



**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

DONALD F. PARSONS, JR.  
VICE CHANCELLOR

New Castle County CourtHouse  
500 N. King Street, Suite 11400  
Wilmington, Delaware 19801-3734

Submitted: May 23, 2006  
Decided: September 20, 2006

Mr. Javier Quereguan  
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Re: *Javier Quereguan v. New Castle County, et al.*  
Civil Action No. 20298-N

Dear Counsel:

Pending before the Court is Plaintiff Javier Quereguan's Motion to Join Aurea E. Quereguan and Joanne Quereguan as parties to this action. For the reasons stated below, the Court grants Quereguan's motion.

**I. FACTUAL BACKGROUND<sup>1</sup>**

Plaintiff *pro se*, Javier Quereguan ("Quereguan"), is a resident of New Castle County and the owner of property located at 320 Maple Avenue in Wilmington,

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<sup>1</sup> Unless otherwise noted, all facts are drawn from the Complaint or are undisputed as indicated in the briefing or argument on Quereguan's motion to amend, held on July 28, 2005. See *Quereguan v. New Castle County*, No. 20298-NC, 2006 WL 2522214 (Del. Ch. Aug. 18, 2006) and *Quereguan v. New Castle County*, 2004 WL 2271606 (Del. Ch. Sept. 28, 2004) for a more detailed recitation of the facts.

Delaware. Quereguan alleges that a defective retaining wall located at the edge of the adjoining Absalom Jones Community Center property (the “Center Property”) caused water damages to his house and yard. Accordingly, Quereguan seeks monetary relief and an injunction ordering the wall to be fixed to prevent future damage.<sup>2</sup>

## II. PROCEDURAL HISTORY

In January 2003, Quereguan filed a Complaint in Superior Court against the Red Clay Consolidated School District (“Red Clay”), New Castle County (the “County”), and the State of Delaware (“the State”). At the time the alleged problem began, Red Clay owned the Center Property and leased it to the County;<sup>3</sup> since then, the State purchased the Center Property pursuant to the Bond and Capital Improvements Act of the State of Delaware for the Fiscal Year Ending June 30, 2003.<sup>4</sup> All three defendants moved to dismiss. At argument, the Court concluded that it lacked jurisdiction to grant Quereguan equitable relief and transferred the case to the Court of Chancery.<sup>5</sup>

In June 2004, this Court held argument on Defendants’ motions to dismiss. Thereafter, the Court denied the County’s motion to dismiss, granted Red Clay’s motion

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<sup>2</sup> Compl. Prayer for Relief (a).

<sup>3</sup> Red Clay’s Answer ¶ 46.

<sup>4</sup> State’s Mot. For Rearg. Ex. 1. Anticipating this purchase, the State and the County executed a lease agreement for the term August 1, 2002 to July 31, 2007.

<sup>5</sup> *Quereguan v. New Castle County*, C.A. No. 03C-01-069, March 24, 2003 (Order of Judge Del Pesco).

to dismiss without prejudice to Quereguan's ability to amend his Complaint within 30 days to overcome the basis for dismissal, and granted in part and denied in part the State's motion to dismiss and for summary judgment.<sup>6</sup> Following reargument, the Court also dismissed Quereguan's claim for injunctive relief against the State.<sup>7</sup>

From October 2004 to June 2005, Quereguan and the County proceeded with discovery. The Court began trial on June 13, 2005, but upon the County's request, adjourned the trial after one day to enable the County to file a third-party complaint.<sup>8</sup> To the extent that Quereguan "believed that his family had suffered physical ailments as a result of the water problems he was complaining about,"<sup>9</sup> I also granted him leave to amend his pleadings to put in claims for personal injuries.<sup>10</sup>

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<sup>6</sup> *Quereguan*, 2006 WL 2522214 and *Quereguan*, 2004 WL 2271606.

<sup>7</sup> *Quereguan v. New Castle County*, 2004 WL 3038025 (Del. Ch. Nov. 24, 2004).

<sup>8</sup> On July 14, 2005, the County filed a Third-Party Complaint against the State based on the lease. Quereguan did not object to the filing of that pleading. The State moved to dismiss the Third-Party Complaint, and this Court issued an opinion on April 24, 2006 denying that motion. *Quereguan v. New Castle County*, 2006 WL 1215193 (Del. Ch. Apr. 24, 2006). Subsequently, the State moved for reargument and, in addition, made separate motions to sever and transfer the Third-Party Complaint. On August 18, 2006, this Court issued an opinion denying all three motions. *Quereguan v. New Castle County*, 2006 WL 2522214 (Del. Ch. Aug. 18, 2006).

<sup>9</sup> July 28, 2005 Teleconference Transcript ("Teleconf. Tr.") at 3.

<sup>10</sup> *Id.* at 4.

Quereguan filed a motion to amend his Complaint in July, 2005. The parties addressed that motion in a teleconference on July 28, 2005. I granted Quereguan's motion to amend at that time, except to the extent it attempted to assert new claims against the State for personal injuries.<sup>11</sup> I further ordered that the approved portions of Quereguan's motion to amend, together with his original complaint, would be deemed to constitute the amended complaint.<sup>12</sup> The County answered Quereguan's amended complaint on July 29, 2005.

On April 25, 2006, Quereguan moved pursuant to Rules 20(a) and 19(a) to join his wife, Aurea E. Quereguan, and his daughter, Joanne Quereguan, as parties to this action. On May 3, 2006, the County filed its opposition to this motion. The State also opposed the motion, but only to the extent the proposed joinder could enlarge the potential consequential damages resulting from the County's contribution and indemnification claims.<sup>13</sup>

### **III. ANALYSIS**

#### **A. Procedural Standards**

Court of Chancery Rule 20(a) provides in pertinent part:

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<sup>11</sup> *Quereguan*, 2006 WL 1215193, at n.2.

<sup>12</sup> Teleconf. Tr. at 8-14.

<sup>13</sup> The State filed its objection on May 5, 2006 ("State's Resp.").

All persons may join in 1 action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.

The provisions for permissive joinder under Rule 20 “are very broad and the court is given discretion to decide the scope of the civil action and to make such orders as will prevent delay or prejudice.”<sup>14</sup> Because Quereguan timely amended his Complaint under Rule 15 to include a claim for personal injuries he and his family members suffered as a result of the alleged conduct of the County, this Court must determine whether the addition of his wife and daughter to this action will cause delay or prejudice the non-moving parties.

The County opposes the motion to join on the ground that Quereguan did not join any other party in his July 19, 2005 amended complaint. As a result, the County argues, it is too late for Quereguan to join his wife and daughter.<sup>15</sup> Further, the County argues that joinder at this stage would be prejudicial to it.<sup>16</sup> The State bases its opposition on the potential for greater consequential damages.<sup>17</sup> Quereguan represents himself *pro se* and

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<sup>14</sup> *Arrington v. City of Fairfield*, 414 F.2d 687, 693 (5th Cir. 1969) (applying the similar Fed. R. Civ. P. 20(a)).

<sup>15</sup> New Castle County Resp. in Opp’n to Pl.’s Mot. to Join Aurea E. Quereguan and Joanne Quereguan as Parties to this Action ¶ 5.

<sup>16</sup> *Id.*

<sup>17</sup> State’s Resp.

did not reply to the Defendants' oppositions. Nevertheless, neither the County nor the State have shown any basis for denying Quereguan's motion. In particular, the County and State have not demonstrated any undue delay by Quereguan or material prejudice that would result from the proposed joinder.

**B. The Timeliness of the Motion to Join**

When I granted the County leave on June 15, 2005 to file their Third-Party Complaint, I also allowed Quereguan to amend his Complaint. Quereguan filed his proposed amended complaint on July 15, 2005, and I discussed the scope of it with the parties during the July 28, 2005 teleconference. Particularly, I summarized, in pertinent part, the amendments Quereguan sought:

[H]e's claiming that the county was on notice relating to these [water damage] problems, that he was trying to have them fixed. They were not fixed and continue not to be fixed. And as a result of those actions, he and his family have suffered personal injury that he claims is a result of wrongful conduct on the part of the county and therefore they should be able to recover damages for the personal injuries.... [M]aybe paragraph 13 which explains when Mr. Quereguan became aware of the mold situation and that that might – he definitely has mold. That's his allegation at least, and that [the mold] might lead to health problems....

[B]ut [paragraphs] 43 through 46 or 47 – those are indicating that his wife suffered some physical ailments[,] that he himself has and that his daughter has, and he spells out briefly what they are.<sup>18</sup>

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<sup>18</sup> Teleconf. Tr. at 5-6. Quereguan also sought to assert certain additional claims in his amendment, and I denied those amendments.

At the conclusion of the teleconference, I further stated:

Essentially what we're saying is that the case is enlarged slightly from what it was at the time we went to trial to include now also your claims for damages based on your allegations that you and your family members have suffered personal injuries as a result of the actions the county has taken or failed to take.<sup>19</sup>

Between the July 28 teleconference and the filing of Quereguan's motion to join his wife and daughter as plaintiffs, the main activities in this case have focused on the Third-Party Complaint. The State unsuccessfully moved to dismiss that pleading and then sought reargument. Additionally, the State filed a motion to sever or transfer the claims against them. The Court has now decided all of those motions. In the meantime, no party undertook any discovery, and the case otherwise has been at a standstill.

In this context, the County's argument that Quereguan's motion to join comes too late is weak. Because the joinder sought by the motion is consistent with the amendment Quereguan made in July, 2005, and is not likely to expand materially the scope of the litigation, I do not find the untimeliness objection persuasive.

### C. Prejudice to the Non-Moving Parties

From the July 28 teleconference, the County and the State had notice that Quereguan's amended complaint implicitly included claims for injuries to his wife and daughter. Quereguan's failure to formally name Aurea and Joanne as plaintiffs is not

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<sup>19</sup> *Id.* at 11.

fatal to his joinder request. Nor has the County or the State shown that the addition of Quereguan's wife and daughter will prejudice them to such an extent that exclusion or a separate trial, as permitted under Rule 20(b), would be appropriate.<sup>20</sup> Neither the County nor the State has demonstrated such prejudice.

Although the passage of time generally increases the risk of substantial prejudice,<sup>21</sup> that is not the case here. From essentially the time Quereguan moved to amend his complaint until his subsequent motion to join, the parties and the Court have been involved in litigating the State's challenges to the Third-Party Complaint. The County has not identified any specific of prejudice to it resulting from the timing of Quereguan's motion. The County merely states that "joinder at this stage of the proceedings would be prejudicial." Such a conclusory statement does not demonstrate any prejudice sufficient to trigger Rule 20(b).

On the other hand, denying Quereguan's motion would undermine substantially Quereguan's efforts to obtain redress for his wife's and child's injuries and otherwise prevent him from obtaining relief he had adequately described on their behalf in his amended complaint. In addition, Quereguan's wife and daughter fit the description of persons who should be joined if feasible under Rule 19, in that they are persons who are

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<sup>20</sup> See Ct. Ch. R. 20(b) ("The Court ... may order separate trials or make other orders to prevent delay or prejudice.").

<sup>21</sup> See *Timblin v. Kent General Hosp.*, 1995 WL 44250, at \*1 (Del. Super.) (citing 6 Charles A. Wright et al., *Federal Practice and Procedure*, § 1488, at 670 (1990)).



needed to accord “complete relief” and who claim “an interest relating to the subject matter of the action and [are] so situated that the disposition of the action in the person’s absence may (i) as a practical matter impair or impede the person’s ability to protect that interest.”<sup>22</sup> Moreover, Delaware law has a strong preference for deciding cases on the merits, rather than on procedural grounds.<sup>23</sup> Therefore, Quereguan will be allowed to join Aurea E. Quereguan and Joanne Quereguan as named plaintiffs in this action.

#### **IV. Conclusion**

For the reasons stated, the Court grants Quereguan’s motion for joinder. The Court considers it important, however, to clarify the state of Quereguan’s pleading. While a *pro se* complaint “may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers,”<sup>24</sup> self-representation is not a blank check for defect. It is important that Quereguan comply with the rules. Accordingly, to minimize the risk of misunderstandings as the case moves forward, the Court directs Quereguan to file a Restated Amended Complaint within 20 days of this letter opinion that includes the allegations of the initial Complaint and the following:

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<sup>22</sup> Ct. Ch. R. 19(a).

<sup>23</sup> *One Va. Ave. Condo. Ass’n of Owners v. Reed*, 2005 WL 1924195, at \*7 n.35 (Del. Ch. Aug. 8, 2005).

<sup>24</sup> *Vick v. Haller*, 522 A.2d 865, 1987 WL 36716 (Del. 1987) (Table). *See also Browne v. Saunders*, 768 A.2d 467, 2001 WL 138497 (Del. 2001) (Table) (“As a general rule, we interpret pleading requirements liberally where the plaintiff appears *pro se*.”).

1. A new caption that includes as additional Plaintiffs Aurea E. Quereguan and Joanne Quereguan;
2. Paragraphs 12, 13, 43, 44, 45, 46, and 47 of the motion to amend dated July 15, 2005;
3. The names “Aurea E. Quereguan” and “Joanne Quereguan,” where appropriate, in the description of the alleged injuries.
4. The names Aurea E. Quereguan and Joanne Quereguan, where appropriate, in the request for relief.

**IT IS SO ORDERED.**

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor