IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

JACOB RICHARDSON, *Plaintiff/Appellant*,

v.

ALL SERVICES UNLIMITED, INC., an Arizona corporation,
Defendant/Appellee.

No. 1 CA-CV 15-0642
FILED 12-14-2017

Appeal from the Superior Court in Coconino County
No. S0300CV201400015
The Honorable Mark R. Moran, Judge

REVERSED AND REMANDED

COUNSEL

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OPINION

Judge Randall M. Howe delivered the opinion of the Court, in which Presiding Judge Kenton D. Jones and Judge Donn Kessler[1] joined.

H O W E, Judge:

¶1 Jacob Richardson appeals the trial court's judgment that the statute of limitations barred his claim against All Services Unlimited, Inc. ("All Services"). The issue presented is whether a plaintiff's unawareness that a party may have been responsible for the plaintiff's injury constitutes a mistake as to the identity of the proper party under Arizona Rule of Civil Procedure 15(c)(2), so that amending the complaint adding that party relates back to the original complaint for purposes of the statute of limitations. We hold that it does and reverse the granting of summary judgment.

FACTS AND PROCEDURAL HISTORY

¶2 Richardson, an ironworker employed by Arizona Steel Construction and Repair, Inc., was injured on January 25, 2012, while working at a property owned by Bellemont Truck Repair and Towing, Inc., Bellemont Truck Repair, LLC, and Larry Oldaker (collectively, "Bellemont Truck"). On January 10, 2014, Richardson filed a complaint alleging that Bellemont Truck had control of the property during the construction project, and its negligent maintenance of the property caused Richardson's injury.

¶3 Thereafter, in March 2014, Richardson learned that Bellemont Truck had employed All Services as a general contractor for the project. Richardson amended his complaint to add All Services as a defendant based on its role as the general contractor for the construction project.

¶4 All Services moved for summary judgment, arguing that the statute of limitations set forth in A.R.S. § 12–542 barred Richardson's action because he did not file the amended complaint within two years of his

[1] The Honorable Donn Kessler, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

injury. It also argued that Richardson could not claim that his amendment related back to the original complaint under Rule 15(c)(2) because Richardson had not made a mistake regarding the identity of the correct defendant. It further asserted that Arizona's discovery rule did not allow Richardson to name All Services as a defendant after the limitations period ran because he had not made a reasonable inquiry about the existence of other potentially liable entities.

¶5 Richardson responded that the amended complaint related back to the original complaint under Rule 15(c) because he reasonably believed that Bellemont Truck was acting as both landowner and general contractor for the project. He also maintained that, at minimum, a factual question existed whether he had exercised reasonable diligence in investigating the persons responsible for his injury; therefore, the discovery rule applied and his cause of action did not accrue until he learned that All Services was the general contractor for the construction project.

¶6 The trial court determined that Richardson was not mistaken about Bellemont Truck's identity as a proper party, but instead, was mistaken that another potential defendant existed. Relying on *Tyman v. Hintz Concrete, Inc.*, 214 Ariz. 73 (2006), and *Levinson v. Jarrett ex. rel Cty. of Maricopa*, 207 Ariz. 472 (App. 2004), the court ruled that Richardson's mistake did not satisfy Rule 15(c)'s requirements. Thus, the trial court granted summary judgment for All Services, ruling that the amended complaint did not relate back under Rule 15(c). Richardson timely appealed.

DISCUSSION

¶7 Richardson argues that the trial court erred by granting summary judgment for All Services because his amended complaint related back to the original, timely-filed complaint under Rule 15(c).[2] The interpretation of Rule 15(c) is a question of law that we review de novo. *Pargman v. Vickers*, 208 Ariz. 573, 578 ¶ 22 (App. 2004). Because

[2] Richardson also asserts that his cause of action did not accrue until March 2014 when he discovered that All Services was the general contractor responsible for the property and, therefore, under Arizona's discovery rule, the statute of limitations did not bar his claim. Because the trial court erred by ruling that Richardson's claim did not relate back under Rule 15(c), we do not consider this alternative argument or All Services' argument that Richardson did not make a reasonable inquiry about the existence of other potentially liable entities before the statute of limitations ran.

