

CITATION: Zhao v. Goldentrust Development Inc., 2026 ONSC 4652
COURT FILE NO.: CV-24-0290-0000
DATE: 2026 08 11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Jie Zhao and Chester Z.D. Deng, Plaintiffs

AND:

Goldentrust Development Inc., Spring Garden Homes Inc. and 2604967 Ontario Inc., Defendants

BEFORE: Associate Justice J. Glick

COUNSEL: Alexia Donis and Jordan Katz, for the Plaintiffs

Peng Zhang, representative for the Defendants

HEARD: July 16, 2026

ENDORSEMENT

OVERVIEW

[1] This is a motion by the Plaintiffs to strike the Defendants' Amended Statement of Defence and Counterclaim ("defence") for failure to comply with the September 8, 2025 Order of Justice Yamashita and the Order of Associate Justice Brown dated June 6, 2024. The Defendants oppose the requested relief.

[2] For the reasons that follow, the motion is granted as against Goldentrust Development Inc. and Spring Garden Homes Inc. (the "Vendor Defendants"). These are the Defendants in breach of the Orders of Justice Yamashita and Associate Justice Brown. The Defendant 2604967 Ontario Inc. ("2604967") is not in breach of these orders, which do not apply to it. The motion as against the Defendant 2604967 is denied. Given that the defence was a joint pleading, 2604967 must amend its pleading within thirty days as set out below.

BACKGROUND

[3] The Plaintiffs are mother and son. Together they say they paid \$267,000 in deposits to the Vendor Defendants towards the purchase of a residential property to be built at 146 Old Kennedy Road in Markham, Ontario. The Defendant 2604967 is a related company which formerly held title to the property. The Vendor Defendants first promised to deliver the property by December 18, 2021.

[4] The Plaintiffs allege that the Defendants, after an extension, failed to deliver the property by May 18, 2023. As a result, the Plaintiffs say that on June 8, 2023, they terminated the APS and asked for the return of the deposits. They say, and the Defendants agree, that the deposits were not returned.

[5] The Plaintiffs commenced this action on January 22, 2024. The Defendants jointly defended the claim and launched a counterclaim on March 11, 2024. Their Amended Statement of Defence and Counterclaim is dated June 12, 2024.

[6] On June 6, 2024, the Plaintiffs brought a motion for a certificate of pending litigation against the property or for an Order for security with respect to the property. They brought that motion against all three Defendants. While that decision was under reserve Tarion determined that the Plaintiffs were entitled to the return of the deposits and issued them \$100,000 from Tarion's deposit guarantee program. On October 29, 2024, Associate Justice Brown released his decision requiring the Vendor Defendants to pay the deposit into court pursuant to Rule 45.02 (the "Security Order"). An Order was not made with respect to 2604967. The amount of the security being sought was reduced by \$100,000 to \$167,000 given that Tarion had provided the Plaintiffs with \$100,000.

[7] The Vendor Defendants did not comply with the Security Order. The Plaintiffs therefore brought a contempt motion as against the Vendor Defendants. Before that motion could be heard, the Defendants' counsel brought a motion to be removed from the record and Mr. Zhang obtained an Order allowing him to represent all three of the Defendants.

[8] Cross-examinations were conducted on the contempt motion. On April 30, 2025, Mr. Zhang was cross-examined on his affidavit. Mr. Zhang's answers to undertakings given on that cross-examination were due by May 16, 2025. Incomplete answers were provided on May 23, 2025.

[9] Justice Yamashita heard the contempt motion on September 8, 2025. Her Honour adjourned the motion and ordered Mr. Zhang to deliver answers to undertakings by September 30, 2025. The contempt motion was to be returned after that date. Mr. Zhang produced further incomplete answers on September 30, 2025. The parties thereafter appeared in front of Justice Yamashita on November 13, 2025. Justice Yamashita noted on that date that she did not require further submissions on the contempt motion but would render her decision in due course.

[10] Justice Yamashita's decision on the contempt motion was released on January 6, 2026. Justice Yamashita found that the Vendor Defendants were in breach of the Security Order. She also found that Mr. Zhang's compliance with the undertakings remained largely deficient. Justice Yamashita did not however find the Vendor Defendants in contempt. Justice Yamashita was unable to say "that there is a clear proof, beyond a reasonable doubt, that the Security Order was intentionally breached by the Defendant." The evidence in front of Justice Yamashita suggested that the Vendor Defendants did not have the funds to satisfy the Security Order at the time it was made due, at least in part, to a power of sale proceeding that took place in between the hearing of the motion in front of AJ Brown and his decision on the motion. Justice Yamashita also found that this was not an appropriate case for a contempt order as there were other procedures available to the Court to enforce breach of orders and other more appropriate remedies.

[11] Along with finding that the Vendor Defendants were in clear breach of the Security Order, Justice Yamashita also found that the Vendor Defendants had failed to comply with her Endorsement, dated September 8, 2025, regarding the undertakings and refusals provided by Mr. Zhang. Justice Yamashita ordered that the Vendor Defendants were required to comply with AJ Brown's Order within 30 days of her order, failing which the Plaintiffs were able to move to have the Vendor Defendants' defence struck.

[12] On February 17, 2025, Justice Yamashita released her costs endorsement, ordering that the Vendor Defendants were to pay \$45,000 to the Plaintiffs.

[13] The Vendor Defendants have not complied with Justice Yamashita's Order. They have not paid the security into court, nor have they complied with Justice Yamashita's costs Order.

LAW AND ANALYSIS

[14] Rule 60.12 states that where a party fails to comply with an interlocutory order, the court may, in addition to any other sanction provide by the Rules, stay the party's proceeding, dismiss the party's proceeding or strike out the party's defence or make such other order as is just. An Order under Rule 60.12 is discretionary (*Rana v Unifund Assurance Company*, 2016 ONSC 2502 at paragraph 37).

[15] If a party fails to pay the costs of a motion, subrule 57.03(2) provides the court with discretion to dismiss or stay a party's proceeding, strike out a party's defence, or make such other order as is just. As stated by the Court of Appeal at paragraph 2 in *Garrett v. Oldfield*, 2016 ONCA 424, "in determining whether an action should be dismissed, a court must balance the completing interests of the parties and consider all relevant factors.

[16] Relevant factors that a court may consider in exercising its discretion under subrule 57.03(2) and subrule 60.12 were set out by Associate Justice Robinson in *Allen v. Kumar*, 2022 ONSC 4223 at paragraph 11. These were originally articulated at paragraph 50 of *Rana v. Agnihotri* by Justice Dunphy. The relevant factors are:

- a. The court must be alive to the possibility that non-compliance with court orders is indicative of its process being abused. Failing to act may deprive the moving party of justice according to law and risks rendering the court "a paper tiger";
- b. A litigant's right of access to the courts must be accompanied by the responsibility to abide by the *Rules* and comply with court orders. Exempting impecunious parties from enforcing costs orders may

amount to granting “carte blanche” to continue to ignore rules and orders and take unsupportable steps in the action without fear of consequences;

- c. Where a party had the opportunity to make submissions about impecuniosity at the prior hearings leading to the costs order(s), subsequently seeking to relieve against payment of those costs constitutes a collateral attack on the prior orders;
- d. The court may consider a pattern of unnecessary and unreasonable steps taken in the proceeding, including appealing numerous orders without chance of success or knowing the risk of an adverse costs order;
- e. If court orders are cavalierly ignored and if a litigant continuously fails to comply with their obligations as a litigant and then fails to abide by the costs consequences of that behaviour, the court is justified in bringing some finality to the action;
- f. Impecuniosity is not a shield for unreasonable conduct of litigation and a dismissal order may be made even if it resolves the matter on procedural rather than substantive grounds;
- g. Self-represented litigants, while entitled to some accommodation and assistance to ensure a fair hearing, are not entitled to abuse the system or the party opposite. Failure to enforce orders once made against self-represented parties is unfair to the parties opposite and undermines respect for the court and the civil justice system; an
- h. At some point, costs themselves become an inadequate form of compensation for prejudice, especially where the party on whom they are imposed refuses to pay them.

The Positions of the Parties

[17] The Plaintiffs argue that the defence should be struck and the counterclaim should be dismissed. They say the Defendants have failed to comply with AJ Brown’s Order for two years. They say that the Defendants have been given multiple “last chances” and striking the defence is an appropriate remedy. They say the failure to comply was deliberate, clear, and that there is no

reasonable explanation for the failure to comply. They do not draw any distinction as between the three defendants, arguing that they are all related; they point to the fact that the three Defendants filed a joint defence where they stated that they are related corporations with the same head office in the Town of Markham.

