

Court of King's Bench of Alberta

Citation: Regency Innovations Inc. v Wehbe, 2026 ABKB 537

Date: 20260729
Docket: 2103 03071
Registry: Edmonton

Between:

Regency Innovations Inc.

Plaintiff/Defendant by Counterclaim/Respondent

- and -

Abdul Wehbe and Hanadi Wehbe

Defendants

- and -

Abdul Wehbe

Plaintiff by Counterclaim/Applicant

- and -

HighPro WestWeld Ltd.

Defendant by Counterclaim

**Reasons for Decision
of the
Honourable Justice J.D. Martin**

I. Introduction

[1] The Applicant, Abdul Wehbe, seeks permission to amend his Counterclaim to sue the Respondent, Regency Innovations Inc. (“Regency”), for breach of contract, negligent misrepresentation, general damages, and statutory breaches under the *Sale of Goods Act*, RSA 2000, c S-2, and the *Consumer Protection Act*, RSA 2000, c C-26.3.

II. Background

[2] On January 29, 2021, Regency commenced this Action by filing a Statement of Claim against Abdul Wehbe and Hanadi Wehbe. Regency brought a claim under the *Builders’ Lien Act*, RSA 2000, c B-7, and sued for breach of contract, debt, damages, and unjust enrichment.

[3] On April 16, 2021, Abdul Wehbe and Hanadi Wehbe filed a Statement of Defence, denying each and every allegation in the Statement of Claim, including Regency’s assertion that it had contracted directly with them. The Applicant also filed a Counterclaim against Regency and HighPro WestWeld Ltd. (“HighPro”).

[4] In his Counterclaim, the Applicant alleged that HighPro breached its contract with him and that Regency was negligent in performing its work. The Applicant pleaded that he entered into a contract with HighPro, pursuant to which HighPro agreed to provide general contracting services. He further alleged that HighPro subsequently entered into a subcontracting agreement with Regency to construct and install custom cabinetry in the Applicant’s home.

[5] On June 30, 2021, Regency filed a Statement of Defence to the Counterclaim, denying each and every allegation, including the assertion that it had entered into a contract with HighPro.

[6] On July 23, 2021, HighPro filed a Statement of Defence acknowledging that it had entered into a contract with Abdul Wehbe. However, HighPro denied that it agreed to act as the general contractor for the project and further denied that it entered into a subcontracting agreement with Regency for the construction and installation of the cabinetry.

[7] The Order for Trial, dated June 27, 2025, incorporated the Applicant and Regency’s (the “Parties”) Litigation Plan. The Litigation Plan confirmed that the exchange of records, questioning, and responses to undertakings was complete as between the Parties. On April 16, 2026, the Parties filed their respective witness lists.

[8] The trial was scheduled for five days commencing May 4, 2026. On April 30, 2026, counsel for Regency wrote to the Court advising that Regency would not be pursuing its claim against Abdul Wehbe and Hanadi Wehbe. Counsel wrote:

“That claim was premised on there being a Registered Builders Lien against the Title of the Defendants, and there being a contractual relationship between the Plaintiff and the Defendants. There is in fact no Builders Lien registered on Title. Plaintiff’s Counsel never named the General Contractor, HIGHPRO WESTWELD LTD. in the Statement of Claim.

Upon further review of the pleadings, the Plaintiff has decided not to pursue its claim against the Defendants at trial and agrees with the Counterclaim that the issue at Trial as between Regency Innovations Inc. and Abdul Wehbe is the issue of negligence.”

[9] As Regency abandoned its claim, the Parties agreed that the Applicant would proceed on his Counterclaim and present his evidence first at trial.

[10] Between May 4 and May 6, 2026, the Applicant called four witnesses: Abdul Wehbe; Carla Ladner, an expert in forensic engineering; Kassem El-Kardri, the president and owner of Accent Marble Granite Ltd.; and Gregory Gazdewich, who provided an estimate of the cost to remediate the work.

