

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

Case No.: SLUHCV2023/0412 formerly SLUHCV2017/0732

BETWEEN:

CHRISTOPHER EDWARD

Claimant

-and-

[1] **HILARY ESTANIO**

[2] **DANIS ESTANIO**

Defendants

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances: Mrs Veronica Barnard for the Claimant
Mr Gerard Williams for the Defendants.

2024: July 25
October 21

JUDGMENT

Defendants application for permission to amend

[1] **PARIAGSINGH, J:** - Before the Court is the defendants' application filed on March 04, 2024 seeking permission to amend their counterclaim filed on 30 January 2018. The grounds for the application are that the claimant, in his capacity as a contractor, is deemed to have warranted all construction works performed on the defendants' house for a period of 10 years from the date of completion, in accordance with Articles 1588 and 2120 of the Civil Code of Saint Lucia. The defendants allege that in January 2024, they discovered that substandard base material had been used in the installation of their roof in 2016, when they noticed the roof was leaking.

- [2] The application is supported by a sworn affidavit from a paralegal in the chambers of the defendants' counsel. She attests that she was informed by the defendants that they visited their home in December 2023 for a short vacation, during which they discovered the roof leaking. Upon returning to the United States, they engaged a contractor to investigate the situation. It was only after the roof was replaced due to the defect in January 2024 that a detailed report was provided on 18 February 2024. This report listed the cost of repairs as \$54,675.00, which the defendants assert they have paid in full.
- [3] The defendants contend that, as the referee's report—previously ordered by another judge during an earlier trial date—has not yet been accepted by the Court, the amendment should be granted. They note that the referee estimated the outstanding work at \$69,000.00, while they spent \$54,675.00 on the roof, which should also be considered.
- [4] Additionally, the defendants claim that the application was made promptly, as the report only became available in February 2024 and the defect was discovered shortly before. They assert that granting the application would eliminate the need for a new claim and additional costs. Furthermore, they argue there is no prejudice to the claimant, as he would still have the opportunity to challenge the amended content during the trial. Alternatively, they submit that any prejudice could be addressed through an order for costs. The application is opposed.

ANALYSIS

The first affidavit in support:

- [5] In my view, the defendants' evidence is questionable. Although no cross-examination took place, and affidavits sworn for interlocutory applications may include evidence based on information and belief, the court approaches evidence given by counsel's staff with caution. Much of the material in the affidavit pertains to matters based on the deponent's information.

- [6] The affidavit does not provide any details regarding whether the defendants, or anyone else, occupied their house before December 2023 or whether this was the first occasion on which leaks were observed. Furthermore, it does not clarify whether the roof was inspected by anyone when the counterclaim, alleging substandard work, was filed. There is no mention of the roof or its defects, nor of whether the defects could have been discovered earlier. This is significant because, at paragraph 9 of the affidavit, the deponent states: "The Applicants were not aware of the severity of the leakage until it was reported that the entire roof had to be replaced due to the nature of the defect." The Court is left uncertain as to whether the roof had been leaking before December 2023 and was only discovered then due to the defendants' visit or if this was the first time the roof had leaked.
- [7] Furthermore, at paragraph 10 of the affidavit, the deponent claims that the defendants paid for and replaced the roof, stating: "The cost of repairs was listed at \$54,675.00, which we have since paid in full to the contractor," yet no receipt is exhibited. What is exhibited is an unsigned estimate (No. 0002) for the same amount. This estimate is accompanied by an unsigned report, dated "22/02/24."
- [8] The unsigned report itself does not align with the deponent's evidence. The report does not indicate when any site visit was conducted, nor does it specify whether leaks were observed. Curiously, the report dated 22 February 2024 recommends the use of "ice and water shield" on the project, while the deponent's evidence at paragraph 9 states: "The works were undertaken in January 2024...."
- [9] The Court cannot reconcile the disparity between the deponent's evidence—that the works were undertaken in January 2024—the unsigned report dated 22 February 2024, and the unsigned estimate dated 18 February 2024. Therefore, the Court attaches very little weight to the evidence of the leak, the repairs conducted, or the alleged financial loss incurred by the defendants as the defendants' own documents do not support the evidence presented in the application.

The second affidavit in support:

[10] In a second affidavit, also sworn by a paralegal from their counsel's chambers, the defendants claim at paragraph 4 that "from 2020 they have on occasions observed dried watermarks on their floors but never attributed these to rainwater coming through the roof." They argue that some light cleaning done before their arrival in December 2023 made any leaks only noticeable when they were at the house during a heavy downpour.

[11] Paragraph 7 of the second affidavit contradicts the first affidavit, stating, "The contractor's report was not available until February 2024, at which time they contracted the repairs." In the first affidavit, it is asserted that repairs were carried out in January 2024.

[12] The inconsistencies in the defendants' affidavits, particularly regarding the date of discovery, the timing of repairs, and the documentation provided, lead the Court to question the reliability of the evidence. For example, the defendants claim repairs were carried out in January 2024, but the report is dated February 2024, and no receipts were provided for the alleged payment of \$54,675.00. This lack of corroboration significantly diminishes the weight of the evidence.

The affidavit in opposition:

[13] In an affidavit in opposition filed on 14 March 2024, the claimant asserts that the application is both prejudicial and onerous. He recites the history of the case, which commenced on 21 December 2017, and contends that the defendants should not be allowed to amend their counterclaim more than six years after its filing.

[14] The claimant asserts that the application was not made promptly, as it was submitted three months after the fact. He points out that there had been no complaints about the roof over the seven-year span of the case, including during its pendency. Specifically, he notes that no mention of leaks was made during the hearing on 24 January 2024. The claimant also describes the method and materials used for the roof installation, emphasising that they meet proper standards. He further contends that he has not been given the opportunity to inspect the alleged defects, despite the defendants claiming

they discovered them in December 2023. In his view, granting the application would severely prejudice him, as he believes the defendants are merely trying to avoid paying for the work he completed.

The submissions:

[15] The defendants make the following points in their written submissions:

- 1) Part 20.2 of the Civil Procedure Rules (CPR) is not applicable as Article 2120 of the Civil Code of Saint Lucia discharges contractors from warranty liability after 10 years for work performed or directed – paragraph 5.
- 2) The amendment sought, based on contract and negligence, does not fall outside the limitation period – paragraph 6.
- 3) The proposed amendments arise from the same or substantially the same facts currently before the Court – paragraph 7.
- 4) The Court has the discretion to grant an amendment under Part 20.1 – paragraph 8.
- 5) The application was made promptly – paragraphs 9 and 10.
- 6) The defendants are still within the time frame to bring a separate claim – paragraph 12.
- 7) Roof works were already an issue in the claim – paragraph 14.

[16] The claimant's main points in opposition are:

- 1) The court must weigh the justice of the situation, including the legitimate expectation that a claim's basis will not be fundamentally altered at the last minute – paragraph 18.
- 2) The application was not made promptly – paragraph 20.
- 3) The application is prejudicial to the claimant – paragraph 21.
- 4) The administration of justice disfavors allowing defendants to alter their case at the last moment – paragraph 23.

Promptitude:

[17] Promptitude is a contextual issue and must be adequately explained. The evidence must show that the steps taken (or not taken) were reasonable and justify any delay in filing the application.

[18] In this instance, it is difficult to conclude that the application was made promptly. The uncertainty in the defendants' own evidence about whether the alleged leaks could have been discovered before December 2023 presents a significant hurdle. Even accepting their claim that they only identified the leaks at that time, there is no explanation as to why the application was made three months later.

[19] The defendants' contradictory evidence further undermines their position. Initially, they claimed the roof was repaired in January 2024, but later, they suggested otherwise. If the repairs did occur in January, there is no explanation for the delay in filing the application in March. Alternatively, if they obtained an estimate in February, implying some investigation took place, no details have been provided to explain the delay in making the application.

[20] The defendants allege that they discovered the leak in December 2023, conducted repairs in January 2024, yet the report was only produced in February 2024. These

dates are contradicted by the affidavit, which further undermines the credibility of their evidence.

[21] The defendants submitted two affidavits in support of their application. Both affidavits contain contradictions, particularly concerning the timeline of the roof repairs. These inconsistencies, including the failure to provide receipts or signed documentation, undermine the credibility of their application.

[22] The defendants have failed to show promptness in making this application. Despite discovering the defect in December 2023, they only filed the application in March 2024. The explanation for this delay is inadequate and unsupported by their own evidence. I am unable to find that the delay from December 2023 to March 2024 has been satisfactorily explained. Accordingly, I hold that the application was not made promptly.

Prejudice if the application is refused:

[23] The potential prejudice to the defendants if the application is refused is not substantial. As they themselves have argued, under their interpretation of Article 2120 of the Civil Code, they are still able to bring a separate claim.

[24] This Court does not intend to determine whether the time for bringing a new claim has been prescribed, as this issue does not arise from the current application. The defendants' alternative argument, that the amendment should be allowed because the defect is part of the same transaction, also does not arise, in my view.

Prejudice if the application is granted:

[25] If the Court were to entertain the defendants' invitation to rule on the applicability of Article 2120, it would risk prejudicing the claimant in the event of a second claim by deciding on an issue that could potentially be the subject of an application to dispute jurisdiction, a defence to the claim, or a motion to strike out. If the defendants believe their argument regarding the 10-year limitation period, the claimant should not be prejudiced by determining this issue tangentially in the current application.

Whether prejudice can be compensated in costs:

[26] While the defendants argue that any prejudice to the claimant can be compensated with an order for costs, I do not find this to be the case here. This matter has been pending for seven years and has been scheduled for trial twice. Allowing an amendment at this stage would require new directions for further disclosure, revised bundles, and updated witness statements—potentially four years after the case was set for trial. This cannot be adequately compensated with costs, particularly when the defendants have the option to bring fresh proceedings, as per their submissions.

Would a likely trial date be affected:

[27] Although no trial date has been fixed, a hearing pursuant to Rule 40 of the CPR to consider the referee's report is pending. If the application is granted, new directions would be required, and any potential trial date would likely be delayed further.

The administration of justice:

[28] The administration of justice favours the final and full determination of cases on their merits. The general disposition of the Court is that amendments should be granted when necessary to ensure that the real issue in controversy between the parties is resolved, provided no injustice is done to the other side, as stated in **Steward v North Metropolitan Tramways Company** 16 Q.B.D. 178 (1885)

[29] In determining the real issue in controversy, I have considered the pleadings concerning the roof and the overall nature of the counterclaim.

[30] Paragraph 26 of the statement of claim states:

“On 18 June 2016, the claimant emailed the defendants regarding upgrading the size and spacing of the rafters and other roof timbers, which, as per plan, were inadequate to support the specified roof covering (clay tiles). The defendants were informed that the cost differential for this change would be provided subsequently. The defendants agreed.”

[31] Paragraph 21 of the defence (which is repeated in the counterclaim) states:

“Paragraph 26 is denied. The original plans provided for a clay roof. The claimant acknowledged that he made an error in his calculations, assuming the roof was designed for galvanised steel. Accordingly, the rafters proposed were insufficient to accommodate the clay roof.”

[32] In my view, there is no fact at issue in the claim as originally pleaded regarding any defect in the works or the quality of the materials used by the claimant. The primary dispute concerns the time taken to complete the work and whether the claimant is liable for the cost to complete the work or provide certain items.

[33] This is evident from a reading of the counterclaim. The counterclaim focuses on amounts allegedly spent to complete unfinished work and to supply items that the defendants argue were included in the fixed-price contract for their home’s construction.

[34] In my opinion, the amendment now sought represents a material change from what was initially pleaded in the defence and counterclaim. It introduces a new allegation concerning the quality of the work or the materials used, which was not a feature of the original defence or counterclaim.

[35] The Court of Appeal in **Allert & Ors v Matheson & Anor** (GDAHCVAP2014/0007) held that:

"There are several factors that the court must take into consideration when deciding whether to exercise its discretion to amend a statement of case. These factors include: the justice to the parties; the legitimate expectation that the basis of a claim will not be fundamentally changed at the last minute; the adverse effect on other litigants of lost judicial time; the stage reached in the proceedings; whether the other side can be adequately compensated in costs; and whether the amendment will serve any useful purpose."

[36] In **Allert**, the Court of Appeal laid out several key factors to be considered when determining whether to allow an amendment. These include justice to the parties, promptness, and the stage of proceedings. In this case, the defendants’ delay and the potential prejudice to the claimant outweigh the benefits of allowing the amendment.

[37] Granting this amendment would unfairly affect the claimant, who has been involved in this litigation for seven years. It would result in new disclosures, further delays, and additional costs, which cannot be compensated by a mere order for costs.

[38] In conclusion, the inconsistencies in the defendants' evidence, the failure to explain the delay, and the prejudice that would result to the claimant if the amendment were granted, lead this Court to dismiss the application.

[39] For completeness, I propose to deal with the resolution of the grounds of the application in summary form as follows:

Grounds of the application	Treatment by the Court
1. Part 20.2 of the Civil Procedure Rules (CPR) is not applicable as Article 2120 of the Civil Code of Saint Lucia discharges contractors from warranty liability after 10 years for work performed or directed – paragraph 5.	Court finds no merit in this argument
2. The amendment sought, based on contract and negligence, does not fall outside the limitation period – paragraph 6.	Court does not need to resolve that issue on this application
3. The proposed amendments arise from the same or substantially the same facts	Court finds that the amendment sought introduces a new limb to the defence and counterclaim not previously before the

currently before the Court – paragraph 7	Court, that is the quality of work performed and the suitability of material used
4. The Court has the discretion to grant an amendment under Part 20.1 – paragraph 8.	The Court agrees with this ground but does not consider it a properly stated ground to grant relief
5. The application was made promptly – paragraphs 9 and 10.	The Court finds that the application was not made promptly
6. The defendants are still within the time frame to bring a separate claim – paragraph 12.	The resolution of this issue is not necessary for the determination of this application.
7. Roof works were already an issue in the claim – paragraph 14.	This is factually incorrect. What was in issue is the increased price for the roof based on an increased building area. The roof works were never put in issue in the defence and counterclaim.

Costs:

[40] The general rule is that costs follow the event. Therefore, there is no reason to depart from this rule. The claimant shall have his costs of this application.

Order:

[41] For the reasons stated above, it is hereby ordered that:

- 1) The application filed on 4 March 2024 is dismissed.

- 2) The defendants shall pay the claimant's costs of the application, which will be summarily assessed by this Court at the next hearing, in default of agreement between the parties.



Alvin S. Pariagsingh
Judge

By the Court,

Registrar