardens. Mr. Hartog was the individual who, on behalf of Canadian Hydrogardens, introduced Mr. Macsai and Genesys. Mr. Hartog deposed that he was Mr. Macsai's supplier for the materials required for Mr. Macsai's cannabis production operation.
- [40] Mr. Hartog deposed that he was present during meetings between Mr. Macsai and Mr. Wiersma and witnessed Mr. Macsai advise Mr. Wiersma of the deadline by which he required the greenhouses to be completed. He further indicated that Mr. Wiersma advised that the project would be completed within the requested timeframe. Mr. Hartog's evidence is that the deadline for the project was extended by Mr. Macsai to June 1, 2017 but the greenhouses were not completed by that date and Mr. Macsai "lost crop yield" as a result.

⁴ *Hryniak v Mauldin*, [2014] 1 SCR 87.

⁵ There is a reference in Randy Hartog's affidavit to an affidavit of Adam Macsai sworn the same date – December 20, 2022 – but a copy of that affidavit was not provided to me during the motion argument, nor was it referred to by Mr. Macsai in his submissions.

- [41] Mr. Hartog's evidence provides no particulars of the damages that Mr. Macsai incurred due to this alleged lost crop yield. His affidavit also indicates that Mr. Macsai did ultimately pay his bill owing to Canadian Hydrogardens in full after having been given an interest-free grace period.
- [42] The evidence of Mr. Hartog confirms that there were delays in the construction of the greenhouses due to grading issues and electrical work. Mr. Hartog in his affidavit questions the reasonableness of but does not contradict the evidence of Mr. Wiersma as to the reasons for those delays.
- [43] The difficulty for Mr. Macsai is that the evidence of Mr. Hartog does not demonstrate that there is a genuine issue for trial. Taken at its highest, Mr. Hartog's evidence corroborates Mr. Macsai's claim that he provided a specific deadline for the completion of the greenhouses that was not met. However, Mr. Hartog's evidence does not provide any confirmation that the contract for the building of the greenhouses was contingent on a specific deadline, nor does it provide any evidence as to what damages, if any, Mr. Macsai suffered as a result of the alleged late completion of the greenhouses. Mr. Hartog's statement about Mr. Macsai's lost crop yield is conclusory, an opinion for which no evidentiary basis was provided.
- [44] Mr. Macsai's position on the issue of his failure to answer undertakings also supports the conclusion that there is no genuine issue for trial. The basis for Mr. Macsai's defence and counterclaim is that there was an unjustified delay in the completion of the greenhouses and that Mr. Macsai suffered damages as a result. However, there is no evidence that the contract between the parties provided for a specific deadline. There is also no evidence as to what damages, if any, Mr. Macsai has suffered as a result of the greenhouse completion being delayed.
- [45] A party defending a motion for summary judgement cannot rely simply on bald denials and assertions. Mr. Macsai was required to put his best foot forward in responding to Genesys' motion. Even his own submissions confirm that Mr. Macsai has no documentary evidence supporting his claims.
- [46] This action has been brought under simplified procedure. Mr. Macsai does not have the right to simply show up on the day of trial with his witnesses. In simplified procedure matters, all evidence in chief must be tendered through trial-worthy affidavits filed in advance of trial. These rules apply equally to all parties whether they are represented by counsel or not.
- [47] Although it is trite to say that it is preferable for all matters to be heard on their merits, it is also a fundamental principle of civil procedure that trial by ambush is not permitted. That is to say, Mr. Macsai does not have a right to show up on the day of trial and present evidence that has never been previously disclosed to Genesys. Whatever evidence Mr. Macsai has to present in support of his defence and counterclaim should have been disclosed to Genesys through the examination for discovery process and filed with the Court in response to this motion.

[48] I find that Mr. Macsai does not have any evidence other than bald assertions to support his claims. All of the evidence filed on this motion supports the conclusion that Mr. Macsai has no documentary evidence to corroborate his statements. Therefore, there is no genuine issue for trial on Mr. Macsai's defence or counterclaim.

Conclusion

[49] This is not an appropriate case for Mr. Macsai's pleadings to be struck. However, given the complete lack of evidence filed in support of Mr. Macsai's defence and counterclaim, I find that there is no genuine issue for trial.

[50] I am satisfied that the claim for damages by Genesys has been made out on the evidence before me and summary judgment shall issue accordingly.

[51] Genesys has been entirely successful and is therefore presumptively entitled to its costs. A Rule 49 Offer was made by Genesys on August 26, 2025 which, if accepted, would have put Mr. Macsai in a better position than he finds himself after argument on the motion for summary judgment. I am therefore satisfied that substantial indemnity costs after August 26, 2025 are appropriate.

[52] The total amount of costs being sought is reasonable and proportionate in the circumstances. Although this action proceeded by way of simplified procedure, the long and winding road that was the journey this litigation took increased costs for Genesys. I find that all of the delays in this matter are attributable to Mr. Macsai. Despite delays and unproductive court attendances, the costs being sought by Genesys are modest in the circumstances. I am therefore satisfied that costs should be awarded in the amount claimed by Genesys.

[53] Judgment to go:

- 1) The Plaintiff is awarded damages in the amount of \$87,833.70.
- 2) Pre-judgment interest as of November 20, 2025 is set at \$129,772.49.
- 3) Post-judgment interest awarded pursuant to the Rules of Civil Procedure.
- 4) Costs awarded to the Plaintiff fixed in the amount of \$13,415.53 inclusive of HST and disbursements.

A.D. Hilliard

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BETWEEN:

2498623 Ontario Inc. c.o.b. Genesys Greenhouse
Supplies & Services

Plaintiff

– and –

Adam Macsai

Defendant

REASONS FOR JUDGMENT

A.D. Hilliard, J.

Released: December 4, 2025