



Superior Court of Justice – East Region
161 Elgin Street
Ottawa, Ontario K2P 2K1

CITATION: Ebadi vs Fosters and Oakwood (aka Navan Realty), 2025 ONSC 6860

ENDORSEMENT OF CIVIL MOTION, APPLICATION OR CASE CONFERENCE

SHORT TITLE OF PROCEEDINGS: Ebadi vs Fosters and Oakwood (aka Navan Realty)

COURT FILE NO.: CV-22-00088958-0000

BEFORE: Associate Justice Perron

HEARD ON: November 27, 2025

COUNSEL:

Yusuf Ebadi, self-represented, for the plaintiff
Julius Dawn for defendants/moving party

ENDORSEMENT:

1. This is a motion by the defendants seeking to strike certain paragraphs of the plaintiffs' second reply pleading and to revise the timetable previously ordered by Justice Flaherty on April 22, 2025.
2. The underlying action arises from a failed real estate transaction.
3. The defendants raise several issues with the second reply including that it raises new facts and issues that were not, and ought to have been, raised in the statement of claim. They also submit that the form of the reply is deficient because the amendments to the previous reply are not underlined.
4. The plaintiffs' position is that the reply pleading is proper and complies with the requirements of Rule 25.08. In particular, the plaintiffs allege that the defendants have introduced new allegations in their amended defence which require the plea of additional facts in reply so as not to take the defendants by surprise at trial.
5. That said, the plaintiffs indicate in their responding affidavit that the facts plead in reply are



not “new” and should be of no surprise to the defendants because they are alleged facts arising from the parties’ exchange of productions and discoveries as well as from evidence delivered on previous motions in this matter.

6. The plaintiffs also submit that Rule 25.08 is the only applicable rule because it is the only rule that was referenced by Justice Flaherty.

Relevant Litigation History

7. Pleadings were originally closed in May 2022. However, in February 2025, the plaintiffs prepared a draft amended statement of claim which increased the amount of damages sought and added a claim for loss of equity.
8. The defendants were prepared to consent to the amended claim on the condition that a fresh affidavit of documents be exchanged along with re-attendance at examination for discoveries and payment of costs thrown away.
9. The plaintiffs refused those conditions, necessitating the motion before Justice Flaherty.
10. Her Honour permitted the amendments to the claim, imposed the conditions requested by the defendants and ordered a timetable for the delivery of the amended pleadings.
11. As part of the timetable, Justice Flaherty ordered: “If necessary, under Rule 25.08, the plaintiffs may serve and file a reply within 10 days of receiving the amended statement of defence.”
12. The amended claim and amended defence were delivered without any objections. However, the defendants now take issue with the amended reply.

Applicable Rules of Civil Procedure and Law

13. It is difficult to compare the amendments of the second reply to the previous version of the reply because the plaintiffs did not underline changes.
14. Because of the extent of the changes made, it appears that the plaintiffs sought to deliver a “fresh” reply. This is permitted by subrule 26.03(1).



15. I am therefore not concerned with the “format” of the reply so much as whether its contents comply with the requirements of Rules and applicable caselaw.
16. Although Justice Flaherty only referenced Rule 25.08 in her previous endorsement, I do not agree with the plaintiffs that Her Honour intended to restrict the application of other relevant Rules or caselaw that govern pleadings.
17. Her Honour likely only referenced Rule 25.08 because this is the Rule that explains when a reply pleading is permitted. This was no doubt meant to assist the plaintiffs in helping them navigate the Rules.
18. Rule 25.08 permits a reply, where necessary, in order to allege:
 - a. A different version of facts from that set out in the defence, unless those facts were already plead in the claim; or
 - b. A reply in response to a defence that might, if not specifically pleaded, take the opposite party by surprise or raise an issue that has not been previously raised subject to subrule 25.06(5).
 - c. Subrule 25.06(5) provides that an allegation that is inconsistent with an allegation made in a party’s previous pleading or that raises a new ground of claim shall not be made in a subsequent pleading but by way of amendment to the previous pleadings (which in the present matter would be the statement of claim).
19. Pursuant to rule 25.08, a reply may only be delivered for the two purposes above. In addition, a party who does not deliver a reply is deemed to deny all of the allegations of fact made in the defence.
20. Rule 25.06 applies to all pleadings. This is expressly indicated in the title that precedes the Rule. Subparagraph 1 provides that every pleading shall contain a concise statement of the material facts on which the party relies, but not the evidence of which those facts are to be proved.
21. With respect to the preparation of amended pleadings, Rule 26.05 sets out the general timelines for responding, and provides that a party who does not respond to an amended pleading is deemed to rely on the party’s original pleading in answer to the amended pleading.



