

Court of King's Bench of Alberta

Citation: St Albert (City) v Melcor Developments Ltd, 2026 ABKB 213

Date: 20260320
Docket: 1703 10651
Registry: Edmonton

Between:

The City of St Albert

Plaintiff

- and -

**Melcor Developments Ltd and WSP Canada Inc formerly doing business as
Focus Corporation Ltd**

Defendants

- and -

Sureway Construction Group Ltd, Sureway Construction Ltd and Standard General Inc

Third Party

**Memorandum of Decision
of
Applications Judge B.W. Summers**

Introduction

[1] This application made before me in Special Chambers requires me to consider whether to allow an amendment to a Third Party Claim where the Third Party Defendant to be added was previously a defendant in the main action, but is no longer, as the claim in the main action was limitation barred against that party.

[2] The issue on this application is whether s 6 of the *Limitations Act* saves the proposed Third Party Claim from being limitation barred.

Facts

[3] On February 22, 2005, WSP Canada Inc, formerly doing business as Focus Corporation Ltd (“WSP”) entered into a contract with Melcor Developments Ltd (“Melcor”) to provide project management and specific engineering services (including infrastructure design and construction drawings) with respect to the Oakmont subdivision in St. Albert. Melcor was developing the subdivision under a contract with The City of St. Albert (“City”).

[4] An important fact is that the contract between the City and Melcor extended the normal limitation period for claims by the City against Melcor by an additional four years.

[5] The City became aware of problems with respect to drainage in the Oakmont subdivision in 2011. Ultimately the City commissioned a report from an independent engineer which was received in October of 2013. Melcor and WSP were made aware of the report when it was issued.

[6] On June 6, 2017, the City filed a Statement of Claim against Melcor and WSP alleging it had suffered damages as the result of a deficiently designed and constructed drainage swale in the Oakmont subdivision (“Swale”). The Statement of Claim was amended twice, with the second amendment being made on June 21, 2018 (“Action”).

[7] The Action alleged causes of action against Melcor and WSP in both contract and tort.

[8] In the summer of 2018 Melcor and WSP each defended and filed a Notice of Claim against Co-Defendant against each other seeking contribution or indemnity under the *Tortfeasors Act* or the *Contributory Negligence Act*. They each also issued a Third Party Claim against Sureway Construction Group Ltd, Sureway Construction Ltd (collectively “Sureway”) and Standard General Inc. WSP’s Third Party Claim was also made against Thurber Engineering Ltd (“Thurber”).

[9] On November 3, 2022 WSP notified Melcor that the City was releasing WSP from the Action, apparently in recognition that the City’s claim against WSP was limitation-barred.

[10] On November 7, 2022 Melcor filed an application to amend its Third Party Claim to add WSP as a Third Party Defendant.¹ Melcor’s draft Amended Third Party Claim against WSP claimed for contribution or indemnity as a result of breach of contract and negligence on the part of WSP.

[11] In 2023 a number of Partial Discontinuances of Action were filed as follows:

- (a) April 26 - Melcor discontinued its Third Party Claim as against Sureway;
- (b) May 12 – the City discontinued the Action against WSP; and
- (c) June 1 – WSP discontinued as against Thurber.

¹ The draft Amended Third Party Claim also sought to add another “Sureway” entity called Sureway Construction Management Ltd. However, this has been abandoned as Melcor discontinued against Sureway.

Issues

[12] Melcor applies for leave to amend its Third Party Claim to add WSP under r 3.74, or alternatively for an extension of time to file and serve its Third Party Claim against WSP pursuant to rules 3.45 and 13.5 of Alberta *Rules of Court*.

Discussion of the Law

[13] There are no facts in dispute. There are only questions of law in issue.

Application to amend the Third Party Claim to add WSP under r 3.74

[14] Rule 3.74 states:

Adding, removing or substituting parties after close of pleadings

3.74(1) After close of pleadings, no person may be added, removed or substituted as a party to an action started by statement of claim except in accordance with this rule.

