

STATE OF VERMONT

**SUPERIOR COURT
Addison Unit**

**CIVIL DIVISION
Case No. 23-CV-01214**

Hon. James H. Douglas,)
 Special Administrator of the)
 Estate of John Abner Mead,)
 Plaintiff)
 v.)
))
The President and Fellows of)
 Middlebury College)
 Defendant)

MOTION TO AMEND COMPLAINT

NOW COMES the Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and pursuant to V.R.C.P. 15(a), hereby moves this Honorable Court to grant leave to amend the Complaint as follows:

I. INTRODUCTION

After appointment by the Rutland Unit of the Vermont Superior Court Probate Division, Plaintiff filed suit in the above-captioned matter alleging breach of contract, breach of the covenant of good faith and fair dealing and pleading the alternate claims of Breach of Conditional Gift and Unjust Enrichment. Given the supplementary discovery documents that were produced shortly before and on the day that Defendant filed its Motion for Summary Judgment, and informed by the Court’s decision on Summary Judgment, the Plaintiff moves for leave to amend his Complaint:

1. To withdraw the alternate claim of Breach of Conditional Gift;
2. To withdraw the alternate claim of Unjust Enrichment;
3. To include an alternate claim for Promissory Estoppel; and,

4. To include an alternate claim for Equitable Estoppel.

Plaintiff's motion to withdraw the Gift and Unjust Enrichment claim are informed by the Court's decision on summary judgment. In the interests of preserving the parties and the court's resources, Plaintiff accepts the Court's determination on those claims and will not be seeking further review from the Supreme Court.

Plaintiff's motion to add alternate claims for Promissory and Equitable Estoppel stem from the exact same set of facts which give rise to Plaintiff's claims for Breach of Contract and the Breach of Good Faith and Fair Dealing and is supported by the evidentiary materials supplied by Defendant in supplementary discovery production of more than 1000 documents shortly before and on the same day that Defendants filed its Summary Judgment Motion. Accordingly, defendants have been in possession and control of that material throughout this litigation and will not be prejudiced by Plaintiff's complaint being amended to add the Estoppel claims.

II. ARGUMENT

After the initial pleadings in a case have been filed "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." V.R.C.P. 15(a). In general, "trial courts are to be liberal in permitting amendment to the pleadings." *Lillicrap v Martin*, 156 Vt. 165, 170 (1991). "[A]mendments to the pleadings are freely allowed where there is no prejudice to the parties and when the proposed amendment is not obviously frivolous or dilatory". *Desrochers v Perrault*, 148 Vt. 491, 493 (1987).

In the 2008 case *Colby v. Umbrella, Inc.*, the Vermont Supreme Court explained in detail the underpinnings of the Rule's liberal application:

"The principal reasons underlying the liberal amendment policy are (1) to provide maximum opportunity for each claim to be decided on its merits rather than on a

procedural technicality, (2) to give notice of the nature of the claim or defense, and (3) to enable a party to assert matters that were overlooked or unknown to him at an earlier stage in the proceedings.” *Bevins v. King*, 143 Vt. 252, 255, 465 A.2d 282, 283 (1983). In rare cases, however, denial of a motion under Rule 15(a) may be justified based upon a consideration of the following factors: “**(1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party.**” *Perkins v. Windsor Hosp. Corp.*, 142 Vt. 305, 313, 455 A.2d 810, 815 (1982).

Colby v. Umbrella, Inc., 2008 VT 20, ¶ 4, 184 Vt. 1, 5, 955 A.2d 1082, 1086 (2008).

By this present Motion, the Plaintiff proposes to add alternate Promissory Estoppel and Equitable Estoppel claims to the Complaint to ensure that such a claim is not overlooked and is sufficiently pled to provide notice of the nature of the claim, which comports with the documents obtained through the discovery process, produced shortly before and on the same date that Defendant filed its Motion for Summary Judgment. Moreover, allowance of the amendment will provide the maximum opportunity for each claim to be decided on its merits, rather than upon a procedural technicality.

Furthermore, the addition of a Estoppel Counts will not prejudice the Defendant under the test set forth in *Perkins v. Windsor Hospital Corp.*, 142 Vt. 205 (1982) in which the Supreme Court reversed the trial court’s denial of a motion to amend the Complaint, explaining:

Plaintiff promptly moved for reconsideration of the dismissal and sought to amend the complaint against the defendant hospital. This motion was denied, the court stating: “The proposed amendments would cause prejudice to the defendants ... because they state an entirely new cause of action and are out of time.” The amendments, if allowed, would have clarified the respondeat superior claim and alleged direct negligence on the part of the hospital.

We find that the court erred in refusing to permit the requested amendments; reversal of judgment in favor of the defendant hospital is therefore required.

V.R.C.P. 15(a) directs the trial courts that “leave [to amend] shall be freely given when justice so requires.” Moreover, the lower courts must be mindful of the “historical Vermont tradition of liberality in the allowance of amendments to the pleadings.” *Tracy v. Vinton Motors, Inc.*, 130 Vt. 512, 513, 296 A.2d 269, 271 (1972). Nonetheless, we will reverse a trial court’s ruling on a motion for leave to

amend only if the ruling is an abuse of discretion. *Gilwee v. Town of Barre*, 138 Vt. 109, 111, 412 A.2d 300, 301 (1980). See also 6 C. Wright & A. Miller, Federal Practice and Procedure § 1484 (1971).

It appears that the court below denied plaintiff's motion to amend in part because it stated a new cause of action—direct negligence on the part of the defendant hospital. This was error. V.R.C.P. 15 directs the trial court to consider not whether the amendment raises a new cause of action but “whether the just and expeditious disposition of the controversy between the parties will be advanced by permitting the amendment.” 1A W. Barron & A. Holtzoff, Federal Practice and Procedure § 448, at 753 (C. Wright ed. 1960). The trial court should have considered the propriety of plaintiff's motion to amend by examining several factors: (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party. See *Forman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962). None of these factors support the denial of plaintiff's motion to amend.

Perkins v. Windsor Hosp. Corp., 142 Vt. 305, 312–14, 455 A.2d 810, 815–16 (1982).

Like in *Perkins v. Windsor Hosp. Corp.*, the Plaintiff here is seeking to amend his Complaint to add a Promissory and Equitable Estoppel claims based upon the same set of operative facts contained in the original complaint. Thus, the Court must determine “whether the just and expeditious disposition of the controversy between the parties will be advanced by permitting the amendment.” In making that determination, the trial court should consider the propriety of plaintiff's motion to amend by examining several factors: (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party. See *Forman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962). None of these factors support the denial of plaintiff's motion to amend in this case.

In the case at bar, there has been no undue delay. In reviewing the more than 1000 pages of documents obtained from Defendant in discovery, the production of which was completed on the same day that Defendant filed its Motion for Summary Judgment, the issue of amendment arose to ensure that a Promissory or Equitable Estoppel claim, which is supported by the supplemental documentary evidence and by Vermont law, was not overlooked and was adequately pled to ensure

that a just disposition of the controversy is accomplished. The proposed amendment is not brought in bad faith, is neither frivolous nor dilatory, and will not cause any undue delay in this case, which has been bi-furcated for purposes of discovery. Therefore, there are many months before there will be a trial in this matter, which should be more than sufficient for the Defense to prepare for the additional Counts.

The *Perkins v. Windsor Hosp. Corp.* opinion also reversed the trial court on its holding that the proposed amendment to the Complaint was “out of time,” confirming the relation back doctrine contained in VRCP 15(c). While there is no statute of limitations issue requiring a relation back of the pleadings in the case at bar, the decision is also instructive regarding lack of prejudice resulting to the Defendant:

It was also error to refuse to allow the direct negligence amendment. The negligence claim arose out of the conduct or occurrence set forth in the original complaint. The defendant hospital had notice from the beginning of this action that plaintiff sought to hold it responsible for the harm she allegedly suffered as a result of the Flagyl treatment. We find the hospital's assertion that it would be prejudiced if the amendment is permitted unpersuasive in light of the fact that the hospital was a party defendant up to the actual day of jury drawing. Any surprise engendered by allowance of the proposed amendment could have been eliminated by requesting a continuance of the trial.

Perkins v. Windsor Hosp. Corp., 142 Vt. 305, 312–14, 455 A.2d 810, 815–16 (1982).

WHEREFORE, based on the above and foregoing, the Plaintiff respectfully requests that the Court grant leave to Plaintiff to Amend the Complaint. A Redline version of the Complaint and an Excerpted Redline version of the proposed First Amended Complaint is submitted on even date herewith for the Court’s review. The excerpted version contains only the pages of the Complaint that have been altered, eliminating pages 4-75 where no changes were made.

DATED at Randolph, County of Orange and State of Vermont, this 17th day of October 2024.

**The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead, *Plaintiff***

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