

CITATION: TSCC No. 1835 v. Cion Corp., 2026 ONSC 3865
COURT FILE NO.: CV-25-00744316-0000
DATE: 20260702

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1835

Applicant

AND:

CION CORP.; 2363959 ONTARIO INC., DBA Uptown Construction; OSMAN
KHORSAND

Respondents

BEFORE: Associate Justice Josefo

COUNSEL: *Patrick Gajos*, for the Applicant

Sonja Nuic, for the Respondents

DATE HEARD: June 30, 2026

DATE OF DECISION: July 2, 2026

ENDORSEMENT

The Relief Sought by this Motion and the Position of the Parties:

[1] The moving defendants, 2363959 Ontario Inc., DBA Uptown Construction (“Uptown”) and Khorsand, seek an Order under Rule 6.01 that this within action (CV-25-00744316-0000) and ten other actions be heard at the same time or one immediately after the other, as the trial Judge directs. The ten other actions are: CV-25-00741543-0000, CV-25-00741541-0000, CV-25-00735830-0000, CV-25-00741548-0000, CV-25-00741516-0000, CV-25-00741510-0000, CV-25-00741511-0000, CV-25-00741517-0000, CV-25-00741547-0000, and CV-25-00741515-0000.

[2] These defendants also seek, pursuant to the November 28, 2025 Notice of Motion, common discovery of the defendants in this within action and in the other ten actions listed above, with the evidence gleaned at discoveries used at the one trial (or trials, one following the other). In other words, these defendants only want to be subjected to one examination for discovery for the eleven actions.

[3] The plaintiff herein, the condo corporation, and the individual homeowners who brought the above-listed ten actions, agree that those ten individual actions could be heard together or one immediately after the other pursuant to Rule 6.01. Yet these parties disagree that those ten actions should be melded together with this within action. While they agree that the Defendants could be examined for discovery once for all ten actions, plaintiff herein asserts that this within action, involving different parties, merits its own discovery process.

Factual Underpinnings:

[4] This matter began in or about April 2023. The condo corporation retained the within defendant Cion Corp, an engineering firm (Cion Corp. takes no position on this motion), and subsequently, as allegedly recommended by Cion, the within defendant Uptown, a roofing contractor. The purpose was to replace the roof of the condo townhouse complex located in Toronto. The CCDC Stipulated Price Contract was signed by the condo corporation, Uptown, and Cion on May 28, 2023. On May 31, 2023, work began.

[5] On Friday, June 2, 2023, the roof was stripped, with the upper deck allegedly exposed to the elements. A rainstorm unfortunately began. Given the exposure, water entered the individual townhouse units, allegedly causing damage to the property of the homeowners. That alleged damage led to the above-listed ten individual lawsuits brought by the individual homeowners against Uptown, Khorsand (the principal of Uptown), and Samira Afzalzada, allegedly an administrator and another principal of Uptown. Afzalzada is, however, not a defendant in this within action. The ten actions sound in tort, with the homeowners seeking damages for, *inter alia*, their personal property damaged by the flooding.

[6] This within action is brought by the condo corporation against the defendants listed above, and Cion. The claims involve the common elements, including the roof. The action alleges breach of contract, professional negligence, as well as misrepresentation. I will discuss this action in more detail, ahead.

Law-Brief Overview:

[7] As both counsel well discussed the applicable law in their factums, an overview of it will suffice. As always, the challenge is in applying the law to the facts of the particular case(s).

[8] When considering whether cases should be tried together, one first asks, is there a question of law or fact in common in the cases for which relief under Rule 6.01 is sought? Or, is there the same incident, transaction, occurrence, or series of transactions/occurrences at issue?

[9] These preliminary questions go to the intention of the Rule: promoting the more efficient and expeditious determination of disputes, especially when there are important facts in common, avoiding multiple proceedings, and negating the risk of inconsistent results. One also must weigh whether granting the relief will help the combined parties narrow the issues and promote settlement, as well as help the parties to achieve potential costs savings as the cases progress.

[10] If common questions of law or fact, or the same incident, transaction(s) or occurrence(s) exist in the actions for which the relief is sought, then the balance of convenience must be considered. As discussed in *Alsous v Shahin*, 2023 ONSC 3995 (para 20), can it be concluded that the common question of fact in the proceedings for which linkage is sought is sufficiently important when considering other facts to make consolidation (or trials together or one following the other) desirable?

[11] The other facts to be considered include whether the legal and factual issues are equally straight-forward in the various actions, even when arising out of the same incident or transaction, and the litigation status of the various actions. Are they roughly at the same stage in the litigation process, or is one lagging the other?

[12] Yet, holding up advanced matters for a matter barely begun is possible, so long as, in the Court's reasonable application of discretion, this is the right result in all the circumstances of the case at bar; if, for one example, the issues between the various actions are so inextricably interwoven that, if the Rule 6.01 relief is not granted, there is a serious risk of inconsistent results.

