

CITATION: United Bakery Manufacturers Inc. v. Alectra Utilities Corporation
2026 ONSC 2928

COURT FILE NO.: CV-24-00062789-0000

DATE: 2026-05-20

SUPERIOR COURT OF JUSTICE

RE: United Bakery Manufacturers Inc., Plaintiff

AND:

Alectra Utilities Corporation, Defendant

BEFORE: The Honourable Mr. Justice Robert B. Reid

COUNSEL: M. Arnold, Counsel, for the Plaintiff

A. Chughtai, Counsel, for the Defendant

HEARD: April 8, 2026

DECISION ON MOTION

Introduction:

- [1] The defendant, Alectra Utilities Corporation (“Alectra”), brought a motion for summary judgment dated November 19, 2025, pursuant to rule 20.01(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “Rules”) requesting a dismissal of the claim by the plaintiff, United Bakery Manufacturers Inc. (“United”), based on the absence of a genuine issue requiring a trial.
- [2] United submits that there are several genuine issues requiring a trial and seeks dismissal of the motion.
- [3] For the reasons set out below, Alectra’s motion is dismissed.

Background:

- [4] Alectra is an electrical utilities company which provides electrical services to United. On August 16, 2023, those services were interrupted, allegedly because of the failure of one of Alectra’s underground supply cables. As a result, there was a stoppage for about four hours of the commercial baking operation of United.
- [5] United alleges that the service interruption was the responsibility of Alectra, and that Alectra should be found liable to United for damages claimed at about \$420,000.

Litigation Chronology:

- [6] The statement of claim was issued December 13, 2024, and amended January 23, 2025. The amended statement of claim was served January 28, 2025.
- [7] The statement of defence was filed March 6, 2025.
- [8] United made a motion for default judgment or, in the alternative, summary judgment dated April 8, 2025. Affidavit material was filed by both parties. United made a further motion for default judgment dated August 13, 2025.
- [9] United's summary judgment motion did not proceed. Its motion for default judgment was dismissed by decision of Spurgeon J. on September 21, 2025.
- [10] United filed its reply on September 23, 2025.
- [11] The current summary judgment motion by Alectra is dated November 19, 2025, with the supporting affidavit of Glen Yamashita sworn December 17, 2025. The responding affidavit of Russ Gorochowski on behalf of United was sworn January 27, 2026.

Is there a genuine issue requiring a trial?

- [12] The provisions of rule 20.04(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, (the "Rules") provide that the court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to the claim or the defence.
- [13] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 66, the Supreme Court of Canada directed that there will be no genuine issue requiring a trial if the summary judgment process provides the judge with the evidence required to adjudicate the dispute in a fair and just manner and the process is a timely, affordable, and proportionate procedure. I need not review the Rules and the provisions of *Hryniak* as to the use of the expanded fact-finding powers contained in the Rules since they are unnecessary based on my reasons set out below.
- [14] The caselaw is clear and uncontroversial that the onus is on the moving party to demonstrate that there is no genuine issue requiring a trial, which the responding party must then answer and refute. The responding party must "lead trump or risk losing" or put another way, must put its best foot forward by providing admissible evidence demonstrating a genuine issue. Neither party can rely solely on allegations or denials. See *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (S.C.), at para. 24, and *Chernet v. RBC General Insurance Company*, 2017 ONCA 337, at para. 12.

Positions of the Parties:

Alectra:

