SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Ms. Ann Zhai
39660 Banyan Tree Road
Fremont, California 94538
Plaintiff

Mary E. Sherlock, Esquire
19 S. State Street, Suite 100
Dover, Delaware 19901
Attorney for Defendants

Re: Zhai v. Stein and Stein Tree Service, Inc.
C.A. No. 10C-11-079 RRC

Submitted: October 14, 2011
Decided: January 6, 2012

On Plaintiff's "Motion to Join Parties."
DENIED.

On Defendants' Motion to Dismiss.
GRANTED.

Ms. Zhai and Ms. Sherlock:

INTRODUCTION

Defendants seek dismissal of *pro se* Plaintiff's automobile collision personal injury action for failing to state a legally cognizable claim. Plaintiff originally filed suit only against a corporation and the corporation's President. Plaintiff subsequently sought to include the employees whom Plaintiff alleges drove the automobile, as well as a married couple involved in a separate Pennsylvania

collision. The Court first must address whether to include the parties, and secondly, the merits of Defendants' Motion to Dismiss.

The Court does not have jurisdiction over the Pennsylvania action and cannot join that claim. Similarly, the Court will not permit Plaintiff to include the individual employees because the employees were untimely included and not properly notified. Plaintiff's claims against the corporation must be dismissed because the employees have not been effectively joined and liability may not otherwise be imputed against the corporation. Plaintiff fails to establish personal liability for the corporate president as well. Therefore, the Motion to Dismiss is **GRANTED.**

I. FACTUAL AND PROCEDURAL HISTORY[1]

On November 11, 2008, a collision occurred in New Castle County involving two automobiles. Plaintiff was driving a personal vehicle and suffered a rear-end collision from a commercial truck owned by Stein Tree Service, Inc., ("Stein Tree Service") a Delaware corporation. Plaintiff contends that two males were traveling in the commercial truck, and that the driver was a Caucasian male in his twenties and the passenger a "Spanish" male, of similar age.[2]

Plaintiff contends that:

> "The driver…refused to reveal his identity and/or his commercial driver license at the time of exchanging information. As a result of it, plaintiff does not know his identity. But he only voluntarily gave business policy number. The driver further assured plaintiff that his employer was in tree Service in State of Delaware for nearly thirty years and the owner of the company was Mr. Jeffrey Stein"[3]

Plaintiff claims that at the time of the collision she was headed to a family emergency and did not immediately assess her injuries. Accordingly, Plaintiff contends that the extent of her injuries were not immediately apparent, but that she suffered from "numbness and mental shock and disturbance initially [ ] after the incident. Plaintiff started to experienc[e] radiated dull pain a few months later from the head, neck, to lower back [which] progressed with time."[4] Plaintiff contends

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[1] The majority of these facts are taken from Plaintiff's Complaint.
[2] Compl. ¶5. All errors in original.
[3] Compl. ¶5. All errors in original.
[4] Compl. ¶12. All errors in original.

that she has suffered no prior injuries which could contribute to the alleged personal injuries from this collision.[5]

Plaintiff filed a pro se "Verified Complaint" on November 9, 2010 and named Stein Tree Service and Jeffrey Stein, the President of Stein Tree Service, as Defendants. Defendants filed a Motion to Dismiss on May 2, 2011. In July of 2011, Plaintiff sent to Defendants, and attempted to file with the Court, an Amended Verified Complaint.

The Court received the Amended Verified Complaint on July 20, 2011. However, the Court rejected it for failing to conform to Court requirements and for captioning additional Defendants too vaguely. Specifically, the Amended Verified Complaint was rejected because Delaware Superior Court Civil Rule 15(aa) states that "[a] party serving an amended pleading shall indicate plainly in the amended pleading in what respect that amendment differs from the pleading which it amends."[6] Typically, a party indicates an amended complaint's changes by highlighting, underlining, or placing in bold, the amended portions. Moreover, the Amended Verified Complaint insufficiently described new Pennsylvania Defendants as "The Salcido Family."

Notice of the Amended Verified Complaint's rejection was sent to Plaintiff. The notice returned the Amended Verified Complaint and explained that it did not comply with the relevant rules. Plaintiff never attempted to re-file the Amended Verified Complaint.

On August 25, 2011 Plaintiff responded to Defendants' Motion to Dismiss and contemporaneously filed a "Motion to Join Parties."[7] Although it is difficult to glean Plaintiff's contentions from these papers, it appears that Plaintiff seeks to include Don Smith and Luis Arguirre—two Stein Tree Service employees—as well as Richard and Mary Anne Salcido. Plaintiff's Motion avers that Smith was the driver of the commercial truck and that Arguirre was the passenger. Plaintiff seeks to add Richard and Mary Anne Salcido to address a separate automobile collision

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[5] In total, Plaintiff apparently claims damages for loss of quality of life, loss of domestic and professional services, lost income, lost career advancement, lost business opportunities, and the "reasonable estimation of her bright future and life span due to this incident and plaintiff has endured and will continue to endure the pain and suffering due to this incident." Compl. ¶16-21.
[6] Super. Ct. Civ. R 15(aa).
[7] Plaintiff captioned the Motion as quoted. However, because of the relief requested, the Court must analyze the "Motion to Join Parties" as a Motion to Amend the Complaint to allow for the addition of new parties and claims.

that occurred in Pennsylvania in April of 2009. Defendants filed response briefing and the Court held oral argument on the Motions in September of 2011.

II. DEFENDANTS' CONTENTIONS

Defendants assert that Plaintiff's claims against Stein Tree Service fail because the Complaint did not name an individual tortfeasor, specifically, the employees who drove the vehicle owned by the corporation. Defendants argue that "mere ownership of a vehicle at the time of an accident is not enough to impute vicarious liability to the owner for any purported negligence of the driver of the vehicle."[8] Defendants seek dismissal of the claims against Jeffrey Stein because they assert Stein cannot be liable in his capacity as President. In their original Motion, Defendants proffer no other argument for dismissal.

In Defendants' later reply briefing, Defendants clarify that they seek dismissal for Stein Tree Service because the Complaint does not allege Stein Tree Service's negligence, nor that the corporation was the individual tortfeasor, but rather, simply that the driver of the truck was negligent. In other words, Defendants disclaim corporate liability because Plaintiff did not join the individual employees to the suit. Without joining Smith and Arguirre to the suit, Defendants contend that Plaintiff has not properly articulated a claim under *respondeat superior*.

Defendants contend that the statute of limitations bars the addition of Smith and Arguirre at this late date because Smith and Arguirre were not added as parties until September of 2011. Personal injury actions carry a two-year statute of limitations, which in this case, expired on November 11, 2010.

Defendants also argue that the claim against the Salcidos must be dismissed because the automobile accident underlying that claim is not included in the original Complaint. Defendants assert that this Court lacks jurisdiction over that action and that the joinder rules do not permit the consolidation of cases arising out of separate automobile collisions in separate states.

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[8] *Roach v. Parker*, 48 Del. (9 Terry) 519, 520 (Super Ct. 1954); *Finkbiher v. Mullins*, 532 A.2d 609 (Del. Super. 1987).

III. PLAINTIFF'S CONTENTIONS

Plaintiff filed a Response and contemporaneously filed a "Motion to Join Parties."[9] While the Plaintiff captioned the Motion in such a way, the Court interprets the Motion as one seeking to amend the Complaint to join parties not included within the original Complaint.

Plaintiff contends that Stein Tree Service employs Don Smith and Luis Arguirre. Plaintiff claims that Smith was the driver of the commercial truck and that Arguirre was the passenger. Plaintiff proffers no further argument opposing dismissal in her original Response.

In later briefing, Plaintiff asserts that under *respondeat superior*, Stein Tree Service is responsible for any negligent conduct of an employee and that Smith and Arguirre were within the scope of their employment at the time of the collision. Additionally, Plaintiff contends that Jeffrey Stein must not be dismissed because it is unclear whether Smith had a valid commercial license qualifying him to operate the commercial vehicle. Plaintiff contends that Stein's knowledge and state of mind in permitting Smith to operate the truck without assurances regarding Smith's driving qualifications requires that Stein remain.[10]

Plaintiff argues that the Salcidos must be included because "complete relief for the total loss cannot be fairly adjudicated without bringing all responsible parties into one suit."[11] Without citing any authority, Plaintiff seemingly argues that judicial economy requires consolidation of the instant action with the Pennsylvania action. For the proposition that the Salcidos must be joined to this action, Plaintiff cites Superior Court Civil Rules 15(a) and 19(a). Plaintiff states that "without joining additional parties to this suit, upon discovery, there would be two separate and redundant third-party practices in each separate court to join additional defendant[s] with the original defendant."[12]

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[9] It is difficult to distill Plaintiff's contentions from the Motion and briefing papers.
[10] Although not clearly explained, it appears that Plaintiff argues that Stein must be kept in the suit in his individual capacity, both under theories of negligence and negligent entrustment.
[11] Pl.'s Response Br. 2.
[12] *Id.* at 4.

DISCUSSION

I. PLAINTIFF'S MOTION TO AMEND THE COMPLAINT TO JOIN SMITH AND ARGUIRRE FAILS BECAUSE THE AMENDMENT WAS ATTEMPTED WITHOUT PROPER NOTICE AND BEYOND THE PERIOD OF LIMITATIONS

The Court must first consider whether Plaintiff has effectively included Smith, Arguirre, or Richard and Mary Anne Salcido. Superior Court Civil Rule 21 states that the "[m]isjoinder of parties is not ground for dismissal of an action."[13] Parties may be "added by order of the Court on motion of any party or [by the Court's] own initiative at any stage of the action and on such terms as are just."[14]

Superior Court Rule 15(a), which confers the basic entitlement to amend a complaint, provides that parties may amend a "pleading once as a matter of course at any time before a responsive pleading is served . . . [o]therwise 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."[15] Absent prejudice to another party, a trial court must grant leave to amend.[16] Delay alone is an insufficient basis to deny amendment.[17] If delay is inexcusable or if attempts to amend are overly repetitive, denial of a plaintiff's attempted amendment may be justified.[18]

Rule 15(a) allows parties to state additional claims and may also be used to add, substitute, or drop parties.[19] Rule 15(c) provides for amended complaints to relate back to before the expiration of the period of limitations.[20] If an amended

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[13] Super. Ct. Civ. R. 21.
[14] Super. Ct. Civ. R. 21.
[15] Super. Ct. Civ. R. 15(a).
[16] *Ikeda v. Molock*, 603 A.2d 785 (Del. 1991).
[17] *Chrysler Corp. v. New Castle County*, 484 A.2d 75 (Del. Super. 1983).
[18] *Laird v. Buckley*, 539 A.2d 1076 (Del. 1988); *H & H Poultry Co., Inc. v. Whaley*, 408 A.2d 289 (Del. 1979).
[19] *Mullen*, 625 A.2d 258 (citing 6 Wright, Miller & Kane, Federal Practice and Procedure §1474 (1990); 3 Moore's Federal Practice ¶15.08[3]; 6 Cyclopedia of Federal Procedure §18.27 (3d ed. 1988).
[20] *Mergenthaler, Inc. v. Jefferson*, 332 A.2d 396 (Del. 1975); *Annone v. Kawasaki Motor Corp.*, 316 A.2d 209 (Del. 1974)("[L]eave to amend which would otherwise be freely given [under Rule 15(a)] may and should be given with a relation-back consequence if the requirements of Rule 15(c) are met.")

pleading relates back, it will be as if the complaint was amended during the period of limitations.

If an amended complaint seeks to modify the parties to the action, three criteria must be fulfilled for the amended complaint to relate back.[21] First, the claim asserted by the amendment must arise out of the same conduct, transaction or occurrence asserted in the original pleading.[22] Second, within the time provided by the rules, the party to be added must have received notice of the action, so that the party will not be prejudiced.[23] Third, within the time provided by law for commencing the action, the party to be added must have known or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party to be added by the amendment.[24]

It is in the trial court's discretion to determine whether a proposed amendment satisfies the requirements of Rule 15(c).[25] However, the trial court is limited in that it is not permitted to "bend the clear language of a Rule."[26] Of the three criteria of Rule 15(c)(3) the requirement that the party to be added receive proper notice is the most litigated. The notice need not be formal, include service of process, nor must it be in writing.[27]

Superior Court Rule 15 is virtually identical to its counterpart in the Federal Rules of Civil Procedure.[28] Recently, the Delaware Supreme Court has analyzed Rule 15(c)'s notice requirement through interpretations of the Federal Rule in the federal courts.[29] Specifically relevant here is the Supreme Court's consideration of the "identity of interest theory" for establishing notice. The Third Circuit has explained that "[i]dentity of interest generally means that the parties are so closely related in their business operations or other activities that the institution of the action against one serves to provide notice of the litigation to the other."[30] The

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[21] Super. Ct. Civ. R. 15(c)(3).
[22] *Mullen*, 625 A.2d at 264.
[23] *Id.*
[24] *Id.*
[25] *Id*. at 209.
[26] *Mergenthaler*, 332 A.2d at 399.
[27] *Mullen*, 625 A.2d at 265.
[28] *Id.* at 262.
[29] *Lovett v. Pietlock,* 2011 WL 5354267 *2 (Del. Nov. 8, 2011)(TABLE).
[30] *Id.* (citing *Singletary v. Pennsylvania Dept. of Corrections*, 266 F.3d 186, 197(3d Cir. 2001))(internal quotation marks omitted).

identity of interest test is typically used to impute notice between a parent corporation and a subsidiary.[31]

Identity of interest has also been analyzed in the context of an employee and an employer. The Third Circuit concluded that a state prison psychologist—who lacked supervisory duties—could not have a shared identity of interest with the employer, simply by virtue of employment.[32] The dispositive factor in the court's analysis was that the employee was "not highly enough placed in the prison's hierarchy for us to conclude that his interests as an employee are identical to the prison's interests."[33]

The court found that "absent other circumstances that permit the inference that notice was actually received, a non-management employee . . . does not share a sufficient nexus of interests with his or her employer so that notice given to the employer can be imputed to the employee."[34] Contractual relationships, by themselves, are insufficient to demonstrate an identity of interest justifying the imputation of knowledge for the purposes of determining whether the amended complaint naming new defendants relates back to the filing of the original complaint. [35]

The Delaware Supreme Court has declined to utilize identity of interest to impute notice to state employees when other state employees were involved in a lawsuit.[36] The Court of Common Pleas however, has found that notice was imputed to an employee of the State of Delaware Department of Transportation when that employee was alleged to be responsible for an automobile collision.[37] However, an additional factor considered in that case was that the employee was also a defendant in a different action in the Superior Court, arising from the same factual circumstances; as such, the employee was deemed on notice of all actions arising therefrom.[38]

In this case, no facts have been proffered by Plaintiff regarding Smith and Arguirre's positions at Stein Tree Service. There is no indication that either is a

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[31] *Id.* (citing *Johnson v. Geico Cas. Co*., 673 F.Supp.2d 244, 249 (D.Del.2009)).
[32] *Singletary*, 266 F.3d 186, 198.
[33] *Singletary*, 266 F.3d 186,199.
[34] *Id.* at 200.
[35] *Bailey v. U.S.,* 289 F. Supp. 2d 1197, 1208 (D. Haw. 2003), quoting Wright, Miller & Kane.
[36] *Lovett,* 2011 WL 5354267 *2.
[37] *Johnson v. State Dept. of Transp.,* 2011 WL 6016912 *3 (Del. Com. Pl. Oct. 27, 2011).
[38] *Id.*

management level employee at Stein Tree Service. No additional credible evidence suggests a shared identity of interest with the corporation resulting from their employment. There is no other basis under which notice of the action can be imputed to the employees.

Finally, Rule 15(c)(3) requires that the party to be added have notice of the lawsuit, not simply notice of the underlying facts. Seeing as how the great majority of automobile collisions are resolved without the need for litigation, involvement in an automobile collision is itself insufficient notice. Since the notice was inadequate and the notice provided to Stein Tree Service cannot fairly be imputed to the employees, the attempted joinder of the employees is ineffective.

II. PLAINTIFF'S MOTION TO AMEND THE COMPLAINT TO JOIN RICHARD AND MARY ANNE SALCIDO FAILS BECAUSE IT IS UNTIMELY AND DOES NOT RELATE TO THE ORIGINAL COMPLANT AND THIS COURT LACKS JURISDICTION

Plaintiff also seeks to join Richard and Mary Anne Salcido to this suit as Defendants. Plaintiff asserts that the Salcidos must be included in the instant action because Plaintiff's later automobile collision with the Salcidos is so directly tied to this action that the cases must be consolidated for judicial efficiency. Plaintiff fails to cite any authority for this contention, and it could be deemed waived on those grounds alone.[39]

An analysis of this attempted joinder under Rule 15(c) clarifies that this attempt to add parties must fail because it does not qualify for relation back. The attempted joinder of the Salcidos pertains to a separate Pennsylvania automobile collision that has no connection to the facts in the original Complaint. To add additional parties not included within the original Complaint, the same conduct, transaction, or occurrence must underlie the joinder. Since Plaintiff is seeking to join Mr. and Mrs. Salcido to address an unrelated automobile collision, their joinder is barred by the statute of limitations.