22. Although Justice Flaherty’s endorsement altered the timeline set out in Rule 26.05 for the delivery of the amended pleadings, Rule 26.05 nonetheless applies because it governs amended pleadings.
23. The defendants also rely on *Van Huizen v Trisura Guarantee Insurance Company* (2021 ONSC 6614) in support of their position that the plaintiffs’ second reply is improper.
24. In *Van Huizen*, Justice Bell clarified that the purpose of Rule 26.05 is to permit a party to make amendments to its pleading “to respond to an amendment made in the pleading of an opposite party” but it does not permit a party to raise new issues without obtaining leave to amend its previous pleading¹.
25. Justice Bell also found that “Where the plaintiffs have made a conscious and informed choice not to deliver a reply to the initial statement of defence, the right to deliver a reply is limited to pleadings necessary to respond to the amendments and issues arising as a consequence of those amendments²”.

Analysis

First Category of Objections

26. The first category of objections raised by the defendants to the plaintiffs’ second reply in this proceeding are very similar to the objections made by the defendants in *Van Huizen*, including that the plaintiffs have responded to unamended paragraphs of the amended statement of defence.
27. In particular, the defendants submit that paragraphs 8 to 32 of the second reply ought to be struck because, on the face of the pleading, the allegations are made in reply to paragraphs 22 to 72 of the amended statement of defence which do not contain any substantive amendments.
28. The plaintiffs submit that the allegations in paragraphs 8 to 32 are necessary to respond to the amended defence as a whole on the basis that the amended defence changes the context

¹ [Van Huizen v Trisura Guarantee Insurance Company, 2021 ONSC 6614, at para 31.](#)

² [Van Huizen, at para 40, relying on Talisman Energy Inc. v Petro-Canada \(2000 ABQB 602\).](#)



- of the defence. They also submit that it was not possible to plead those allegations in the original reply because the information was only obtained at examinations for discovery and in productions exchanged after the delivery of the original reply.
29. I reviewed paragraphs 22 to 72 of the amended defence and agree with the defendants that there are no substantive amendments made to those paragraphs.
 30. The plaintiffs chose not to reply to paragraphs 22 to 72 of the defence in their original reply.
 31. The plaintiffs rely on *Anisman v Drabinsky* (2020 ONSC 1197). While there is a good discussion in that case on Rule 25.08, it is not helpful because the main issue in that case was whether the plaintiffs were required to plead in reply to a limitation period defence, and whether they were precluded from introducing affidavit evidence on the limitation period issue in their materials responding to the motion for summary judgment.
 32. However, the *Van Huizen* case relied upon by the defendants is directly on point: the plaintiffs are not permitted to amend their reply and plead to paragraphs in the amended defence that contain no significant amendments.
 33. The plaintiffs cannot at this stage attempt to buttress their claim by adding new allegations in their amended reply when they had the opportunity to reply to those paragraphs in the original statement of defence and chose not to do so.
 34. In addition, most of the allegations in paragraphs 8 to 32 of the proposed reply appear to plead evidence and legal arguments.
 35. Pursuant to the Rules, in particular Rule 25.06, it is not proper to plead evidence or make legal arguments and submissions in a pleading, nor is it necessary or appropriate to amend one's pleading to plead evidence that is obtained during the course of the proceeding.
 36. Paragraphs 8 to 32 of the second reply are therefore improper and are hereby struck.
 37. The defendants did not make any amendments to the counterclaim section of their amended pleading. Therefore, for the same reasons set out above, the plaintiffs are not permitted to make fresh amendments to their defence to counterclaim, and paragraphs 45 to 51 of the second reply are also struck.
 38. Because paragraphs 45 to 51 of the second reply contains the totality of the allegations in



the defence to counterclaim, the defendants were agreeable to permitting the plaintiffs to reinsert paragraphs 28 to 32 of their original reply and defence to counterclaim in the fresh reply.

39. I agree that this is appropriate and those paragraphs shall now stand as the plaintiffs' defence to counterclaim.

Second Category of Objections

40. The defendants also allege that certain paragraphs of the second reply are irrelevant or raise allegations that are principally directed towards trying to discredit or attack the character of the defendants and their solicitors. The defendants abandoned its arguments on certain paragraphs during the motion such that paragraphs 5, 6 and 7 of the second reply were at issue.
41. I provided each party with the opportunity to make submissions on the appropriateness of each paragraph.
42. The plaintiffs' main argument is that these allegations are necessary because they respond to new evidence obtained during the proceeding, including arguments applicable to rulings made by the Court during the proceeding.
43. As discussed above, it is not appropriate to plead evidence or submit legal arguments in a pleading.
44. Paragraphs 5 to 7 of the second reply are therefore also struck.

Adjustments to Timetable

45. None of the further steps ordered by Justice Flaherty have taken place because of the dispute on the reply pleading. A revised timetable was discussed with the parties during the motion.
46. On consent of the parties, the timelines set out in Justice Flaherty's endorsement of April 22, 2025 are amended as follows:



- a. The plaintiffs shall deliver a fresh reply by December 1, 2025. The fresh reply shall only contain paragraphs 1 to 4 and 33 to 44 from the proposed second reply as well as paragraphs 28 to 32 of the original defence to counterclaim;
 - b. The defendants shall produce the production letter ordered by Justice Flaherty by December 19, 2025;
 - c. The parties shall exchange any supplementary affidavits of documents by February 13, 2026;
 - d. Any further examinations shall be completed by April 30, 2026; and,
 - e. Any answers to further undertakings shall be answered within 60 days of examinations.
47. As Justice Flaherty remarked in her previous endorsement, there have been several motions in this matter and extensive litigation. The parties exchanged affidavits of documents and amended affidavits of documents. They have attended and re-attended at examinations and there have been three motions for outstanding undertakings and at least three case conferences dealing with disclosure.
48. The pattern of litigating this action by way of motion cannot continue. It is a 2022 action that is stuck at the pleadings and the discovery stage.
49. Because there have been at least two pleadings' motions, there would need to be rather exceptional circumstances that warrant further amendments to pleadings. In addition, the plaintiffs confirmed today that they did not seek to make further amendments to the claim.
50. As such, now that the issues with respect to the reply pleading have been resolved, and further to my discussion with the parties today, there shall be no further motions seeking to amend pleadings in this action.
51. In addition, I will be case-managing the matter going forward. To that end, I have scheduled a one-hour case conference before me on May 27, 2026 at 10 a.m.
52. The purpose of the May 27th case conference will be to set a timetable for the final steps in this action which, after completion of the above steps, should only be: a) the completion date for mediation and, b) the deadline to set the action down for trial.
53. If there are any urgent issues that cannot be resolved by the parties prior to May 27, 2026,



the parties have leave to contact the office of the Associate Judges to request an expedited case conference before me.

