

CITATION: Atwal v. Semkiw et al., 2026 ONSC 2418
COURT FILE NO.: CV-25-2778-0000
DATE: 2026 04 23

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Ephraim Atwal, Plaintiff

AND:

Brian Semkiw and Rui Mendes, Defendants

BEFORE: Glick, AJ.

COUNSEL: Tamara Watson and Fabian Suárez-Amaya, for the Plaintiff

Alexander Munera (for the Defendant, Brian Semkiw), Christopher MacLeod, and
N. Joan Kasozi (for the Defendant, Rui Mendes)

HEARD: March 26, 2026

ENDORSEMENT

OVERVIEW

[1] This is an action brought by the plaintiff Ephraim Atwal for the recognition and enforcement of a judgment from the Supreme Court of the State of New York (which action is the “New York Action”). There were three defendants in the New York Action – two of whom have been named as defendants in the within action (the “Ontario Action”). The third defendant in the New York Action – Blair Baker – has not been named as a defendant in the Ontario Action.

[2] The defendants Brian Semkiw and Rui Mendes now each move for an order granting them leave to amend their statements of defence and to advance crossclaims as against each other. They also both seek leave to issue third party claims against Blair Baker. The plaintiff consents to the amendments to the statements of defence, but opposes the crossclaims and the issuance of third party claims.

[3] For the reasons that follow, the defendants are granted leave to amend the statements of defence to provide more detail about the circumstances surrounding the settlement of the New York Action. The balances of the defendants' motions are dismissed.

FACTS

Procedural History

[4] The plaintiff issued his statement of claim in the Ontario Action on May 29, 2025. In the claim, the plaintiff alleges that on November 23, 2020, he, along with Sandesh Singh, who is not a party to the Ontario Action, commenced the New York Action against the defendants and Baker. The New York Action was settled by way of minutes of settlement. The minutes provided that the defendants and Baker would pay to the plaintiff and Singh the amount of \$2,000,000 USD in eight payments. If payments were not made, the parties to the New York Action agreed that the plaintiff and Singh would be entitled to judgment in the amount of \$2,250,000 USD, minus any money recovered, plus costs and disbursements.

[5] The first payment was to be paid on November 2, 2024. The plaintiff says that no payments were made. As a result, on December 26, 2024, the plaintiff and Singh obtained judgment in the New York Action against the defendants and Baker. Liability was joint and several. The total amount of the judgment was \$2,251,210 USD. The plaintiff in his claim seeks an order recognizing and enforcing the judgment in the New York Action.

[6] On July 18, 2025, Mendes served a statement of defence. Mendes amongst other things disputes that the New York Court is a court of competent jurisdiction. He says that there is no real and substantial connection between the New York Court and the cause of action. He pleads that he only consented to the jurisdiction of the New York Court under duress and that the circumstances surrounding the settlement agreement rendered it unenforceable. He also argues that the judgment is flawed and contrary to the law in Ontario and that it is not precise, final or enforceable. He raises a concern with the fact that the Ontario Action is brought by only one of the plaintiffs and brought against only two of the defendants in the New York Action.

[7] On August 19, 2025, the plaintiff served Mendes with a reply which disputes the assertions in the statement of defence.

[8] On August 8, 2025, Semkiw served a notice of intent to defend the claim in the Ontario Action. On September 3, 2025, Semkiw served his statement of defence. That defence raises similar issues as raised by Mendes in his statement of defence.

[9] On November 17, 2025, the plaintiff served the defendants with a motion for summary judgment. That motion is outstanding, and no responding materials have been filed. The plaintiff has attempted to set a timetable for the motion, but there has been no agreement in this regard amongst the parties.

[10] On or about December 11, 2025, the defendants advised the plaintiff of their intent to amend their defences. On January 30, 2026, the defendants both served proposed amended defences and crossclaims. The defendants' proposed amendments included crossclaims as against Blair Baker. Because Baker is not a party to the Ontario Action, the defendants subsequently revised the proposed pleadings to remove those crossclaims and instead propose to advance third party claims as against Baker.

