

# THE HIGH COURT

[2025] IEHC 46

[2023 No. 3154P]

**BETWEEN**

**KC CAPITAL PROPERTY GROUP LIMITED**

**PLAINTIFF**

**– AND –**

**KEEGAN QUARRIES LIMITED (2)**

**DEFENDANT**

**JUDGMENT of Mr Justice Max Barrett delivered on 29<sup>th</sup> January 2025.**

## SUMMARY

*In this judgment I explain why I will grant an order pursuant to O.28, r.(1) RSC granting the plaintiff liberty to amend the statement of claim in the manner identified in a draft amended statement of claim appended hereto.*

1. By motion of 16<sup>th</sup> September 2024, the plaintiff seeks an order pursuant to O.28, r.(1) RSC granting the plaintiff liberty to amend its statement of claim in the manner identified in a draft amended statement of claim appended to the notice of motion. In April I gave judgment on a security for costs application in these proceedings (see [2024] IEHC 257) and the background facts are set out therein so I do not propose to repeat them here.
2. I approach this application informed by the observation of Geoghegan J. in *Croke v. Waterford Crystal* [2004] IESC 97 that a liberal approach falls to be adopted in an application of this sort and that the primary consideration for the court is whether the amendments are necessary for the purpose of determining the real questions of controversy

in the litigation. (That primary consideration is met here.) I note also in this regard the observation of Clarke J. in *Woori Bank v. KDB Ireland Ltd* [2006] IEHC 156, para.5.2, that a court should lean in favour of allowing an amendment, if it is appropriate to do so, unless it is manifest that the issue which is sought to be raised in the amended pleading must necessarily fail. (It is not so manifest here.) In passing, I note also the observation of Collins J. in *Stafford v. Rice* [2022] IECA 47, para.23, that, in principle, any cause of action that could have been pleaded at the outset can be added by way of amendment, even if that has the effect of materially or radically altering the nature and scope of the existing proceedings.

3. The key paragraph in the proposed amended statement of claim is paragraph 19 which makes allegations of fraudulent misrepresentation and/or deceit. I have appended the text of paragraph 19 hereto. There are other proposed changes but it is paragraph 19 that was the focus of the present disputed application and in truth there did not appear to be objection to the other proposed changes which in any event seem unobjectionable. I understand that the proposed pleas of fraudulent misrepresentation and/or deceit have been prompted by the plaintiff's receipt of an expert concrete technology report dated 6th December 2023. That seems to me to offer a perfectly adequate explanation of why the proposed amendments as to fraudulent misrepresentation and/or deceit are now being sought.
  
4. The proposed amendments are clear and precise and meet the particularity requirements of O.19, r.5(2) RSC. (I am mindful in reaching this conclusion of the cautionary observations of Twomey J. in *Kearney v. J&E Davy* [2022] IEHC 95, paras.15-17 about the latitude to be given to a plaintiff where concealment may prevent a case from being particularised in great detail before they have the benefit of discovery.) Here, the proposed amendments are clear and precise. There is more than a bald allegation of fraud. The plaintiff has sought to align the additional pleas with the expert report of 6<sup>th</sup> December 2023. If the proposed amendment is allowed, the defendant has enough before it to understand, in broad outline, the case that it will be required to meet at trial. So there is enough material to allow the defendant to deliver an amended defence. And, it should be noted, there are several stages between now and the trial which will allow the defendant to seek and/or the plaintiff to provide further detail in respect of the claims made (raising

a notice for particulars, the replies to same, the discovery process, the delivery of interrogatories, and the exchange of expert reports).

5. It is clear from the judgment of Clarke J. in *Woori* [2006] IEHC 156 para. 3.2 that where there has been a delay in a party seeking to amend a pleading, that is relevant to the assessment of whether leave to amend should be granted to the extent that this might cause prejudice to the other parties. There has been some delay by the plaintiff in this case. However, I understood counsel for the defendant not to be pressing the issue of delay too assiduously and, if I might respectfully observe, I consider that he was right not to do so. For we seem here to be in the same position that presented in *Dormer v. Allied Irish Banks plc* [2017] IECA 199, viz. where the claim of fraudulent misrepresentation and/or deceit (there it was a claim of fraud) is new but the facts on which it is based are the same as those relied upon to establish the claims made in the original statement of claim. Nor is it the case that some sort of logistical prejudice presents where an amendment is being sought so late that it would significantly disrupt the proceedings. We are still well in advance of any trial.
6. Though I do not recall that it featured at the hearing, I note from the affidavit evidence before me that there is a suggestion by Mr Mullaney, for the defendant, that the plaintiff is bringing the within application on the basis of an ulterior motive to delay the hearing, increase the costs arising, and seek to damage the plaintiff. This has been denied by the defendant. Fundamentally, all that presents in this regard is, to use a colloquialism, a ‘swearing match’ between the parties and I do not see that the assertion of improper motive has been established.
7. Returning to *Stafford v. Rice* [2022] IECA 47 para.23, Collins J. engages in an excursus on O.28 RSC which is useful in deciding the case at hand. Collins J. observes, *inter alia*, as follows:

**‘(1) The power of amendment is a broad one.’**

I do not consider that what is being sought here goes beyond  
what is permissible.

**‘(2) In principle, any claim, cause of action or defence that could have been pleaded ab initio can be added by way of amendment.’**

I have already treated with this aspect of matters above.

**‘(3) O.28(1) is “intended to be a liberal role”.’**

Noted. See (1).

**‘(4) The requirement that the amendment is necessary for the purpose of determining “the real questions in controversy between the parties” ... “simply means that the amendment must raise or relate to an issue between the parties arising from the proceedings”.’**

The amendments here proposed so raise or relate.

**‘(5) Where an amendment can be made without prejudice to the other party, or where any prejudice can be addressed by the imposition of appropriate terms...the amendment should be allowed.’**

I do not see any prejudice to arise. The proposed amendments are clear and precise. There is more than a bald allegation of fraud. The plaintiff has sought to align the additional pleas with the expert report of 6<sup>th</sup> December 2023. If the proposed amendment is allowed, the defendant has enough before it to understand, in broad outline, the case that it will be required to meet at trial. So there is enough material to allow the defendant to deliver an amended defence. And, there are several stages between

now and the trial which will allow the defendant to seek and/or the plaintiff to provide further detail in respect of the claims made. Collins J. moves on to deal with prejudice in more detail in points (6), (7), (8). Again, I do not see any prejudice to arise, whether from the belated amendment of the proceedings, or substantively or through some material change in circumstances that has arisen, or of a practical or logistical form. There is simply no prejudice.

Collins J. deals with the interaction between the making of an amendment and the operation of limitation periods at points (9)-(11). This aspect of matters does not present in the within proceedings. Collins J. also declines at point (12) to deal with the issue of whether, so as to permit an amendment on such terms as are just, a court could order that the relevant amendment only take effect from the date of the amendment order. He declined to do so because the point was not argued in the appeal before him. Likewise it does not arise as an issue in the case before me. If it did, I would, I admit, conceivably have struggled to see any sound basis for imposing such a limitation.

**‘(13) The court is not generally concerned with the merits of any proposed amendment... Where, however, it is manifest that an amended claim is doomed to fail, the amendment should not be permitted’.**

Noted, as to the first sentence. As to the second sentence, it is not manifest that the proposed amended claims now before me are doomed to fail.

**‘(14)...[T]here appears to be no rule of law precluding the amendment of proceedings to add a claim that has accrued since the commencement of the proceedings’.**

Noted but not relevant to the case before me.

**8.** For the various reasons stated above. I will accede to the application now made.