SUPREME COURT OF NOVA SCOTIA

Citation: *Garian Construction Ltd. v Dixon Marine Group 2000 Inc.*, 2019 NSSC 357

Date: 20191113
Docket: Yar No 470933
Registry: Yarmouth

Between:

Garian Construction Ltd.

Plaintiff

v.

Dixon Marine Group 2000 Inc.

Defendant

Judge:	The Honourable Justice John A. Keith
Heard:	November 4, 2019, in Yarmouth, Nova Scotia and November 8, 2019, in Shelburne, Nova Scotia
Counsel:	Rubin Dexter, counsel for the Applicant (Defendant) Dixon Marine Group 2000 Inc. Augustus Richardson, Q.C., counsel for the Respondent (Plaintiff) Garian Construction Ltd.

By the Court:

Introduction

[1] The Plaintiff, Garian Construction Ltd. ("Garian Construction"), is currently owned and controlled by Ian McNicol ("Mr. McNicol"). The Defendant, Dixon Marine Group 2000 Inc. ("Dixon Marine"), is owned by Gary Dixon ("Mr. Dixon"). Mr. McNicol and Mr. Dixon were once friends, who also owned a number of businesses together. That was then. Now, they are no longer friends and they no longer own any businesses together. They are in the process of disentangling their commercial relationships.

[2] The process has proven difficult. Mr. McNicol and Mr. Dixon currently interact primarily in Court as opposing parties in several contentious legal proceedings. This is one of those proceedings.

[3] The motion before me is brought by the Defendant, Dixon Marine, to strike certain amendments to the Statement of Claim made by the Plaintiff, Garian Construction, on December 4, 2018. Dixon Marine relies upon Rules 83.11(1) and (3) in support of its motion.

Procedural Background

[4] A brief chronology of the relevant procedural background is necessary to put this motion in its proper perspective. I should note that this chronology focuses on two actions: the within proceeding and another proceeding commenced in Bridgewater, Nova Scotia. There are other legal proceedings involving the same parties although, for the purposes of this decision, they are not especially germane.

- **April 4, 2016**: Gary Dixon and his spouse, Pamela Dixon, personally commence a claim against Ian McNicol. The claim is for the balance allegedly owing under an oral agreement to purchase Gary Dixon and Pamela Dixon's shares in Garian Construction (the Plaintiff in the within proceeding). This proceeding was commenced in Bridgewater and bears Court File No. 450073 (the "**Bridgewater Action**");

- **June 2, 2016**: Ian McNicol files his Defence in the Bridgewater Action;

- **August 25, 2017**: Gary and Pamela Dixon amend the Statement of Claim in the Bridgewater Action to add 3248666 Nova Scotia Limited as a party and

also to add a new allegation alleging a breach of the escrow conditions regarding the underlying sale of shares;

- **November 30, 2017**: The Notice of Claim in this proceeding is filed in Yarmouth, Nova Scotia by Garian Construction's previous counsel (the "**Yarmouth Action**"). This Yarmouth Action is brought by Garian Construction against a single Defendant: Dixon Marine. Neither Garian Construction nor Dixon Marine were named parties in the Bridgewater Action. The claim was commenced as a Notice of Action in Debt pursuant to Rule 4.03 and alleged that Dixon Marine owes Garian Construction a total of $202,653.25 plus interest. However, the underlying material facts refer only to Garian Construction supplying labour and material to complete a project in the spring of 2012 at the Dixon Marine boat building shop in Wood's Harbour, Nova Scotia. In fact, as will be seen below, the activities which gave rise to the alleged debt of $202,653.25 extend beyond both 2012 and beyond the Dixon Marine boat building shop in Wood's Harbour.

- **June 20, 2018**: An Amended Notice of Defence and Counterclaim was filed in the Bridgewater Action. This document was filed outside deadlines previously set by the Court and without either Court permission or the parties' consent. While it related to the $202,635.25 already claimed in this Yarmouth Action, the Counterclaim was brought against Gary Dixon and Pamela Dixon personally and was framed as inducing breach of contract, unjust enrichment and equitable setoff. As indicated, neither of the parties in this Yarmouth Action for Debt were named in the Bridgewater Action.

- **June 27, 2018**: Gary and Pamela Dixon filed a Notice of Motion in the Yarmouth Action to strike the Counterclaim in the Bridgewater Action. They relied upon Rule 83.02 and Rule 83.11(3). Pausing here, and to repeat, the amended Defence and Counterclaim was accepted by the Court but was not eligible to have been filed as of right. The Defendants should have sought either the Plaintiff's consent or the Court's permission to amend.