The addition of Mr. and Mrs. Salcido fails on jurisdictional grounds as well. The plaintiff has the burden for showing a basis for the court's long-arm

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[39] *See Flamer,* 953 A.2d 130, 134 (Del.2008)(failure to cite authority for a legal argument constitutes waiver).

jurisdiction.[40] Plaintiff has proffered no basis for why the Court has jurisdiction over Mr. and Mrs. Salcido. Plaintiff alleges that the Salcidos are Pennsylvania residents and the Motion to Amend the Complaint states the collision underlying this claim occurred in Pennsylvania. Plaintiff has not adduced any theory for personal jurisdiction based upon the Salcido's minimum contacts. For all those reasons, Plaintiff's Motion to Amend the Complaint to join Richard and Mary Anne Salcido and the claims against them, is **DENIED**.

III. THE ORIGINAL DEFENDANTS MUST BE DISMISSED BECAUSE THE PLAINTIFF HAS NOT PROFFERED A VALID BASIS FOR PIERCING THE CORPORATE VEIL AND CANNOT SUE UNDER A RESPONDEAT SUPERIOR THEORY WITHOUT THE INDIVIDUAL TORTFEASOR

Defendants filed the Motion to Dismiss pursuant to Superior Court Civil Rule 12(b)(6) for "failure to state a claim upon which relief can be granted."[41] The standard of review on such a motion is well-settled. The plaintiff's burden to survive dismissal is low.[42] The Court must accept all well-pled allegations as true.[43] The motion will be denied when the plaintiff is able to prove facts entitling plaintiff to relief.[44]

"Delaware is a notice pleading jurisdiction and the complaint need only give general notice as to the nature of the claim asserted against the defendant in order to avoid dismissal for failure to state a claim."[45] Even if the plaintiff's allegations are "vague or lacking in detail, [a complaint] is nevertheless 'well-pleaded' if it puts the opposing party on notice of the claim being brought against it."[46] A complaint with sufficient notice shifts the burden to the defendant to "determine the details of the cause of action by way of discovery for the purpose of raising legal defenses."[47] The motion will be granted "only where it appears with

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[40] *Harmon v. Eudaily,* 407 A.2d 232 (Del. Super. 1979), *aff'd,* 420 A.2d 1175 (Del 1980).
[41] Super. Ct. Civ. R. 12(b)(6).
[42] *Doe v. Cahill,* 884 A.2d 451, 458 (Del. 2005).
[43] *Loveman v. Nusmile, Inc.,* 2009 WL 847655, at *2 (Del.Super.Mar.31, 2009) (*citing Anglo Am. Sec. Fund, L.P. v. S.R. Global Intern. Fund, L.P.,* 829 A.2d 143, 148–49 (Del. Ch.2003)).
[44] *Spence v. Funk,* 396 A.2d 967, 968 (Del. 1978)(citations omitted).
[45] *Nye v. Univ. of Delaware,* 2003 WL 22176412, at *3 (Del.Super.Sept.17, 2003).
[46] *Precision Air, Inc. v. Standard Chlorine of Del., Inc.,* 654 A.2d 403, 406 (Del. 1995).
[47] *Klein v. Sunbeam Corp.,* 94 A.2d 385, 391 (Del.1952).

reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief."[48]

Additionally, this Court will hold a *pro se* plaintiff's complaint to a "somewhat less stringent technical standard" than a complaint prepared by an attorney.[49] The same rules, however, still apply to a *pro se* Plaintiff; this Court will accommodate them only to the extent that the substantive rights of the opposing party are not affected.[50]

After addressing the Plaintiff's Motion to Amend the Complaint to Join Parties, the Court turns now to address the Defendants' Motion to Dismiss. After denying the Plaintiff's attempted joinder, the remaining claims are only against Stein Tree Service and Jeffrey Stein.

Plaintiff has not alleged sufficient claims against Stein Tree Service to survive Defendants' Motion to Dismiss. It is fundamental that an employer is liable for the torts of his employee committed while acting in the scope of his employment.[51] However, since the individual employees whose negligence is alleged were not properly included in this action, no valid basis for a claim against Stein Tree Service is present. Defendants correctly argued that Stein Tree Service does not incur liability simply because they own a vehicle that may have been negligently operated. It is the not the corporation's negligence which underlies this action. The alleged negligence that underlies this claim rests with the employees who were never properly joined to this action. Therefore, Defendants' Motion to Dismiss Stein Tree Service is **GRANTED**.