- [15] Alectra submits that the amended statement of claim is clear at paragraph 1(1) that United requests damages based only on breach of contract and breach of warranty. It submits that the “placeholder” additional provision “and such further and other heads of damages as may become apparent in this proceeding” is of no consequence.
- [16] Alectra asserts that a contract existed between the parties and denies any breach of that contract or of any warranty.
- [17] In its material filed in support of this motion, Alectra states that in providing services as a utility operator/distributor, it is licensed by the Ontario Energy Board (“OEB”) to distribute electricity under the terms of the Distribution System Code (“DSC”) issued by the OEB. Pursuant to those terms, Alectra has published Conditions of Service (“COS”) which it says form the contract between it and United, and that as a customer, United implicitly accepts that it is bound by the terms of the COS. It is agreed that there is no written contract between the parties.
- [18] Alectra further states that, as per the COS, it does not guarantee a continuous or unvaried flow of power, and further that it can be found liable for damages only as arise out of its wilful misconduct or negligence, neither of which is alleged or factually supported in the amended statement of claim. The COS further limits any claim for damages to exclude loss of profit or revenue, business interruption losses, loss of contract or goodwill, or for any indirect, consequential, incidental, or special damages including punitive or exemplary damages arising in tort, contract, or otherwise. Those limitations mimic the terms of the DSC.
- [19] Based on the terms of the COS, Alectra denies any basis for liability to United.
- [20] Russ Gorochofski, representing United, was cross-examined on August 25, 2025, as part of the plaintiff’s earlier summary judgment motion. During that cross-examination, it was admitted by counsel that “we have no evidence of a contract having been breached. We are not relying on any contract ... or breach of warranty,” and further that “there is no warranty of which we are aware.” Mr. Gorochofski was asked: “Now, you are saying ... from what I understand, your position is that there is no contract between Alectra and United. Is that right?” He responded “Yes.”
- [21] As a result of the foregoing, Alectra submits that there is no genuine issue requiring a trial, and that this court may confidently dismiss the action on the basis that there is no factual basis supporting the pleaded causes of action.

Position of United:

- [22] United notes that the statement of defence does not allege that the relationship was governed by an implicit contract between the parties, such as the COS, although it acknowledges that Alectra denies the breach of any contract.
- [23] United states that the pleading of “such further and other evidence as may become apparent during this proceeding” was included because at the time, United had no knowledge of the cause for the service interruption. Based on subsequently acquired information, it now alleges that a cause of action in negligence exists. Therefore, in its reply dated September 23, 2025, United pleaded negligence with reasonable particulars. Alectra has not sought to strike that pleading. Whether Alectra was negligent is a genuine issue requiring trial.
- [24] United also submits that Alectra is required to provide evidence relating to details of the service interruption such as incident reports in response to the negligence allegation, and that the failure to do so raises an adverse inference to be used in assessing Alectra’s motion. Withholding that information means that Alectra is not putting its best foot forward.

Analysis:

- [25] The statement of claim alleges two causes of action: breach of contract, and breach of warranty. Allegations of negligence are made against Alectra for the first time in the reply, although negligence was pre-emptively denied by Alectra in its statement of defence.
- [26] In this summary judgment motion, Alectra bears the onus of establishing that there is no genuine issue requiring a trial. It asserts that there was a binding implied contract through the COS, no breach of the COS, and in any event, the terms of the COS protect Alectra from liability for damages. United was aware of the existence of the COS and its contents since it pleaded at paragraph 11 of the amended statement of claim that it was in full compliance with that document.
- [27] Alectra denies any breach of contract or warranty and relies on the fact that United has presented no evidence on the subject and has conceded the point in the cross-examination of its representative.
- [28] In response, United must put its best foot forward and provide evidence of a triable issue. On the pleaded causes of action of breach of contract and breach of warranty, United’s “best foot forward” position is a concession that there was no breach of contract or breach of warranty. As such, there is no genuine issue requiring a trial on those issues.
- [29] The pleading in the statement of claim of “such further and other evidence as may become apparent in the proceeding” does not assist United in defeating the summary judgment motion. If United’s submission on that point was accepted, no summary judgment motion could ever succeed in the face of such a pleading because of the potential for discovery of some other cause of action or evidence during the litigation.

