Court of King's Bench of Alberta

Citation: Lindstrom v Cashyn Homes Inc, 2026 ABKB 265

Date: 20260406
Docket: 2401 17044
Registry: Calgary

Between:

BRYANNA LINDSTROM, operating as KESHAS CUSTOM CREATIONS and KOVA ENTERPRISES; STESHA MADISON KELSEA LINDSTROM operating as KESHAS CUSTOM CREATIONS and KOVA ENTERPRISES

Appellant

- and -

CASHYN HOMES INC.

Respondent

Reasons for Decision
of the
Honourable Justice C. Dario

Appeal from the Decision by
The Honourable Assistant Chief Justice D.B. Higa

Dated the 28th day of October, 2024
(Docket: P2390100358)

INTRODUCTION:

[1] The Appellants (Defendants and Plaintiffs by Counterclaim) appeal the decision of Assistant Chief Justice D.B. Higa of October 28, 2024 (the "**COJ Decision**"). In the COJ Decision, the Justice declined to grant certain proposed amendments to an Amended Amended Dispute Note and Counterclaim in an **Amendment Application**. The amendments denied involved revisions: a) to add a Defendant to the Counterclaim, b) to increase the quantum of certain damages claimed, and c) to add a new cause of action. None of these proposed amendments were statute barred due to limitations issues. The Justice also declined to a transfer of the action to the Court of King's Bench pursuant to a **Transfer Application**, which was sought on the basis of the claimed damages exceeding the Court of Justice's monetary jurisdiction.

[2] The underlying dispute pertains to a contract for residential renovation services each party states the other breached. The Plaintiff, Cashyn Homes Inc. ("**Cashyn**"), purchased a residential property in northwest Calgary on about July 27, 2022, with the intent to renovate and sell it. Around October 5, 2022, Cashyn and Keshas Custom Creations ("**Keshas**") entered into an agreement for Keshas to perform services pursuant to a written contract (the "**Contract**"). Bryanna and (Stesha) Madison Lindstrom are each 50% shareholders and the Vice-president and President respectively of 1198965 Canada Inc., a federally incorporated entity carrying on business in Alberta under the tradename Keshas Custom Creations. The Contract was amended in writing twice, once around October 15, 2022, and again around November 17, 2022.

[3] The Plaintiff claims the Respondents did not perform the services in quality or timeliness as contracted despite being paid more than agreed to, requiring it to engage third parties to redo and/or complete the work. The Respondents claim the Plaintiff failed in providing certain materials, equipment and other pre-conditions to completion of the services, and that they did perform the services and were not paid for the services in accordance with the Contract as amended.

PROCEDURAL BACKGROUND:

[4] The procedural background for this matter was set out in paragraphs 2 through 6 of the COJ Decision and are restated here. The Civil Claim was filed by the Plaintiff, Cashyn Homes Inc., on February 3, 2023, claiming damages of $43,500. A Dispute Note was filed by the Defendants on February 28, 2023, seeking damages for $49,000. A pretrial conference was held on September 25, 2023, at which both parties were granted leave to amend their pleadings. Trial dates were set for July 30, 31 and August 1, 2024.

[5] On October 21, 2023, Cashyn filed an Amended Civil Claim including a revision to the damages sought to $43,012.70. The Appellants/Defendants, through counsel, filed an Amended Dispute Note and Counterclaim on November 20, 2023, including revising the damages sought to $48,578.61. No applications were filed by either party after November 20, 2023. The Affidavits on file do not disclose that the Defendants were contemplating further amendments after November 20, 2023.

[6] In July 2024, the assigned trial judge requested a case management conference, which was held on July 10, 2024, 20 days before the commencement of trial. That conference resulted in the adjournment of the trial dates, and the Defendants were granted leave to file an application to transfer the action to the Court of King's Bench. Notably, the Order does not contain

provisions relating to amendment of pleadings. On August 16, 2024, the Defendants filed an application seeking not only the transfer of the action but also seeking leave to file an Amended Amended Dispute Note and Counterclaim.

[7] In addition to other amendments (which were granted), the proposed amendments included the following amendments to Schedule B, the Counterclaim:

a) the addition of Brennan Holowaty as a Defendant to the Counterclaim;

b) the addition of a new cause of action of negligence relating to the theft of certain personal and work items and equipment resulting from Cashyn's failure to replace locks,

c) the addition of damages to include the debts of (Stesha) Madison Lindstrom and Keshas, such as personal and Keshas' credit card bills, utility bills and other bills, due to their inability to pay such debts when Keshas was not paid for the work performed under the Contract as amended, and

d) an increase to the quantum damages claimed for certain other categories of damages.