[18] The Plaintiffs address the Defendants' argument that they could not comply with the Security Order in three ways. First, they note that the Defendants did not adduce evidence on the motion in front of AJ Brown, including of their finances. They say that the Defendants cannot now claim financial hardship. Second, the Plaintiffs note there is no independent documentation or verification of the Defendants' financial position. The Plaintiffs say that the undertakings the Defendants provided on the contempt motion were insufficient to establish impecuniosity and instead demonstrate an attempt to obfuscate. Third, the Plaintiffs argue that impecuniosity cannot act as a shield against cost sanctions and should not be a shield against an order to pay money into court.

[19] The Plaintiffs also argue that the lack of merit to the defence and the impact of the breach on the Plaintiffs warrant striking the defence. They note that their claim is for a return of their deposit and that Tarion has already determined they are entitled to same. They note the Defendants admit to retaining the deposit, but take the position that they still intend to construct the property, that the Plaintiffs are in breach of the agreement and that the deposits are forfeited by the Plaintiffs' alleged breach. This is the case even as the property has been sold. They also argue that Mr. Zhang admitted he owed the deposit to the Plaintiffs. They argue that the Defendants are using their breach to try to delay a decision on the merits. They also argue that the Defendants' non-compliance has prejudiced them, requiring numerous motions and leading to unrecoverable costs. They say striking the defence is a proportional and just remedy in the circumstances.

[20] The Defendants acknowledge "the seriousness of the compliance issues raised by the Plaintiffs." They ask that the defence not be struck and that instead there be a "short, supervised timetable to identify and cure the specific undertaking and disclosure issues relied on by the Plaintiffs." They say the Plaintiffs ought to particularize any remaining undertakings and that the Defendants ought to then be required to serve updated answers within a fixed-timetable. With

respect to the Security Order, the Defendants acknowledge it has not been paid and state that they do not have the funds to do so.

[21] The Defendants acknowledge that the court has the power to dismiss their defence, but argue that a proportional order would address the concern with compliance while preserving their ability to have the matter adjudicated on its merits. The focus of their argument relates to the undertakings. The timetable they propose relates only to those undertakings and not to the Security Order. They do not have any plan to address the Security Order. They also argue that the court ought not to make any determination as to the merit of the defence on this motion. Finally, they argue that 2604967 should not have its defence struck as it is not in breach of any order.

Discussion and Findings

[22] I do not think that there is a continuing breach relating to the undertakings that could by itself support an order striking the defence or dismissing the counterclaim. The undertakings were given during a cross-examination on the contempt motion. Justice Yamashita ordered that the undertakings be answered in advance of a decision on the contempt motion. The contempt motion has been argued and there has been a decision. Justice Yamashita addressed the deficiency of the answers to undertakings in that decision. In that circumstance, even if the information requested by way of an undertaking remains relevant, the mechanism to seek that information is no longer by way of enforcement of that undertaking. Instead, the Plaintiffs must seek that information by way of the mechanisms of discovery. What this means, for this motion, is that the failure to answer the undertakings given on the contempt motion does not give rise to an independent ground to strike the defence and/or dismiss the counterclaim. At most, the Vendor Defendants' failure to comply with Justice Yamashita's interim order goes to the pattern of their conduct in this action, which is a relevant consideration under Rule 60.12 when considering whether to strike the defence and dismiss the counterclaim for failure to comply with the Security Order.

[23] This also addresses the Defendants' position that instead of striking their defence and dismissing their counterclaim I should instead impose a timetable to give them a final chance to answer any outstanding undertakings. Such an order might be appropriate where the breach which gave rise to the motion was the failure to answer undertakings. The breach that gave rise to the

within motion, however, is the Vendor Defendants' failure to pay security into court pursuant to the Order of AJ Brown and the subsequent Order of Justice Yamashita.

[24] The Vendor Defendants have not complied with the Security Order or complied with Justice Yamashita's Order of January 6, 2026. They have provided no evidence of any attempt to comply with the Orders and have put forward no plan to address the Security Order going forward. They have had two years to comply with AJ Brown's original order and, as of the date of the hearing of this motion, six months to comply with Justice Yamashita's Order.