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[48] *Ramunno v. Cawley,* 705 A.2d 1029, 1034 (Del.1998) (citing *Spence,* 396 A.2d at 968).

[49] *See, e.g., Vick v. Haller,* 522 A.2d 865, *1 (Del.1985) ("A *pro se* complaint, however inartfully pleaded, may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers...."). *Cf. In re Estate of Hall,* 882 A.2d 761 (Del.2005) ("While this Court allows a pro se litigant leeway in meeting the briefing requirements, the brief at the very least must assert an argument that is capable of review.") *See also*, *Anderson v. Tingle,* 2011 WL 3654531, at * 1 (Del.Super.Aug.15, 2011).

[50] See, e.g., *Draper v. Med. Ctr. of Del.,* 767 A.2d 796, 799 (Del.2001)("Litigants, whether represented by counsel or appearing *pro se,* must diligently prepare their cases for trial or risk dismissal for failure to prosecute. There is no different set of rules for *pro se* plaintiffs, and the trial court should not sacrifice the orderly and efficient administration of justice to accommodate an unrepresented plaintiff."

[51] *Fields v. Synthetic Ropes, Inc.* 59 Del. 135, 215 A.2d 427, 432 (1965). Citing 1 Restatement, Agency 2d, § 219

Defendants seek dismissal of Defendant Jeffrey Stein based upon the Plaintiff not articulating a legal basis for piercing the corporate veil. Plaintiff asserts that Stein must be kept in the case because discovery is required to determine Stein's state of mind at the time he chose to allow an employee to drive a commercial truck without the requisite commercial driver's license. Although difficult to glean from Plaintiff's argument, it appears that Plaintiff is attempting to articulate an argument that Stein must be kept in the case, on a negligent entrustment theory. Negligent entrustment occurs when the vehicle's owner "entrust[s] his motor vehicle to one who is so reckless or incompetent that in his hands the motor vehicle [becomes] a dangerous instrumentality."[52]

In essence, Plaintiff is arguing (without any legal theory cited) that a claim for negligent entrustment is sufficient to pierce the corporate veil and for liability to attach to a corporate president. As a procedural matter, the claim against Stein could be dismissed solely because the Plaintiff failed to offer any authority in support of this claim. [53] Substantively, for jurisdictional purposes, a plaintiff seeking to pierce the corporate veil usually must demonstrate that the corporation has no independent reason for existence and exists solely to provide a means for doing an individual's bidding.[54] An additional burden exists when a Plaintiff is seeking to pierce the corporate veil for liability purposes, as in this case. Such a Plaintiff must generally demonstrate fraud or contravention of law or contract.[55] Plaintiff's complaint does not articulate either basis for piercing the corporate veil, but only suggests negligence and negligent entrustment.

Furthermore, piercing the corporate veil to assert liability upon Stein as President of Stein Tree Service is a remedy only available in equity. The Supreme Court of Delaware has unequivocally explained that piercing the corporate veil may only be accomplished in the Court of Chancery because Delaware still embraces the distinctions between law and equity.[56] For all these reasons, the claims against Jeffrey Stein as President of Defendant Stein Tree Service, must also be dismissed.

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[52] *Estate of Alberta Rae v. Murphy*, 2006 WL 1067277 (Del. Super. Mar. 13, 2006) *aff'd sub nom., Estate of Rae v. Murphy*, 956 A.2d 1266 (Del. 2008).
[53] *See Flamer v. State,* 953 A.2d 130, 134 (Del.2008)(failure to cite authority for a legal argument constitutes waiver).
[54] *Gebelein v Perma-Dry Waterproofing Co*., 7 Del. J. Corp. L. 309, 312 (Del. Ch. 1982).
[55] *Pauley Petroleum Inc. v. Continental Oil Co*., 239 A.2d 629, 633 (Del. 1968).
[56] *Sonne v. Sacks,* 314 A.2d 194, 197 (Del. 1973).

CONCLUSION

Since the Court has **DENIED** the Plaintiff's attempted amendment to include additional parties not named in the original Complaint and has **GRANTED** Defendants' Motion to Dismiss as to the only two parties in the original Complaint, the original Complaint and the proposed amended complaint are **DISMISSED** in their entirety.

IT IS SO ORDERED.

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Richard R. Cooch, R.J.

oc: Prothonotary