

**IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PENNSYLVANIA**

REYNOLDS IRON WORKS, INC.,	:	No. 20-00,730
Plaintiff	:	
VS	:	
LUNDY CONSTRUCTION CO., INC.,	:	
Defendant	:	CIVIL ACTION LAW
VS	:	
NICHOLAS MEAT LLC and	:	
PROVIDENCE ENGINEERING CORP.,	:	
Addition Defendants	:	

**OPINION AND ORDER**

This matter came before the Court on the Motion of Original Defendant Lundy Construction Co., Inc. (hereinafter “Lundy”), filed December 9, 2022, seeking leave of Court to file an Amended Joinder Complaint in the form attached to the Motion as Exhibit A, and to file an Amended Reply to New Matter and Answer to Nicholas Meat, LLC (hereinafter “Nicholas”) Counterclaim with New Matter and Cross-Claim, attached to the Motion as Exhibit B. In point of fact, Exhibit B does not propose to amend the Reply to New Matter and Answer to Nicholas Meat, LLC Counterclaim with New Matter. Rather, Exhibit B is a Motion seeking leave of Court to file new Cross-Claims against Reynolds Iron Works, Inc. (hereafter “Reynolds”) and Providence Engineering Corp. (hereafter “Providence”). For that reason, the proposed pleading attached to the Motion as Exhibit B will hereinafter be referred to as Lundy’s Motion seeking leave of Court to file Cross-Claims.

The course of this litigation was somewhat unusual. The largest claims, measured in dollar value, have been asserted by Original Defendant Lundy against Additional Defendant Nicholas, and vice versa. The matter was commenced on July 21, 2020, by the filing of a Complaint by Reynolds Iron Works, Inc. (hereinafter “Reynolds”), against Lundy, seeking

to collect the claimed balance of \$86,498.29 on a steel subcontract dated July 31, 2018, which appears to simply be a “follow-up” to a one- page Purchase Order by Lundy in the gross amount of \$688,862.00. The Complaint contains a total of only 48 paragraphs, 38 of which allege facts, and seeks relief in only one Count of breach of express contract. The Answer filed by Lundy on August 12, 2020, admits only the identity of Lundy (Paragraphs 2 and 3) and denies every other allegation of fact in the Complaint. The accompanying “New Matter” contains 18 numbered Paragraphs, asserting virtually every affirmative defense known at Pennsylvania contract law (with no allegations of fact in support). On October 19, 2020, Lundy filed a Third-Party Complaint against its customer, Nicholas, and Nicholas’ design professional, Providence. The Third-Party Complaint alleges a version of the material facts of the litigation at Paragraphs 6 through 53. The Answer filed by Nicholas on November 9, 2020, admits only the allegations by Lundy at Paragraphs 10 and 15, and denies the balance. The Answer filed by Providence on March 29, 2021, denies every allegation of the Lundy Third Party Complaint, including those which identify the parties to the litigation. As the Court observed in the Opinion and Order filed November 23, 2022, the extent to which the facts of this matter are disputed is remarkable. The Court anticipates that the expert testimony which will likely form most of the trial will surround the competing claims of Original Defendant Lundy and Additional Defendant Nicholas. In relative terms, the involvement of Reynolds in the construction project may be a very minor issue at trial.

Various scheduling Orders have been entered over the three-year course of this litigation. Pursuant to the requirements of those Order, the pleadings have been closed, discovery has been completed, expert reports have been exchanged, and multiple dispositive motions were filed, briefed, argued, and resolved.

By Order filed November 9, 2022, the Court set a trial scheduling conference for December 2, 2022. At that conference, the parties agreed on trial dates. By Order dated and filed December 6, 2022, the Court scheduled jury selection for May 15, 2023, and trial for May 30, 2023 through June 23, 2023. On December 9, 2022, Lundy filed this Motion.

Amendment of pleadings is controlled by Pa.R.C.P. 1030, which provides that “an amendment may be made to conform the pleading to the evidence offered or admitted.” Although the Rule has been interpreted to favor liberal amendment, amendment will not be permitted where the amendment will surprise or prejudice the opposing party. *Horowitz v. Universal Underwriters Insurance Company*, 397 Pa.Super. 473, 479, 580 A.2d 395, (Pa. Super. 1990), citing *Robinson Protective Alarm Company v. Bolger & Picker*, 512 Pa. 116, 516 A.2d 299, n. 6 (Pa. 1986); and *Soxman v. Goodge*, 372 Pa.Super. 343, 346-47, 539 A.2d 826, 828 (Pa. Super. 1988). The tardiness of a proposed amendment will only be considered in the context of potential prejudice to the non-moving party *Horowitz v. Universal Underwriters Insurance Company*, 397 Pa.Super. 473, 479, 580 A.2d 395 (1990), citing *Gutierrez v. Pennsylvania Gas & Water Company*, 352 Pa. Super 282, 286, 507 A.2d 1230, 1232 (1986). The Courts of this Commonwealth have suggested that, even in the presence of potential prejudice, the Court should consider permitting the requested amendment, and continuing the case to mitigate prejudice.

With regard to Lundy’s proposed Amended Joinder Complaint, attached to the Motion as Exhibit A, it appears to the Court that the amended pleading does little more than correct or clarify the wording of the earlier Joinder Complaint. At oral argument, counsel for Nicholas and Providence reaffirmed their strident dispute of the allegations by Lundy, but did not identify any meaningful prejudice. For those reasons, the amendment will be

permitted. With regard to Lundy's request to file the "eleventh hour" Cross Claims attached to the Motion as Exhibit B, the Motion will be denied.

At oral argument, counsel for Lundy credibly argued prejudice. Counsel for Providence argued that the Cross-Claims lack merit. The issue of merit aside, the Court finds that "eleventh hour" filing of the Cross Claims is likely to materially prejudice Reynolds and Providence, and that a continuance may not remedy that prejudice.

The parties have completed discovery, and exchanged expert reports. The facts of this matter were well known to Lundy, long ago. The parties have filed and briefed and argued dispositive motions, which have been resolved. The matter is scheduled for a lengthy trial. At least with regard to Reynolds, the Cross-Claims might result in the participation of new counsel, and would likely result in the amendment or supplement of exchanged experts reports. Throughout the course of this litigation, Reynolds has been in the relatively "passive" position of attempting to collect a contract debt. The proposed Cross-Claims would require Reynolds to take a much more aggressive role in this litigation, in order to dispute the claims of Nicholas and Providence. Counsel for Reynolds and Providence may seek to re-open discovery, limited to the Cross-Claims. Reynold currently plans to rely upon the testimony of expert witnesses retained and paid by counsel for Lundy. If facing a Cross-Claim by Lundy, Reynolds may decide that it cannot rely upon the testimony of those experts. Counsel for Reynolds may feel compelled to secure one or more independent experts. Preparation of new expert reports, followed by opposing reports may be required. Postponement of the trial will almost certainly result.

How the proposed Cross-Claims will affect Providence is less clear. The Court has determined that it will permit Lundy to amend its Third Party claims against Providence,

which are asserted in Counts V and VI of the Amended Joinder Complaint, attached to the Motion as Exhibit A. That amended pleading should meet Lundy's need to amend, without undue prejudice to Providence. Permitting Lundy to file tardy Cross-Claims may require Providence to undertake a new litigation analysis, all within a few months of a scheduled lengthy jury trial. Once again, a delay of the trial would be the likely result. In fact, after oral argument on Lundy's Motion, the Court received a supplement response by Providence which claimed that "Should Lundy be permitted to assert a cross-claim against Providence, Providence will act on its procedural right to assert a cross-claim against Reynolds in its reply to Lundy's new pleading." Once again, counsel for Reynolds may feel compelled to secure one or more independent experts. Preparation of new expert reports, followed by opposing reports may be required, and postponement of the trial will almost certainly result.

For the reasons set forth above, Lundy's Motion to file the proposed Cross-Claims attached to the Motion as Exhibit B will be denied.

And now, this \_\_\_\_\_ day of January, 2023, Lundy's Motion, filed December 9, 2022, is granted in part and denied in part.

The Motion is granted to the extent that the Motion seeks leave of Court to file the Amended Joinder Complaint attached to the Motion as Exhibit A. The Motion is denied, to the extent that the Motion seeks leave of Court to file the Cross-Claims attached to the Motion as Exhibit B.

By The Court,

Hon. William P. Carlucci, Judge

cc: Court Administrator

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