- **October 10, 2018**: Gary and Pamela Dixon's motion to strike the Counterclaim in the Bridgewater Action was heard before Justice Lynch. Justice Lynch dismissed the Counterclaim and, in doing so, made the following comments:

    1. Gary Dixon and Ian McNicol are operating minds of companies (Garian Construction and Dixon Marine), which are the subject matter of the debt, but these companies "were set up for a reason, so that they

would not be personally liable. And I am not going to pierce the corporate veil to find that the parties are the same, or essentially the same." (p. 5 of Justice Lynch's oral reasons);

2. Garian Construction and Dixon Marine are not parties to the Bridgewater Action and there was "different conduct, different transactions and different events with different parties. They do not stem from the same conduct, they do not stem from the same transaction, and they do not stem from the original pleadings." Thus, the Garian Construction debt against Dixon Marine "is related to the conduct, transaction or events described in the original pleadings" (pp. 6 to 7 of Justice Lynch's oral reasons);

3. "There is another action [i.e. the Yarmouth Action] that allows the Defendants to pursue their claim. Although there may be problems with it, I accept what Mr. Dexter [counsel for Gary Dixon and Dixon Marine] says, that is an issue for that action, not this one." (p. 8 of Justice Lynch's oral reasons).

- **December 4, 2018**:

1. Dixon Marine filed its Notice of Defence in this Yarmouth Action, responding to the claim issued more than a year before (November 30, 2017). Dixon Marine's Defence denied owing the amounts claimed ($202,635.25) but focused on the single project mentioned in the Statement of Claim (the work allegedly done by Garian Construction at the Dixon Marine boat shop in the spring of 2012). Dixon Marine also alleged that the action was statute barred as it was made after the expiry of the application limitation period. That said, at the hearing of the motion before me, Dixon Marine clarified that the work conducted by Garian Construction in 2012 was not statute barred because discussions regarding the underlying debt continued into early 2016 – and the Yarmouth Action for this debt was eventually commenced on November 30, 2017, within the applicable limitation period. However, Dixon Marine argued, the work done in 2012 amounted to only $58,578.10 of the total amount claimed ($202,653.10) and that the balance ($144,075.15) was now statute barred.

2. Immediately after Dixon Marine filed its Notice of Defence, Garian Construction filed its Amended Notice of Action, which became the subject matter of the dispute before me. Because the amended claim

was filed within 10 days of the defence being filed, Garian Construction did not require either Dixon's consent or the Court's permission to make these amendments (Rule 83.01(2)). The parties agree that the Prothonotary properly accepted these documents as filed and the amendments were made "as of right"; and they were deemed to have been made on the day they were filed, December 4, 2019 (Rule 83.09).

- **December 19, 2018**: Dixon Marine reacted quickly to Garian Construction's amended claim and filed this motion to strike the amendments.

Issue 1: "As of right" amendments and expired limitation periods

[5] A significant preliminary issue is whether certain amendments made as of right under the Rules may be struck under Rule 83.11.[1]

[6] As indicated above, the amendments filed by Garian Construction here were made "as of right" because Dixon Marine did not file its Statement of Defence until December 4, 2018. Garian Construction made its amendments the same day (December 4, 2018) – and well within the 10 day period for "as of right" amendments under Rule 83.01(2*)*.

[7] Nevertheless, Dixon Marine contends that any amendment involving new claims which may be statute barred are subject to the Court's permission under Rule 83.11 – even if the amendment was otherwise made "as of right". Put slightly differently, where an amendment made "as of right" introduces a new claim which may be statute barred, Dixon Marine argues that the Court retains the jurisdiction to strike that amendment under Rule 83.11.

[8] Counsel for Dixon Marine correctly observes that amendments which are not made "as of right" (i.e. require a judge's permission) become subject under Rule 83.11(3) to an assessment as to whether the proposed amendments are being made after the expiry of either a limitations period or an extended limitations period. The questions arise: should amendments made "as of right" escape similar scrutiny? Conversely, should a party responding to amendments made "as of

[1] Note that the Notice of Motion filed by Dixon Marine seeks an Order simply striking all of paragraphs 3 to 6 of the claim. This would have totally eviscerated the claim and left only paragraphs 1 to 2 introducing the parties. At the hearing, counsel for Dixon Marine clarified that his client is only seeking to strike the information contained in certain amendments made by the Defendant on December 4, 2018 and effectively restore the parties to the position they were in before those amendments were made (i.e. reinstate the original Notice of Claim). The practical implications are discussed in greater detail below.

right" be denied the ability at the pleadings stage to move under Rule 83.11(3) and avoid claims which may be statute-barred? If so, why?