(2) On application, the Court may order that a person be added, removed or substituted as a party to an action if

- (a) in the case of a person to be added or substituted as plaintiff, plaintiff-by-counterclaim or third party plaintiff, the application is made by a person or party and the consent of the person proposed to be added or substituted as a party is filed with the application;
- (b) in the case of an application to add or substitute any other party, or to remove or to correct the name of a party, the application is made by a person or party and the Court is satisfied the order should be made.

(3) The Court may not make an order under this rule if prejudice would result for a party that could not be remedied by a costs award, an adjournment or the imposition of terms.

[15] The Alberta Court of Appeal stated the test for amending a pleading in *Attila Dogan Construction & Installation Co Inc v AMEC Americas Limited*, 2014 ABCA 74 as follows (from paragraph 25):

Assuming some modest amount of evidence is provided in support, any pleading may be amended, no matter how careless or late the party seeking the amendment, subject to four major exceptions:

- (a) The amendment would cause serious prejudice to the opposing party, not compensable in costs;
- (b) The amendment requested is hopeless;
- (c) Unless permitted by statute, the amendment seeks to add a new party or new cause of action after the expiry of a limitation period; or

- (d) There is an element of bad faith associated with the failure to plead the amendment in the first instance.

[16] WSP asserts that Melcor's application to add WSP as a Third Party Defendant is both limitation barred and highly prejudicial to it as the Third Party Claims that WSP had issued necessarily came to an end when the City discontinued the Action against WSP.

[17] Melcor does not argue that the limitation periods under s 3 of the *Limitations Act* have not expired.² Rather, Melcor argues that s 6 of the *Limitations Act* allows its Third Party Claim against WSP to proceed. The relevant portions of that section are as follows:

Claims added to a proceeding

6(1) Notwithstanding the expiration of the relevant limitation period, when a claim is added to a proceeding previously commenced, either through a new pleading or an amendment to pleadings, the defendant is not entitled to immunity from liability in respect of the added claim if the requirements of subsection (2), (3) or (4) are satisfied.

...

(4) When the added claim adds or substitutes a defendant, or changes the capacity in which a defendant is sued,

- (a) the added claim must be related to the conduct, transaction or events described in the original pleading in the proceeding, and
- (b) the defendant must have received, within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in maintaining a defence to it on the merits.

(5) Under this section,

- (a) the claimant has the burden of proving
 - (i) that the added claim is related to the conduct, transaction or events described in the original pleading in the proceeding, and

...

- (b) the defendant has the burden of proving that the requirement of subsection ... (4)(b), if in issue, was not satisfied.

[18] Pursuant to subsection (5), Melcor has the burden of proving that the Third Party Claim against WSP is "...related to the conduct, transaction or events described in the original pleading in the proceeding". WSP does not contest that this requirement is met.

[19] Pursuant to subsection (5), WSP has the burden of proving that it did not receive within the applicable limitation period applicable to the added claim plus the time provided by law for

² Melcor made no argument that s 3(2.1) of the *Limitations Act* extended Melcor's time to third party WSP on the basis that WSP is a joint tort-feasor liable to contribute to Melcor pursuant to s 3(1) of the *Tort-feasors Act*.

service of process sufficient knowledge of the added claim that WSP will not be prejudiced in maintaining a defence on the merits.

[20] What is the “limitation period applicable to the added claim”?

[21] The added claim by Melcor against WSP is for “contribution or indemnity ... (for) ... the damages claimed by the Plaintiff, ... (which) ... were the result of the negligence and breach of contract of ... (WSP)” (from paragraph 7 of the proposed Amended Third Party Claim).

[22] WSP asserts that the two year limitation period with respect to Melcor’s claim for contribution or indemnity from WSP, for negligence or breach of contract was October 2015, which is two years after the City and Melcor knew that there were problems with the Swale (following receipt of the report from the independent engineer in October of 2013). Melcor did not put forward an alternate date for the commencement of the limitation period.

