

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

October 3, 2006

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**RE: James Pettit v. Country Life Homes, Inc., et al.**  
**C.A. No. 03C-03-026-RFS**

Dear Counsel:

The Court must decide a remand issue requested by the Supreme Court in the matter of *Pettit v. Country Life Homes, Inc. et al.*, Del. Supr., No. 617, 2005, Berger, J. (June 30, 2006) (ORDER).

The question concerns whether Pettit's motion to amend his complaint to allege a contract claim should be granted or not. After consideration of the positions of the parties, I find that the complaint should be amended.

Wilson Builders ("Wilson") and Country Life Homes ("Country Life") entered into a construction contract. A provision in the contract required Wilson to obtain and maintain liability and workers' compensation insurance. Despite this provision, Country Life failed to enforce the provision. Country Life permitted Wilson to work without verifying whether Wilson had in fact obtained insurance. During the course of employment with Wilson, Pettit was injured when a miter saw he was operating severed his right thumb. Pettit contends that he is a third party beneficiary

under the contract, and that due to Country Life's failure to enforce the contract, he lost seventy-five thousand dollars (\$75,000) in workers' compensation benefits. *See Brown v. Robb*, 583 A.2d 949, 954 (Del. 1990).

On remand, the Supreme Court has asked this Court to determine whether Pettit's motion to amend should be granted as it relates to a possible contractual claim only against Country Life. Previously, the Court ruled on the case dispositive summary judgment motions that were focused on various negligence claims. For that reason, Pettit's motion to amend the complaint to assert a contractual claim was not specifically addressed.

Rule 15 of the Superior Court Civil Rules governs amendments to a party's pleadings. Rule 15(a) states in pertinent part that a "party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."<sup>1</sup> Leave of court 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. *Parker v. State of Delaware et al.*, Del.Super., C.A. No. 99C-07-323-JRJ, Jurden, J. (Oct. 14, 2003). The decision to allow or deny an amendment to the complaint is within the discretion of the Court. *Grand Ventures, Inc. v. Whaley*, 632 A.2d 63, 72 (Del.1993).

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<sup>1</sup> Del. Super. Ct. Civ. R. 15(a).

On January 3, 2005, Pettit moved to amend his complaint. The pretrial scheduling order was entered on February 23, 2004. The last day to file a motion to amend the complaint was March 31, 2004. Pettit missed the filing deadline by nine months. Quality Mechanical filed its motion for summary judgment on November 1, 2004, and Country Life Homes filed its motion for summary judgment on November 5, 2004. As indicated, Pettit did not file the motion to amend until January 3, 2005, two months after the summary judgment motions were filed. However, mere delay is not sufficient to deny Pettit's motion to amend. *See Itek Corp. v. Chicago Aerial Indus., Inc.*, 257 A.2d 232 (Del. Super. Ct. 1969).

Further, a motion to amend will be granted when justice so requires. An opposing party should not be adversely affected by it. How would the prejudice be compared and balanced between the parties?

In this regard, Country Life is not seriously prejudiced. The evidence has been gathered. Both parties have the contract. If the motion is granted, the Court may only be faced with a question of law whether the contractual claim can succeed in a worker's compensation context. The damages are liquidated. The burden of additional proceedings pales by comparison to the hard consequences flowing from a denial. In that instance, Pettit would lose his day in court and would be irreparably harmed.

Even assuming unnecessary delay on Pettit's part in the process, there is no evidence of bad faith by him or significant prejudice to Country Life for the foregoing reasons. *See Hess v. Carmine*, 396 A.2d 173, 177 (Del. Super. Ct. 1978). Considering the interests of justice, and public policy which favors settling disputes on the merits, Pettit's motion to amend the complaint to allege a breach of contract claim is granted.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Clerk of the Supreme Court  
Prothonotary