Applying the Law to the Facts:

[13] In applying all the above factors, I observe that there can be no doubt that the rain incident of June 2, 2023 started this entire matter. There is thus a common incident or fact involved in these eleven cases. Yet, on the other criteria, the within action is, in my view, distinct in many ways from the ten individual actions commenced by the homeowners. For example:

- The causes of action are different: the homeowners sue in Tort while the corporation alleges a breach of the complex CCDC contract, which contract will likely play no or a very limited role in the ten actions. The corporation also alleges, *inter alia*, professional negligence. The corporation's claim, and its action, especially considering the crossclaims amongst the defendants, is I find more complex overall than a claim for damages resulting from water ingress.
- In the homeowners' actions, the plaintiffs have served their damages reports. These ten actions arise out of a claim of a breach of duty of care by the trade (Uptown) allegedly owed to the occupants of the property. By contrast, in this within action, there will be needed expert engineering evidence addressing the standard of care of an engineer and of Uptown, if those standards were breached, and with the two defendants clearly "pointing the finger" at each other. Again, the legal analysis will be different and, in the within action, it will involve balancing more given the centrality of the issue of breach of contract, as well as professional negligence and related claims. Weighing the degree of liability (if any) between Uptown and Cion, for example, will be an important task, yet one which is likely unrelated to the ten individual claims.

- The ten homeowner actions were commenced pursuant to Rule 76. While there is allegedly some dispute about this, the Statements of Claim do assert this (see, for example from two of the actions, Paragraph 22 of the Groth and Jenkins claim). Moreover, the Discovery Plan for those actions signed January 7, 2026 by counsel for these moving defendants clearly notes that these are Rule 76 proceedings. Counsel for the defendants did not, at the time of signing back the Plan, dispute that these cases are proceeding under Rule 76.
- Paragraph 23 of each claim, moreover, envisages a simplified or streamlined, process: “[paragraph 23] The Plaintiffs propose that this action be tried at Toronto, tried together as a mass tort with the unit owners claiming damages related to the same negligence of the Contractor.” The within action, conversely, is not under Rule 76. With a claim of \$3,500,000.00, it is clearly in the regular stream.
- Cion corp. is not a party to the ten homeowners’ actions. Nor has the within defendants as of this time sought to implead or implicate Cion corp. into the ten actions. While a motion to amend the Statements of Defence in the ten actions to bring a counterclaim against the condo corporation was mooted in argument, again, nothing has yet been done in that regard, despite time to do that, or to seek other amendments if truly desired. The parties are thus, at least at this time, not the same.
- The ten individual actions are further along than is the within action: the plaintiff homeowners have served their damages reports for each unit as of November 28, 2025. The defendants and Afzalzada have delivered their productions for the homeowners’ actions. The January 7, 2026 Discovery Plan for the homeowners’ actions envisaged a single discovery of the defendants to be used in all ten actions. Nine of ten examinations for discovery of the homeowners pursuant to the time-limits in Rule 76 have been completed. As of May 26, 2026, the individual plaintiff’s have delivered their answers to undertakings. Mandatory mediation was completed on June 5, 2026. These matters now await a pre-trial. It should be just one pre-trial for all ten actions, I add.

[14] In my view, counsel for the plaintiff put it well when he asserted (at paragraph 31 of his factum) that the negligence pleadings in the homeowners’ cases as contrasted with the within action involve allegations of breaches of “different duties, that were owed to different parties”, who were functioning within “a different legal relationship”. All that, with which I agree, is reason enough to deny the relief sought.

[15] Moreover, I see no true efficiency in having these eleven cases tried together when it seems likely that the homeowners’ claims will focus on the more straightforward issues involving the nature and extent of the damage suffered by each because of the (seemingly hard to dispute) ingress

of water after Uptown stripped the roof. Yet the within action, as already discussed herein, has a far wider focus, and it is not nearly at the same stage as the ten actions. Thus, I do not see trying these cases together to be more efficient overall. It will just render the Simplified Rule actions more complex. Nor will it likely promote settlement; nor will it narrow the issues, for any party to these eleven actions.

[16] The mere fact of the incident in common is, in my view, thus not sufficient to outweigh what I conclude are the many important points of differentiation in the nature of these cases, and in the remedies sought as contrasted between the claim of the condo corp. and the claims of the individual homeowners.

[17] Addressing the balance of convenience, it would also not be, in my view, just to the homeowners to delay their quest for justice in simplified proceedings, to make them wait for the far more complex action of the condo corporation to, in essence, “catch up” to them. While it makes sense that the ten individual actions be formally bound together pursuant to Rule 6.01, I decline to grant the relief sought by the within defendants. There will be common discovery of the defendants in the ten actions listed above, which common discovery plaintiff had long since proposed. Yet, the defendants in this within action will be discovered separately for this action, which should be arranged or scheduled along with the Cion corp. defendants.

[18] The motion of these defendants is thus dismissed for these reasons herein.

Costs and an Order:

[19] I urge counsel to agree on costs, which should be possible given the outcome. When having those discussions, however, both sides should recall that neither filed a Compendium in this matter, as required by the Rules.

[20] If costs can be agreed upon, the quantum can be added to a draft Order which counsel can prepare for my review and signature. Such can be sent to ATC Ms. Kimi Sharma. If agreement proves elusive, then a case-conference can be held with me, scheduled via Ms. Sharma.

Associate Justice Josefo

Date: July 2, 2026