54. For clarity, there shall be no further motions of any kind filed in this action unless I grant leave for same at a case conference, which can be requested on an expedited basis pursuant to the above. That said, there shall be no requests to bring a summary judgment motion because this was also discussed at the motion today and I confirmed to the defendants that leave for such a motion would not be granted because, among other reasons, it would be inappropriate to do so given the stage of the action and that the matter will soon be ready to set down for trial.

Costs of this Motion

55. The defendants made an offer on November 13, 2025 to settle the motion on almost identical terms to my Orders above. The defendants also take the position that the plaintiffs' proposals to resolve the issues with the second reply were not reasonable, including requests to strike/amend paragraphs of the amended statement of defence. The defendants therefore seek costs of a partial indemnity basis up to the date of the offer and substantial indemnity costs thereafter for total costs of \$8,013.16. Costs on a partial indemnity basis would be \$5,824.02.
56. The plaintiffs did not deliver a costs outline or bill of costs. I did not provide them with leave to prepare and file one because the Rules and practice directives are clear that a party seeking costs on a motion must serve and file a costs outline prior to the hearing of the motion, and be prepared to deal with costs at the hearing.
57. The plaintiffs would not be entitled to costs of this motion in any event because the defendants were largely successful at the motion.
58. The plaintiffs submit that no costs should be payable because they tried to resolve the motion by scheduling a case conference, and they offered to proceed with the steps ordered by Justice Flaherty (exchange of documents and examinations) while the parties awaited the determination of this motion. They submit that the defendants are trying to delay this



matter from proceeding to trial.

59. The defendants stated that they agreed to the plaintiffs' request for a case conference but they refused to vacate the hearing date for this motion (which the plaintiffs were insisting upon) and that the plaintiffs thereafter cancelled the request for case conference.
60. It is unfortunate that the case conference did not proceed because, even if it appears unlikely, the issues might have been resolved through discussions at the case conference.
61. In addition, most of the allegations in the second reply were deficient on their face because they pled evidence (obtained from discoveries and productions) and legal argument (i.e. positions of contractual interpretation of the agreements entered into by the parties and/or interpretation of previous rulings of the Court).
62. The plaintiffs are self-represented and the defendants are represented by counsel. The rules dealing with pleadings are very technical in nature and not the most user-friendly.
63. I query in the circumstances where a motion to strike was necessary or whether the issues could have been better addressed in a more practical way as the litigation continued.
64. In the circumstances, I exercise my discretion to award costs of this motion payable by the plaintiffs to the defendants in the amount of \$1,500.

Summary of Disposition

65. The motion is granted and paragraphs 5 to 7, 8 to 32 and 45-51 of the plaintiffs' second reply are hereby struck.
66. The timetable set out in Justice Flaherty's endorsement of April 22, 2025 is hereby amended as follows:
 - a. The plaintiffs shall serve and file a fresh Reply by December 1, 2025. The fresh Reply shall only contain paragraphs 1 to 4 and 33 to 44 from the proposed second Reply as well as paragraphs 28 to 32 of the original defence to counterclaim;
 - b. The defendants shall produce the production letter previously ordered by Justice Flaherty by December 19, 2025;
 - c. The parties shall exchange any supplementary affidavits of documents by February



Superior Court of Justice – East Region
161 Elgin Street
Ottawa, Ontario K2P 2K1

13, 2026;

- d. Any further examinations shall be completed by April 30, 2026;
- e. Any answers to further undertakings shall be answered within 60 days of examinations; and,
- f. A further case conference shall be held before me for one hour on May 27, 2026 at 10 a.m.

67. I will be case-managing the action and there shall be no further motions in this matter unless I provide leave for same at a case conference. The parties have leave to contact the office of the Associate Judges to request an expedited case conference before me if urgent issues arise that cannot be resolved on consent.

68. Costs of this motion in the amount of \$1,500 shall be payable by the plaintiffs to the defendants.

A handwritten signature in cursive script, appearing to read 'Kagen Perron'.

Date: December 1, 2025

Associate Justice Perron