CITATION: Maplequest (Vaughan) Developments Inc. v. Primont Homes (Vaughan) Inc., 2026 ONSC 1270
DIVISIONAL COURT FILE NO.: DC-25-00000710-0000
DATE: 20260306

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: MAPLEQUEST (VAUGHAN) DEVELOPMENTS INC. Appellant

AND:

PRIMONT HOMES (VAUGHAN) INC. Respondent

BEFORE: L. Brownstone J.

COUNSEL: *Kate Costin* and *Sara Romeih*, for the Appellant

Scott McGrath and *Alexander Soutter*, for the Respondent

HEARD at Toronto: March 03, 2026

ENDORSEMENT

Introduction

[1] On July 29, 2025, Associate Justice Josefo struck out the appellant Maplequest's statement of defence and counterclaim under rules 30.08(2) and 60.12. Associate Justice Josefo, who had been case managing the file for five years, found that Maplequest had engaged in an ongoing pattern of delay and non-compliance with court orders. After Maplequest again failed to comply with his "last-chance order", Associate Justice Josefo concluded no lesser remedies had been effective in obtaining Maplequest's compliance. He granted Primont's motion to strike Maplequest's pleading.

[2] On appeal, Maplequest submits that Associate Justice Josefo erred in striking its defence, and should have struck only its counterclaim, which was the subject of its latest act of non-compliance. Maplequest submits the striking of the defence was incorrect and disproportionate, constituting a palpable and overriding error that warrants appellate intervention. It asks this court to vary Associate Justice Josefo's order and reinstate its statement of defence. In the alternative, Maplequest asks that it be permitted to file a new statement of defence.

[3] Primont submits there is no error in Associate Justice Josefo's decision, that he carefully considered and applied the governing principles and Maplequest's conduct, and determined this "nuclear option" was the only one that was appropriate in the circumstances. Primont notes that the argument that only the counterclaim, not the statement of defence, should be struck was not advanced before Associate Justice Josefo at the hearing of the motion. Primont submits this Court should not entertain that new argument on appeal. If the Court does consider the new argument, it should be dismissed.

Decision under review

[4] A lengthy procedural history led to the striking of the pleading. I need not review it here. Associate Justice Josefo refers to relevant portions of that history in his endorsement and the parties take no issue with his recitation of events. Associate Justice Josefo was acutely familiar with the file, having case-managed it for five years.

[5] In his endorsement, Associate Justice Josefo referred to seven orders for production and disclosure with which Maplequest had failed to comply. Maplequest's recent failures were dealt with in a May 26, 2025, endorsement, in which Associate Justice Josefo issued a "last chance" order peremptory on Maplequest, requiring it to pay outstanding costs and produce specific documents by June 13, 2025.

[6] Maplequest paid the costs but had still not complied with the production orders by the time the motion to strike its pleading was heard. The parties agree that the outstanding production orders were in respect of documents relevant to Maplequest's counterclaim.

[7] Associate Justice Josefo heard the motion to strike on July 25, 2025, Maplequest did not provide a factum and counsel sought an adjournment because he had "other pressing deadlines". Associate Justice Josefo denied the adjournment request, and counsel participated in the motion, providing what Associate Justice Josefo referred to as able submissions. The parties agree that Maplequest did not suggest to Associate Justice Josefo that it would be appropriate or proportionate to strike only the counterclaim, even as an alternative position.

[8] Associate Justice Josefo granted Primont's motion to strike. During the course of his reasons, Associate Justice Josefo noted that:

a. Maplequest has breached a series of orders, and continues to be in breach of orders;

b. Maplequest breached a last-chance peremptory order, despite Associate Justice Josefo's clear admonishments;

c. This was not a months-long, but a years-long, pattern of delay;

d. There was thin to non-existent, and certainly not reliable, evidence that Maplequest was genuinely trying to comply with orders;

e. Maplequest failed to comply even with orders to which it had consented;

f. Maplequest engaged in an ongoing pattern of delay and non-compliance that disregards its obligation to adhere to court orders;

g. At the time the motion was heard, Maplequest remained in default of two court orders, which are significant in the context of the litigation;

h. Maplequest's recent breach was not inadvertent;

i. There is no satisfactory or credible explanation for Maplequest's delay and non-compliance;

j. At least some of the delays in the litigation were deliberately engineered by Maplequest;

k. These delays increased the costs of the litigation;

l. Maplequest had many chances to comply, including with respect to Associate Justice Josefo's "last-chance" order;

m. Maplequest had a pattern of leading "right up to the brink", and had ultimately "gone over the brink", especially given its uncured lack of compliance as of the date the motion was argued;

n. The orders were "being treated as "paper tigers" to be adhered to only if and when convenient, or "whenever" by Maplequest." This is particularly concerning when the order is a peremptory, last-chance order;

o. The order had been clearly described to counsel as a last-chance order;

p. Associate Justice Josefo referred to Maplequest's "prevarications", "defiance' and "unequivocal" non-compliance.