[11] On February 12, 2026, the parties attended at triage court and booked these motions.

[12] The proposed amendments to the statements of defence provide further detail as to why the defendants say the settlement agreement in the New York Action was not entered into voluntarily. The proposed crossclaims are for contribution and indemnity only.

[13] The proposed third-party claims are similar in that they seek contribution and indemnity from Baker if either defendant is found liable in the main action.

LAW

Amendments to a Statement of Defence

[14] Rule 26.01 states that “on motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.”

[15] The test on a motion under rule 26.01 is settled law. As I noted at para. 21 of my decision in *Folino v. Shahid*, 2026 ONSC 841, the Court of Appeal in *1588444 Ontario Ltd. v. State Farm Fire and Casualty Co.*, 2017 ONCA 42, at para. 25, held that motions under rule 26.01 are to be granted unless:

- a) The responding party would suffer non-compensable prejudice;
- b) The amended pleading is scandalous, frivolous, vexatious or an abuse of the court’s process; or
- c) The pleading discloses no reasonable cause of action.

[16] Counsel for Mendes correctly cites this test. In contrast, counsel for Semkiw, relying on the Court of Appeal’s decision in *Spar Roofing & Metal Supplies Limited v. Glynn*, 2016 ONCA 296, argues that the only consideration on a motion under rule 26.01 is whether there is non-compensable prejudice.

[17] Semkiw’s articulation of the test on a rule 26.01 motion is incorrect. The Court of Appeal did not in *Spar Roofing* say that the only consideration is whether there is non-compensable prejudice. At para. 43 the Court of Appeal states that a court is not to conduct an analysis of the merits which is akin to a summary judgment motion. However, the Court of Appeal also stated that that the amended pleading must be legally tenable. “Put another way, an amendment is to be granted unless it would have been struck out under r. 21.01(1)(b) if it had been pleaded originally” (para. 43). In doing so, it articulates the same test as it did in *1588444 Ontario Ltd.*

Amending a Statement of Defence to Add a Crossclaim

[18] The test set out by the Court of Appeal in *158844 Ontario Ltd.* applies to amendments to a statement of defence, including amending the defence to add a crossclaim. This is clear from rule 28.03 which states that “[a] defendant who has delivered a statement of defence that does not contain a crossclaim and who wishes to crossclaim may amend the statement of defence in

accordance with rules 26.02 and 26.03 in order to add the crossclaim, and rule 26.05 (responding to amended pleading) applies to the amended statement of defence and crossclaim.”

[19] This is an important point as the plaintiff argues that the test to amend a defence to add a crossclaim is not the test under rule 26.01 but is instead the same test which is applied when determining whether leave should be granted to issue a third-party claim under rule 29. The plaintiff’s position in this regard is incorrect. It is not supported by case law, but by their analysis of rule 28.04(1)(b). However, rule 28.04(1)(b) is not the rule that applies on this motion.

[20] Rule 28.04(1)(b) does not relate to an amendment of a defence to add a crossclaim. Rule 28.04(1)(b) relates to the late delivery of a statement of defence and crossclaim. Rule 28.04(1) states:

Time for Delivery of Statement of Defence and Crossclaim

28.04 (1) A statement of defence and crossclaim shall be delivered,

(a) within the time prescribed by rule 18.01 for delivery of the statement of defence in the main action or at any time before the defendant is noted in default; or

(b) subsequently with leave, which the court shall grant unless the plaintiff would be prejudiced thereby.

[21] The event which precedes the leave referred to in rule 28.04(1)(b) is being noted in default. The rule has nothing to do with the amendment of the defence to add a crossclaim. That, as above, is dealt with by way of rule 28.03 which incorporates the test under rule 26.02.

