SUPREME COURT OF NOVA SCOTIA

Citation: *Noel v. Dillon Leasing Inc.*, 2025 NSSC 176

Date: 20250526
Docket: Hfx, No. 539097
Registry: Halifax

Between:

Jennifer Noel

Applicant

v.

Dillion Leasing Inc., Bradford Bigney, 3307593 Nova Scotia Limited Carrying on Business as Remax Nova, 3224430 Nova Scotia Limited Carrying on Business as A Buyer's Choice Home Inspections

Respondents

Judge: The Honourable Justice D. Shane Russell

Heard: May 23, 2025, in Halifax, Nova Scotiaa

Counsel: Jennifer Noel, self represented Applicant
Alastair Macdonald, for the Respondent, Dillon Leasing Inc.
Ian Dunbar, for the Respondent Bradford Bigney, 3307593 Nova Scotia Limited
Ian Whitcomb, for the Respondent, 3224430 Nova Scotia Limited

By the Court:

Introduction

[1] Ms. Noel is the Applicant. Mr. Alastair Macdonald and Mr. Sidney Kosatsky are both directors of the Respondent Dillion Leasing Inc. ("Dillion").The Applicant has brought a motion to amend pleadings and join both directors as additional parties/Respondents.

Background: The Application

[2] The Application has not been heard. The following is a short overview.

[3] On July 27, 2024, the Applicant entered into an Agreement of Purchase and Sale ("the Agreement") with Dillion for a residence located at 11 Bridget Avenue, Halifax, NS, (PID 00334029) ("Bridget home").

[4] Both the Agreement and accepted Counteroffer were signed by the Applicant and Mr. Kosatsky as "Director of Dillion Leasing Inc.". The signed and accepted Counteroffer specifically noted:

> The Seller's offer to the Buyer includes the terms of the attached offer from the Buyer with the following amendments, exceptions, and/or conditions:
>
> > ii The Buyer and Seller agree and acknowledge that the seller is "Dillion Leasing Inc."

[5] The Applicant obtained a home inspection on July 31, 2024. The inspection was completed by Mr. Roland Gallant, now deceased. Mr. Gallant is affiliated with A Buyer's Choice Home Inspections (also a Respondent). Mr. Bradford Bigney (also a Respondent) is a real estate agent for RE/MAX Nova (also a Respondent). Mr. Bigney acted as the selling agent for Dillion Leasing Inc.

[6] Prior to inspection the Applicant, through her agent, communicated with Mr. Bigney in relation to questions she had about the age of the roof, the supports underneath the structure, electoral wiring, and other matters.

[7] The Applicant also had several communications with the home inspector Mr. Gallant, and Mr. Bigney. These were after the inspection but before taking possession of the home on August 13, 2024 and were related to issues identified in the home inspection report. Other communications related to the integrity of the Bridget home which included the roof, anchors, front door, and insulation.

[8] Shortly after taking possession, the Applicant claims to have noted several significant issues with the property; water damage, black mold, leaking roof, and leaking windows.

[9] On December 11, 2024, the Applicant filed an Application in Court against the following four parties:

1. Dillion Leasing Inc. (“The seller”)

2. Bradford Bigney (“The seller’s agent”)

3. 3307593 Nova Scotia Limited RE/MAX Nova

4. 3224430 Nova Scotia Limited Carrying on Business as A Buyer’s Choice Home Inspections

[10] The Applicant alleges in her Application that Dillion sold the home “with material latent defects”, and “made false, inaccurate or misleading statements to the Applicant about the condition of the home, which were relied upon by her when deciding whether to purchase the home”. It is further alleged that Dillion “did not comply with the material latent defect clause contained in the property listing or fully disclose the condition of the home to the Applicant, thereby breaching the agreements, contract or warranty with the Applicant”.

[11] All Respondents have now filed their respective Notices of Contest. Mr. Macdonald, as one of the directors, signed the Notice of Contest on behalf of Dillion. He has represented Dillion throughout these proceedings. To date, there have been two (2) Motions for Directions (January 16, 2025, and March 19, 2025). All parties have attended, and hearing dates have not been set.

Background: The Notice of Motion

[12] On February 28, 2025, Ms. Noel filed a Notice of Motion to amend the Notice of Application filed on December 11, 2024. As stated, the Applicant seeks to add Mr. Macdonald and Mr. Kosatsky as Respondents.

[13] In addition to adding directors Mr. Macdonald and Mr. Kosatsky as parties the Applicant seeks to amend her Notice of Application to add a single paragraph. This paragraph mirrors word for word the existing claim against Dillion. There are no new causes of action, the Applicant is simply seeking to allege the same cause of action against both Mr. Macdonald and Mr. Kosatsky in their personal capacity as directors. The amendment, if granted, would add the following claim:

> The Respondents, Alastair Macdonald and Sidney Kosatsky, who are directors of Dillion Leasing Inc., sold a mobile home with material latent defects to the applicant. The respondents made false, inaccurate or misleading statements to the applicant about the condition of the home, in which the applicant relied upon when deciding whether to purchase the home. Further, the respondents did not fully or truthfully comply with the material latent defect clause contained in the property listing or fully disclose the condition of the home to the applicant, thereby breaching the agreements, contract or warranty with the applicant.

[14] Both Mr. Macdonald and Mr. Kosatsky are contesting this motion.

Background: Dillion Leasing Inc. as a Registered Company

[15] On May 7, 2024, the Registry of Joint Stock Companies revoked Dillion's Certificate of Registration for non-payment. This predated the July 27, 2024, Agreement and accepted Counteroffer for the Bridget home. At the time of signing

the agreement the Applicant was unaware of the company's revoked status. She only became aware of this months later, around mid October 2024. By that point she had taken possession of the home.

[16] It is not contested that Dillion Leasing's status as a registered company had been revoked during the period leading up to the home's listing, the Applicant's purchase of the home, when the sale documents were executed, and when the Applicant took possession of the home.

[17] Both Mr. Macdonald and Mr. Kosatsky also claim to have been unaware of Dillion's revoked status and carried on "business as usual", acting on behalf of Dillion's day-to-day operations which included the listing and sale of the Bridget home. It was only recently that they too learned of the company's revoked status. Once this was discovered they took action. Dillion was granted reinstatement on March 13, 2025. Once reinstated the company's board consisting of directors, including Mr. Macdonald and Mr. Kosatsky, immediately passed a resolution ratifying all acts of Dillion that occured between the revocation and reinstatement period.

Issue

[18] The issue to be decided on this motion is a narrow one: Should pleadings be amended to join both Mr. Macdonald and Mr. Kosatsky as additional parties/Respondents?

Position of the Alastair Macdonald, Mr. Sidney Kosatsky, & Dillion Leasing Inc.

[19] The Respondents' argument boils down to the firmly held position that Dillon Leasing Inc. was for all intents and purposes a "going concern" during the transaction period. It is submitted that despite the company's revoked status within the relevant period, Dillion Leasing Inc. was at all times the transacting party and not Mr. Macdonald or Mr. Kosatsky. As outlined in the Respondent's motions brief:

> The fact that DLI's status was revoked at the time of the transaction did not directly or indirectly impact any of the commercial or practical considerations existing at the time of the transaction. All parties acted, and continued to act thereafter, in a manner consistent with DLI being an active company. After revocation, DLI was reinstated, and it has ratified all acts in connection with the transaction. Consequently, there has been [sic] adverse impact on the Applicant arising from DLI having a revoked status at the time of the transaction.

[20] Mr. Macdonald and Mr. Kosatsky argue that throughout the negotiations and at the time of the agreement, "the Applicant was aware that she was transacting with a limited company". Both gentlemen point to several reasons that support their position. For the purpose of this decision, I will reference some but not all:

1. All documentation relating to the transaction was in the name of Dillion Leasing Inc.

2. Mr. Sidney Kosatsky never executed documents in a personal capacity and only did so as director of the company.

3. The expressed wording of the signed counteroffer had clear terms and stated, “The Buyer and Seller agree and acknowledge that the seller is Dillon Leasing Inc’”.

4. The Applicant corresponded with Dillion Leasing Inc. in its “corporate capacity”.

[21] It is further argued that at the time of the negotiations and transaction the directors were “unaware of the revoked status and continued carrying on business as usual, acting on behalf of DLI in all operations”. Once they learned of the revoked status they rectified it immediately.

[22] In summary the Respondents argue that the “Applicant is in no worse of a position than when she initially advanced her application on the basis that DLI was a respondent”.

Position of the Applicant

[23] The Applicant appears to acknowledge in her brief that the impact of Dillion Leasing's revoked status may at some point become a live issue when the application is heard on its merits. The Applicant, however argues that the determination of such is for another day. In her submission, the court ought to allow the motion to add Mr. Macdonald and Mr. Kosatsky as parties at this early stage of the proceedings.

[24] The Applicant further says that she only discovered Dillion's revoked status shortly before filing her Notice of Application. Upon further reflection and consideration of the possible implications she promptly brought this motion.

Civil Procedure Rules

[25] Civil Procedure Rule 35.05 states:

> **How a party joins further parties**
>
> 35.05 A party who starts a proceeding may join a further party by amending the originating document, or notice of claim against third party, as provided in Rule 83 – Amendment

[26] Rule 35.06(2) provides:

> (2)A judge may make an order removing or adding a party to prevent the defeat of a proceeding, unless doing so would cause **serious prejudice** that cannot be compensated in costs or an abrogation of an enforceable limitation period.
>
> [Empasis Added]

[27] Rule 35.08 states:

35.08 Judge joining party

(1) A judge may join a person as a party in a proceeding at any stage of the proceeding.

(2) It is presumed that the effective administration of justice requires each person who has an interest in the issues to be before the court in one hearing.

(3) The presumption is rebutted if a judge is satisfied on each of the following:

(a) joining a person as a party would cause serious prejudice to that person, or a party;

(b) the prejudice cannot be compensated in costs;

(c) the prejudice would not have been suffered had the party been joined originally, or would have been suffered in any case.

[Emphasis Added]

…..

(5) Despite Rule 35.08(1), a judge may not join a party if a limitation period, or an extended limitation period, has expired on the claim that would be advanced by or against the party, the expiry precludes the claim, and the person protected by the limitation period is entitled to enforce it.

[28] Finally, Rule 83.04 states:

Amendment to add or remove party

83.04 (1) A notice that starts a proceeding, or a third party notice, may be amended to add a party, except in the circumstances described in Rule 83.04(2).

(2) A judge must set aside an amendment, or part of an amendment, that makes a claim against a new party and to which all of the following apply:

(a) a legislated limitation period, or extended limitation period, applicable to the claim has expired;

(b) the expiry precludes the claim;

(c) the person protected by the limitation period is entitled to enforce it.

... ...

[29] I would note that there are no limitation issues in this case.

Guiding Caselaw

[30] As aptly stated by McDougall J. in *M5 Marketing Communications Inc. v. Ross*, 2011 NSSC 32:

> 11 Although the strict application of the Rules should always be the guiding principle, there will always be circumstances that require the exercise of judicial discretion. This is in keeping with the stated purpose and object of the Rules which is to provide "for the just, speedy and inexpensive determination of every proceeding." [See Rule 1.01]

[31] Of equal importance are the comments of Cromwell, J.A. (as he was then) in *Garth v. Halifax (Regional Municipality)* (2006), 245 N.S.R. (2d) 108 at para. 30:

> 30 The discretion to amend must, of course, be exercised judicially in order to do justice between the parties. Generally, amendments should be granted if they do not occasion prejudice which cannot be compensated in costs.

[32] While factually different from this motion in *Lamey v. Wentworth*, [1999] N.S.J. No. 122 the Court of Appeal made comment with respect to amending pleadings in the context of a Statement of Claim. The Court stated:

> 12 The trial court has a wide discretion on an application to amend pleadings. It is usual to allow amendments where the applicant is acting in good faith and where there would be no injustice or serious prejudice by the amendment that could not be compensated by costs.

[33] The Court of Appeal went on to cite with approval the following passage from *Stacey v. Electrolux Canada (1986)*, 76 N.S.R. (2d) 182:

> [7] In considering this application the chambers judge entered upon an examination of the merits of the proposed amendment. In our opinion, that ought to have been left for the trial judge to determine on the evidence and the law.

[34] Clearly *Garth, Lamey,* and *Stacey* were decided prior to the most recent revisions to the Civil Procedure Rules. Factually they are different than this matter. However, the foundational wisdom found within those decisions remains the same.

[35] I find as it relates to amending pleadings to add additional parties that :

1. A motion judge has a wide discretion.

2. Amendments are not unusual when the Applicant is acting in good faith and there is no identifiable injustice or serious prejudice that could not be compensated by costs.

3. The motion judge ought to avoid getting too far into the fray on what may be a justiciable issue best left for the trial/application justice.

[36] In *Rona Inc. v. Rockhard Construction Ltd.*, [2020] N.S.J. No. 474 Chief Justice D.K. Smith provided a clear and concise summary of the law related to amendments of pleadings. Specifically, she stated at paragraphs 14-16:

> **14** The general law relating to amendments of pleadings has been stated on a number of occasions in Nova Scotia. In *Consolidated Foods Corporation of Canada Limited v. Stacey*, (1986), 76 N.S.R. (2d) 182 (N.S.S.C. A.D.), Clarke, C.J.N.S. stated at P 5:
>
> > ... the amendment should have been granted unless it was shown to the judge that the applicant was acting in bad faith or that by allowing the amendment the other party would suffer serious prejudice that could not be compensated by costs...
>
> **15** In *Global Petroleum Corp. v. Point Tupper Terminals Co.* (1998), 170 N.S.R. (2d) 367 (C.A.) Bateman, J.A. stated at P 15:

> The law regarding amendment of pleadings is not complicated: leave to amend will be granted unless the opponent to the application demonstrates that the applicant is acting in bad faith or that, should the amendment be allowed, the other party will suffer prejudice which cannot be compensated in costs. (**Baumhour et al. v. Williams et al.** (1977), 22 N.S.R. (2d) 564 ; 31 A.P.R. 564 (C.A.)).
>
> **16** While these statements were made in relation to the Nova Scotia Civil Procedure Rules (1972), it has been held that they continue to offer guidance in relation to present Rule 83 (see, for example: *Canada Life Assurance Company v. Saywood*, 2010 NSSC 87; *M5 Marketing Communications Inc. v. Ross*, 2011 NSSC 32 and *Oldford v. Canadian Broadcasting Corporation*, 2011 NSSC 49).

[37] Referring to several historical Nova Scotia cases Chief Justice D.K. Smith outlined the degree of prejudice to be considered:

> **25** In my view, Bateman, J. A. did not intend to suggest in *Global Petroleum, supra*, that an amendment will be denied if there is any prejudice that cannot be compensated for by way of costs regardless of the seriousness of that prejudice. I conclude that the prejudice must be serious enough that it would be unjust to allow the amendment.

[38] As stated in *M5 Marketing Communications Inc* "amending its claim or replacing one defendant with another ….is not an uncommon occurrence. It happens quite regularly although the timing often varies." (para.30). I am mindful that this statement was made in the context of new facts, and when a new appreciation of the claim being advanced comes to light based on evidence uncovered during a discovery. However, I find that the same principles and logic have full application in this case.

Analysis & Conclusion

[39] I shadow the words Chief Justice D.K. Smith in *Rona Inc.* at para. 20:

> **20** When dealing with this motion, I have to determine whether the Applicant is acting in bad faith and, if the amendments are allowed, whether the Defendants (present and proposed) will suffer serious prejudice that cannot be compensated for by way of costs.

[40] After considering the facts, the law, and submissions I have determined that there is no bad faith. By allowing this motion none of the Respondents will suffer serious prejudice that cannot be compensated for by way of costs.

Bad Faith

[41] The respondents have not demonstrated that the Applicant has acted in bad faith in requesting the motion to amend. Despite arguing that the Applicant had knowledge of Dillion's revoked status when she initiated proceedings on December 11, 2024, there is nothing to link her short delay in bringing this motion to bad faith. The proceedings are still in the early stages. The self-represented litigant has been diligent in bringing forth her motion and has not sat back for a protracted period of time.

Serious Prejudice

[42] While the Respondents point to several facts in support of their position that Dillion Leasing Inc. was the contracting party, they do not dispute that the

company's status was revoked at the material time of the events. Exactly how the company's revoked status may play out in any assessment of liability is a justiciable issue, best left for hearing of the Application. Being added as a party does not deprive Mr. Macdonald and Mr. Kosatsky of advancing the full force of their argument against "piercing the corporate veil" at a hearing on its merits. As well, Dillon will still retain the ability to present its case, as it did when the pleadings were first filed.

[43] Furthermore, Dillion, Mr. Macdonald, and Mr. Kosatsky have failed to identify a single prejudice, let alone a "serious prejudice" which may result if the motion is granted. The entirety of their position on this motion revolves around a singular theme which should be argued at the hearing itself. If the argument is successful any hardship or remedy can easily be reflected in costs.

[44] Unlike cases where similar motions have been denied, none of the following prejudice considerations have been identified in this case:

1. Documents, evidence, communications, or witnesses have been lost due to the passage of time.

2. Erosion of memories due to the considerable passage of time.

3. An inability to mount a full and fair contest due to the unexpected, unpredictable, and sudden turn of events caused by adding a new party.

[45] As noted, this matter is still in the very early stages and the actual hearing date has not been set. The parties are still exchanging affidavits and documents. Discoveries have been requested but have yet to take place. All of this allows Mr. Macdonald and Mr. Kosatsky plenty of time to review and prepare their case.

[46] In addition, nothing has taken place procedurally, at either of the brief court appearances that has potential to seriously prejudice Dillion, Mr. Macdonald, or Mr. Kosatsky, should the motion be granted.

[47] I would add that unlike *Rona Inc. v. Rockhard Construction Ltd.*, the Applicant is not seeking to add a new cause of action against any of the Respondents. This matter is straightforward in that the same cause of action remains but is simply extended to Mr. Macdonald and Mr. Kosatsky in their personal capacity. There is nothing new in the substance of the allegations. The specifics against Dillion and the other Respondents remain the same as they were in the original Notice of Application. Objectively, there is nothing new which could catch either of these gentlemen off guard, or by surprise.

Conclusion

[48] I am prepared to grant the Applicant's motion to amend her Notice of Application to join both Mr. Alastair Macdonald and Mr. Sidney Kosatsky as Respondents.

[49] I also allow the Applicant to amend her Notice of Application to include paragraph 2b as requested.

[50] Both Mr. Macdonald and Mr. Kosatsky will be given the opportunity to file their respective Notice of Contest. All other parties including Dillion Leasing Inc. will be given the opportunity to file an amended Notice of Contest should they feel it necessary, in light of this ruling.

[51] The parties have agreed to motion costs in the amount of $316 which will payable forthwith by Dillion to the Applicant.

Russell, J.