[9] Associate Justice Josefo referred specifically to the governing case law. He noted that

> The trilogy of Court of Appeal decisions which address the consequences which can arise from persistent interlocutory delay and non-compliance with court Orders are herein very relevant. These are *Advanced Farm Technologies-JA v. Yung Soon Farm Inc.*, 2021 ONCA 569, *Falcon Lumber Limited v. 2480375 Ontario Inc. (GN Mouldings and Doors)*, 2020 ONCA 310, and *Rimon v. CBC Dragon Inc.*, 2024 ONCA 128.

[10] Associate Justice Josefo concluded:

> Overall I conclude, despite the able submissions of counsel for Maplequest, that this is one of the rare cases where, again quoting responding counsel, all that remains is the "nuclear option" of striking the pleading. This is because nothing else, not all the many case conferences, nor my encouragement at those times to Maplequest to comply, not the Orders themselves, nor other steps taken in the action, has worked to bring about consistent and timely compliance with court Orders on the part of Maplequest.
>
> In *Advanced Farm Technologies*, unlike in this within matter, ultimately the breach was cured (after a long period of silence). Yet the remedy sought of striking the pleading was still granted-the pleading was still struck. In this within matter, leaving aside for the moment all the prevarications and delays of the defendant, and the slow compliance, often only after prodding, over the years, which is all bad enough, there still remains an unequivocal act of non-compliance with, which given the affidavit evidence, I read as defiance of, court Orders and, in particular, the last chance (peremptory) Order, on the part of Maplequest. That again is not acceptable.

Standard of review

[11] The appellate standard of review applies. Questions of law are reviewable on a correctness standard. Questions of fact and questions of mixed fact and law are reviewable on a standard of palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, at para. 37. Maplequest agrees the issue here is one of mixed fact and law, reviewable on a standard of palpable and overriding error.

[12] In *Falcon Lumber Limited v. 2480375 Ontario Inc. (GN Mouldings and Doors)*, 2020 ONCA 310 at para. 58, the Court of Appeal described the standard of review as applied in the context of an appeal of a decision of a motion to strike a pleading as follows:

> Where a motion judge exercises discretion, an appellate court should intervene only where the discretion has been exercised on a wrong principle of law or a clear error has been made. An appellate court should defer to the findings of fact made by a motion judge unless he or she disregarded or failed to appreciate relevant evidence: *Bottan v. Vroom*, 2002 CanLll 41691 (Ont. C.A.), at para. 13.

Analysis

[13] Maplequest submits that this is not a case where a litigant had refused to participate in the litigation. On the contrary, Maplequest was actively involved in the litigation for years. While counsel for Maplequest fairly acknowledged Maplequest's history of non-compliance, she submitted that the only breach that remained at the time of the motion to strike was documentary production related to the counterclaim. Although Associate Justice Josefo referred to the relevant cases, he did not itemize the factors set out in these cases and expressly state how he was applying each of them separately. Had he properly applied each factor, he could not have come to the

conclusion he did. This is an error of mixed fact and law, and is a palpable and overriding error, warranting appellate review.

[14] Maplequest acknowledges Associate Justice Josefo's factual findings were available to him on the record before him.

[15] Primont submits that Associate Justice Josefo considered the relevant governing principles and appropriately applied them. There is no reviewable error.

[16] Both counsel agreed on and referred to the flowing relevant governing case law.

[17] In *Falcon Lumber*, the Court of Appeal approved the following comments of the Divisional Court in *Starland Contracting Inc. v. 1581518 Ontario Ltd*. (2009), 2009 CanLII 30449 (ON SCDC), 252 O.A.C. 19 (Div. Ct.):

> The authority to dismiss proceedings for repeated failure to comply with court orders and flagrant disregard for the court process is an essential management tool. A case management judge or master who has a continuous connection with an action, the parties and their counsel is well-positioned to monitor the conduct of the participants throughout the proceedings, and to determine whether anyone is deliberately stalling, showing bad faith or abusing the process of the court when deadlines are missed and defaults occur under procedural orders. A decision to dismiss an action or strike a pleading because of such defaults is entitled to deference, unless that decision is shown to have been exercised on wrong principles or based upon a misapprehension of the evidence such that there is a palpable and overriding error.

[18] The Court of Appeal in paragraph 57 of *Falcon Lumber* also set out the following governing principles and factors to consider, to which both counsel referred:

> [57] To summarize, several principles guide the exercise of a court's discretion to strike out a party's claim or defence under r. 30.08(2) for non-compliance with documentary disclosure and production obligations:
>
> - The remedy is not restricted to "last resort" situations, in the sense that it must be preceded by a party breaching a series of earlier orders that compelled better disclosure or production. However, courts usually want to ensure that a party has a reasonable opportunity to cure its non-compliance before striking out its pleading;
> - A court should consider a number of common sense factors including: (i) whether the party's failure is deliberate or inadvertent; (ii) whether the failure is clear and unequivocal; (iii) whether the defaulting party can provide a reasonable explanation for its default, coupled with a credible commitment to cure the default quickly; (iv) whether the substance of the default is material or minimal; (v) the extent to which the party remains in default at the time of the request to strike out its pleading; and

(vi) the impact of the default on the ability of the court to do justice in the particular case;

- The merits of a party's claim or defence may play only a limited role where breaches of disclosure and production obligations are alleged as one would reasonably expect a party with a strong claim or defence to comply promptly with its disclosure and production obligations;
- In considering whether an order to strike out a pleading would constitute a proportional remedy in the circumstances, a court should consider:
    - the extent to which the defaulting party's conduct has increased the non-defaulting party's costs of litigating the action, including the proportionality of those increased costs to the amount actually in dispute in the proceeding; and
    - to what extent the defaulting party's failure to comply with its obligation to make automatic disclosure and production of documents has delayed the final adjudication of the case on its merits, taking into account the simplicity (or complexity) of the claim and the amount of money in dispute.

[19] Those factors were applied again by the Court of Appeal in *Advanced Farm Technologies-JA v. Yung Soon Farm Inc.*, 2021 ONCA. More recently, in *Rimon v. CBC Dragon Inc.*, 2024 ONCA 128, the Court of Appeal considered a motion to strike in the context of failure to produce documents. The Court stated, at para. 25,

> The *Rules* are intended to ensure that parties to civil suits disclose all relevant information in a timely manner at all stages of a proceeding. A party's failure to comply with their disclosure obligations increases the costs of litigation and frustrates the opposing party's ability to move the proceeding forward. The *Falcon Lumber* principles apply even more forcibly when a party fails to disclose records when repeatedly ordered by the court to do so within a specific deadline. In such a case, the defaulting party does not simply delay or prevent an adjudication on the merits but undermines the court's authority.

[20] Maplequest acknowledges the competing principles in cases of this kind, as set out in *Starland*:

> The policy underlying the Rules of Civil Procedure is twofold: to ensure that cases that are not settled are tried on their merits; and to ensure that cases are processed, and heard, in an orderly way. A civilized society must ensure that a credible system of justice is in place, and the Rules of Civil Procedure, made pursuant to the Courts of Justice Act, reflect the scheme created by the Province for the orderly handling of civil cases.

[21] Maplequest submits Associate Justice Josefo did not have regard to these principles and did not appropriately balance merits against expediency. The "nuclear option" was disproportionate to the case before him.

[22] Maplequest relies on *Koohestani et al. v. Mahmood et al*., 2015 ONCA 56, 124 O.R. (3d) 205, in which the Court of Appeal overturned a motion judge's decision to strike a statement of defence for failure to pay damages and costs awarded to plaintiffs on motion for partial summary judgment. The Court of Appeal held that the strength of the defence is a factor to consider. The nature of the default in that case was a peripheral one, and the defence was not obviously without merit. The Court of Appeal held that the decision was not entitled to the deference it would normally attract because the motion judge failed to take the appropriate principles into account.

[23] Maplequest also points to a number of cases in which only the counterclaim was struck, not the statement of defence: *Schindler Elevator Corp. v. 1147335 Ontario Inc.*, 2008 CarswellOnt 5796 (Div. Ct.); *New Generation Woodworking Corp. v. Arviv* 2021 ONSC 228.

[24] Each case must be decided on its own merits. Just as there are cases such as those mentioned by Maplequest, so too are there cases in which statements of defence have been struck for what seems to be, objectively, less serious conduct than that which exists here. To take only one example, in *Advanced Farm Technologies* the defendant had cured all defaults by the time the motion to strike was heard. However, the court noted that there was clearly prejudice to the plaintiff, through the ongoing cost of chasing the defendant to fulfill his procedural obligations. The late compliance did not erase the history of non-compliance.

[25] While Associate Justice Josefo did not separately itemize each factor set out in *Falcon Lumber*, it is clear that he considered them. I have summarized some of his findings at paragraph 8 above. Associate Justice Josefo clearly found that Maplequest's failure to provide documents was deliberate, not inadvertent, that the failure was clear and unequivocal, that there was no reasonable explanation for the default and that, despite having been given chances to cure its default, Maplequest did not do so, with the default remaining at the time the request was made to strike its pleading. Associate Justice Josefo found there was resulting prejudice to Primont which inhibits the court's ability to do justice in the case. Associate Justice Josefo's consideration of these factors in a form that was not a list with separate subheadings is of no moment. It is the substance, not the form, of a decision that must be considered.

