CITATION: 1991033 Ontario Ltd. v. 2601412 Ontario Inc. et al., 2026 ONSC 5731
COURT FILE NO.: CV-19-2185 (London)
DATE: 20261009

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 1991033 ONTARIO LTD., Plaintiff/Respondents

AND:

2601412 ONTARIO INC., MARTHA J. LEACH, PAUL MCLAUGHLIN CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF "THE FACTORY", Defendants/Moving Parties

BEFORE: Justice J. Horvat

COUNSEL: Carolyn Brandow, for the Plaintiff/Respondents

Cole Vegso, for the Defendants/Moving Parties

Catherine M. Patterson, for the Third Parties

HEARD: October 7, 2026

REASONS FOR DECISION ON MOTIONS

[1] The defendants (collectively, "The Factory") bring two motions (NOMs dated June 10, 2026, and July 16, 2026) seeking an order that:

(a) leave be granted to conduct a further or continued examination of 1991033 Ontario Ltd. ("199");

(b) 199 produce the notes of Ms. Shannon Donati in relation to meetings held in July 2019;

(c) 199 and/or third party, Tuscanos Pizzeria & Bistro, produce financial and accounting records for Tuscanos;

(d) leave be granted to The Factory to conduct an examination of Robert (Burt) Donati on behalf of Tuscanos;

(e) 199 prepare and deliver a supplementary affidavit of documents that includes all documents produced to the defendants, including those that 199 denies are relevant to this action; and

(f) setting a timetable for the remaining steps in this action before it can be set down for trial.

2026 ONSC 5731 (CanLII)

[2] For the reasons that follow, I dismiss each of Factory's motions.

Background

[3] On February 26, 2018, 199 was incorporated. Ms. Donati is 199's sole officer and director.

[4] From June 2018 until early September 2019, 199 operated food and beverage services on the premises of The Factory.

[5] On November 7, 2019, this action was commenced. The statement of claim claimed damages estimated to be $1 million.

[6] On March 24, 2023, Perfetto J. ordered the parties to comply with their agreed to discovery plan. The Factory was represented by counsel and the scope of production outlined in the discovery plan was agreed to by all parties.

[7] On June 12, 2023, Ms. Donati, as the representative of 199, was examined by The Factory's then lawyer.

[8] In December 2025, 199 received its expert's report estimating damages at over $24 million.

[9] In January 2026, The Factory's current lawyers were retained.

[10] On February 23, 2026, 199 amended its statement of claim increasing the damages sought to $24,847,267. No other amendments were made to the statement of claim.

[11] On May 22, 2026, The Factory delivered a fresh as amended statement of defence. 199 delivered a reply shortly after.

Further Examination of Ms. Donati on behalf of 199

[12] The Factory argues that there are two areas it wishes to explore with Ms. Donati on a further examination for discovery: (i) the increase in damages claimed; and (ii) mitigation of damages.

[13] The only amendment made to the statement of claim was to increase the damages claimed once 199 received its expert's report. The merits of the claim did not change with the increase in damages. No new causes of action or issues were created by the amendment. The theory of the plaintiff's case, the material facts, and the issues relevant to this action, have not changed from the day the action was commenced in 2019. Apart from the damage figure, there is nothing that The Factory did not already know about 199's case following the amendments. The increase in the damages sought by 199 does not create a reason for a further examination for discovery.

[14] The issue of mitigation was canvassed during Ms. Donati's examination in 2023. While The Factory's current counsel may not be satisfied with how deeply the issue was probed, that is not a reason to permit The Factory an additional examination of 199.

2026 ONSC 5731 (CanLII)

[15] The Factory was represented by counsel at Ms. Donati's examination for discovery. It was open to The Factory to ask Ms. Donati on her examination the questions it now seeks to ask. It chose not to.

[16] There is no reason to further delay this action by setting it back to the examination for discovery stage. I am mindful of the principles of proportionality in r. 29.2.02 of the *Rules of Civil* Procedure, R.R.O. 1990, Reg. 194, and I am not prepared to make an order for a further examination of Ms. Donati on behalf of 199.

Ms. Donati's July 2019 Meeting Notes

[17] The Factory seeks the production of notes that Ms. Donati made at certain meetings that occurred in July 2019.

[18] Ms. Donati made notes following 199's eviction from The Factory. During her examination for discovery, during a line of questioning related to the dates of the meetings, Ms. Donati stated that she originally kept the notes for herself. In answer to the under advisement given for production of the notes, 199's lawyer wrote: "The request for a copy of the notes made by Ms. Donati of the meetings with Paul McLaughlin and Martha Leach in July 2019 is refused. Ms. Donati made those notes only after consulting with a lawyer and provided them to her lawyer. Solicitor client privilege is claimed in respect of those notes."

[19] Given that privilege is claimed by 199, I am not prepared to order the production of these notes to The Factory.

Production of Documents from and Examination of Third Party Tuscanos

[20] The Factory argues that 199 and Tuscanos are related or affiliated corporations and that the financial records of Tuscanos ought to be produced. It also argues that Tuscanos' records are relevant to the issues of damages and mitigation. I disagree.

[21] Tuscanos operates a restaurant. Mr. Donati is its officer and director.

[22] The record before me does not establish any relationship between Tuscanos and 199, except that the principles of each are married to each other. I am not satisfied that a letter written by the Donati's to Scotiabank seeking a line of credit is sufficient to order the production of financial documents of an independent corporation. There is no evidence that 199 has operated or provided services to Tuscanos, or vice versa. Each of 199 and Tuscanos are separate corporations with neither asserting any control over the other. More is needed than mere speculation for an order pursuant to r. 30.02(4).

[23] The Factory argued that it would be unfair if there was increased profit to Tuscanos because of Ms. Donati becoming available to provide services to Tuscanos once 199 ceased operating. No authority was provided in support of this being a reason to order production of financial documents from Tuscanos. Neither Ms. Donati nor Tuscanos are named as parties in this action and no relief is sought against them by The Factory. The issue is not a material issue in this action and does not ground an order for third party production.

2026 ONSC 5731 (CanLII)

[24] The Factory also argues that the Tuscanos documents should be produced under r. 30.10. The Court of Appeal for Ontario recently confirmed that orders for non-party production "should not be made as a matter of course but only in exceptional cases": *Derenzis v. Ontario*, 2026 ONCA 344, at para. 12.

[25] The Factory has not established any basis to order production of documents from Tuscanos, including that it is an affiliated corporation or 199 and that the records are being sought by its expert as a comparison data set. I am not satisfied that there is a reasonable possibility that the documents sought are "logically probative" of either the issue of damages or mitigation. The documents sought are not relevant to a material issue in this action. Further, the Tuscanos documents are not necessary for a fair hearing on the issues of damages or mitigation. No order shall be made under either r. 30.02(4) or r. 30.10(1) with respect to Tuscanos: *Derenzis* at paras. 7-12.

[26] The Factory has not established a basis for an examination of Tuscanos and has failed to satisfy the requirements of r. 31.10(2). Based on the record before me, I am unable to conclude that it would be unfair to require The Factory to proceed to trial without having the opportunity to examine Tuscanos. This is particularly so given that the examination will, as this motion already has, cause additional delays in the trial of this action and unreasonable expense for all parties. Further, I am not satisfied that there is good reason to believe that Tuscanos has information relevant to a material issue in this action. Leave to examine Mr. Donati as representative of Tuscanos is denied: *Hopkins v. Robert Green Equipment Sales Ltd.*, 2018 ONSC 998, at para. 6.

[27] Even if there was some basis to order the production of Tuscanos financial records and grant leave to examine Mr. Donati on behalf of Tuscanos, when balanced with the principles of proportionality in r. 29.2.02, The Factory's motion must fail. There is simply no good reason to set this action back years from a trial date by granting the orders sought.

Supplementary Affidavit of Documents

[28] Rule 30.03 requires each party to serve an affidavit of documents that discloses all documents relevant to any matter in issue in the action that are in their possession, control or power.

[29] 199 argues that the documents that The Factory ask be listed in the supplementary affidavit of documents are not relevant to this action and it would be improper for 199 to list them in its affidavit of documents. Given that the relevance of these documents is contested by 199, no order shall be made requiring 199 to deliver a supplementary affidavit of documents.

Costs

[30] 199 and Tuscanos are entitled to their costs of responding to The Factory's motions.

[31] I encourage the parties to attempt to settle the quantum of costs. If they are unable to, then 199 and Tuscanos may deliver written submissions on costs of no more than three double-spaced pages (exclusive of any costs outlines, bill of costs, dockets, offers to settle, or

2026 ONSC 5731 (CanLII)

authorities) by October 30, 2026. The Factory may then deliver responding written submissions on costs of no more than three double-spaced pages (exclusive of any costs outlines, bill of costs, dockets, offers to settle, or authorities) by November 13, 2026.

[32] If the parties require an extension of these timelines because of ongoing negotiations, they may advise trial co-ordination.

Next Steps

[33] To ensure that the merits of this action are determined in a just, expeditious and economical manner, I suggest that counsel request a Case Management Judge. Many of the issues argued today could have been addressed much more quickly, less formally, and disposed of in a much less expensive manner for the parties during a 9:00 a.m. case conference.

[34] This matter shall remain on the Assignment Court list for October 23, 2026, at which time counsel should be prepared to speak to next steps, including scheduling a pre-trial conference and a trial date.

Jacqueline A. Horvat
Justice

Released: October 9, 2026

2026 ONSC 5731 (CanLII)