Issuing a Third Party Claim

[22] Third party claims are governed by rule 29.01, which states:

29.01 A defendant may commence a third party claim against any person who is not a party to the action and who,

(a) is or may be liable to the defendant for all or part of the plaintiff’s claim;

(b) is or may be liable to the defendant for an independent claim for damages or other relief arising out of,

(i) a transaction or occurrence or series of transactions or occurrences involved in the main action, or

(ii) a related transaction or occurrence or series of transactions or occurrences; or

(c) should be bound by the determination of an issue arising between the plaintiff and the defendant. R.R.O. 1990, Reg. 194, r. 29.01.

[23] A third party claim is to be issued within 10 days after the delivery of a statement of defence. Where that has not happened, pursuant to rule 29.02(1.2) a third party claim may be issued at any time with the plaintiff's consent or with leave, which the court shall grant unless the plaintiff would be prejudiced thereby.

[24] The prejudice under rule 29.02(1.2) is different than prejudice under rule 26.01 in the sense that it does not need to be non-compensable prejudice. This may be because a defendant who is denied leave to bring a third party claim can still commence a stand-alone action as against the proposed third party defendants.

[25] As I noted in *Folino*, Justice Somji, in *Townley v. Saunders*, 2024 ONSC 2981, set out at para. 47 the factors a court may consider in finding prejudice under this rule. These had been set out previously in *Farrell v. Costco Wholesale*, 2015 ONSC 7783. Those factors include:

- a. the length of time between notification of the claim to when the defendant opts to issue a third party claim;
- b. the time between service of the claim and the defendant raising the third party claim;
- c. the availability of the underlying facts to the defendant from the time the incident occurred;
- d. the absence of any explanation for the failure to comply with the statutory deadline;
- e. the inexplicable delay in applying for leave thereafter;
- f. the discernable absence of merit to the third party claim;
- g. the unlikelihood that a separate action against the third party would result in an inconsistent verdict;

- h. the fact that examinations for discovery have happened and need to happen again;
- i. the delay in scheduling trial; and
- j. the ongoing adverse effects of the injury on the plaintiff.

[26] Counsel for Mendes, relying on the 1988 case of *Pringle v. Snyder's Potatoes (Preston Ltd. et al.*, [1988] O.J. No. 2818, argued that a defendant need not explain delay in issuing a third party claim. I do not agree that *Pringle* stands for that stark proposition. I interpret *Pringle* as stating that delay is a factor to consider in the context of whether there is prejudice to the plaintiff. To the extent however that *Pringle* stands for the proposition that delay does not need to be explained, it is no longer good law.

[27] The Court of Appeal in *Maillet v. Deren*, 2025 ONCA 159, in considering the test under rule 29.01, states at para. 9 that the “presence or absence of an explanation for delay is always a factor to be considered... The failure to offer an explanation weighs against the party seeking the extension of time.” At para. 10, the Court of Appeal states “the issue of delay by itself, is not determinative...”. At para. 11, the Court of Appeal states that “delay is still a matter that factors into the overall consideration of prejudice.”

[28] The Court of Appeal in *Maillet*, at paras. 12-18, also speaks to the need to consider the merit of the proposed third party claim when determining whether the plaintiff will suffer prejudice. The Court of Appeal states that a rule 29 motion ought not to “be treated as some form of surrogate motion for summary judgment... but that does not change the accepted principle that when a party is seeking an indulgence, it is a relevant factor whether the step for which the indulgence is sought, appears to have some merit.”

[29] The Court of Appeal found that the appropriate test for determining merit is not the test on a rule 21 motion, nor the test on summary judgment, but rather the same test as considering whether to grant an extension of time. At paras. 17-18 of *Maillet*, the Court of Appeal states:

As many cases have held, in assessing the merits, the threshold is not a high one. In some cases, it has been characterized as “a low bar” and other times it has been characterized as whether the step has “any real chance of success”: see *Royal*

Canadian Mortgage Investment Corporation v. 1835923 Ontario Ltd., 2020 ONCA 45, at para. 6, and *Paulsson v. University of Illinois*, 2010 ONCA 21, at para. 5.

In a case such as this, where there have been discoveries held and, consequently, there has been some canvassing of the evidence that is likely to be heard at trial, the motion judge was entitled to make a preliminary determination of the apparent merits of the third party claim and factor that into his prejudice analysis. No party is benefitted by permitting the taking of a step in a proceeding that has no real merit to it.

[30] In the present case there has been no discovery. As such, there has been no canvassing of the evidence. At the same time, I am able to consider whether the third party claim has any merit in considering the question of whether there is prejudice if leave is granted.

Enforcement of Foreign Judgments

[31] Justice Perell, in *Dead End Survival, LLC v. Marhasin*, 2019 ONSC 3453, set out the law with respect to the enforcement of foreign judgments:

[19] At common law, a foreign judgment is, in effect, a debt that can be enforced by a cause of action to claim payment of the debt, and absent evidence of fraud or of a violation of natural justice or of public policy, the enforcing court is not interested in the substantive or procedural law of the foreign court that granted judgment. In an action to enforce the foreign judgment, the Ontario court will not relitigate the underlying litigation that gave rise to the judgment, and if the foreign judgment is proven and is final, the Ontario court will enforce the foreign court's judgment with a judgment of its own.

[20] Foreign non-monetary judgments, including judgments for equitable relief, such as an [sic] specific performance or an injunction are also enforceable. For a foreign non-monetary judgment to be enforceable, it must have been rendered by a court of competent jurisdiction and must be final, and it must be of a nature that the principle of comity requires the domestic court to enforce it. The domestic court retains the discretion that underlies equitable orders and may exercise that discretion in deciding whether to enforce a foreign equitable order.

[21] Subject to the defences, a Canadian court will enforce a foreign judgment if the defendant attorned to the jurisdiction of the foreign court or if the foreign jurisdiction had a "real and substantial connection" to the dispute.

[22] The real and substantial connection is the overriding factor in the determination of the jurisdiction of the foreign court, and once it is determined that a foreign court properly assumed jurisdiction, a foreign judgment is *prima facie* enforceable. Given that the domestic court will not relitigate the substantive merits of the foreign judgment and although the creation of new defences is

possible, there is only a small list of defences to the enforcement of a foreign judgment.

[23] In deciding if the dispute had a real and substantial connection to the foreign jurisdiction, the domestic court must find that a significant connection existed between the plaintiff's cause of action and the foreign jurisdiction. In determining whether there is a real and substantial connection, the domestic court should consider the connections between the subject matter of the action, the alleged wrongdoing, the place where the damages are suffered, as well as with the transactions of the parties and with the action. The connection must be real and substantial but not necessarily the most real and substantial connection of all possible jurisdictions that might have a connection to the dispute. The real and substantial connection test is not a rigid test, and must ultimately be guided by order and fairness, as opposed to a mechanical counting of contacts and connections.

[32] The Supreme Court in *Beals v. Saldanha*, 2003 SCC 72 set out the law with respect to the defences available to a defendant seeking to have a Canadian court refuse enforcement of a foreign judgment. At para. 35, the Supreme Court stated:

A Canadian defendant sued in a foreign jurisdiction has the ability to redress any real or apparent unfairness from the foreign proceedings and the judgment's subsequent enforcement in Canada. The defences applicable in Ontario are natural justice, public policy and fraud. In addition, defendants sued abroad can raise the doctrine of *forum non conveniens*. This would apply in the usual way where it is claimed that the proceedings are not, on the basis of convenience, expense and other considerations, in the proper forum.

[33] The Supreme Court went on at para. 41 to state that "these defences were developed by the common law courts to guard against potential unfairness unforeseen in the drafting of the test for the recognition and enforcement of judgments. The existing defences are narrow in application. They are the most recognizable situations in which an injustice may arise but are not exhaustive." At para. 42 the Supreme Court stated that "unusual situations may arise that might require the creation of a new defence to the enforcement of a foreign judgment."

ANALYSIS

Preliminary Issue – Scheduling

[34] These motions should have been booked by the parties as long motions. Argument took over one hour. Respectfully, the parties ought to have known that 45 minutes would not be

sufficient to address all of the issues raised in this matter. The materials filed were extensive. Each party filed a motion record. Each party also filed at least one factum.