[11] Following the close of the Applicant's case on May 6, 2026, Regency called Iqbal Singh Bhogal, an owner and operator of Regency. At the conclusion of the day's proceedings, I directed counsel to have the authorities that they intended to rely on ready for distribution following the anticipated completion of Regency's evidence the following day, so that I could review them in advance of the closing submissions scheduled for May 8, 2026.

[12] On the evening of May 6, 2026, counsel for Regency provided copies of their authorities to opposing counsel and to the Court. Those authorities addressed the distinction between liability arising in negligence and liability arising in contract.

[13] On the morning of May 7, 2026, before Regency called its final witness, Mitchell Christophersen, an expert in cabinet construction and installation, the Applicant brought an application to amend his pleadings.

[14] After hearing submissions on the Amendment Application, I directed that Regency proceed with the evidence of its final witness on the basis of the pleadings as they then stood. I further directed that the parties provide written submissions regarding the Applicant's Application to amend.

III. The Law

a) Amending pleadings

[15] Once pleadings close, parties may amend their pleadings either with the consent of the opposing party or with the permission of the court: *Rules* 3.62(1)(c), 3.65 and 3.67 of the *Alberta Rules of Court*, Alta Reg 124/2010. Where permission is sought, the amending party must meet the low threshold test of showing some evidence to support the amendment: ***Mikisew Cree First Nation v Canada et al.***, 2002 ABCA 110 at para 26. That the original pleadings were carelessly drafted is not a bar to amending pleadings, as no particular reason is required for needing the amendment: ***Attila Dogan Construction and Installation Co Inc v AMEC Americas Limited***, 2014 ABCA 74 at para 24 [***Attila***].

[16] Further, courts should exercise their discretion to amend pleadings generously rather than restrictively, especially where the amendment is requested early in the proceedings or clarifies an issue or claim a party is advancing: ***Marlborough Ford Sales Ltd. v Ford Motor Co. of Canada Ltd.***, 2003 ABQB 298 (CanLII) at para 10; ***Breen v Foremost Industries Ltd.***, 2022 ABQB 478 at para 6 [***Breen***].

[17] Where the threshold is met, the pleadings may be amended 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** at paras 23-26

[18] The issues in the present case are whether the proposed amendments would cause serious prejudice to Regency, that cannot be compensated by costs, and whether the amendments are statute-barred.

i) Serious prejudice

[19] It is the party opposing the amendment that bears the onus of establishing a serious prejudice that cannot be adequately addressed through costs: **Castledowns Law Office Management Ltd v FastTrack Technologies Inc**, 2012 ABCA 219 at para 17. The amending party does not bear the onus of establishing an absence of prejudice resulting from the proposed amendment: **Bard v Canadian Natural Resources**, 2016 ABQB 267 at para 15 [**Bard**].

[20] Regarding the passage of time, although there is no fixed deadline to amend pleadings, delay remains a relevant consideration that may create an inference of prejudice: **Attila** at para 24; **Sorrell v eQube Technology and Software Inc**, 2019 ABQB 31 at para 13 [**Sorrell**].

[21] Prejudice may also arise where, had the amendment been sought earlier, the opposing party might have led different or additional evidence or taken a different approach during questioning or at trial: **Conmac Western Industries v Robinson**, 1993 CanLII 7058 (AB QB) at para 200. However, bare assertions that a different strategy would have been implemented had the amendment been made earlier are generally insufficient: **Pembina Gas Services Ltd v Focus Corporation**, 2025 ABKB 745 at para 59 [**Pembina**]. These principles recognize that trials must proceed on clearly defined issues within established parameters: **Attila** at para 23.

ii) Limitation period

[22] Where a claim would otherwise be statute-barred pursuant to s 3 of the *Limitations Act*, RSA 2000, c L-12, s 6 of the *Act* will nevertheless permit the amendments where the added claim or pleadings relate to the conduct, transaction or events described in the original pleading in the proceeding.

[23] The determination as to whether a new pleading arises from the same conduct, transaction or event is based on the entirety of the factual and legal context. One way of determining whether a claim arises from the same conduct, transaction, or events is to consider the extent to which the new claim would require proof of a different factual foundation, including additional documentation or other forms of evidence at trial: **DeSoto Resources Limited v EnCana Corporation**, 2010 ABCA 110 at para 10 [**DeSoto**].