The result of these amendments would have been to increase the total amount of damages claimed by the Appellants from $48,578.61 to $293,375.73. The Appellants claimed this required the Justice to transfer the action to the Court of King's Bench, as the claimed damages exceeded the Court of Justice's $100,000 monetary jurisdiction. Other amendments sought are not addressed in this decision as they are not in contention.

[8] The Justice granted all of the amendments to Schedule A of the Amended Dispute Note but only certain amendments to Schedule B, being the Counterclaim. I will not address the permitted amendments as they are not in dispute, unless they relate to the determination of the disputed proposed amendments. The hearing Justice allowed the amendments seeking to claim negligence, but not the increase in damages claimed in consequence to that cause of action. He also did not allow other increases to damages claimed nor the addition of Mr. Holowaty as a defendant to the counterclaim.

THE APPEAL ISSUES:

[9] Two issues on appeal are:

a) Whether the COJ Decision was correct in declining portions of the Amendment Application, and

b) Whether the COJ Decision was correct in denying the Transfer Application.

STANDARD OF REVIEW:

[10] The standard of a review for an appeal from a decision of a Justice of the Court of Justice is on the record. The standard is correctness on a question of law, and palpable or overriding error on findings of fact, factual inferences or issues of mixed fact and law: ***Covey v Dueck***, 2025 ABKB 78 at para 31.

POSITION OF THE PARTIES:

The Appellants

[11] Regarding the Amendment Application, the Appellants assert the Justice applied an improper interpretation and application of section 12 of the *Court of Justice Civil Procedure Regulation*, Alta Reg 176/2018 and Rules 3.65 and 3.74 of the *Alberta Rules of Court*, as informed by leading authorities including ***Astolfi v Stone Creek Resorts Inc.***, 2023 ABKB 416 ***[Astolfi]***, ***Club Industrial Trailers v Paramount Structures***, 2022 ABQB 34 ***[Club Industrial]***, and ***Mikisew Cree First Nation v Alberta***, 2024 ABKB 578 ***[Mikisew]***, as those decisions relate to the amendment of pleadings.

[12] Further, the Appellants raise a number of the Justice's other findings they say were in error, including:

- finding the proposed amendment to add Holowaty as a Defendant was without foundation and hopeless,
- adding damages relating to debts going to collection was hopeless,
- other proposed amendments were hopeless or not recognized at law,
- finding the amendments would cause serious prejudice including due to delay in bringing the same justifying denying the same and effectively shortening the limitations period,
- finding certain of the amendments were introduced in bad faith due to not pleading them earlier,
- treating the Amendment Application as a summary judgement application of the Respondent (and reducing the damages in the existing pleadings by $4,004.38),
- determining the Appellants failed to raise the proposed amendments at the case management meeting, and
- making findings of fact in the absence of evidence.

[13] Further, the Appellant notes Justice Higa did not address in his reasons why certain amendments in paragraphs 8 and 9 of Schedule "B" to the Amended Dispute Note would not be struck as requested (these appear in the proposed Amended Amended Dispute Note as strikethrough text at paragraphs 12 and 13). I agree that this amendment was not addressed in the COJ Decision, perhaps merely as an oversight. The Respondent makes no specific submissions on this issue. I grant the request to strike these two paragraphs from the Amended Amended Dispute Note.

[14] The Applicants further argue the Justice improperly considered the affidavit of Mr. Holowaty. In the hearing discussing this affidavit, the Justice stated he would disregard the portions of that affidavit that make up legal argument, conclusions, and assertions. The affidavit is heavily comprised of these elements, raising the question of how difficult it would be for the hearing Justice to disabuse his mind of all such elements and making it difficult to strike out the offending portions.

[15] Regarding the Transfer Application, the Appellants claim the Justice applied an improper interpretation and application of section 56 of the *Court of Justice Act*, RSA 2000, c C-30.5

[***"COJ Act"***] (successor to the *Provincial Court Act*, RSA 2000, c. P-31), and case law dealing with the transfer of actions such as ***Ferguson v Pronghorn Controls Ltd***., 2011 ABPC 44 ***[Ferguson]***, and ***Hnidan v Shpeley***, 2012 ABQB 686 ***[Hnidan]***. They state he failed to find the matter was as a result of the proposed amendments (that should have been granted) beyond the jurisdiction of the Court.

The Respondent

[16] The Respondent's position is essentially that there was no error on the part of the Justice in law or in his fact finding in the COJ Decision.

THE LAW

Amendments to Pleadings:

[17] Section 12(1) through (3) of the *Court of Justice Civil Procedure Regulation* states:

> **Amendments to pleadings**
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> **12(1)** A party may amend the party's pleadings at any time before the action has been scheduled for a mediation, pre-trial conference, binding judicial dispute resolution proceeding or trial.
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> **(2)** After an action is scheduled for a mediation, pre-trial conference, binding judicial dispute resolution proceeding or trial, a party may not amend the party's pleadings unless
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> (a) all parties have agreed in writing to the amendment, and this agreement has been filed, or
>
> (b) the party, on application, has obtained the permission of the Court.
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> **(3)** If the Court gives permission referred to in subsection (2)(b), the Court shall specify the time period within which the amended pleading shall be filed.

[18] On the face of the legislation, there is no obligation of the Justice to grant permission to the amendment, contrary to the position of the Appellant. The threshold and evidence required for the amendment of pleadings is however low.

[19] It is recognized that accurate pleadings are important. The classic rule is to allow amendments regardless of delay or carelessness unless prejudice would result to the other party which cannot be remedied by costs or other measures (such as an adjournment): ***Balm v 3512061 Canada Ltd***., 2003 ABCA 98. The Court's discretion to allow amendments should be exercised generously; and amendments are generally permitted, subject to narrow exceptions: ***Farm Credit Canada v Chan***, 2021 ABCA 168 at para 17. The applicant need not demonstrate any particular reason for needing the amendment, although after pleadings close, the low evidentiary threshold must still be met: ***Attila Dogan Construction and Installation Co Inc v AMEC Americas Limited***, 2014 ABCA 74 ***[Attila Dogan]*** at para 24.

[20] The Appellant points to the findings of this Court (then the Court of Queen's Bench) in ***Hnidan***, an appeal from the then Provincial Court. The Queen's Bench justice in that decision

confirmed that for the exercise of a discretion of a Provincial Court judge on a procedural point, the test - other than for errors of law - is one of reasonableness: ***Hnidan*** at paras 17 and 18. In ***Hnidan***, the court had no information as to how the increased damages amount sought was calculated, and whether it was just a number pulled out of the air. In that case, the supporting affidavit did not address this issue.

[21] At paragraph 22, that Court confirmed that, "In reviewing the exercise of discretion, before interfering with it, I must be satisfied that the judge's decision amounted to an error of law or was unreasonable. I do not have jurisdiction to simply exercise my own discretion if I disagree with the judge's decision." The Court went on to consider whether the judge addressed his mind to the key issue: is the amount of the counterclaim rational or logically supported by the facts alleged in the counterclaim.[1]

[22] While there are some cases dealing with amendments at the Court of Justice, there is a larger body of case law addressing amendment of pleadings at the Court of King's Bench. Addressing Rules 3.62 and 3.65 which govern the Alberta Court of King's Bench, if some foundation is present, and absent significant prejudice or an injustice to the other parties, the order allowing the amendments should be freely given: ***Kent v Postmedia Network Inc***, 2012 ABQB 559 at para 14; ***Mikisew*** at para 16.

[23] There is a strong presumption in favour of allowing amendments to pleadings after the close of pleadings: ***Kosteckyj v Paramount Resources Ltd***, 2022 ABCA 230 ***[Kosteckyj]*** at paras 12, 41; ***Pace v Economical Mutual Insurance***, 2021 ABCA 1 ***[Pace]*** at para 3; ***AARC Society v Canadian Broadcasting Corporation***, 2019 ABCA 125 ***[AARC Society]*** at para 85. The applicant need not show any particular reason for needing the amendment: ***Attila Dogan*** at para 24. Courts should exercise their discretion to allow the amendment unless the non-moving party demonstrates an exception or compelling reason not to: ***Kosteckyj*** at paras 12, 41; ***Pace*** at para 3, 53; ***AARC Society*** at paras 6, 53.

[24] Proposed amendments must be interpreted liberally and generously, not restrictively: ***Anderson v Airsprint Inc***, 2005 ABCA 332 at para 9; ***PricewaterhouseCoopers Inc v Perpetual Energy Inc***, 2021 ABCA 16 at para 74.

[25] If some modest evidence is provided in support of the requested amendment, it should be given 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.

Attila Dogan at para 25.

[1] Although the amendment was denied on this basis, the judge hearing the application had confirmed that the applicant could pursue the larger amount by pursuing a separate proceeding in the then Court of Queen's Bench.