- [30] The failure of Alectra to specifically plead in its statement of defence that the COS was a contract is irrelevant. The content of the COS is evidence to be considered when assessing whether Alectra put its best foot forward on the motion.
- [31] In the statement of defence at paragraph 6, Alectra denies that there was a breach of duty, want of care, or negligence on its part. That was the first time negligence was mentioned in the pleadings. The second reference to negligence appears in paragraph 22 of the statement of defence, when Alectra pleads the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.
- [32] Paragraph 2 of the reply filed by United states that Alectra “was negligent by failing to inspect and monitor its electrical transmission equipment consisting of three cables buried underground on lands adjacent to [United]’s business.” Further, in paragraph 5 of the reply, United states that “it was [Alectra] who was negligent by failing to conduct regular or any inspections or maintenance of its electrical supply cables.”
- [33] Alectra objected to the reply forming a part of the motion record of United because it was filed two days late and therefore failed to comply with rule 25.04(3). Further, Alectra submitted that the reply should not be considered as to the negligence claim because it is non-compliant with rule 25.06(5). That rule requires that an allegation which raises a new ground of claim shall not be made in a subsequent pleading, but by way of amendment to the previous pleading.
- [34] I advised the parties orally at the hearing of the motion that those requests for relief by Alectra, namely the exclusion or redaction of the reply, should have been contained in a notice of motion, rather than introduced for the first time in its factum filed on the summary judgment motion, and I therefore declined to rule on Alectra’s requests.
- [35] As a result, I am faced with the reply as a non-compliant pleading, but within which is contained reference to alleged negligence on the part of Alectra. The COS, as conceded by Alectra, does contemplate claims for damages arising out of negligence. Particulars of negligence beyond the allegations in the reply are unknown to United as admitted by Mr. Gorochowski in his affidavit in response to this motion sworn January 27, 2026. He deposed that: “There is good reason to believe that [Alectra] was negligent in its installation, operation, and maintenance of the cable but [Alectra] has refused to provide any information about the incident.”
- [36] In the cross-examination of the Alectra representative, questions about whether incident reports or other evidence as to negligence were refused as irrelevant. When asked for details of allegations in the statement of defence that United was negligent, Alectra provided no information.
- [37] As set out by the Court of Appeal for Ontario in *Chernet*, at para. 12, “It is trite law that both parties on a summary judgment motion are required to put their best foot forward. Summary judgment motions are decided by evidence of the facts and by inferences drawn from those facts. Not by speculation about the facts.” In that case, the defendant’s motion

for summary judgment was decided based in part on the failure of the plaintiff to give any coherent explanation of how the motor vehicle accident happened.

- [38] In this case, the onus is on Alectra to show no genuine issue requiring a trial. Accepting for the moment that the allegation of negligence can be considered, Alectra has relied on the terms of the COS and denied wilful misconduct. United attempts to refute that evidence by asking this court to find there to be a genuine issue requiring a trial based on its representative's view that there is "good reason" to believe there to have been negligence on the part of Alectra. Once the issue of negligence was raised by United, albeit in an irregular reply, it was incumbent on Alectra to put its best foot forward, presumably by disclosing any incident reports or documents surrounding the loss of power to United and Alectra's response together with whatever conclusions those reports or documents contained.
- [39] The court is entitled to assume that the parties have placed before it, in some form, all of the evidence that will be available at trial: see *Starcall Wireless Communications Inc. v. Bell Mobility Inc.*, 2017 ONSC 2813 at para. 29. That does not seem to be the case on the negligence issue.
- [40] The court cannot conclude that a summary judgment process based on the information shared by the parties with one another to date and filed with the court as part of the motion is a fair and just manner in which to resolve the claim.
- [41] Based on the foregoing, I am satisfied that the matter should go forward. Alectra has not satisfied its onus of demonstrating that there is no genuine issue requiring a trial on the issue of negligence.
- [42] Therefore, the summary judgment motion will be dismissed.

Costs:

- [43] The award of costs is a matter for further submissions, if required, following the receipt of this decision.
- [44] The parties are encouraged to resolve the issue of costs of the motion between themselves. If they are unable to do so, they may submit their bills of costs and make written submissions, consisting of not more than three pages in length according to the following timetable:
- United is to serve its Bill of Costs and submissions by May 29, 2026.
 - Alectra is to serve its Bill of Costs and submissions by June 12, 2026.
 - United is to serve its reply submissions, if any, by June 19, 2026.
- [45] All submissions are to be filed with the court with a copy to St.Catharines.SCJJA@ontario.ca and uploaded to Case Center by June 22, 2026.

- [46] If no submissions are received by the court by June 22, 2026, or any agreed extension, the matter of costs will be deemed to have been settled.

Date: May 20, 2026

Reid J.