[24] While there is no bright line in assessing whether an issue has already been pleaded, amending parties are not entitled to an unrestricted ability to add otherwise statute-barred claims: **DeSoto** at para 8.

IV. Position of the Parties

a) The Applicant

[25] The Applicant seeks leave to amend his pleadings to add the following claims to his existing negligence claim: breach of contract, negligent misrepresentation, general damages, and statutory breaches under the *Sale of Goods Act* and the *Consumer Protection Act*.

- (a) Breach of Contract: The Applicant argues that on May 11, 2020, he entered into a contractual agreement with Regency, by text message, under which Regency agreed to complete the agreed-upon scope of work and remedy all outstanding deficiencies by June 2020.
- (b) Negligent Misrepresentation: The Applicant alleges that he selected Regency as the cabinet maker, in part, due to representations made on Regency's website, social media, and promotional materials. He contends that the finished product fell below those represented standards.
- (c) *Sale of Goods Act*: The Applicant says that he relied on Regency's skill and judgment to build the cabinets, but that Regency failed to provide cabinets that were reasonably fit for their intended purpose or of merchantable quality.
- (d) *Consumer Protection Act*: The Applicant alleges that Regency overstated the quality and standard of the materials to be used in completing the work.
- (e) General Damages: The Applicant claims he suffered mental and emotional distress because of Regency's work.

b) Regency

[26] Regency opposes the proposed amendments on two grounds: first, that they would cause serious prejudice not compensable in costs, and second, that they are statute-barred.

[27] Regarding prejudice, Regency argues that the Applicant is raising the contractual claim for the first time. Regency notes that the Applicant's Statement of Defence and Counterclaim, pleaded a contract between the Applicant and HighPro, not between the Applicant and Regency. Regency says that if the amendments are allowed, it would need to call evidence denying the existence of any contract with the Applicant, as well as evidence supporting its position that there was no breach of any contract involving HighPro. Regency also advises it would need to adduce evidence as to what, if anything, appeared on its website in 2019, and explore the extent to which the Applicant relied on word-of-mouth recommendations from friends, including the identity of those individuals.

[28] On the limitation issue, Regency argues that the proposed amendments are statute-barred because they do not arise from the same conduct, transaction, or events described in the existing pleadings.

V. Analysis

[29] The Applicant's Application to amend his pleadings is denied.

a) Breach of Contract

i) The Proposed Amendment Would Result in a Serious Prejudice to Regency

[30] The Applicant argues that the proposed breach of contract claim advances an additional legal basis for recovery based on facts and pleadings that are already before the Court. I disagree. Unlike the amendments permitted in *Breen*, the proposed amendment does not simply particularize a legal conclusion arising from facts that were already pleaded. In *Breen*, though the amendments were sought during the cross-examination of the plaintiff/defendant by counterclaim and nearing the close of the plaintiff's case, the factual narrative supporting the amended legal claims were already contained within the pleadings and therefore neither narrowed nor broadened the scope of the remedies sought: paras 4, 57 and 62. Here, the Applicant pleaded the opposite. From the commencement of this Action, the Applicant consistently denied the existence of any contract between himself and Regency and expressly pleaded that he contracted with HighPro, which in turn contracted with Regency: see *Balm v 3512061 Canada Ltd.*, 2003 ABCA 98 at para 11 [*Balm*].

[31] Documentary production, questioning, trial preparation and witness selection, including choice of experts, all proceeded on the basis that the dispute between the Applicant and Regency was based on negligence, not contract: *Brown v Sprague*, 2025 ABCA 41 at para 85. As recently as April 30, 2026, immediately prior to trial, counsel for Regency advised the Court and the Applicant that they would be abandoning their claim and that the trial would proceed solely on the Counterclaim and issue of negligence. The Application to amend was not brought before trial, nor after Regency advised that it was abandoning their claim. Rather, that Application was made after approximately five years of litigation, during which he consistently denied any contractual relationship with Regency, and only after almost all of the evidence had been called. The Applicant chose to advance a contractual claim against HighPro and a negligence claim against Regency. Regency was entitled to conduct its defence on the basis of those pleadings.

[32] Though the Applicant refers to para 12 of his Statement of Defence to suggest that he pleaded the existence of a contract with Regency, that paragraph must be read in its entirety. Contrary to the assertion of the Applicant, the paragraph provides that only if the Court finds that a contract existed, "which is not admitted but expressly denied," Regency is in breach of that contract.

[33] Nor does the Applicant's incorporation of his Statement of Defence into his Counterclaim transform the Statement of Defence into an affirmative cause of action for breach of contract against Regency. The Applicant did not seek judgment against Regency in contract, plead contractual damages against Regency, plead the material facts necessary to advance the alleged May 2020 Agreement or any direct contractual claim against Regency, or frame his claim against Regency as anything other than negligence.

[34] Further, the contractual claim advanced by the Applicant stems from a text message exchange between himself and Regency on and around May 11, 2020, wherein he submits that Regency agreed to oversee the completion of the agreed-upon work and remedy any outstanding deficiencies by June 2020. This secondary contract is not the same contractual claim that Regency initially advanced and then abandoned: *Balm* at para 31. The contractual claim referenced in Regency's pleadings stems from an alleged agreement entered into on May 22, 2019, to install cabinetry. This distinction also applies to HighPro's pleadings. While HighPro

alleged a contractual relationship between the Applicant and Regency, it was referring to the May 2019 Agreement for the “construction and installation of custom cabinetry.” They did not plead the existence of the alleged May 2020 Agreement now raised by the Applicant.

[35] I find the present circumstances similar to those in *Sorrell*. There, the plaintiff sought to add a claim in contract at the end of the trial after the action had been litigated for years on a different legal basis. Hollins J. concluded that such an amendment would create an inherent unfairness because the defendant had defended the action through discoveries and trial on the issues framed by the plaintiff: *Sorrell* at para 13. The same concern arises here. For approximately five years, Regency has defended against a claim of negligence, relying on the Applicant's express position that no contract existed between them. Regency was entitled to rely on that position in determining what evidence was required and what issues were in dispute.

[36] Permitting a breach of contract claim at this stage would significantly broaden the factual and legal issues to be determined. Regency would be required to respond to evidence concerning the alleged existence of a contractual relationship created in May of 2020, the terms of the alleged contract, the scope of any contractual obligations, whether those obligations were breached, and the damages flowing from any such breach. Had the claim been advanced earlier, Regency may have pursued different document production, undertaken different questioning, retained different experts or adopted a different trial strategy. It is also impossible to know what effect the existence of such a claim may have had on settlement discussions throughout the litigation. As recognized in *Sorrell*, these forms of prejudice cannot be adequately compensated through an award of costs: *Sorrell* at para 16.

[37] Nor can the Applicant rely upon any suggestion that the amendment became necessary because of information revealed during the trial. The factual foundation for the proposed contractual claim was known to the Applicant long before the trial commenced. The alleged May 11, 2020 Agreement, which he relies on, involved a text exchange between the Applicant and Regency. The evidence was therefore in his possession from the outset. This is not a case in which newly discovered evidence could further support a late amendment. Rather, it reflects a deliberate litigation choice to pursue HighPro in contract while pursuing Regency only in negligence. Parties are free to make strategic choices in litigation. They are not, however, entitled to obtain a tactical advantage by fundamentally altering their case after years of litigation and after the opposing party has conducted its defence in reliance upon the pleadings as framed. Though carelessness is not a bar to amending pleadings (*Attila* at para 24), and courts have discretion whether to permit an amendment (*Bard* at para 11), in doing so, courts must not permit parties to litigate by ambush or surprise: *Juman v Doucette*, 2008 SCC 8 (CanLII), [2008] 1 SCR 157 at para 24.

[38] The Applicant made a litigation choice to pursue HighPro in contract and Regency in negligence. If that choice now appears mistaken, the consequences of that choice cannot be shifted to Regency after Regency conducted its defence and nearly completed the trial on the basis of the pleadings as framed. To require Regency, after almost all of the evidence has been called, to defend an entirely new cause of action based upon the existence of a contract that the Applicant himself consistently denied would create an unfairness that cannot now be cured by costs or any other procedural order.

ii) The Proposed Amendment is Prohibited by the *Limitations Act*

[39] I also find that the proposed amendment is barred by the *Limitations Act*. The alleged contract of May 2020 was known to the Applicant at all material times. Yet, the claim was not pleaded within the limitation period and was first raised after the Applicant had closed his case and right before Regency called its final witness. While s 6 of the *Limitations Act* permits certain amendments that arise from the same conduct, transaction or events described in the original pleading, when assessing the whole of the factual and legal context, the provision does not provide an unlimited ability to add new causes of action after the expiry of the limitation period: *DeSoto* at para 8.

[40] The proposed breach of contract claim is also not merely a different legal characterization of previously pleaded facts. While I may consider Regency's pleadings in assessing the factual and legal context (*Astolfi v Stone Creek Resorts Inc*, 2023 ABKB 416 at para 61(b)), the Applicant's existing pleadings expressly denied any contractual relationship, and the contractual relationship initially alleged by Regency is not the same contractual relationship now being raised by the Applicant. While the Applicant may have met the low threshold of establishing some evidence to support the amendment, proof of the proposed claim would require the Applicant to establish the existence, terms and breach of this secondary contract with Regency, matters that were never pleaded and that are inconsistent with the Applicant's theory of the case advanced throughout the litigation. Regency would also need to be provided an opportunity to investigate and respond. Applying the principles in *DeSoto*, I am not satisfied that the claim falls within s 6 of the *Limitations Act*. It constitutes a new cause of action requiring proof of material facts and legal issues beyond those framed in the original pleadings.

iii) Conclusion

[41] Accordingly, I find that the proposed amendment to argue a breach of contract must be denied. It would cause a serious prejudice to Regency that cannot be remedied through costs or a procedural order and, in any event, is statute-barred. The Applicant cannot, after years of denying the existence of a contract and pursuing a contrary theory of liability, seek to transform the litigation at trial into a contractual dispute with Regency. Permitting such an amendment would undermine the requirement that litigation proceed on defined issues and would allow trial by ambush.

b) Negligent Misrepresentation, General Damages, the *Sale of Goods Act* and the *Consumer Protection Act*

i) The Proposed Amendments Would Result in a Serious Prejudice to Regency

[42] I have even graver concerns regarding the proposed amendments for negligent misrepresentation, breach of the *Sale of Goods Act*, breach of the *Consumer Protection Act*, and the claim for general damages. Again, unlike in *Breen*, these proposed amendments do not merely particularize legal conclusions already flowing from pleaded facts, nor do they simply refine existing remedies. Rather, they introduce new theories of liability and new factual inquiries that were not identified in the pleadings with which the parties conducted documentary production, questioning, trial preparation, and the trial itself.

[43] Regency has defended this Action since 2021 on the basis of a claim in negligence only. Regency is entitled to prepare its case, marshal its evidence, and conduct its cross-examinations

on that basis. To permit the Applicant, at almost the close of Regency's evidence, to advance entirely new causes of action would create the very type of unfairness identified in **Sorrell**.

[44] As to the negligent misrepresentation claim, it would require Regency to investigate and lead evidence concerning the contents of its website, social media accounts, advertising, and promotional materials at the relevant time, being either May of 2019 or May of 2020, together with the nature and extent of any reliance allegedly placed upon those representations by the Applicant.

[45] Similarly, the statutory claims would require evidence concerning the representations made in connection with the sale of the cabinetry, that the Applicant was relying on Regency's specific skill or judgment, that the cabinetry is not reasonably fit for its purpose, namely storage, the merchantable quality of the cabinetry as opposed to general dissatisfaction with the completed cabinetry, the existence of any unfair practices, and the parties' respective obligations under statutory schemes that were never previously pleaded. Regency's position that it would need to locate and call additional evidence in response to these allegations is not speculative; it flows directly from the nature of the proposed claims themselves: **Pembina** at para 59.