[26] This is not a closed list, however, and Courts are required to consider two distinct interests when assessing the merits of an amendment application: (1) the impact the proposed amendment will have on the non-moving party's litigation interests; and (2) the public interest in the resolution of litigation as quickly as reasonably possible without the expenditure of more public and private resources than is reasonably necessary: ***AARC Society*** at paras 57–62.

[27] The above exceptions are further broken down at paragraph 42 of ***Astolfi***. Relevant to this case are:

> a) Prejudice: the proposed amendment will significantly harm a legitimate litigation interest of the non-moving party that cannot adequately be abridged by an ameliorative costs order or any other order: ***Pace*** at paras 4–5; ***Kosteckyj*** at para 41; ***AARC Society*** at para 64; ***Attila Dogan*** at para 25; ***Remington Development Corporation v Enmax Power Corporation***, 2022 ABCA 71 ***[Remington]*** at para 33;
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> b) Hopeless claims: whether it is plain and obvious that there is no triable issue: ***Swaleh v Lloyd***, 2020 ABCA 18 at para 13; ***Remington*** at paras 35–37; ***Eon Energy Ltd v Ferrybank Resources Ltd***, 2018 ABCA 243 at para 18. With reference to considerations of rule 3.68, proposed amendments will be hopeless if they:
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> (i) disclose no cause of action or reasonable claim, or no reasonable defence to a claim: ***Pace*** at para 6; ***AARC Society*** at para 10; ***Attila Dogan*** at para 27; rule 3.68(2)(b);
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> (ii) raise matters over which the court has no jurisdiction: rule 3.68(2)(a);
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> (iii) are frivolous, irrelevant or improper: rule 3.68(2)(c);
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> (iv) constitute an abuse of process: rule 3.68(2)(d); and
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> (v) have an irregularity that is so prejudicial to the claim that it is sufficient to defeat the claim; rule 3.68(2)(e);
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> c) Bad faith: for example if the failure to plead earlier, or the proposed amendment itself, involves bad faith: ***Pace*** at paras 7, 54; ***AARC Society*** at paras 11, 66; ***Attila Dogan*** at para 25.
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> I agree that amendments that are brought for tactical purposes intended to frustrate, delay or increase the costs of litigation rather than to seriously advance the existing or proposed claims or defences can constitute bad faith: ***Astolfi*** at para 71. The onus is on the party alleging bad faith to prove it on a balance of probabilities, not the opposite party to disprove it: ***Club Industrial*** at para 31; ***Hur v 726913 Alberta Ltd***, 2013 ABQB 208 at paras 72, 76; ***Astolfi*** at para 71; and
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> d) Delay contrary to public interest: the proposed amendment will contravene the public interest in promoting expeditious and economical dispute resolution: ***Pace*** at paras 4, 7, 51–52; ***Kosteckyj*** at para 41; ***AARC Society*** at paras 59–62.

[28] It is not merely a determination of whether some evidence in support of the amendment exists; other considerations must be taken into account. Further, while the evaluation of this evidence in support should not turn into a summary judgement on the substance of the issue, nor does the mere presence of contradictory evidence necessarily prevent an amendment, the justice has the discretion to engage in some limited assessment of the evidence presented to determine if the threshold necessary to justify the amendment has been met: ***Attila Dogan*** at para 29.

Limits to Jurisdiction of the Court of Justice based on the Financial Cap:

[29] Per section 2 of the *COJ Regulations*, that Court's jurisdiction is currently limited to claims and counterclaims within $100,000. While cases relating to the *Rules of the Court* of King's Bench are often referred to in interpreting the COJ Regulations, a distinction must be considered: unlike Justices in the Court of King's Bench, Justices of the Court of Justice do not have inherent jurisdiction, and all jurisdiction must be founded in the ***COJ Act.*** As stated in ***1216808 Alberta Ltd. operating as Prairie Bailiff Services* v. *1106293 Alberta Ltd.***, 2013 ABPC 76, at paragraph 18:

> The Provincial Court, being a statutory Court, can exercise only jurisdiction with which it is clothed by statute (Davis v. Davidson, 2003 ABPC 81). ... The Parties by consent cannot vest this Court with jurisdiction it does not otherwise have.

[30] The Appellants turn to ***Ferguson***, in support of the proposition that the Court of Justice (COJ) must transfer the matter to the Court of King's Bench in the present circumstances. In ***Ferguson***, the defendant's Counterclaim (for damages resulting from its termination of the plaintiff employee) exceeded the jurisdiction of the COJ and thus it made an application to transfer the matter to the Court of King's Bench. The Court found the defendant employer's claims were lacking in particulars with respect to the damage claimed in its counterclaim, and the plaintiff suggested that the Counterclaim was frivolous, vexatious, or an abuse of process. Despite this, the Court found that the *plaintiff* had failed to provide evidence in support of this position, and the plaintiff also had not applied to strike the claims on the basis of frivolity, vexatiousness, or as an abuse of process. Even though the defendant employer's counterclaim of the damages of $3.1 million seemed excessive, the hearing justice could not rule out the possibility that this matter would exceed the COJ's jurisdiction. The Court held that, where the pleadings assert a cause of action known in law and claim a remedy in excess of the jurisdictional limits of the COJ, the onus is on the party opposing the transfer to satisfy the Court on a balance of probabilities that the claim is within Court of Justice jurisdiction. Otherwise, the matter *must* be transferred to the Court of King's Bench: ***Ferguson*** at para 6. As a side note, severance of the claims was also considered in that case. I do not find severance in the present case would be appropriate given the overlapping issues pertaining to the interpretation of the contracts between and obligations of the parties.

[31] That case was decided during the currency of s 56 of the *Provincial Court Act*, RSA 1980, c P-20, which has since then been replaced with the *COJ Act*, however both contain identical wording. The relevant section of the *COJ Act* reads:

Transfer into Court of King's Bench

56(1) If at any time a claim, counterclaim or defence involves a matter that is beyond the jurisdiction of the Court, the Court may order that the matter be transferred to the Court of King's Bench.

[32] There is some discrepancy between the permissive language of "may" in s 56 and the Court's interpretation of "must" in ***Ferguson***. I do *not* find the Justices of the Court of Justice lack *any* discretion in applying s 56(1) of the *COJ Act*. For example, if a counter claim exceeds the current jurisdictional cap by $1, I understand the legislation to allow that Justice to deny the application to transfer the claim and alternatively cap the claim of the counterclaimant to the current limit. Where the discretion ends and the jurisdiction is exceeded will likely be an issue for further debate which has to date thankfully been largely avoided by parties to litigation attempting to fit within the process of the appropriate Court depending on the nature of their claim. There remains the requirement of some evidence substantiating the claim.

[33] The decision in the present case of the hearing Justice to deny the application to transfer the matter to the Court of King's Bench was as a result of his disallowing several amendments resulting in finding that the financial threshold had not been exceeded. While ***Ferguson*** would suggest the burden is on the opposing party to establish that the claims continue to fall within the COJ jurisdiction, this must be after the amendment preconditions are first met: a cause of action known in law (or a novel claim supported with sufficient evidence), some evidence in support of the claim, and none of the other exclusionary factors (as laid out in ***Attila Dogan***) precluding such amendment.

ANALYSIS:

Addition of New Defendant

[34] The amendment sought to add Brennan Holowaty as a Defendant by Counterclaim. Mr. Holowaty is the corporate representative of Cashyn, he is also a director and officer of Cashyn. The existing pleadings reference his involvement in the underlying transactions, including providing the Cashyn company credit card to a prior general manager, resulting in overspending prior to the Appellants becoming involved in the project. The amendments proposed add further particulars regarding his role as co-founder, shareholder and Chief Operating Officer of Cashyn.

[35] The Respondents note that the claim of the Appellants is based on contract and thus there is no basis for a cause of action against Mr. Holowaty; in other words, the facts do not suggest he was a party to the contract. Justice Higa found that the proposed amendment to add Mr. Holowaty was without foundation and therefore hopeless; he was not a party to the contract; and there were no particulars or assertions plead in support of a claim to pierce the corporate veil. The Respondent further argues that this defendant would have been struck as a party if initially named.

[36] I note however that the hearing Justice allowed the claim of negligence set out in paragraph 16 of the proposed amendment, which includes a reference to the close relationship of proximity between the Respondents/Defendants by Counterclaim (which includes Mr. Holowaty in the wording of the amendment) such that they knew or ought to have known that the Plaintiffs would be harmed by the negligence of the Respondents/Defendants by Counterclaim. Although Mr. Holowaty is not separately named throughout the proposed amendment, paragraph 7 of the

proposed amendment clarifies Cashyn and Brennan Holowaty are collectively referred to as the Defendants by Counterclaim. The negligence alleged includes the failure to return certain property of the Appellants pursuant to the contract, or in the alternative, a failure to exercise the requisite standard of care towards the Plaintiffs.

