

Court of King's Bench of Alberta

Citation: CNOOC Petroleum North America ULC v 801 Seventh Inc, 2026 ABKB 127

Date: 20260223
Docket: 1901 06261
Registry: Calgary

Between:

CNOOC Petroleum North America ULC

Plaintiff

- and -

**801 Seventh Inc, OPTrust Office Inc., Centurion Holdings Ltd., Quantico Capital Corp.,
Westhills Development Corporation, Canadian Income Fund Group Inc., and Tokay
Capital Corp.**

Defendants

- and -

CNOOC Limited

Defendant by Counterclaim

**Memorandum of Decision
of the
Associate Chief Justice
D.B. Nixon**

I. Introduction

[1] The underlying litigation involves a dispute over a commercial lease. The trial was bifurcated. The first segment of the case addressed the liability issue (the “Liability Trial”), and a decision has been issued on that matter: see *CNOOC Petroleum North America ULC v 801 Seventh Inc*, 2025 ABKB 145.

[2] The decision in the Liability Trial has been appealed. The appeal was argued on February 12, 2026 but no decision has yet been issued by the Alberta Court of Appeal concerning the decision in the Liability Trial.

[3] These applications arise between the conclusion of the Liability Trial and before resumption of trial on the second segment. The second segment of the trial will address damages.

[4] For ease of readability, I shall refer to the plaintiff CNOOC Petroleum North America ULC and the defendant by counterclaim CNOOC Limited as the “CNOOC Parties”. Similarly, I will refer to the defendants 801 Seventh Inc, OPTrust Office Inc, Centurion Holdings Ltd, Quantico Capital Corp, Westhills Development Corporation, Canadian Income Fund Group Inc, and Tokay Capital Corp as the “Landlord Parties”.

[5] This decision addresses the threshold question of whether the CNOOC Parties need to apply under *Alberta Rules of Court*, Alta Reg 124/2010 (the “Rules”) *Rule* 3.15 to amend their Statements of Defence to Counterclaim or whether the filing by the Landlord Parties of an Amended Response to Request for Particulars has put the CNOOC Parties into a position where they have the ability to amend as of right under *Rule* 3.62.

[6] The parties agreed during the Case Management Hearing of January 21, 2026 to have this threshold question argued via an exchange of written submissions.

II. Background

[7] The Landlord Parties initially particularized its damages claim in a Response to Request for Particulars on June 7, 2019. They then filed an Amended Response to Request for Particulars on December 16, 2025. This follows applications to amend the Response to Request for Particulars in the previous case management decisions outlined in *CNOOC Petroleum ULC v 801 Seventh Avenue Inc*, 2025 ABKB 537 and the Desk Endorsement of Justice Dilts on December 2, 2025.

III. Issue

[8] Determine whether the CNOOC Parties must apply under *Rule* 3.65 to amend their respective Statements of Defence to Counterclaim, or whether they have the ability to amend as of right under *Rule* 3.62.

IV. The Law

[9] The pertinent *Rules* are the following:

3.62(1) A party may amend the party’s pleading, including an amendment to add, remove, substitute or correct the name of a party, as follows:

- (a) before pleadings close, any number of times without the Court's permission;
 - (b) after pleadings close,
 - (i) for the addition, removal, substitution or correction of the name of a party, with the Court's prior permission in accordance with rule 3.74, or
 - (ii) for any other amendment, with the Court's prior permission in accordance with rule 3.65;
 - (c) despite clauses (a) and (b), whether or not pleadings have closed, with the agreement of the parties filed with the Court.
- (2) An amended pleading must be
- (a) filed, and
 - (b) served on each of the other parties
 - (i) within 10 days after the date on which it is filed, or
 - (ii) if the pleading is a statement of claim that has not already been served, in accordance with Division 3, Subdivision 2.
- (3) A party may, without the Court's permission, amend that party's pleading before or after pleadings close if that amended pleading is
- (a) a statement of defence in response to an amended statement of claim, an amended counterclaim or an amended third party claim, or
 - (b) a reply to an amended statement of defence, amended statement of defence to an amended counterclaim, or amended statement of defence to an amended third party claim.
- (4) A response pleading referred to in subrule (3) must be
- (a) filed, and
 - (b) served on each of the other parties within 10 days after the date that the amended pleading referred to in subrule (3) is served.
- (5) If a party has pleaded in response to a pleading that is subsequently amended and served on that party and the party does not file and serve a further response to the amended pleading, the party is assumed to rely on the party's unamended pleading in response to the amended pleading referred to in subrule (3).
- (6) This rule does not apply to amendments to a class proceeding under the *Class Proceedings Act*.
- [...]
- 3.65(1) Subject to subrule (5), before or after close of pleadings, the Court may give permission to amend a pleading.

(2) If the Court gives permission for a pleading to be amended, the Court must specify the time period within which the amended pleading must be filed and served.

(3) An order giving permission to amend a pleading under this rule ceases to have effect unless the amended pleading is filed and served within the time specified by the Court.

(4) If the Court directs or allows a pleading to be amended at trial,

- (a) the amendment must be recorded in writing by the court clerk, and
- (b) no order need be filed.

(5) This rule does not apply to an amendment to a pleading to add, remove, substitute or correct the name of a party to which rule 3.74 applies.

[...]

3.67(1) This rule applies to pleadings between the following:

- (a) a plaintiff and a defendant;
- (b) a plaintiff-by-counterclaim and a defendant-by-counterclaim;
- (c) a third party plaintiff and a third party defendant;
- (d) a plaintiff and a third party defendant.

(2) Pleadings close when

- (a) a reply is filed and served by a plaintiff, plaintiff-by-counterclaim or third party plaintiff, as the case may be, or
- (b) the time for filing and serving a reply expires,

whichever is earlier.

(3) The close of pleadings against one party represents the close of pleadings against all parties to that pleading.

[...]

Definitions (Appendix)

“pleading” means

- (a) a statement of claim,
- (b) a statement of defence,
- (c) a counterclaim,
- (d) a defence to a counterclaim,
- (e) a reply to a statement of defence,
- (f) a reply to a statement of defence to a counterclaim,
- (g) a third party claim,
- (h) a defence to a third party claim,

- (i) a reply to a third party's statement of defence, or
- (j) a response to a request for particulars or a response to an order for particulars;

V. Analysis

[10] CNOOC argues that the *Rules* “permit the CNOOC Parties’ right to responsive pleadings.” The CNOOC Parties argue that the pleadings have not closed yet, pointing to comments made by Justice Jeffrey and Justice Dilts during the applications. The CNOOC Parties further argue that they are responding to an amended counterclaim, and as such under *Rule* 3.62(3) they can amend as of right. Finally, the CNOOC Parties argue that fairness and judicial economy prefer that they amend as of right and then the Landlord Parties can either apply to strike or reply to their amended statement of defence to counterclaim.

[11] In contrast, the Landlord Parties argue that the pleadings have been closed for years and all the subsequent amendments were either by consent or by leave of the court. Further, the Landlord Parties argue that *Rule* 3.62(3) is clear as to which documents trigger the ability to amend as of right and that an Amended Response to Request for Particulars is not one of these. Finally, the Landlord Parties argue that most of the arguments regarding fairness raised by the CNOOC Parties would more appropriately be part of the leave to amend application under *Rule* 3.65 and that it would be more efficient and a better use of judicial resources to deal with this as an amendment application instead of the proposed approach suggested by the CNOOC Parties.

[12] Based on my review of the evidence and analysis of the law, I find that the CNOOC Parties must apply under *Rule* 3.65 to amend. I make this determination for the following reasons.

[13] First, I disagree with the suggestion of the CNOOC Parties that the pleadings are not closed. *Rule* 3.67 determines whether the pleadings are closed for the purposes of *Rules* 3.62 and 3.65. The stipulations under *Rule* 3.67 that the pleadings are closed have been met. The reference by previous Justices to the pleadings not being closed was during oral hearings in a more colloquial sense as the parties were contemplating amendments to the pleadings, and the Justices were seeking to continue to move the bifurcated trial to its next stage in order to start figuring out deadlines. My determination on this point is bolstered by the fact that the Landlord Parties had applied to amend the Response to Request for Particulars. If the CNOOC Parties were correct that pleadings were not closed, there would have been no need for the Landlord Parties to have so applied.

[14] Second, I agree with the Landlord Parties that *Rule* 3.62(3) refers to only specific documents, and the provision does not include an Amended Response to Request for Particulars. There is no debate that a Response to Request for Particulars is a “pleading”. I make this comment because this is set out in the Definitions in the Appendix at (j). The document that was amended, however, was the Response to Request for Particulars, and not the Statement of Counterclaim. The *Rules* set out when it applies to pleadings broadly or to more specific documents in the *Rules*. As such, *Rule* 3.62(3) does not apply in this situation.

[15] The CNOOC Parties cite *Melcor Reit Limited Partnership (Melcor Reit GP Inc) v TDL Group Corp (Tim Hortons)*, 2021 ABQB 379 at paras 10 to 13 for support for their position. In my view, the *Melcor Reit* decision does not assist them. The *Melcor Reit* decision outlines that

for the purposes of an application to strike under *Rule* 3.68(2), a Response to a Request for Particulars (as outlined above) is a pleading, but a Response to a Notice to Admit is evidence and as such could not be struck under that *Rule*. This highlights the broader wording under *Rule* 3.68(2) than is present in *Rule* 3.62(3).

[16] The broader wording under *Rule* 3.68 also suggests that the approach suggested by the Landlord Parties is more economical and efficient than the approach suggested by the CNOOC Parties. To emphasize this point, it is a better use of judicial resources to have the CNOOC Parties make an application to amend under *Rule* 3.65 and have it dealt with in that manner as opposed to the CNOOC Parties making its amendments and then have the Landlord Parties respond with an application to strike under *Rule* 3.68 and/or a reply under *Rule* 3.62(3). In summary, the approach suggested by the Landlord Parties more effectively frames the issue and the proposed amendments.

[17] The Landlord Parties suggested in the Case Management Hearing as well as in their letter that they would be amenable to consent to certain amendments. However, despite the CNOOC Parties repeatedly asking for confirmation on which amendments that would be, there does not appear to have been any clear response. As such, following the application to amend by the CNOOC Parties, I expect the Landlord Parties to clearly indicate which amendments they consent to so as to ensure that only the amendments that are at issue will have to be dealt with by this Court.

Conclusion

[18] Turning to the issue as framed above, the CNOOC Parties do not have an ability to amend their respective Statements of Defence to Counterclaim as of right pursuant to *Rule* 3.62(3). As a result, the CNOOC Parties will have to apply to amend pursuant to *Rule* 3.65.

Costs

[19] There will be no costs ordered for this exchange of written submissions.

Dated at the City of Calgary, Alberta this 23rd day of February 2026.

D.B. Nixon
A.C.J.C.K.B.A.

Appearances:

Jeffrey E. Sharpe, KC, Julia A. Lisztwan and Matthew C. Kuhl
for CNOOC Petroleum North America ULC

Blair C. Yorke-Slader, KC, Michael D. Mysak, David R. McKinnon and Tyler D. McDonough

for 801 Seventh Inc, OPTrust Office Inc, Centurion Holdings Ltd, Quantico Capital Corp,
Westhills Development Corporation, Canadian Income Fund Group Inc, and Tokay Capital
Corp

Jerry J. Patterson, KC
for CNOOC Limited