[46] With respect to the claim for general damages, the Applicant has raised for the first time that he suffered mental and emotional distress culminating in damages in the amount of \$60,000. As with the other proposed amendments, even if the Applicant were recalled as a witness at trial, as suggested by the Applicant's counsel, Regency would be left without an opportunity to investigate and lead evidence on this issue.

[47] As to the applicability of the *Sale of Goods Act*, it requires the existence of a contract of sale. As I previously held, after consistently denying the existence of any contractual relationship with Regency, the Applicant cannot now argue the contrary once almost all of the evidence has been called. Further, with respect to the *Consumer Protection Act*, it would require Regency to investigate and respond to allegations of unfair practices, as defined within the *Consumer Protection Act*.

[48] Had these claims been advanced at an earlier stage, further documentary production and questioning would almost certainly have followed. Different questions may have been asked during examinations, different records may have been produced, and the parties may have approached trial preparation, witness selection, expert evidence, settlement discussions, and litigation strategy differently. As recognized in **Sorrell**, reopening the litigation to address such matters would likely require further discovery and potentially revisiting portions of the trial, creating delay and rendering portions of the evidence already heard difficult to assess within the altered framework of the case.

[49] I am therefore satisfied that permitting these amendments at this stage of the trial would cause serious prejudice to Regency that cannot be adequately compensated through an award of costs or other procedural order. This is not a case such as **Pembina**, where a year remained before trial to address the consequences of the amendment. This Application was brought only after the commencement of trial, after the Applicant had closed his case, almost the entirety of the evidence was in, and after the litigation had proceeded for years on a fundamentally different footing.

i) The Proposed Amendments are Prohibited by the *Limitations Act*

[50] I am also satisfied that these amendments are statute-barred. The material facts giving rise to these proposed claims were known, or ought reasonably to have been known, to the Applicant years before the application was made. The alleged representations contained on Regency's website, social media account and promotional materials, the alleged deficiencies in the cabinetry, and the alleged emotional distress arising from the work were all matters that existed and were known to the Applicant well before the commencement of the proceedings.

[51] Although s 6 of the *Limitations Act* may permit an amendment after the expiry of a limitation period where the new claim relates to the conduct, transaction, or events previously pleaded, that provision does not provide an unlimited ability to add new claims. The inquiry requires consideration of the entire factual and legal context, including the extent to which different conduct, transactions, events, documents, and evidence would require proof: see *DeSoto*.

[52] The proposed negligent misrepresentation, statutory, and general damage claims substantially expand the scope of the litigation well beyond the negligence claim originally pleaded against Regency. While the Applicant may have met the low threshold of establishing some evidence to support these amendments, proof of those claims would require evidence addressing representations made by Regency, statutory obligations, reliance on any representations, consumer protection considerations, suffering by Abdul Wehbe, and heads of damages that were not previously in issue. Regency would also need to be provided an opportunity to investigate and respond to these claims. These proposed amendments do not simply represent an alternative legal characterization of the facts already pleaded, as contemplated in *Breen*. Rather, they introduce new claims that require additional factual foundations and evidence. Applying the principles in *DeSoto*, I am not satisfied that they arise from the same conduct, transaction, or events as previously pleaded so as to avoid the operation of the limitation period.

ii) Conclusion

[53] Accordingly, the requested amendments are denied. They would cause Regency serious prejudice, not compensable in costs or by a procedural order, and they are barred by the *Limitations Act*.

VI. Conclusion

[54] The Applicant's Application to amend his pleadings is denied.

Heard on the 4th to the 7th days of May, 2026.

Written submissions received on the 12th, 14th and 15th days of May, 2026.

Dated at the City of Edmonton, Alberta this 29th day of July, 2026.

J.D. Martin
J.C.K.B.A.

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