[35] Going forward I encourage counsel to more accurately assess the time they need to make sure the matter is fully and properly argued. While I was able to accommodate the parties, it may not always be possible. On a different day, with a different docket, it is possible that these motions would have been adjourned which would have resulted in delay.

The Proposed Amendments

[36] The plaintiff has consented to the proposed amendments to the statements of defence that go to the voluntariness of the settlement agreement in the New York Action. Leave is therefore granted with respect to those proposed amendments.

[37] The more difficult issue is whether leave should be granted to amend the statements of defence to add crossclaims. While the defendants consent to the crossclaims, the plaintiff does not. The plaintiff's objection means that leave of the court is required under rule 26.02(c). As above, per the Court of Appeal in *1588444 Ontario Ltd.*, that leave must be granted unless the amendment will result in non-compensable prejudice, the pleading is scandalous, frivolous, vexatious or an abuse of the court's process, or if the pleading discloses no reasonable cause of action.

No Non-Compensable Prejudice

[38] The plaintiff argues that he will be prejudiced by the crossclaims. Specifically, the plaintiff argues that he will suffer prejudice by virtue of delay in bringing his summary judgment motion. The plaintiff in making this argument points to the fact that the defendants are only moving to amend their claims after the plaintiff served his motion record for summary judgment.

[39] The plaintiff's argument with respect to prejudice is premised on his position that the test which applies is the test under rule 29 and not the test under rule 26.02. There is therefore no assertion that the prejudice is non-compensable. As above however, in order for leave to amend a defence to assert a crossclaim to be denied, the prejudice adduced must be non-compensable.

[40] I find that any delay that may result from the proposed crossclaims can be compensated for by way of costs. Put differently, any prejudice that the plaintiff may suffer as a result of the proposed amendments is compensable. There is no basis to deny leave on the ground that the plaintiff will suffer prejudice. I turn then to the legal tenability of the crossclaims.

Contribution and Indemnity Not Available

[41] Mendes argues that the crossclaim does not raise new issues. Counsel for Mendes argues that if the plaintiff is successful in enforcing the judgment on a joint and several basis, Mendes ought to be permitted to reserve his right to seek contribution and indemnity from the other individuals named in the foreign judgment. Mendes denies he is attempting to relitigate any issues in the New York Action. He relies on the *Negligence Act*, R.S.O. 1990, c. N. 1, which he asserts “provides for a statutory right of contribution and indemnity for concurrent tortfeasors.”

[42] Semkiw did not make any arguments about the tenability of the crossclaim given his erroneous position that the only consideration under rule 26.01 was whether the plaintiff would suffer prejudice.

[43] The plaintiff in contrast argues that leave should not be granted to amend the pleadings to advance crossclaims because doing so “re-open[s] the apportionment of liability: an issue already decided by the New York Court”. The plaintiff argues that allowing the defendants to issue crossclaims would be to allow them to “create further expense and delay by relitigating their joint and several liability.” The plaintiff also argues that the defendants are working in concert to delay the hearing of the summary judgment motion. While he doesn’t explicitly allege that the crossclaims are abuses of process, that is the clear implication.

[44] I do not agree that the proposed crossclaims are abuses of process, but I do find that they are legally untenable. Contribution and indemnity were not addressed in the judgment in the New York Action. The defendants were instead found jointly and severally liable for the amount of the judgment. In those circumstances, crossclaims for contribution and indemnity are not available to them in this proceeding.

[45] Support for this proposition is found in the case law. As set out by the Supreme Court in *Beals*, the defences available to a defendant in a proceeding to enforce a foreign judgment are limited to natural justice, public policy and fraud. In addition, defendants sued abroad can raise the doctrine of *forum non conveniens*. A defendant is not however able to raise a new legal issue with respect to liability not addressed in the underlying judgment. In this action a crossclaim for contribution and indemnity raises a new legal issue.

[46] The *Negligence Act* does not assist the defendants in their argument that they should be allowed to issue crossclaims against each other. The issue the court is to determine in this proceeding is not whether the defendants are responsible for damages owed to the plaintiff due to fault or neglect, but rather whether the foreign judgment should be recognized and enforced. The *Negligence Act* therefore does not apply.

[47] As Justice Perell stated in *Dead End Survival*, the “enforcing court is not interested in the substantive or procedural law of the foreign court that granted judgment.” The action is not a mechanism by which the defendants can determine contribution and indemnity, which relate to the substantive law of the underlying New York Action. Put differently, determination of substantive liability is not an issue in the action. The question is whether the judgment in the New York Action is proven and final.

[48] On this basis, the defendants’ motions for leave to amend the defences to add crossclaims are denied.

Third Party Claims

[49] While the underlying issues with respect to the crossclaims and the third party claims are the same, the tests to be applied are different. As set out above, the issue is whether the plaintiff will be prejudiced if leave is granted to issue the third party claims. That analysis of prejudice includes delay as well as a consideration of whether there is merit to the third party claims.

Parties’ Positions

[50] Semkiw points to the *Negligence Act* in support of his assertion that leave should be granted to issue his third party action. He states that since it was first enacted in 1924, “civil litigants in Ontario have been vested with the substantive right of commencing third party actions against a non-party alleged to have negligently caused or contributed to the damages alleged in the underlying action.” Semkiw, relying on *Farrell v. Costco Wholesale*, also argues that there is no prejudice to the plaintiff.

[51] Mendes, relying on *Pringle*, argues that he does not need to explain any delay in issuing the third party claim. Mendes argues that there is no non-compensable prejudice. He argues that a third party claim avoids a multiplicity of proceedings, which would result if he was forced to issue a separate action with respect to the issue of Baker’s liability to him for contribution and indemnity.

[52] Mendes also argues that if the plaintiff is successful, Mendes “ought to be permitted to reserve his right to seek contribution and indemnity from the other individuals named in the Foreign Judgment.” In this regard, Mendes relies on the recent decision of Justice Brownstone in *Wekerle v. Arbour*, 2025 ONSC 1456. At para. 33, Justice Brownstone states:

Rule 29.01(a)

[33] Rule 29.01(a) cannot, in my view, supplant the substantive law concerning when a claim for contribution and/or indemnity may be available. That is, if there is a possible claim for contribution and/or indemnity against the third parties, the third-party claim is properly brought under rule 29.01(a). Rule 29.01(a) confers the ability to bring a claim but still requires that there be a viable legal basis for the defendant’s claim. Rule 29.01(a) works in concert with the right to claim contribution and indemnity in order to bring efficiency to proceedings and avoid a multiplicity of proceedings. It provides the appropriate procedure for a properly founded claim.

[53] Mendes argues that under New York law, third party claims are not mandatory. Citing *NY CPLR § 1007 (2025)* he argues that he was not required to commence a third party claim in the originating jurisdiction within any deadline or at all. He argues on that basis that “it would be unfair and improper to now bar him from seeking contribution and indemnity now that the Plaintiff is seeking to enforce the judgment in Ontario only against a subset of the defendants.” Mendes, finally, in oral argument referred the court to *Chevron Corp v. Yaiguaje*, 2015 SCC 42 to argue that there was a jurisdictional basis to assert a third party claim as against Baker.

[54] The plaintiff's arguments in relation to the third party claims are largely the same as those advanced in relation to the crossclaims. The plaintiff argues that he will be prejudiced by the delay and that the proposed third party claims are attempts to relitigate the underlying decisions. In addition, the plaintiff argues that Ontario has no jurisdiction over Baker. If the third-party claims are issued, he expects Baker to bring a motion challenging this court's jurisdiction.

The Third Party Claims are Legally Untenable

[55] Having regard to the case law, I find that the proposed third party claims are untenable. This finding relates back to the fact that the issue in the Ontario Action is the recognition and enforcement of a foreign judgment. In the context of this claim, where the New York Court found that liability was joint and several, but did not make any determination with respect to contribution or indemnity, the defendants cannot advance a claim for contribution and indemnity either against each other or a third party. To allow them to do so is to allow them to relitigate the substance of the underlying action. Justice Perell's finding in *Dead End Survival*, that the "enforcing court is not interested in the substantive or procedural law of the foreign court that granted judgment" applies equally to the proposed crossclaims and the proposed third party claims.

[56] This finding is not inconsistent with Justice Brownstone's decision in *Wekerle*. Justice Brownstone found that "if there is a possible claim for contribution and/or indemnity against the third parties, the third party claim is properly brought under rule 29.01(a). Rule 29.01(a) confers the ability to bring a claim but still requires that there be a viable legal basis for the defendant's claim." In the context of the Ontario Action there is no viable legal claim for contribution and/or indemnity against the third parties and as such no basis for a third party claim.

[57] Mendes' argument about third party claims in New York must also be rejected. Baker was a defendant in the New York Action. The judgment in that action is also against Baker. There was therefore no need to issue a third party claim against him in New York. The law in relation to third party claims in New York is irrelevant to the question before this court.

[58] Having regard to the findings above, I do not need to address the parties' arguments about jurisdiction vis-à-vis Baker in any depth. I would however note that the defendants have no judgment against Baker to recognize or enforce in Canada. The commencement of a third party

claim therefore would represent an entirely new *lis* as between the defendants and Baker. The case law relating to the enforcement of foreign judgments, including the Supreme Court's decision in *Chevron*, does not apply to the commencement of an action by the defendants against Baker or assist the defendants in making out this court's jurisdiction. Given my findings though above, I make no finding whether this court would or would not have jurisdiction over the third party claims.

[59] For all of these reasons, the defendants are denied leave to issue third party claims as against Baker.

Prejudice to the Plaintiff

[60] My findings about the tenability of the third party claims in the context of the Ontario Action are sufficient to dispose of the motion. However, if I am wrong in my finding that there is no merit to the third party claims, I would also dismiss the motion on the basis that the plaintiff would be prejudiced if leave was granted to issue those third party claims.

[61] Prejudice under rule 29.01(1.2) is different than prejudice under rule 26.01 in the sense that it does not need to be non-compensable prejudice. If leave is granted to issue the third party claims, the prosecution of the main action will be delayed, including the hearing of the summary judgment motion.

[62] The defendants have provided no explanation as to why they did not initially issue third party claims as against Baker, or why they waited until after they were served with the summary judgment motions. As set out by the Court of Appeal in *Maillet*, a failure to explain the delay weighs against the party seeking an extension. As set out by this court in *Heffernan v. John H. Kieffer Professional Corporation*, 2021 ONSC 2786, at para. 48, in the absence of an explanation courts will assume that delay was intentional.

[63] The only issues in the main action are whether the foreign judgment ought to be recognized and enforced. Adding two third party claims that add the issue of whether there should be contribution and indemnity, even if those claims were tenable, would expand the issues to be determined and delay the hearing of the main action to the prejudice of the plaintiff. Weighing the

factors set out in *Townley*, I find that leave should be denied to issue the third party claims on this basis as well.

CONCLUSION

[64] For the reasons above, the defendants' motions to amend their defences to advance allegations in relation to the underlying settlement are granted. The remainders of their motions with respect to crossclaims and third party claims are dismissed.

[65] I encourage the parties to settle the costs of this motion. If they cannot do so, costs submissions can be made in writing through the administration office. Submissions are to be limited to three pages. The plaintiff is to serve their submissions within seven days of this decision. The defendants are to serve their submissions seven days later. There will be no reply.

Associate Justice Glick

Date: April 23, 2026

CITATION: Atwal v. Semkiw et al., 2026 ONSC 2418

COURT FILE NO.: CV-25-2778-0000

DATE: 2026 04 23

ONTARIO

SUPERIOR COURT OF JUSTICE

Ephraim Atwal, Plaintiff

AND:

Brian Semkiw and Rui Mendes, Defendants

ENDORSEMENT

Glick, AJ.

Released: April 23, 2026