[26] It is true that Associate Justice Josefo did not refer to the merits of the defence. However, the case law is clear that the merits play only a limited role in cases of breaches of production and disclosure obligations. Associate Justice Josefo considered all factors in accordance with the Court of Appeal's direction in *Falcon Lumber*.

[27] In terms of Maplequest's submission that Associate Justice Josefo ought to have struck only the counterclaim, Maplequest has provided no explanation for why it did not raise this before Associate Justice Josefo. Maplequest submits that the issue of proportionality was squarely before Associate Justice Josefo and he should have considered striking only the counterclaim, although this was not proposed to him. The affidavit evidence was clear that the breach related only ot the counterclaim, so striking the counterclaim should have been considered as a proportionate response.

[28] Maplequest submits that this court should consider the new argument because all facts were before Associate Justice Josefo, as was the issue of proportionality. The court should not be unduly restrictive in considering new issues on appeal: *Quickie Convenience Stores Corp. v. Parkland Fuel Corporation* 2020 ONCA 453, 151 O.R. (3d) 778 at paras. 38-39.

[29] The court does not have the benefit of Associate Justice Josefo's reasoning on the new issue raised, namely, that only the counterclaim and not the statement of defence should have been struck. Given that he had seen the parties some 15 times, his reasoning would have no doubt been helpful on this issue.

[30] Nonetheless, even exercising my discretion to consider the matter, I do not agree the order was disproportionate. Maplequest points to a number of cases where pleadings were sought to be struck where the parties behaved worse than it did. That is not the question. The question is whether Associate Justice Josefo committed reversible error in his decision in this case.

[31] Associate Justice Josefo applied the correct legal test and found, on facts that were clearly before him and not disputed by Maplequest, that there was a repeated and significant pattern of delay and failure to abide by court orders, and that the "nuclear option" was the only one that would be appropriate. He clearly considered whether anything less than that option would be appropriate, and determined it would not. It was not an error for Associate Justice Josefo to consider the entire conduct of the litigation and Maplequest's historical behaviour. It was this history that led Associate Justice Josefo to conclude that lesser options, that had been used to attempt to control Maplequest's behaviour, had been and would be ineffective. While Maplequest attempts to parse its misbehaviour, and Associate Justice Josefo's "last-chance order", into that affecting the defence and that affecting the counterclaim, Associate Justice Josefo was not obliged to do so (particularly in the absence of this argument being put to him).

[32] Maplequest concedes that Associate Justice Josefo was entitled to consider the history of breaches. However, its submission that Associate Justice Josefo's order was disproportionate suggests that Associate Justice Josefo was required to limit his order to respond only to the breaches that were outstanding at the time of the motion. I do not agree. Associate Justice Josefo was entitled to assess those breaches in the context of Maplequest's pattern of "deliberately engineering" delays and the other factors outlined in the case law. Having done so, he concluded that striking the defence and counterclaim was required because "nothing else, not all the many case conferences, nor my encouragement at those times to Maplequest to comply, not the Orders themselves, nor other steps taken in the action, has worked to bring about consistent and timely compliance with court Orders on the part of Maplequest." There is nothing disproportionate, and certainly no palpable and overriding error, in this conclusion.

[33] Lastly, Maplequest asks in the alternative that it be permitted to file a new statement of defence. Maplequest relies on *Thrive Capital Management Ltd. v. Noble 1324 Queen Inc*., 2023 ONSC 1383. There, defendants were incarcerated for contempt and their defence was struck. They were provided with a last chance to purge their contempt before judgment would be granted against them. The defendants claimed they had sufficiently purged their contempt and sought to be

permitted to file a statement of defence. Justice Kimmel found they had done enough to purge their contempt and permitted them to file a statement of defence.

[34] *Thrive Capital* does not assist Maplequest. There, the court determined that the defendants had sufficiently complied with the court's "last-chance" order to be permuted to file a defence. Even allowing for the procedural differences in the motion before Kimmel J. and that before Associate Justice Josefo, Associate Justice Josefo found in this case that Maplequest remained non-compliant with the "last-chance" order at the time of the hearing. In so doing, he was not holding Maplequest to a standard of perfection. The comments of Associate Justice Josefo, summarized above, demonstrate that perfection was far from the standard he was applying. Indeed, the difference between *Thrive Capital* and this case underscores that these cases are carefully determined in their specific factual contexts.

[35] Associate Justice Josefo determined that striking Maplequest's defence and counterclaim was appropriate. I have found no error in that decision. To accede to Maplequest's alternative argument and permit Maplequest to file a new statement of defence would undermine Associate Justice Josefo's order. I decline to do so.

[36] The appeal is dismissed. As agreed by the parties, Maplequest shall pay Primont costs in the amount of $16,000 inclusive.

L. Brownstone J.

Date: March 6, 2026