Vermont Superior Court
Filed 09/10/26
Washington Unit

VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION
Case No. 25-CV-01104

**Joseph Heim et al v. Anthony Colicchio et al**

# ENTRY REGARDING MOTION

Title: Motion to Amend Complaint (Motion: 27)
Filer: Alexander J. Larosa
Filed Date: August 10, 2026

The motion is GRANTED IN PART.

Plaintiff has moved to amend his complaint pursuant to Rule 15(a). Defendant Laura Colicchio has opposed this amendment on several specific grounds. The purpose of the present amendment reflects the somewhat unusual posture of this case.

Plaintiff Joseph Heim originally filed the present matter in March of 2025. At the time, Plaintiff was self-represented. In his pro se complaint, Plaintiff recited the history of the parties' contractual relationship and made several representations that he was pursuing a breach of contract claim as well as violations of the Prompt Pay Act. In the document, however, Plaintiff's sole claim was for foreclosure of his mechanic's lien, a lien that was filed on December 9, 2024 and which was never perfected.[1]

Much of the early part of this litigation has been marked by a series of motions involving both parties, but primarily Defendants, who were and remain self-represented. These motions have sought to dismiss the present action, impose sanctions, and to strike filings. They have been uniformly denied as being either without merit or inconsistent with the Rules of Civil Procedure.

[1] Ex. B2 of Plaintiff's original complaint contains a lien dated December 9, 2024 that appears to have been filed in the Town of Fayston land records on the same day. Ex. 13 of Defendant's Response to the present motion to amend shows that Plaintiff had originally signed a mechanic's lien on March 20, 2024, which would make the December lien the second one. For purposes of the Court's analysis in this decision, it will only focus only on the second lien given that the first was never raised or asserted by Plaintiff in this case.

Two important changes to the case have occurred in the past six months. First, and most regretfully, Defendant Anthony Colicchio passed away in February of 2026. His surviving spouse, Defendant Laura Colicchio has opened an estate for Mr. Colicchio in Maryland, and Plaintiff has sought to substitute the estate under V.R.C.P. 25 as a party. Second, Plaintiff engaged counsel in May of 2026. Through counsel, Plaintiff has filed the present amendment to correct his earlier complaint and to clarify the nature of his claims. In this respect, the Court understands the present motion to be less about adding new claims and more about ensuring that both parties have proper notice of the scope and issues for the present litigation.

*Standard of Review*

Under V.R.C.P. 15(a)(2), a motion to amend should be granted with liberality. The Court is to "freely give leave when justice so requires." V.R.C.P. 15(a)(2). The "trial court must be mindful of the Vermont tradition of liberally allowing amendments to pleadings where there is no prejudice to the other party." *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 4 (citing *Tracy v. Vinton Motors, Inc.*, 130 Vt. 512, 513 (1972)). A motion to amend, however, may be denied if the motion to amend demonstrates undue delay, bad faith, a futility to the amendment, and prejudice to the opposing party. Id. (quoting *Perkins v. Windsor Hosp. Corp.*, 142 Vt. 305, 313 (1982)). Motions to amend filed before the close of discovery are timely and should be permitted. Shahi v. Madden, 2008 VT 25, ¶ 7, 183 Vt. 320 (permitting amendment six days before trial where amendments clarified existing claims that were within the scope of discovery).

In the present case, there are two factors that support Plaintiff's motion. First, despite a year and a half of litigation, the present matter is still within the early stages of discovery. To the Court's understanding no depositions have been taken and no experts have been disclosed. Much of the time that this case has been active has been consumed with the early type of procedural motions described above that have not materially advanced the litigation. With this understanding, the Court finds that the motion is timely and will not unduly delay or prejudice the present litigation. In fact, with the clarity offered by a succinct and conforming complaint, the amendment offers the parties an opportunity to move forward with their efforts to resolve or litigate the claims. Second, Plaintiff's amended complaint complies with Rule 8(a) of the Vermont Rules of Civil Procedure and provides both a succinct statement of the claims and

supporting facts that will allow Plaintiff's litigation to proceed with a degree of clarity that it has not previously enjoyed.

Defendant Laura Colicchio has filed a number of objections to the present complaint. Many of these issues go to the merits of Plaintiff's claims and his credibility. As such, they are not grounds to deny the motion to amend. *Bock v. Gold*, 2008 VT 81, ¶ 4 (noting that "the threshold a plaintiff must cross in order to meet our notice-pleading standard is 'exceedingly low.'") (internal citation omitted). For example, Defendant notes that Plaintiff filed a $390,500 claim against her late husband's estate, which was disallowed by the Maryland probate court. While this fact may go to Mr. Heim's credibility in establishing his claim, it does not, in and of itself, prevent him from making a claim against either Ms. Colicchio or Mr. Colicchio's Estate.