[9] Counsel for Dixon Marine argues forcefully that claims which may be statute barred should not be spared scrutiny under Rule 83.11 simply because they are made "as of right". He states that such a distinction promotes disproportionate proceedings by precluding the possibility of eliminating statute-barred claims at an early stage; and it undermines the purpose of Rule 1.02 "for the just, speedy, inexpensive determination of every proceeding".

[10] I respectfully disagree. In my view, the Rules do not contemplate that amendments made "as of right" under Rule 83.02(2) become subject to attack under Rules 83.11(1) and (3).

[11] I begin with a basic summary of how amendments occur in a defended action:

1. A party may amend the notice by which the action is started (Rule 83.02(1));

2. The Rules distinguish amendments which require the Court's permission and amendments which do not require the Court's permission. The Rules contemplate that amendments which are sought "early in an action" may be made without the parties' agreement or the Court's permission (Rule 83.01(2)). By contrast, amendments which are sought well after pleadings have closed require either the parties' agreement or the Court's permission

3. What does it mean to seek an amendment "early in an action"? Rule 83.02(2) provides the necessary clarity. It states that an amendment "must" be made no later than 10 days after the day when all parties claimed against have filed a defence "unless the other parties agree or a judge permits otherwise." In other words, amendments may be made "as of right" within 10 days of pleadings deemed to be closed under the Rules. Otherwise, they require the parties' agreement or the Court's permission.

4. "As of right" amendments are deemed to be effective on the date they are filed (Rule 83.09). As of that date, the amendment process is completed – and it all occurs without a judge's intervention. I note that the same effective date applies to other amendments (i.e. amendments which are not "as of right"). However, in that case, the

party seeking to file the amended pleading cannot file without first obtaining the parties' agreement or a judge's permission.

5. Rule 83.11(1) confirms the Court's general authority to permit an amendment. If the Court's permission is required, Rule 83.11 creates certain restrictions as to how that discretion is exercised in respect of claims which may be statute barred:

   a) Under Rule 83.11(2), an amendment "cannot be made" if it has the effect of adding a party to the proceeding that could not be added under Rule 35. The language is mandatory and so the Court has no discretion. Thus, for example, the Court cannot permit a party to be added to a proceeding under Rule 35.08(5) if the applicable limitation period (or extended limitation period) affecting the new party has expired; and the expiry precludes the claim; and the person protected by the limitation period is entitled to enforce it;

   b) Rule 83.11(3) describes the factors which a judge must consider when deciding whether to permit an amendment after the expiry of either a limitation period or an extended limitation period.

[12] Pausing here, I agree with counsel for Dixon Marine that Rule 83.11(1) does confirm a judge's general authority to permit an amendment. I also agree that Rule 83.11(3) establishes certain narrow exceptions where a judge may permit an amendment even after a limitation period has expired. However, these Rules are both predicated upon the presumption that a judge's permission is required before any amendment may be filed and deemed effective. They do not apply when the amendments were made as of right under Rule 83.02(2) because a judge's permission is simply not required. A plaintiff amending its claim under Rule 83.02(2) is not required to seek a judge's permission and, as such, a judge is not required to exercise discretion.

[13] Respectfully, the Defendants are effectively asking that I expand the Court's discretion under Rule 83.11(3) so that it includes the discretion to permit an amendment which has not been completed and, the discretion to retroactively deny (or set aside) an amendment that has been completed. The Rules do not contemplate retroactively reversing an "as of right" amendment; and I am not prepared to do so. To expand a judge's discretion under Rule 83.11 would unreasonably distort that Rule's structure and meaning beyond what was intended. It would also, in my view, upend the balance, which the Rules seek to strike

between amendments made "as of right" early in the proceeding and amendments which are made later in the process and which may trigger enhanced scrutiny of expired limitation periods under Rule 83.11(3).

[14] The Rules ensure that only diligent litigants acting within 10 days of the close of pleading can amend "as of right". As such, parties can clarify or confirm their claims at an early stage, without the threat of an attack which might upend the demands of justice. Otherwise, parties would be discouraged from clarifying pleadings at an early stage which, in turn, risks confusion and invites expansive interlocutory wrangling while the process of ultimately obtaining a fulsome judicial determination of the actual merits is at least temporarily derailed.

[15] The circumstances of this case exemplify part of the underlying concern sought to be addressed by the Rules. This action was filed as a Notice of Action for Debt under Rule 4.03. In it, Garian Construction sought judgment in the amount of $202,653.25. The evidence before me makes it clear that the facts which gave rise to this alleged debt cover a period from about 2012 to 2015 and involve two parties whose business relationships are alleged to be very closely intertwined. However, the original Statement of Claim filed on November 29, 2017 refers only to a single project which occurred in the spring of 2012 at the Dixon Marine boat building facility in Woods Harbour, Nova Scotia. That project represented only $58,578.10 of the $202,653.25 claimed. The balance ($144,075.15) related to work allegedly undertaken after 2012.

[16] The practical implication of the relief sought by the Defendant would be to eliminate more than 71% of the alleged debt simply because the full scope of the facts underpinning the $202,653.25 debt being claimed by Garian Construction was not adequately described in the original pleadings. In other words, the pleadings properly identified the total amount of the debt claimed by Garian Construction but did not sufficiently describe the circumstances giving rise to that debt. Allowing the relief sought by the Defendant would not achieve justice in this circumstance where the attempt to correct the issue was made within 10 days of the pleadings being closed, as permitted under Rule 83.02(2).

[17] Having said all that, once an amendment is made "as of right" by an existing party, the opposing parties alleging that the amendments are statute barred are not left without a remedy. At that stage, the parties would have other avenues available to them including, for example, a motion for summary judgment and the related relief available if that motion fails (see, for example, *Fougere* v *Blunden Construction*, 2014 NSCA 52, at paras 7 to 14) or possibly a motion to determine a question of law under Rule 12.

[18] I am not unmindful of the Supreme Court of Canada's call for proportionate legal proceedings in *Hyrniak* v *Mauldin*, 2014 SCC 7 ("***Hyrniak***"). At paragraph 31, the Supreme Court stated:

> "Even where proportionality is not specifically codified, applying rules of court that involve discretion "includes ... an underlying principle of proportionality which means taking account of the appropriateness of the procedure, its cost and impact on the litigation, and its timeliness, given the nature and complexity of the litigation" (*Szeto v. Dwyer*, 2010 NLCA 36, 297 Nfld. & P.E.I.R. 311 (N.L. C.A.), at para. 53)."

[19] *Hyrniak* calls upon the Court to exercise its available discretion when applying civil procedure rules to ensure the judicial process operates in a way which is proportionate. However, *Hyrniak* does not confer upon a judge the broad discretion to ignore the plain words of the Rules or distort their meaning – particularly where the Rules as a whole are already calibrated to achieve efficient, just proceedings.

[20] Similarly, not every interlocutory proceeding which might (or might not) eliminate a claim comes with a guarantee of proportionality or increased efficiencies. The fact that a party might attack a claim does not necessarily result in efficiency. Without ascribing any responsibility, the present circumstances are a case in point. Dixon Marine filed its defence in this Yarmouth Action more than a year after the claim was filed. This motion was quickly filed in December, 2018 and has taken almost 11 months to complete.

[21] In short, more than two years have passed and the parties to this Yarmouth Action have not yet passed the pleadings stage. While the Court must remain vigilant to the demands of proportionate proceedings, it is not axiomatic that lengthy interlocutory proceedings shorten the proceeding as a whole or result in cost savings – even if they have the potential of terminating certain claims without trial.

[22] I am supported in my conclusions by other related Rules. In particular:

1. Rule 83.04 and Rule 83.11(2) expressly speak to amendments which introduce claims where the applicable limitation period has expired. The language in both Rule 83.04 and Rule 83.11(2) is mandatory and eliminates any exercise of discretion (see: Rule 2.02(3)). Rule 83.04 begins by confirming that "A judge <u>must</u> set aside an amendment, or part of an amendment…" (emphasis added). Rule 83.11(2) contains similar mandatory, declarative language. It begins: "An amendment

<u>cannot be made</u>…" (emphasis added). However, both Rule 83.04 and Rule 83.11(2) only apply where the amendments seek to add a new party. Neither apply here. The impugned amendments made by Garian Construction do not seek to add a new party;

2. Rule 83.11(3) also discusses amendments in the context of expired limitation periods. It confirms the discretion of a judge to allow an amendment even after the expiration of an applicable limitation period in certain, very narrow circumstances. However, this Rule is again predicated on the presumption that a judge's permission is required. It does not apply if a judge's permission is not required and the amendment is already deemed to have been made under the Rules, without the Court's permission. Rule 83.11(3) does not confirm any discretion to retroactively deny (or set aside) amendments which were already made. If the Rules intended a judge to exercise that power, the drafters of the Rules would presumably have included language similar to that found in Rule 83.04 (i.e. "A judge must set aside an amendment…."). To read in the additional discretion to reverse amendments already made under the Rules would twist the wording of the Rule well beyond the meaning which the words can reasonably bear;

3. Rule 83.10 confirms that, among other things, a party must be given reasonable notice of a motion for permission of a judge to make an amendment which causes "a new or greater claim to be made". However, similar to Rule 83.11(3), Rule 83.10 does <u>not</u> contain a broad declarative statement that requires the Court's permission for <u>any</u> amendment which includes "a new or greater claim to be made" (i.e. including amendments made as of right). It is expressly limited to amendments made against parties who have otherwise become disentitled to notice. Although Dixon Marine argues that the amendments here involve new or greater claims, Rule 83.10 does not apply because neither Garian Construction nor Dixon Marine are parties who have become disentitled to notice.

Issue 2: Section 22 of the *Limitations of Actions Act*

[23] My findings above dispose of the motion, but even if my conclusions regarding the Rules are wrong, I would allow the proposed amendments under Section 22 of the *Limitations of Actions Act*.

[24] Section 22 of the *Limitations of Actions Act* states:

> **Claims added to proceedings**
>
> **22** Notwithstanding the expiry of the relevant limitation period established by this Act, a claim may be added, through a new or amended pleading, to a proceeding previously commenced if the added claim is related to the conduct, transaction or events described in the original pleadings and if the added claim
>
> (a) is made by a party to the proceeding against another party to the proceeding and does not change the capacity in which either party sues or is sued;
>
> (b) adds or substitutes a defendant or changes the capacity in which a defendant is sued, but the defendant has received, before or within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in defending against the added claim on the merits; or
>
> (c) adds or substitutes a claimant or changes the capacity in which a claimant sues, but the defendant has received, before or within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in defending against the added claim on the merits, and the addition of the claim is necessary or desirable to ensure the effective determination or enforcement of the claims asserted or intended to be asserted in the original pleadings.

[25] The amendments do not seek to change the capacity of any party or add a party or substitute a party. So, the focus of the debate under Section 22 revolves around whether the amendments in question involve conduct which "is related to the conduct, transaction or events described in the original pleadings".

[26] In *Dyack* v *Lincoln*, 2017 NSSC 187 ("***Dyack***"), Justice Chipman observed that the words "related to" in the context of Section 22 "have a very broad meaning" (para 51). The authorities cited by Justice Chipman in *Dyack* similarly confirm that the threshold to come within this meaning is "not particularly high".

[27] In *Dyack*, Justice Chipman also quotes from the Alberta Court of Appeal's decision in *DeSoto Resources Ltd*. v *EnCana Corp*, 2010 ABCA 110 ("***DeSoto***"), which describes that a key underlying objective grounding Section 22 is that the addition of new claims will not result in any prejudice or surprise because they arise out of the same conduct, transactions or events (para 52, *Dyack*).

[28] I have carefully considered the evidence before me including the oral evidence under cross-examination of Ian McNicol and Janine Dixon.

[29] The new allegations being added to support the original claim of a $202,653.25 debt are, for the purposes of the Section 22 analysis, related to the conduct, transactions or events described in the original pleading. I offer the following reasons:

1. The evidence indicates that the parties were operating in close association and as part of a broader commercial and personal relationship between their directing minds: Ian McNicol and Gary Dixon;

2. Dixon Marine seeks to separate the various alleged contracts between the parties and address the material facts, circumstances and debt associated with each contract separately. Garian Construction alleges that the contractual arrangements and expectations between these related entities are not so easily separated into discrete contracts, and that a broader perspective is required. Without determining the issue, there is evidence to support the contention that the work which comprises the alleged $202,653.25 debt is the culmination of several projects – with various debts and offsetting payments being calculated as part of a single equation. Thus, for example:

    a) The general ledger of Garian Construction has a single account entitled "Dixon Marine" which purports to track all of the various invoices submitted and payments received for all the work complete both for Dixon Marine and the personal residence of Gary and Pamela Dixon;

    b) While there is cross-examination of Garian Construction's principal, Ian McNicol, from an earlier proceeding in the Bridgewater Action indicating that there was no "running balance" of the debt owing by Dixon Marine, the uncontradicted evidence of Garian Construction's bookkeeper, Shelly Nickerson, is that there was a "running balance" covering all of the debt for all of the projects allegedly completed by Garian Construction on behalf of Dixon Marine. Again, Ms. Nickerson's evidence is supported by a single general ledger account, discussed above, created in the books and records of Garian Construction for Dixon Marine. Put slightly differently, for accounting purposes, Garian Construction approached the debt allegedly owing by Dixon

Marine in a more comprehensive manner, combining all of the work done by Garian Construction for Dixon Marine.

3. There is evidence that amounts owing by Dixon Marine; how the debts would be treated for tax purposes; and what payment terms would apply to the outstanding debt were all the subject of discussions and negotiations, reflective of historically close and somewhat informal interactions between companies controlled by Ian McNicol and Gary Dixon. That closeness and informality has only more recently, in the context of these adversarial proceedings, given way to an approach which is formal and, where the parties' actions and underlying motivations are now subject to close scrutiny;

4. The $202,653.25 originally claimed by Garian Construction would not have caught Dixon Marine unaware. The evidence indicates that this figure was the subject of discussion between the parties in 2015 and 2016. It is unfortunate that the original Notice of Action tied the $202,653.25 debt to a single project which occurred in the spring of 2012. The $202,653.25 was broader in scope and captured more work than that done in 2012. The amendments merely reflect and explain that broader scope so that the work which Garian Construction says justifies the $202,653.25 debt are alleged in the original claim.

   In short, the debt alleged in the original claim has never changed but the work completed to explain that debt was broader than expressed in the claim. While Dixon Marine clearly disputes that it is liable for the alleged debt (and the work alleged to support that debt), Garian Construction's original claim of $202,652.25 and the underlying work more properly described in the amendments is not a surprise. More to the point, the amendments are clearly related to the $202,652.25 originally claimed and, in the context of the parties' historic relationships, are also related to the 2012 work which formed the overly narrow factual foundation for the original claim;

5. As mentioned, this is an Action for Debt under Rule 4.03. The debt is $202,652.25. Rule 4.03(5) sets out the material facts that must be pleaded and they include both a concise statement of the debt incurred (Rule 4.03(5)(b)) and a concise statement of how that debt came due (Rule 4.03(5)(c)). The amendments are therefore not only related to one another and the debt being claimed but they are mandated and material under Rule 4.03. This is particularly relevant when

considering how the alleged debt came due and Garian Construction's related allegation that the consolidated debt of Dixon Marine was subject to ongoing discussion regarding tax implications and payment;

6. Dixon Marine's position is that the allegations made by Garian Construction about the 2012 work at Dixon Marine's Woods Harbour boat shop represents a separate, independent contractual claim and yet survives the *Limitations of Actions Act* because discussions were continuing into 2016 regarding this debt. Thus, the claim which was filed on November 30, 2017 would have been within the applicable limitation period. However, the discussions which were occurring in 2016 involved not simply the $58,578.10 but the entirety of the alleged debt ($202,652.25). That is, the discussions which allow the alleged debt from 2012 work ($58,578.10) to survive the applicable limitations period were subsumed within and related to the discussions around the entire debt ($202,652.25). The evidence confirms that the amendments are related to the conduct, transactions or events described in the original pleading – at least in so far as an analysis under Section 22 of the *Limitations of Actions Act* is concerned.

[30] The motion is dismissed subject to the following closing comments:

1. Nothing in these reasons should be deemed to have any bearing on any future motion either party may wish to bring. Without restriction, for example, Dixon Marine is free to bring a motion for summary judgment on the pleadings or on evidence should it so choose. Any such future motions can be addressed on the basis of the record then put before the Court; and

2. My findings with respect to Section 22 were, as indicated, for the purposes of this motion only and having regard to the threshold test of allowing these sorts of amendments under Section 22. For example, for the purposes of the Section 22 provisional analysis, I found the specific amendments made by Garian Construction are related to conduct, transactions and events described in the original pleading. That finding is for the purposes of this motion only.

Keith J.