[23] The time provided by law for service is one year specified in r 3.26: *Calgary Mack Sales Ltd v Shah*, 2005 ABCA 304 (“*Shah*”); *Kapeluck v Two Girls and a Hammer Inc*, 2022 ABQB 467 and *Acielo v Condominium Plan 9022497*, 2016 ABCA 251.

[24] In considering the application of s 6(4) of the *Limitations Act*, the issue is the state of WSP’s knowledge one year after expiry of the limitation period. That is, at October of 2016, did WSP have “sufficient knowledge of the added claim that the defendant will not be prejudiced in maintaining a defence to it on the merits”?

[25] Melcor refers to *Osunde v Saskatchewan Mutual Insurance Company*, 2020 ABQB 177 (“*Osunde*”) for the proposition that “where the proposed new defendant was a party all along, sued as a third party in the same capacity as it was a third party, s 6 allows the amendment” (at paragraph 61).

[26] But in this case the City did not commence its action against Melcor and WSP until June 6, 2017, approximately nine months after the time at which the Court is to consider whether WSP has sufficient knowledge of the added claim such that it was not prejudiced.

[27] How could WSP have any knowledge of the added claim nine months before the main claim was commenced? Clearly, it could not. It is nonsensical.

[28] The City discontinued the Action against WSP because it had commenced the Action after expiry of the limitation period (as against WSP). It would be passing strange indeed if a claim against a defendant could withstand a limitation defense as an “added claim”, but not as an original claim.

[29] This very unique situation is brought about by the fact that the City’s claim against Melcor is not limitation barred because of the agreement between them that the limitation period for claims by the City against Melcor are extended by four years. WSP is not a party to that contract and its limitation period is not extended beyond the statutory limits.

[30] A case that has an interesting similarity to this case is *HSB Securities (Canada) Inc v Davies, Ward & Beck*, 2005 CarswellOnt 267 (ONCA). In that case the defendant Davies entered into a tolling agreement with the plaintiff. The agreement allowed the plaintiff to delay its action against Davies pending the outcome of the plaintiff’s claim against its fidelity insurer. The plaintiff’s action against its insurer failed and the plaintiff commenced its action against Davies. Davies third partied KPMG and Craig Malcolm. KPMG and Malcolm applied to strike

the third party claim on the basis it was limitation barred. The Ontario Court of Appeal ruled that:

[89] The equities of the situation before us also support the position advanced by KPMG and Malcolm on this appeal. If one of the joint tortfeasors in this case has to bear the risk of a statutory limitation period expiring during the passage of time permitted by the Tolling Agreement, it should be Davies. KPMG and Malcolm had nothing to do with the delay that gave rise to the expiry of the statutory limitation period in its favour. Further, Davies could have declined to enter into the Tolling Agreement with Gordon unless it or Gordon obtained a similar agreement from KPMG and Malcolm. By pursuing contribution against KPMG and Malcolm, Davies is attempting to have KPMG's and Malcolm's substantive legal rights under the *Negligence Act*, 1990 and the *Limitations Act*, 1990 forfeited for no reason other than that Davies voluntarily gave up its own similar rights when it signed the Tolling Agreement.³

[31] In this case before me, WSP had nothing to do with, and was not a party to the agreement extending the limitation period. As between Melcor and WSP, Melcor should bear the risk of the statutory limitation period expiring.

[32] Melcor's alternative application for an order under r 13(5) to extend the time for filing and service of its Third Party Notice is dismissed, as being academic.

Conclusion

[33] Melcor's application is dismissed with costs to the respondent WSP. If the parties cannot agree on the scale or quantum of costs, an application may be made before me in morning chambers in the next 30 days.

Heard on the 25th day of February, 2026.

Dated at the City of Edmonton, Alberta this 20th day of March, 2026.

B.W. Summers
A.J.C.K.B.A.

³ This statement is likely *obiter* as the Ontario Court of Appeal rendered its decision on its interpretation of s 8 of the *Negligence Act*. This section is a parallel provision to s 3(1.2) of Alberta's *Limitations Act*. This reinforces WSP's position that this statutory provision does not assist Melcor in this case.

Appearances:

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