[37] Although not well spelled out in the proposed revisions to the claim, I consider the accompanying affidavits. In paragraph 6 of the accompanying affidavit, (Stesha) Madison Lindstrom refers to items Cashyn and Brennan "had access to" during the time the time the Appellants were providing services to Cashyn, being personal items such as jewelry, houseware and kitchenware items valued at approximately $19,000. It is not clear if this was due to their personal relationship, and whether this was a function of anything related to the Contract in issue. Even assuming all of these facts to be true, it is unclear how such items such as jewelry relate to the services being provided or how such access relates to the Contract. This may be the basis of a separate claim, unrelated to the Contract despite the broad wording of paragraph 20 of the Contract (requiring each party return to the other any property that is their sole respective property at the termination of the agreement).

[38] Paragraph 9 of Bryanna Lindstrom's affidavit refers to tools, materials, and equipment owned by Keshas in the amount of almost $53,000 that were stolen from the property around October 22, 2022. To the extent that the theft resulted from a failure of a standard of care by Holowaty (i.e. negligence), while Cashyn may ultimately be vicariously liable, it is not unusual for the employee or officer having failed in the standard to be separately named as a party. A rationale for adding the employee to the claim is in the event the employer attempts to escape vicarious liability by alleging the employee was acting outside of their duties or authorization. Naming him as a defendant in this context is appropriate. Paragraph 14 of Bryanna Lindstrom's affidavit refers to tools, materials and equipment of Keshas valued at over $5,000 that Cashyn and Holowaty failed to return. Similar reasoning applies to the inclusion of Mr. Holowaty in this portion of the claim to the extent that his negligence occasioned the loss. It would be an error of law to not allow the amendment to include him to be named in the claim.

[39] All other aspects in which Mr. Holowaty is referred to as a co-defendant by counterclaim are not appropriate as the claims pertain to the breach of contract, to which Mr. Holowaty is not a party, and no pleadings or basis have been provided to pierce the corporate veil. The amended claim shall be revised to refer to Mr. Holowaty as a defendant only to those specific claims on the basis of negligence and not generally with respect to the rest of the amendments.

Negligence

[40] In the COJ Decision, the Court allowed the claim of negligence, however, not the increased amount of $76,935.06 claimed for personal and corporate items stolen or not returned. Originally, only $7,500 was claimed in respect of the breach of the related provision of the contract. I have already addressed that the claim of personal items in the amount of $19,000 is not logically connected to the facts raised in the claim and will not be allowed. Although the affidavit of Bryanna Lindstrom approximates the value of Keshas' items stolen from the property at $52,748.75, there is no other evidence in support of the same: no delineation of what the missing items are, their book or market value, or otherwise. This is similar to the issue considered by the Court in ***Hnidan*** in which the Court was wary of a damages amount being pulled out of the air. Particularly at this late stage in the proceedings, this amount is characterized

as a bald assertion. At the stage in the proceeding in which the amendment was brought, I find Justice Higa's decision to refuse the increased quantum related to this claim did not amount to an error of law nor was it unreasonable.

Novel Claim

[41] Paragraph 20 of the proposed amendment relates to a claim for the failure of Cashyn to pay in a timely manner resulting in both Keshas and (Stesha) Madison Lindstrom being unable to pay other bills owing, resulting in them going to collections and one going to judgment. The nature and amount of these bills is set out in paragraph 5 of (Stesha) Madison Lindstrom's affidavit. The amendment to include this claim was denied by the hearing Justice as a hopeless novel cause of action.

[42] The Appellants instead argue this claim is not novel, but merely a form of consequential damages resulting from the conduct of the Defendants. An issue with the characterization by the Appellants is that they do not appear to merely be claiming the additional expenses incurred as a consequence of non-payment under the contract (such as interest amounts payable, collection fees, and legal fees for those amounts that went to judgment), but for the entire amount of their other bills owing (whether of Keshas or as a result of non-payment to its employee/principal, Madison Lindstrom). This interpretation is however not completely clear based on how it is worded in the affidavit. To the extent that the Appellants are claiming the entire amount that they owed to others, this would constitute double recovery, as through trial, they will be awarded what they are owed under the Contract and can then use those funds to pay those bills and/or employee. Non-payment of other debts resulting from non-payment of this debt does not fit into the definition of consequential damages. As such, it is a hopeless claim: one for which there is no recognized basis in law to bring the claim forward. In addition, and in the event the idea is to extend the concept of consequential damages to all such unpaid bills, no case authority was provided to substantiate consequential damages of this nature. The hearing Justice further found that such a claim offends the principles of remoteness and foreseeability and is furthermore commercially untenable. I agree.

[43] Assuming that all that is being sought is truly consequential damages (again, such as interest amounts payable, collection fees, and legal fees for those amounts that went to judgment), a second issue with this claim raised by the hearing Justice was the remoteness of such claim. Although in the context of negligence rather than contract, the remoteness of the damages is addressed to some extent in paragraph 16 of the proposed amendment in which the Appellants assert a close relationship of proximity by which the Defendants by Counterclaim (here both Holowaty and Cashyn) would be aware of the harm that would result from their negligent conduct.

[44] While this claim may be difficult to make given the issues of remoteness that the Appellants will have to overcome, this is not a summary judgment decision. This case has a unique feature of some of the principals of the parties being personally involved with each other. That said, the claim will be limited to only the *additional* expenses incurred from the non-payment of these debts, not the debts themselves. Given the lack of clarity of how the affidavit is written, it could be that the hearing Justice was fully correct in disallowing this claim. I am giving the Appellants considerable benefit of the doubt in my interpretation of what is being

claimed. As will be addressed further below, this claim amount will be limited to the lesser of the $61,363.94 claimed and the amount that is limited by the $100,000 cap of the COJ.

Claims Relating to Future Projects

[45] In paragraphs 21 and 22 of the Amendment, the Appellants claim loss of future opportunities as a result of negligent misrepresentations of Holowaty and Cashyn. The Appellants state they entered into oral agreements with them for the provision of contracting and general contractor work for projects at two properties (identified in the claim) resulting in the Appellants relying on these representations and declining to accept other work. Rather than framing this as a breach of contract, the pleadings assert negligent misrepresentation.

[46] The hearing Justice denied this amendment on the basis that there was insufficient information in the pleadings or affidavit to support the legitimacy of these negligent misrepresentation claims, such as the particulars of the representations, when they were made, who made the representations and to whom, what projects the Appellants declined to accept, the nature and timing of the projects, and why declining those projects was necessary. While paragraph 15 of the affidavit of Bryanna Lindstrom does clarify that Cashyn and Brennan entered into oral agreements with Keshas for these other Cashyn projects, I agree that other of the information highlighted by the hearing Justice is missing. This includes when the representations were made and to which of the principals of Keshas, and the details of the other projects declined as well as details of why they were declined (for example, was this due to scheduling conflicts and work capacity, or other conflicts). The claim must be sufficiently specific so that the defending party knows the case of which it has to meet. There is no basis to alter the findings of the hearing Justice in declining paragraphs 21 and 22.

Increases to the Quantum of Damages

[47] Paragraphs 17, 19 and 22 of the proposed amendment increase the quantum of damages claimed. Paragraph 17 relates to the claim for Keshas property that has already been addressed above. Paragraph 19 relates to the damages sustained as a result of Extra Work. Although the hearing Justice found there was no basis for this increased claim, the allowed amendments to paragraph 18 of the proposed Amendment outline several additional components of the Extra Work which would clearly increase the amount claimed. The proposed Amendment seeks to increase the amounts claimed from $24,461 to the amount of $40,076.73. On the basis of the itemized Extra Work that has been added to the proposed paragraph 18, I accept that this is sufficient substantiation for the increased additional costs, and the amendments to this paragraph are accepted.

[48] These costs were part of Justice Higa's assessment that the increased quantum amendments were brought in bad faith. I will address bad faith momentarily, however, while the addition of this claim is late, it alone would not merit a bad faith characterization. The change to the quantum of damages that result from this amendment would also not have the same effect as some of the other requested amendments in triggering a transfer of the action. Looking at the claim holistically, it may merely be a different expression of the claims previously contained in paragraphs 8 and 9 of the existing amended claim which the Appellants now seek to have removed from the claim. In granting the removal of paragraphs 8 and 9, I am allowing the

increase to the damages related to the Extra Work to $40,076.73 to capture the items added to paragraph 18 and allowed by the hearing Justice.

Transfer Application

[49] Subject to a finding of bad faith, the allowed amounts claimed fall near or within the jurisdiction of the COJ. As a result, I am limiting the total amount claimed to $100,000.

[50] This amount reflects the following claims in the proposed amendment: unreturned or stolen property of $7,500 set out in paragraph 17, unpaid extra work in the amount of $40,076.73 set out in paragraphs 18 and 19, purely consequential damages due to non-payment in the amount of $52,423.27 set out in paragraph 20, limited however to purely consequential damages that does not double compensate the Appellant for failure of payment under the contractual terms.

Bad Faith

[51] It is true that the classic rule is that amendments can be brought even during a trial, subject to certain exceptions. A distinguishing feature of the amendments sought in this case is that the quantum of damages sought has been increased so significantly, that it would result in pushing this matter into a different court and court process entirely. The parties lost the trial date set, and had the matter been transferred to the Court of King's Bench, 18 months of litigation would be rendered largely meaningless. Resolution of the matter would be prolonged for a number of years. This is not merely throw-away costs for the preparation of the next step in a proceeding or even a trial – it is the throw away costs for the entire proceedings and requiring the parties to start again from the beginning. That is not the typical outcome of a last-minute application to amend the pleadings. The prejudice is significant.

[52] The hearing Justice's determination of bad faith was made in the context of the late timing of the Amendment Application, the lack of evidence to substantiate some of the larger costs claims, the claims of negligent misrepresentation without providing sufficient details, and the potential consequence of a transfer of application shortly before trial. While absence of an explanation for the sudden increase of claims was another reason stated by the hearing Justice, the Appellants state that they could not have brought those claims earlier, as they were not discoverable earlier. In their submissions, the Appellants could have said more about this. Was the failure to honor the oral agreement about the future projects not known until shortly before the trial? Was the theft of the Appellant's items in 2022 only recently discovered? This seems unlikely. Possibly the ultimate cost of bills going to collection only recently occurred and thus only recently discovered, however, more information could have been provided to confirm that.

[53] I cannot find that Justice Higa erred in the bad faith determination. This determination is based in part recognizing that I am not replacing my assessment for the hearing Justice, rather confirming that his decision did not amount to an error of law nor was it unreasonable. That said, this determination of bad faith on various components of the claim does not change my view on the portions of the claim that I have allowed. Had only those requests been made and the total claims remained within the $100,000 jurisdiction of the COJ, it may be that bad faith may not have been considered, rather just a cost consequence for delaying the trial.

[54] The finding of bad faith will however be relevant to the costs decision. Whether characterized as bad faith, or merely prejudice compensable in costs, there was a significant price to be paid for the late application for these amendments resulting in the loss of the trial date, and the attempted transfer to a different court. Even where the transfer is not granted, the late in the process application requires a costs award commensurate with the prejudice occasioned by this delay. Pursuant to paragraph 67 of the COJ decision, the parties are entitled to address costs of the adjournment of the July 2025 trial.

Disposition

[55] In summary, Mr. Holowaty may be added as a defendant with respect to the negligence claim, thus paragraph 6 of the Amendment may be added. However, paragraph 7 is far too broadly worded, and reference to Mr. Holowaty as a defendant is limited to paragraphs 16 and 17 of the Amendment, and any other paragraphs as may relate to those negligence claims.

[56] I confirm that paragraphs 8 and 9 (12 and 13 to Schedule B of the Amended Amended Dispute Note) shall be struck.

[57] The $15,615 increase to the quantum of damages in paragraph 19 relating to Extra Work is allowed. The removal of paragraphs 8 and 9 of the current amended claim, would reduce the quantum down further than previously claimed.

[58] Paragraphs 21 and 22 remain disallowed.

[59] The proposed amendments to Paragraph 20 are allowed subject to the total amount of the Appellants' claim not exceeding the $100,000 limit. The amount of $61,363.94 is reduced to $52,423.27 (a reduction of $8,940.67). To the extent that the quantum of the claim in Paragraph 20 relates to non-payment of debts other than actual consequential damages, the recoverable portion may be a small fraction of that number in any event.

[60] To make a different direction defeats the guiding principles of the exercise of the court's discretion set out in Rules 1.2 and 1.4. Those rules include that a purpose of the rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way, including to facilitate the quickest means of resolving a claim at the least expense. To allow the matter to be transferred to the Court of King's Bench for only a few thousand dollars of the claim would be far outweighed in this case by the throw away costs that would be levied on the Appellant and the costs to the resources of the Court by transferring the matter.

[61] As the financial threshold is not exceeded, the denial of the Transfer Application is upheld. Stated more simply, the Transfer Application is denied.

[62] The finding of bad faith is not altered subject to allowing the portions of the proposed amendment that I have. The consequence of this finding will be decided in the costs determination before the hearing Justice.

[63] The parties may bring the determination of costs for the adjournment before Justice Higa within 30 days of this decision if they are unable to agree to the appropriate amount.

[64] Given the mixed result, however the general success of the Respondent in this application, it is entitled to regular Schedule C costs for this appeal on column 3, Item 8: an

application with a brief, in the amount of $2025 (which is the enhanced costs of item 7 addressing appeals from the Court of Justice).

Heard on the 12th day of December, 2025.
Oral Decision provided at the City of Calgary, Alberta on this 5th day of March, 2026.
Published and Dated this 6th day of April, 2026.

C. Dario
J.C.K.B.A.

Appearances:

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for the Appellant

Joshua Williams
for the Respondent