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April 2, 2013

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Re: *Mack v. Mack*
C.A. No. 4240-VCN
Date Submitted: March 22, 2013

Dear Counsel:

Plaintiff Elaine Mack, on March 7, 2013, moved to amend her complaint to add a waste claim. That claim involves damages to a dwelling that the Plaintiff owns with Defendant Beverly J. Mack. This action has been pending since December 19, 2008, and trial is scheduled to start on April 9, 2013.

Given the age of the case, that the events on which the Plaintiff's proposed waste claim is based are not recent, and the imminence of trial, this application ordinarily would be denied as simply too late.

The Defendant, in her counterclaim filed on March 26, 2008, put at issue what appears to be substantially the same damages to the dwelling as the Plaintiff now seeks to raise in her waste claim. The Defendant alleged that the Plaintiff is liable for those damages.

Those damages will be a topic for the trial. Each side accuses the other of being responsible, but, for whatever reason, one side did not formally assert a claim based on those damages. The Plaintiff's defense of the counterclaim against her likely will involve an effort to prove that the damages were not her fault—but, instead, were the fault of the Defendant.

Thus, denying Plaintiff's motion to amend would limit the scope of the trial by only a small and, most likely, insignificant margin. If the cause of the damages to the dwelling is to be tried anyway, there is no good reason not to afford each side the opportunity to make her case.¹ The Defendant cannot argue that she was not aware of the dispute with the Plaintiff over which one (if either) bears responsibility for the damages. Accordingly, the Plaintiff's motion to amend her complaint to add a claim for waste is granted.

¹ The Defendant has suggested that she might consider dropping her counterclaim for damages to the dwelling, but that has not happened.

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That leaves the question of what to do about the trial scheduled to start next week. The Defendant has requested a continuance if the motion to amend is granted. The Plaintiff has informed the Court that she does not oppose that request. Further delay of the trial is an unfortunate result, but the Defendant cannot reasonably be expected to be ready to address Plaintiff's claims in a formal and structured fashion in a matter of days. For these reasons, the current trial date will be continued.

Counsel are requested to confer in an effort to determine when this matter will be ready for trial.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K