

**CITATION:** CCAS v. Reliance, 2015 ONSC 8157  
**COURT FILE NO.:** CV-09-393743  
**DATE:** 20150709

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** Catholic Children’s Aid Society of Toronto, Plaintiff

**AND:**

Reliance Insurance Company et al., Defendants

**BEFORE:** L. A. Pattillo J.

**COUNSEL:** *Patrick Ho*, for the Plaintiff

*Chris Cheung*, for the Defendant

**HEARD:** April 2, 2015

**ENDORSEMENT**

[1] Plaintiff seeks to amend its Amended Fresh as Amended Statement of Claim by adding a claim for punitive and exemplary damages. It submits it is entitled to leave to amend based on either: first the consent of counsel for Reliance and, in the alternative pursuant to rule 26.01. Reliance responds by submitting no consent and no leave given that the proposed claim is well outside the applicable limitation period and cannot be supported based on the facts as pleaded.

[2] The Plaintiff’s claim as asserted in the Amended Fresh as Amended Statement of Claim is failure to pay pursuant to an insurance policy Reliance defended by Statement of Defence dated October 15, 2010, alleging improvident settlement and failure to provide evidence of circumstances

which would give rise to compensatory damages sustained during the policy period.

[3] The Plaintiff filed a reply to Reliance's defence dated January 7, 2011 outlining, among other things, the evidence that had been provided to the Defendant. The Plaintiff first raised its proposed amendment in May 2014. The amendment (proposed para. 20) claims punitive and exemplary damages and then lists a number of bullet points detailing Alliance's alleged improper handling of the claim including failures of investigation; failure to consider all facts and information. It also alleges that Reliance denied coverage to gain bargaining leverage.

[4] I am satisfied from the record that counsel for Reliance did not consent to the amendment. Mr. Brock's letter of May 16, 2014, written shortly after he received Plaintiff's proposed draft amendment makes it clear he was not consenting. While there was a subsequent meeting in December 2014 at which certain procedural matters were agreed by counsel, I am satisfied from the evidence that Mr. Brock did not agree to the amendment now proposed. Nor does his inattention to later emails constitute agreement to the amendment. I accept Mr. Brock's evidence on the issue.

[5] The Plaintiff concedes that the proposed amendment is well past the limitation period which expired in March 2011. It submits that the proposed amendment asserts a remedy not a new cause of action and it is based on facts previously pleaded.

[6] In my view, the Plaintiff does seek to add a new cause of action – breach of duty of good faith. Even if the first bullet allegation alleging a duty of good faith is deleted, as was proposed by Plaintiff's counsel, the allegations all relate to a breach of an alleged duty “to fairly investigate and assess this claim in a balanced and reasonable manner” (2<sup>nd</sup> bullet point).

[7] I do not disagree with the decision in *Shubaly v. Coachman Insurance*, 2013 ONSC 5455 (OSCJ) to the effect that where an alternative remedy is asserted based on facts already pleaded, the limitation period is not engaged. That is not the case here, however. The Plaintiff submits that there are no new facts alleged. It relies on the facts pleaded in its reply. But those facts are

essentially the information provided. There is no allegation of improper handling or consideration of the claim. Looked at another way, if the Plaintiff simply asserted a claim for punitive and exemplary damages, there are not sufficient facts pleaded (absent the proposed amendment) to establish such claim.

[8] Whether the proposed amendment asserts an alternative or additional claim for relief or a new cause of action does not matter. It is not appropriate in either case for the reasons stated.

[9] Accordingly the motion is dismissed.

[10] The Defendant claims costs of \$5,000.00. The Plaintiff does not disagree. Costs to the Defendant fixed at \$5,000.00 payable forthwith.

Signed: L. A. Pattillo J.

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L. A. Pattillo J.

**Date:** July 9, 2015