

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FERRIS W. WHARTON
JUDGE

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Decided: February 9, 2026

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Re: *Michael C. Senisch v. BCC Investment Properties, LLC*
and J2A Architects + Builders, LLC
C.A. No. N21C-11-197 FWW

Upon Plaintiff's Motion for Leave to File Fourth Amended and Supplemental Complaint,

DENIED.

Dear Counsel:

The Court has before it Plaintiff Michael C. Senisch's ("Senisch") Motion for Leave to File Fourth Amended and Supplemental Complaint.¹ The proposed Fourth Amended Complaint alleges that in 2025, Senisch discovered "new, non-public information to support a new claim of fraud against BCC."² According to the proposed complaint, new information establishes that the home is approximately

¹ Mot., D.I. 75.

² *Id.* at Ex. A, at ¶ 18.

3,500 square feet, instead of the nearly 6,000 square feet at which BCC marketed it.³ The proposed Fourth Amended Complaint also states that in September 2025, Senisch discovered that the infiltrations into the basement were coming from an undisclosed underground septic tank.⁴ Defendant BCC Investment Properties, LLC (“BCC”) opposes the motion.⁵ Defendant J2A Architects + Builders, LLC (“J2A”) takes no position.

A review of the docket shows that Senisch’s original Complaint was filed on November 23, 2021.⁶ Named as defendants were BCC and W. Robert Comegys (“Comegys”) and Joseph M. Jancuska (“Jancuska”).⁷ J2A was not a defendant. The Complaint alleged seven counts against the various defendants related to the sale of a property located at 8 Darley Road in Claymont, Delaware.⁸ Specifically, in Count I, it alleged Breach of Contract against BCC for failing to adequately disclose, *inter alia*, the extent of water intrusion into the property.⁹ Count II alleged Fraud against BCC and Comegys for intentionally failing to disclose, falsely misrepresenting, and intentionally omitting from the Seller’s Disclosure certain defects, including water

³ *Id.* at Ex. A at ¶¶18, 19, 34, 42

⁴ *Id.* at Ex. A at ¶ 20.

⁵ Resp., D.I. 79.

⁶ D.I. 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

intrusion into the basement of the property.¹⁰ Count III alleged Fraudulent Misrepresentation against BCC and Comegys for intentionally failing to disclose, falsely misrepresenting and intentionally omitting the same defects including the water intrusion into the basement.¹¹ Count IV alleged Negligent Construction against all three defendants related to 8A Darley Road that caused water to intrude into the purchased property.¹² Finally, all three defendants were charged with Trespass in Count V for causing water to flow from 8A Darley Road onto 8 Darley Road.¹³

The Court granted Comegys' Motion to Dismiss the fraud claims against him without prejudice because the Complaint failed to allege them with the particularity required by Superior Court Civil Rule 9(c).¹⁴ On February 22, 2022, Senisch filed his First Amended Complaint.¹⁵ Comegys again moved to dismiss on the basis that Senisch once more failed to comply with the requirements of Rule 9(c) in alleging fraud against him.¹⁶ This time, Senisch stipulated to dismissal which the Court

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ D.I. 38.

¹⁴ *Senisch v. BCC Investment Properties, LLC*, 2022 WL 178506 (Del. Super. Ct. Jan. 20, 2022).

¹⁵ D.I. 13.

¹⁶ Comegys' Mot. to Dismiss, D.I. 16.

ordered on April 12, 2022.¹⁷

On March 15, 2023, the Court issued a scheduling order setting a bench trial for June 10, 2024.¹⁸ The Court set a deadline for motions to add or amend the Complaint of June 30, 2023.¹⁹ On June 28, 2023, Senisch moved for leave to file his Second Amended Complaint.²⁰ BCC took no position on the motion²¹ and it was granted on July 17, 2023.²² Senisch filed his Second Amended Complaint on July 6, 2023.²³ The Second Amended Complaint removes both Comegys and Jancuska as defendants and adds J2A.²⁴ The claims against J2A allege Negligent Construction and Trespass and relate to the construction at 8A Darley Road.²⁵

By stipulation and with the approval of the Court, the date for motions to add or amend was extended to April 15, 2024.²⁶ On that date, Senisch filed his Motion for Leave to File Third and Supplemental Complaint.²⁷ Neither defendant opposed

¹⁷ D.I. 19.

¹⁸ D.I. 25.

¹⁹ *Id.*

²⁰ D.I. 27.

²¹ D.I. 28.

²² D.I. 30.

²³ D.I. 32.

²⁴ *Id.*

²⁵ *Id.* at Counts IV and V.

²⁶ D.I. 44.

²⁷ D.I. 45.

the motion²⁸ and it was granted on May 3, 2024.²⁹ The Third Amended Complaint maintains the same two defendants. Most of the amendments relate to 8A Darley Road, but one adds that the Seller's Disclosure stated that "there was minor water leakage in basement. Installed French drain, now no issues."³⁰ Interestingly, paragraph 15 of the Third Amended Complaint alleges that construction activity at 8A Darley road has caused water to flow into the property at 8 Darley Road "causing substantial deterioration and demonstrating the existence of an undisclosed underground tank."³¹ A new trial scheduling order was issued setting trial for March 24, 2025.³² The trial was rescheduled again to February 23, 2026.³³ Trial was rescheduled yet again due to health concerns of one of the attorneys.³⁴ No new date has been set.

As indicated, Senisch's motion for leave to file a Fourth Amended Complaint seeks to add fraud allegations against BCC related to the square footage of his home.³⁵ And, the motion adds supplemental language related to the discovery of an

²⁸ D.I. 47 (BCC); D.I. 48 (J2A).

²⁹ D.I. 50.

³⁰ D.I. 51 at ¶ 6(e).

³¹ *Id.* at ¶ 15.

³² D.I. 54.

³³ D.I. 66.

³⁴ D.I. 81.

³⁵ D.I. 75.

allegedly undisclosed underground septic tank.³⁶

BCC opposes the motion. It argues that Senisch has engaged in “excessive and unreasonable delay” and that the square footage discrepancy claim and the basement infiltration claims are not “newly arising claims.”³⁷ Any claim that Senisch was misled about the square footage of the home by an MLS listing is barred by the Agreement of Sale attached to the original Complaint.³⁸ Paragraph 26 of the Agreement specifically states, “By signing the Agreement, Buyer and Seller acknowledges [sic] they have not relied on any representations made by Broker(s), or any Agent(s), Subagent(s) or employees of Broker(s) except those representations written in this Agreement.”³⁹ Further, since Senisch has lived in the home since 2018, it is “inconceivable that [he] was blamelessly ignorant that the home was half the size that it was purportedly indicated in the MLS listing.”⁴⁰ Additionally, according to BCC, the infiltration issues related to allegedly undisclosed tanks are not new, but are within the scope of Senisch’s prior disclosure and fraud claims.⁴¹ BCC concludes that Senisch had ample opportunity to assert those claims earlier but failed to do so, and, accordingly, the Court should deny him a fourth amendment to his

³⁶ *Id.*

³⁷ Resp. at ¶ 4, D.I. 80.

³⁸ *Id.* at ¶ 5 (citing the Complaint, Ex. A at pg. 7 of 7, D.I. 1.).

³⁹ Complaint, Ex. A at ¶ 26, D.I. 1.

⁴⁰ Resp. at ¶ 6.

⁴¹ *Id.* at ¶ 7.

Complaint.⁴²

BCC also asserts that it would suffer undue prejudice if the proposed amendment was allowed.⁴³ It has prepared the case and conducted discovery based on the Third Amended Complaint, litigated the case for five years, and is on the eve of trial.⁴⁴ Injecting a new fraud claim would require reopening discovery, require new expert analysis on “valuation, square footage, sewer systems and damages, and expand the scope of trial well beyond what was contemplated by the current scheduling order and substantially increase litigation costs after years of defense.”⁴⁵

BCC invokes Superior Court Civil Rule 16. Under that rule according to BCC, Senisch must demonstrate good cause, meaning diligence, for amending the scheduling order.⁴⁶ Given that it is eight years after closing and five years after this litigation began, BCC contends that Senisch cannot demonstrate good cause.⁴⁷

Finally, BCC argues that even if delay and prejudice are disregarded, the proposed amendment would be futile.⁴⁸ It asserts that fraud and misrepresentation claims stemming from a 2018 real estate transaction are time-barred and that

⁴² *Id.* at ¶ 8.

⁴³ *Id.* at ¶ 9.

⁴⁴ *Id.* BCC’s arguments regarding prejudice from postponing trial are now moot. Trial was postponed for reasons unrelated to this motion.

⁴⁵ *Id.*

⁴⁶ *Id.* at 12.

⁴⁷ *Id.*

⁴⁸ *Id.* at 14.

Senisch's damages theory is speculative and insufficient to support a fraud claim.⁴⁹

Anticipating some of BCC's objections, Senisch denies that the delay here is a sufficient basis to deny his motion because BCC cannot demonstrate prejudice.⁵⁰ He asserts that opening the discovery window for a brief period would alleviate any prejudice to BCC.⁵¹ Rather, Senisch argues that he would suffer "manifest injustice" if the scheduling order is not amended to allowed him to amend his complaint and re-open discovery.⁵²

Superior Court Civil Rule 15(a) addresses amendments to pleadings. After a responsive pleading, amendments are permissible only "by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires."⁵³ In the absence of prejudice to another party, the trial court is required to exercise its discretion in favor of granting leave to amend.⁵⁴ Delay alone is not a sufficient basis to deny amendment of the pleadings,⁵⁵ although inexcusable delay and repeated attempts at amendment may justify denial.⁵⁶ Leave to amend pleadings

⁴⁹ *Id.* at ¶¶ 14,15.

⁵⁰ Mot. at ¶ 11, D.I. 75. .

⁵¹ *Id.* at 12.

⁵² *Id.* ¶ 15.

⁵³ Super. Ct. Civ. R. 15(a).

⁵⁴ *Ikeda v. Molock*, 603 A.2d 785 (Del. 1991).

⁵⁵ *Chrysler Corp. v. New Castle County*, 464 A.2d 75 (Del. Super. Ct. 1983).

⁵⁶ *Laird v. Buckley*, 539 A.2d 1076 (Del. 1988); *H & H Poultry Co., Inc. v. Whaley*, 408 A.2d 289 (Del. 1979).

“should be freely given unless there is evidence of undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies, prejudice, futility, or the like.”⁵⁷ If an amended complaint is subject to dismissal under Rule 12(b)(1) for lack of jurisdiction or under Rule 12(b)(6) for failure to state a claim, the motion for leave to amend the complaint is futile.⁵⁸ The decision whether to permit an amendment is left to the sound discretion of the trial judge.⁵⁹

Courts are “reluctant to allow amendments which substantially alter the nature of the claim or which allege new claim[s].”⁶⁰ Amendments “must not substantially change the cause of action or defense or introduce a different claim or defense.”⁶¹ In *Brighthouse Life Insurance Company v. Geronta Funding*, the Court found the nonmoving party was prejudiced because a claim added after discovery closed changed their defense approach entirely.⁶² In *Martinez v. E.I. DuPont de Nemours*

⁵⁷ *US Dominion, Inc. v. Newsmax Media, Inc.* 2025 WL 1068257 (Del. Super. Ct. Apr. 9, 2025) (quoting *Pettit v. Counter Life Homes, Inc.*, 2006 WL 2811707, at *1 (Del. Super. Ct. Oct. 3, 2006)).

⁵⁸ *Id.* at *1 (citing *Clark v. State Farm Mut. Auto. Ins. Co.*, 131 A.3d 806, 811 (Del. 2016); *Cummings v. Estate of Lewis*, 2013 WL 979417 (Del. Ch. Mar. 14, 2013)).

⁵⁹ *Id.* (citing *Wilson v. Consumer’s Life Ins. Co.*, 2000 WL 2011169, at *2 (Del. Super. Ct. Aug 1, 2000)).

⁶⁰ *Brighthouse Life Ins. Co. v. Geronta Funding*, 2019 WL 8198325, at *4 (Del. Super. Ct. Aug. 7, 2019).

⁶¹ *Playtex Family Products, Inc. v. St. Paul Surplus Lines Ins. Co.*, 1990 WL 35299, at *4 (Del. Super. Ct. Mar. 27, 1990) (quoting *E.K. Geyser, Co. v. Blue Rock Shopping Centr.*, 299A.2d 499 (Del. Super. Ct. 1967)).

⁶² 2019 WL 8198325, at *5

and Co., Inc., a case where the amendments required additional briefing, expert affidavits, and additional hearings on Argentine law, the Court also found the defendants were prejudiced.⁶³

The Court, in exercising its discretion finds that there has been undue delay, significant prejudice to BCC, and amending the complaint as proposed would be futile. This case is old – the original Complaint was brought on November 23, 2021. The underlying real estate transaction occurred on November 27, 2018. There have been three previous amendments to the original Complaint, and now, three trial dates have come and gone.⁶⁴ The last rescheduling occurred three weeks before trial was set to begin. Needless to say, discovery is complete.

The proposed amendment purports to amend and supplement the fraud claims, but it introduces an entirely new theory of fraud, factually distinct from the present allegations, based on alleged misrepresentations of the home's square footage. As a result, BCC will have to prepare a defense to this new allegation, which will entail the added expenses of investigating the factual basis for the claim, retaining at least one expert witness, taking depositions, and likely engaging in additional motion practice. Further, the trial necessarily will be put off longer than otherwise would be necessary, all to the prejudice of BCC. Senisch has had ample time to discover

⁶³ 2012 WL 4479164 (Del. Super. Ct. Sept. 21, 2012).

⁶⁴ June 10, 2024 (D.I. 25); March 24, 2025 (D.I. 53); February 23, 2026 (D.I. 68).

and litigate such a significant discrepancy in the square footage of his home. Finally, the proposed claim is likely futile based on the incorporation clause of the Agreement of Sale by which Senisch disclaims any reliance on any representations outside of that document.

Lastly, the motion speaks to new information identifying the source of the basement leaks as an undisclosed underground septic tank. BCC notes that the infiltration issues related to an allegedly undisclosed tank are not new, but are within the scope of Senisch's prior disclosure and fraud claims.⁶⁵ In fact, the Third Amended Complaint alleges that water flow onto the property from 8A Darley Road "demonstrated the existence of an undisclosed underground tank."⁶⁶ It is uncertain if this underground tank in the Third Amended Complaint is the underground septic tank referenced in the proposed Fourth Amended Complaint. If it is, it is already in the case. If it is not, it is unclear what it adds to the case or why it was not discovered long ago. There are existing allegations of fraud involving water infiltration into the basement and an undisclosed tank. The case should be litigated on the basis of those allegations.

Accordingly, for the reasons set forth above, Plaintiff Michael G. Senisch's Motion for Leave to File Fourth Amended and Supplemental Complaint is

⁶⁵ D.I. 80, at ¶ 7.

⁶⁶ Third Amended Complaint, at ¶ 15, D.I. 51.

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DENIED. Because the Court denies the motion on the basis of undue delay, prejudice and futility, there is no need to address BCC's Rule 16 argument.

IT IS SO ORDERED.

/s/ Ferris W. Wharton

Ferris W. Wharton, J.