Similarly, Defendant disputes some of the documents that were originally attached to Plaintiff's complaint but does not dispute the underlying fact. For example, Defendant notes that there is a dispute about which contract controls the parties' relationship, but she does not dispute the fact that there was a contractual relationship. For purposes of the complaint, the amended complaint is sufficient to claim that the parties had a contract for Plaintiff to do work for Defendants and that Plaintiff alleges this contract has been breached by Defendants. As Plaintiff notes in his reply, the details about which contract was the actual agreement and which material terms apply is fodder for discovery and eventual trial or motion practice.

Out of Defendant's objections, there are two that bear further analysis and alteration to the proposed amended complaint. First, Defendant objects to Count IV of Plaintiff's amended complaint, which seeks foreclosure of his mechanic's lien. Plaintiff admits that his mechanic's lien was not perfected as required under Vermont law within 180 days from the time such payment was due or within the time it was filed. 9 V.S.A. § 1924. As such, Plaintiff lacks the necessary factual grounds or legal predicate to make a claim for foreclosure. 9 V.S.A. § 1925. Under *Colby*, an amendment or any part thereof, may be denied if it proposes a futile claim on which no relief is available or which would open the amended complaint to a likely successful Rule 12(b)(6) claim. In this case, the notice of lien has grown stale and has not been perfected. As such, there are no grounds as a matter of law for Plaintiff to seek foreclosure of his lien. Therefore, the Court will not allow Count IV of the complaint, which must be struck.

The second issue concerns whether there is grounds to substitute Ms. Colicchio, as Executor for the Estate of Anthony Colicchio, for Mr. Colicchio as a defendant in this case. V.R.C.P. 25.[2] In her answer, Ms. Colicchio has noted that the Maryland probate court has denied Mr. Heim's status as a creditor and has denied his claims against the estate. As Plaintiff's counsel notes, this presents an interesting legal issue. On one hand, the ruling of Maryland probate court does not limit Plaintiff's ability to bring a claim against the Estate, but on the other, its ruling would seem to preclude any effort to collect against the Estate as a judgment creditor (presuming for the moment that Plaintiff was successful). As Plaintiff notes in his reply, there is the further fact that Mr. Colicchio may not have any Vermont assets given that his real estate holdings in the state went to his wife as a tenant by the entity upon his passing and would not enter his probate estate. From these circumstances, Plaintiff in his reply has made a strategic decision to forgo any claim against Mr. Colicchio's estate and will pursue only Ms. Colicchio. Such a decision avoids wading into the questions of whether a claim against the Estate may proceed, but it does not alter the merits of the amended complaint given that Ms. Colicchio remains as she was a party to the contract and is the sole owner of the Vermont real estate. In light of this concession, the Court will strike Mr. Colicchio as a Defendant and will **deny** the motion to substitute his estate as a party to the present litigation.[3]

**ORDER**

In light of this analysis, the Court **Grants** Plaintiff's motion to amend as follows:

1) Plaintiff shall strike the Estate of Anthony Colicchio as a party to the amended complaint.
2) Plaintiff shall strike Count IV of the Complaint.
3) Plaintiff shall file a clean copy of the amended complaint with the Court and with the sole remaining defendant, Laura Colicchio within 14 days of this Order.

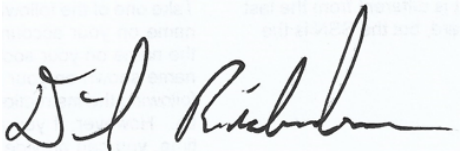
[2] This issue was initially raised by Plaintiff prior to retaining counsel, but this Court has not formally ruled upon the request due to the entry of counsel and the continuances granted to give counsel time to come up to speed on the issues.

[3] This ruling extends to both the complaint and the counterclaim as the Estate has not sought to be joined to or pursue the counterclaims in Mr. Colicchio's stead. V.R.C.P. 25.

4) Defendant shall have 21 days after receiving the complaint to file a revised answer to the complaint. Such a revised answer shall not require Defendant to re-file her counterclaims.

The Court will schedule a status conference in this matter in 45 days to address any outstanding issues, including a discovery calendar for all remaining discovery and to set a time line for mediation and trial-readiness.

Electronically signed on 9/9/2026 7:20 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge