IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

VALERIE BAILEY a/k/a APRIL BAILEY,	)	
Plaintiff,	)	
	)	C.A. No. 03C-05-006 MMJ
v.	)	
BRENDA L. CROWSON,	)	
Defendant.	)	

Submitted: July 28, 2004
Decided: September 10, 2004

MEMORANDUM OPINION

UPON PLAINTIFF'S MOTION TO AMEND

GRANTED

L. Vincent Ramunno, Esquire, Ramunno, Ramunno & Scerba, Attorneys for the Plaintiff

Arthur D. Kuhl, Esquire, Michael A. Pedicone, P.A., Attorneys for Defendant and Charles Jeffrey Hobbs

JOHNSTON, Judge

Factual Summary

This personal injury case arises out of a September 20, 2001 motor vehicle accident in which an unknown driver allegedly forced Plaintiff's vehicle off the road and then drove away. The police investigated this accident and were able to identify the owner of the vehicle as a Brenda Crowson ("Defendant").

Suit was filed on or about April 28, 2003 against Defendant. This action was automatically stayed on July 9, 2003 because of Defendant's pending bankruptcy petition. The applicable limitations period ended as of September 20, 2003. The automatic stay was lifted by agreement on February 3, 2004. On July 14, 2004, Plaintiff moved to amend the complaint to substitute Jeffrey Hobbs, the driver, as the defendant in this case.

The Parties' Contentions

Plaintiff asserts that the expiration of the statute of limitations should not be a bar to Plaintiff's right to amend the complaint. Plaintiff states that she first learned the identity of the driver on February 5, 2004, when the parties stipulated to arbitration which was scheduled for July 7, 2004. At that time Defendant's attorney produced a copy of Hobbs' statement admitting that he was the driver and that he left

the scene. The statement had not been attached or identified in Defendant's Form 30 Interrogatory Answers.

At the arbitration, Defendant testified that her son, Hobbs, was the driver. She also testified that when she received notice of this suit and the complaint she called Hobbs. During that call, Defendant ascertained that Hobbs was the driver and been involved in the accident in question.

Defendant claims that Plaintiff knew or should have known the identity of the driver of Defendant's vehicle long before the statute of limitations expired. The police report, dated September 20, 2001, indicated that Defendant was the owner of the vehicle, but also indicated the driver was a white male. By letter dated June 20, 2003, Defendant's insurance carrier advised Plaintiff's counsel of the statute of limitations. The letter contained a handwritten notation naming Hobbs as the driver of the vehicle in question. The answer was filed on or about June 25, 2003, and specifically admitted that the Defendant was the owner, but denied that she was the driver. The Answers to Form 30 Interrogatories noted that Jeffrey Hobbs was present at the scene.

Analysis

Superior Court Civil Rule 15 directs liberal granting of amendments to pleadings and applies equally to plaintiffs and defendants for any purpose relating to

pleading.[1] Additional entities may be added as parties under Rule 15(c) after the running of the period of limitations if the requirements of Rule 15(c) are met.[2]

In order for an amendment adding or substituting a party after the running of the statute of limitations to be related back to the filing date of the action, three conditions must be satisfied:

1. The claim or defense asserted in the amended pleading must arise out of the same conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading;
2. Within the period provided by law for commencing the action against the party (i.e., the statute of limitations), the party to be brought in by the amendment must receive such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits; and
3. Within the period provided by law for commencing the action against the party, the party to be brought in by the amendment knew or should

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[1] *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 263 (Del. 1993) (*citing* Super. Ct. Civ. R. 15(a)).

[2] *Annone v. Kawasaki Motor Corp.*, 316 A.2d 209, 211 (Del. 1974)); *see Lavin v. Silver,* Del. Super., C.A. No. 01C-06-033, Witham, J. (June 10, 2003) at *8-*9.

have known that but for a mistake concerning the identity of the party, the suit would have been brought against the party.[3]

The first condition for adding a party after the running of the statute of limitations is satisfied because the claim asserted in the amended pleading arose out of the same occurrence, i.e., the motor vehicle accident on September 20, 2001, as set forth in the original complaint.

The second condition of Rule 15(c) requires that the party to be brought in by the amendment received sufficient notice of the institution of action, so that the party will not be prejudiced in maintaining a defense on the merits. Rule 15 is silent as to the type or quality of the notice. However, the Delaware Supreme Court has noted that such notice need not be formal. Notice by service of process is not mandated, and notice may not even have to be in writing.[4] Hobbs had actual notice of the pendency of the litigation well prior to the running of the limitations period. At the arbitration, Defendant testified that when she received notice of this suit and the complaint, she called her son and ascertained that Hobbs was the driver.

As a result of circumstances unrelated to the 2001 accident, Hobbs now is severely disabled. This unfortunate medical condition, however, was not caused by

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[3]Super. Ct .Civ. R. 15(c).

[4]*Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 265 (Del. 1993)(*citing Mergenthaler, Inc. v. Jefferson*, 332 A.2d 396, 398 (Del. 1975)).

Plaintiff. A person's physical disability is not, in and of itself, a sufficient basis to insulate that person from being named a party to a lawsuit. Even if Hobbs is unable to travel to participate in these proceedings, appropriate accommodations can be made. Amendment of the complaint will not result in prejudice to Hobbs. In absence of prejudice to another party, the trial court is required to exercise its discretion in favor of granting leave to amend pleadings.[5]

The third requirement of Rule 15(c) is that the party to be brought in by the amendment knew or should have known that but for a mistake concerning the identity of the party, the suit would have been brought against the party. Defendant claims that Plaintiff permitted the statute of limitations to expire without amending the complaint, not because of a mistake, but as a matter of choice because Plaintiff knew when the suit was filed that there was a question as to the identity of the driver. The Answer denied that the named Defendant was the driver. The statute of limitations letter sent by Defendant's carrier included a handwritten indication of the driver's identity. Finally, Plaintiff testified that she intended to sue the owner.[6] Defendant

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[5]*Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 265 (Del. 1993) *(citing Ikeda v. Molock*, 603 A.2d 785 (Del. 1991)).

[6]Plaintiff's testimony on this point reflects her reliance on legal counsel, instead of a specific intention *not* to sue the driver.

contends that lack of knowledge regarding a known party is not a mistake.[7] The plaintiff's failure here must be considered a choice and not a mistake.[8]

The party seeking amendment does not have to show evidence of excusable neglect or that it has been misled. The only relevant inquiry is whether the party to be added knew or should have known of the mistaken identity.[9]

Hobbs knew or should have known that but for Plaintiff's mistaken belief, he would have been named as an original defendant. Hobbs had that knowledge on the day of the accident, since he was driving the car in question. Hobbs was on actual notice of the mistake when his mother called to ascertain that he was the one who had driven her car and been involved with the accident in question.

Conclusion

Even though Plaintiff probably should have known that she was suing the wrong party and amended the Complaint earlier, delay alone is not a sufficient basis to deny amendment of the pleadings.[10] Although inexcusable delay and repeated

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[7] *Johnson v. Plauls Plastering*, Del Super., 98C-05-088, Quillen, J. (July 30, 1999).

[8] *Id*.

[9] *Annone v. Kawasaki Motor Corp.*, 316 A.2d 209, 210-11 (Del. 1974)).

[10] *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 265 (Del. 1993) (*citing Chrysler Corp. v. New Castle County*, 464 A.2d 75 (Del. Super. 1983)).

attempts at amendment may justify denial,[11] Plaintiff's conduct does not rise to the level of inexcusable delay and Plaintiff has not made repeated attempts to amend.

All three conditions set forth in Rule 15(c) for relation back of an amendment adding a party are satisfied. Therefore, the amendment will relate back to the date of the original Complaint for purposes of the limitations period.[12] Plaintiff's Motion to Amend is hereby **GRANTED**.

IT IS SO ORDERED.

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The Honorable Mary M. Johnston

ORIGINAL: PROTHONOTARY'S OFFICE - CIVIL DIV.

[11] *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 265 (Del. 1993) (*citing Laird v. Buckley*, 539 A.2d 1076 (Del. 1988); *H& H Poultry Co., Inc. v. Whaley*, 408 A.2d 289 (Del. 1979)).

[12] *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 265 (Del. 1993) (*citing* Superior Court Civil Rule 15(c)).