

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Crispin v. Aronetz*,
2026 BCSC 1043

Date: 20260515
Docket: S-2463695
Registry: Prince George

Between:

Thomas Allen Crispin and Cheryl Denise Crispin

Plaintiffs

And

Craig Michael James Aronetz

Defendant

Before: The Honourable Justice R. Tindale

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

K.A. Pavao

Counsel for the Respondent appearing by
videoconference:

D.A. Solimano
S.P. Drinovz

Place and Date of Trial/Hearing:

Prince George, B.C.
May 11, 2026

Place and Date of Judgment:

Prince George, B.C.
May 15, 2026

[1] **THE COURT:** The plaintiffs, Thomas Allen Crispin and Cheryl Denise Crispin, pursuant to a notice of application filed May 4, 2026, seek leave to amend their notice of civil claim to include a claim for an easement and special costs, as well as some other technical changes.

[2] The defendant, Craig Michael James Aronetz, is opposed to this relief.

BACKGROUND

[3] In July of 2016 the plaintiffs purchased property located at Lot 22, District Lot 2211, Cariboo Plan 23795 (“Lot 22”).

[4] Lot 22 adjoins the property belonging to the defendant, which is located at Lot 21, District Lot 2211, Cariboo District Plan 23795 (“Lot 21”).

[5] In August of 2020, the plaintiffs built a garage that straddled the property line between Lot 22 and Lot 21 (the “Garage”).

[6] On August 8, 2020, the parties entered into an agreement to sell a parcel of land from Lot 21 that the Garage is located upon to the plaintiffs (the “Contract”).

[7] A dispute arose as to the enforceability of the contract between the parties, which gave rise to the within action.

[8] The plaintiffs filed a notice of civil claim and a certificate of pending litigation on April 16, 2024.

[9] On June 11, 2024, the defendant filed a response to civil claim and a counterclaim. The counterclaim, among other things, seeks special costs against the plaintiffs.

[10] On July 3, 2024, the plaintiffs filed a response to counterclaim.

[11] The trial of this matter is scheduled for three days to commence on the two-week assize beginning June 1, 2026.

[12] A trial management conference was held in this matter on April 28, 2026, at which time the plaintiffs sought an order for leave to amend their notice of civil claim.

POSITION OF THE PARTIES

Plaintiffs

[13] The plaintiffs say that all possible remedies should be before the court including the equitable remedy of an easement.

[14] The plaintiff argues that the material facts pled in their notice of civil claim establish and deal with the encroachment of the Garage on Lot 21.

[15] The plaintiffs argue that the issue of an easement is not a new cause of action. The plaintiffs say that because this is not a new cause of action, there is no issue as to the potential expiry of the limitation period.

[16] The plaintiffs argue that a new claim is not raised just because their claim, which was initially in contract, now includes an equitable remedy: *Taylor v. Benz The Canadian Coffee Company Ltd.* 2019 BCSC 906 at para. 54.

[17] The plaintiffs argue that the proposed amendment includes relief that fits into the factual matrix as plead, arises out of the same time period and the same course of dealings between the parties.

[18] The plaintiffs further argue that there is no prejudice to the defendant if leave to make the amendment is granted because the plaintiffs are not seeking to adjourn the trial and the proposed amendments will not change the time needed for trial. Further, with regard to the CPL, that was filed at the onset of the proceedings. The facts have not changed with regard to this within matter.

[19] The plaintiffs' counsel stated that the delay in bringing this application to amend the notice of civil claim was an oversight on her part and the plaintiffs should not be prejudiced because of that.

Defendant

[20] The defendant argues that the proposed amendments to the notice of civil claim go beyond a mere correction of names or other technical aspects of the claim.

[21] The defendant argues that the proposed amendments are a new cause of action as the plaintiffs claim changes from one of strictly contract to one of contract and an equitable remedy. Further, the plaintiffs are now seeking special costs.

[22] The defendant notes that granting leave to amend a notice of civil claim is discretionary and the court should determine whether it is just and convenient to allow these amendments.

[23] The defendant notes that the trial of this matter is set to commence June 1, 2026. The defendant argues that nothing has changed factually since the examinations for discovery of the plaintiffs in 2025 and query why the lengthy delay for applying to amend their notice of civil claim.

[24] The defendant argues that it is very important that this trial proceed as scheduled because a CPL has been registered against Lot 21.

[25] The defendant says that the plaintiffs' application should be dismissed, but if the plaintiffs are allowed to amend their notice of civil claim it should be on conditions which preserve the scheduled trial date. The conditions suggested by the defendant are:

- 1) the plaintiffs will not rely on the amendments as a basis to adjourn the trial
- 2) the defendant may file and serve an amended response to civil claim and the amended counterclaim if necessary;
- 3) the defendant may seek further particulars production or directions if necessary;

- 4) the defendant would be able to raise any and all objections at trial including limitation period, prejudice, admissibility and pleading deficiency; and
- 5) costs of the application will be in the cause.

DECISION

[26] The plaintiffs seek to amend their notice of civil claim to include the equitable remedy of an easement and special costs.

[27] Rule 6-1(1)(b) of the *Supreme Court Civil Rules* (the “Rules”) reads:

- (1) Subject to Rules 6-2(7) and (10) and 7-7(5), a party may amend the whole or any part of a pleading filed by the party, other than to change parties or withdraw an admission,

...

- (b) after the notice of trial is served, only with

- (i) leave of the court, or
- (ii) written consent of the parties.

[28] The applicable legal principles to be considered in an application to amend pleadings is set out in *Taylor v Blenz The Canadian Coffee Company Ltd.*, at paras. 31 - 37:

[31] Rule 6-1 of the *Civil Rules* allows parties to amend pleadings with leave of the court. The old *Limitation Act*, R.S.B.C. 1996, c. 266, and the new *Limitation Act*, S.B.C. 2012, c. 13 (s. 22(5)), expressly confer upon the court the discretion to grant amendments that raise “fresh causes of action”, as stated in s. 4(4) of the old *Limitation Act*, or “new claims”, as stated in s. 22(5) of the new *Limitation Act*, which would otherwise be time-barred.

[32] The general approach to applications to amend pleadings is generous and non-technical so as to permit amendments that are necessary to determine the real questions between the parties, considering always the interests of justice: *Century Services Inc. v. LeRoy*, 2015 BCCA 120, at para. 10. In *Preferred Steel Construction Inc. v. M3 Steel (Kamloops) Ltd.*, 2015 BCCA 16 at para. 47, the Court of Appeal emphasized the need for flexibility in dealing with applications to amend pleadings given the evolutionary quality of litigation and the resulting requirement to ensure that pleadings adapt to changing circumstances. These foundational principles were recently reiterated in *Swiss Reinsurance Co. v. Camarin Ltd.*, 2018 BCCA 122 at paras. 22 and 23.

[33] Granting leave to amend pleadings is a highly discretionary decision. Ultimately, the question is whether it is just and convenient to allow the

amendments: *Swiss* at para. 21; *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.* (1996), 1996 CanLII 3033 (BCCA), 19 B.C.L.R. (3d) 282 (C.A.), at paras. 36 – 38.

[34] The objective is to balance the interests of justice and convenience in relation to all the parties. Delay, the reasons for delay, the expiry of a limitation period, the presence or absence of prejudice, and the extent of the connection between the proposed amendments and the existing claims are all factors to be considered and none, on their own, are decisive: *Teal Cedar Products (1977) Ltd.* at paras. 41 and 67.

[35] Where the proposed amendments do not raise a new cause of action, there will be no issue as to the potential expiry of a limitation period. Thus, it makes sense to first determine whether the proposed amendments raise a new cause of action because the determination of that question, due to the potential expiry of the associated limitation period, is a component in the ultimate assessment of whether it is just and convenient to allow the proposed amendments: *Swiss* at para. 21.

[36] In *Swiss*, the Court of Appeal cited with approval the definitions of cause of action found in *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 and in *Letang v. Cooper*, [1965] 1 Q.B. 232. In the former case, the Supreme Court of Canada said that "[a] cause of action has traditionally been defined as comprising every fact which it would be necessary for the plaintiff to prove, if disputed, in order to support his or her right to the judgment of the court" (at para. 54). In the latter case, Lord Diplock defined cause of action as "a factual situation the existence of which entitles one person to obtain from the court a remedy against another person" (at 242 O 43). Justice Garson for the Court in *Swiss* said, that she saw little difference between these two descriptions (at para. 28).

[37] Where proposed amendments do raise a new cause of action and it is possible that the limitation period applicable to the new cause of action has expired, the court should first determine whether it is just and convenient to allow the amendments assuming that the limitation period has expired: *KPMG Inc. v. IMO Industries (Canada) Inc.*, 2008 BCCA 317, at paras. 47 - 49. If so, the proposed amendments should be allowed unconditionally. If not (i.e., if the loss of a limitation defence would cause such prejudice as would not permit the exercise of the court's discretion in favour of the amendments), then the amendments should be allowed without prejudice to the defendant raising the limitation defence at trial.

[29] The plaintiffs are not required to tender evidence in support of the proposed amendments. The draft amended pleading is sufficient, so long as it sets out a proper cause of action: *Mand v. Cheema*, 2021 BCSC 1854 at para. 19.

[30] The plaintiffs say that their amendments do not amount to a new cause of action because they do not go beyond the scope of the set of facts engaged by the current notice of civil claim.

[31] The plaintiffs are seeking amendments to the notice of civil claim which include additional legal argument for registering a CPL against Lot 21. Neither party made substantive submissions with regard to these amendments, which in my view do not amount to a new cause of action and should be allowed.

[32] The plaintiffs are also seeking an amendment to the notice of civil claim to include special costs. The defendant in their counterclaim alleges that the plaintiffs commenced a frivolous lawsuit and filed a CPL that had no legal merit as a basis for the defendant's claim for special costs.

[33] The plaintiffs' proposed amendments with regard to special costs are as a result of the defendant's pleadings. The plaintiff clearly sought costs against the defendant in the original notice of civil claim. In my view, an amendment for special costs does not go beyond the scope of the set of facts engaged by the current pleading and it is not a new cause of action.

[34] However, even if amending the notice of civil claim to include special costs amounts to a new cause of action, it would be just and convenient to allow this amendment because of the allegations made by the defendant in their counterclaim. Further, there would be no prejudice to the defendant to allow this cause of action because it does not affect the defendant's ability to respond to the amended claim.

[35] In *Canadian Dewatering L.P. v Directional Mining & Drilling Ltd.* 20918 BCSC 517 Master Keighley discussed prejudice in the context of an application to amend pleadings, at paras. 22 and 23:

[22] As to what constitutes prejudice, the fact that an opposing party is affected negatively by an amendment does not necessarily mean that the party is prejudiced. In order to be considered as "prejudice" for the purposes of this analysis, "prejudice must affect the ability of the party to respond to the amended claim" *Bel Mar Developments Inc. v. North Shore Credit Union Square* [2001] BCJ No. 512, 2001 BCSC 388 (CanLII). In such a case, the court must balance the prejudices between the parties keeping in mind that in general terms, it is the plaintiff who will suffer more harm in losing the ability to prosecute a claim than a defendant who loses a "windfall opportunity" to prevent a claim from being asserted against it: *Takenaka v. Stanley* 2000 BCSC 242 (SC Master).

[23] The onus is on the defendant to show *actual* prejudice such as an impaired ability to defend itself through a loss of witnesses, loss of evidence or other factors relating to the passage of time. In *Middelaer*, Jenkins J. said at para. 28:

There is no evidence of any prejudice to Delta involving lost or destroyed evidence, witnesses who are no longer available, or any other prejudice caused by the passage of time beyond the limitation period. The only prejudice suffered by Delta is the opportunity to rely on the statutory limitation period. There is no unfairness to Delta because it has not lost its ability to defend itself in this action. The very same actions or inactions of Delta, which form the basis of their defence to the companion actions, would be at issue in this action.

[36] The plaintiffs' application to amend their civil claim to include special costs is granted.

[37] Finally, with regard to the plaintiffs' application to amend their notice of civil claim to include an easement, in my view, while the plaintiffs propose some additional language as part of their amendments, the proposed amendments regarding the easement do not change the substance of the factual issues raised in this action: *Taylor* at para. 44.

[38] In fact, the proposed amendments with regard to an easement naturally flows from and fits into the factual matrix of this case. It was an oversight of counsel not to expressly state this relief in the notice of civil claim.

[39] The proposed amendments with regard to the easement do not constitute a new cause of action and they should be allowed.

[40] The defendant is concerned about the trial of this matter being delayed, in particular because of the amendment with regard to the easement.

[41] I am satisfied that the defendant could suffer prejudice if the trial was adjourned because of this amendment, given there is a CPL on Lot 21 which restricts what the defendant can do with his property.

[42] I am also satisfied that the proposed amendments are necessary so that the merits of this case can be adjudicated upon to determine the real questions between

the parties. Any potential prejudice to the defendant can be ameliorated with conditions.

[43] It is just and convenient to allow the plaintiffs' amendments subject to the following conditions:

- 1) The plaintiffs will not rely on the amendments as a basis to apply to adjourn the trial;
- 2) The defendant may file and serve an amended response to civil claim and an amended counterclaim if necessary within seven days; and
- 3) The defendant may seek further particulars production or directions if necessary.

[44] The plaintiffs are granted leave to amend their original notice of civil claim as set out in the Appendix A, which is attached to their notice of application filed May 4, 2026, subject to the above-noted conditions.

[45] The plaintiffs have been largely successful on this application and normally would be entitled to their costs. However, this application was brought, in my view, late in the litigation and it should have been brought earlier. Further, the parties likely could have come to an agreement had the application been brought sooner.

[46] I order that the parties will bear their own costs of this application.

[47] All right. Thank you.

“The Honourable Mr. Justice Tindale”