[25] The Defendants say they are impecunious and cannot pay the security that has been ordered to be paid. They did not produce any evidence on this motion in support of that assertion. While their claim of impecuniosity precluded a finding of contempt, Justice Yamashita specifically attorned to the possibility of a motion to strike their defence if they did not comply and pay the security. In addition, as noted by Justice Kurz at paragraph 83 of *Son v. Khan*, 2018 ONSC 284, and by AJ Robinson in *Allen v. Kumar*, impecuniosity is not a shield to non-compliance with a court order. This is particularly true where impecuniosity was not raised on the motion that gave rise to the order, and where there was no appeal or subsequent motion to vary that order. While the Vendor Defendants did attempt to move to vary the Security Order, and sought an adjournment of the contempt motion for that purpose, they were denied leave to do so by Justice Yamashita while the Plaintiffs' contempt motion was outstanding. They were able to move to vary the Security Order after the contempt motion was heard but have not done so.

[26] When these facts are weighed along with the Vendor Defendants' failure to answer undertakings on the contempt motion and with the unpaid costs order arising out of that same motion, I find that an Order under 60.12 is necessary to address the non-compliance. Failure to act in these circumstances denies the moving parties of "justice according to law and risks rendering the court 'a paper tiger'".

[27] Courts, balancing the interests at play, often give a party one last chance to comply with a court order and regularize their position before moving to dismissal. This was the approach of Justice Dunphy in *Rana v. Unifund Assurance Company*, 2016 ONSC 2502, *Justice Myers in Baradaran v. Tarion Corporation*, 2014 ONSC 6870, and more recently, the approach taken by

Associate Justice Frank in *Dunning v. Colliers Macaulay Nicolls Inc.*, 2025 ONSC 3561. I took this approach in *Rana v. Agnihotri*, 2026 ONSC 1496 and in *Aarooj v. Terra Greenhouse*, 2026 ONSC 3317. The difficulty for the Vendor Defendants on this motion is that Justice Yamashita's Order was already their "last chance." They did not avail themselves of that chance, nor do I have any confidence that there will be compliance if I give them another last chance.

[28] The last question is whether the relief should be granted as against all three Defendants or only as against the Vendor Defendants. Even though the Defendants are all related corporations, 2604967 was not subject to, and therefore did not breach, the Security Order or the subsequent Order of Justice Yamashita. The noncompliance giving rise to this motion is non-compliance by the Vendor Defendants only. I find therefore that the relief ought to be granted only against the Vendor Defendants.

[29] I recognize that the Defendants have jointly defended the action and jointly counterclaimed. The assertions in the Amended Statement of Claim and Counterclaim are largely undifferentiated as between the Defendants. This though does not justify an order striking 2604967's defence. It is instead a pleadings issue which can be addressed by requiring 2604967 to serve and file an amended Amended Statement of Defence and Counterclaim. That amended pleading is to deal only with 2604967's defences and counterclaims and not those that belong solely to, or which are predicated on the rights solely held by, the Vendor Defendants. That amended pleading must be served and filed within thirty days of the date of this Order. If 2604967 fails to serve and file the pleading within the time specified, the Plaintiffs may move for an order striking 2604967's defence. That further motion is to be heard before me.

Costs

[30] The Parties made costs submissions at the hearing of the motion. The Plaintiffs, if successful, sought costs on a substantial indemnity basis in the amount of \$9,969.65. The Defendants, if successful, did not seek costs. If the Plaintiffs were successful the Defendants suggested that a more reasonable amount be awarded – in the range of \$5000.

[31] The Plaintiffs were partially successful on this motion in that they achieved the relief sought as against two of the three Defendants. Having regard to the submissions of the Parties and

the Plaintiffs' costs outline, I award costs to the Plaintiffs as against the Vendor Defendants in the amount of \$5000, which accounts for that partial success. I make no Order with respect to costs to or from 2604967.

CONCLUSION

[32] For the reasons set out above, the Plaintiffs' motion is granted as against the Vendor Defendants only. The Vendor Defendants' Amended Statement of Defence and Counterclaim is struck, meaning that the Vendor Defendants' counterclaims are also dismissed.

[33] The motion as against the Defendant 2604967 is denied. 2604967 is however required to serve and file an amended Amended Statement of Defence and Counterclaim within thirty days of the date of this Order. If that is not done, the Plaintiffs may move before me for an Order striking 2604967's defence.

[34] The Vendor Defendants are ordered to pay costs to the Plaintiff in the amount of \$5000 inclusive. Costs are to be paid within thirty days. No costs are payable to, or payable from, 2604967.

Associate Justice J. Glick

Date: August 11, 2026