Richardson's amended complaint adding All Services as a party relates back under Rule 15(c), the trial court erred by granting summary judgment for All Services.

¶8 An amended complaint relates back under Rule 15(c) if: (1) the claim arose out of the same conduct, transaction, or occurrence as the claim in the original complaint; (2) the added defendant received notice of the action within the applicable limitations period plus the period provided by Rule 4(i) for the service of the summons and complaint; (3) the notice is sufficient to avoid prejudicing the joined defendant's ability to defend on the merits; and (4) within that same period, the party to be added by amendment knew or should have known that, but for a mistake concerning the identity of the proper party, plaintiff would have named the proper party in the original complaint. Ariz. R. Civ. P. 15(c); *Flynn v. Campbell*, 243 Ariz. 76, 81 ¶ 11 (2017).

¶9 Here, the parties do not dispute that the first three requirements for relation back are satisfied. Richardson's claim against All Services arose out of his injury on January 25, 2012—the same conduct or occurrence alleged in the original complaint—and All Services had notice of the initiation of the action against it within the two-year statute of limitations period plus the period provided for service of the summons and complaint. Further, All Services has not alleged that the delay prejudiced its ability to defend on the merits. The disagreement centers on whether Richardson committed a "mistake concerning the identity of the proper party" by naming only Bellemont Truck in the original complaint.

¶10 Richardson argues that the court erred because he was mistaken about the identity of the project supervisor and erroneously named Bellemont Truck as a defendant in that capacity. He contends that if he had not been mistaken about Bellemont Truck's role at the property, he would have named the general contractor, All Services, as a defendant in the original complaint.

¶11 While this case was on appeal, our supreme court overruled *Tyman*, on which the trial court relied in entering summary judgment. *See Flynn*, 243 Ariz. at 82 ¶ 16. In doing so, *Flynn* adopted the United States Supreme Court's analysis in *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538 (2010), to determine when a mistake is cognizable under Rule 15(c). *Id.* The court held that the first question is whether the defendant knew or should have known that "absent some mistake," the plaintiff would have brought suit against him or her. *Id.* Any mistake—factual or legal—is sufficient under Rule 15(c). *Id.* A mistake is not cognizable under Rule 15(c) only

when it is "a deliberate choice to sue one party instead of another while fully understanding the factual and legal differences between the two parties." *See Krupski*, 560 U.S. at 549. "To decide whether a Rule 15(c) 'mistake' has occurred, the court must determine 'whether, in a counterfactual error-free world, the action would have been brought against the proper party.'" *Tyman*, 214 Ariz. at 76 ¶ 19 (quoting *Leonard v. Parry*, 219 F.3d 25, 29 (1st Cir. 2000)). The plaintiff has the burden to establish the mistake. *Id.* at 77 ¶ 22.

¶12 In this case, Richardson offered evidence he mistakenly believed that Bellemont Truck was the project supervisor responsible for the maintenance of the property. This belief was based on his observation of Bellemont Truck's owner, Larry Oldaker, clearing the property of ice and snow and his lack of knowledge about All Services' presence—or the presence of any general contractor—at the property. He alleged in the original complaint that Bellemont Truck had retained control of the property during the construction project, and its negligent maintenance of the property caused Richardson's injury. After filing the original complaint, Richardson learned that Bellemont Truck had not retained control of the property, but had employed All Services as the general contractor for the project. Under these circumstances, Richardson made a mistake concerning the proper party's identity. *See Krupski*, 560 U.S. at 549 (noting that "[a] mistake is '[a]n error, misconception, or misunderstanding; an erroneous belief'" (quoting Black's Law Dictionary 1092 (9th ed. 2009))).

¶13 Citing *In re Vitamin C Antitrust Litig.*, 995 F. Supp. 2d 125 (E.D.N.Y. 2014), All Services maintains that Richardson's mistake was not cognizable under Rule 15(c) because the mistake was based on his lack of knowledge regarding the appropriate defendant, rather than a mistaken belief that Bellemont was liable. In *In re Vitamin C*, that court determined that a mistake under federal Rule 15(c) is not cognizable when "[t]he plaintiff has sued the right defendant, and simply neglected to sue another defendant who might also be liable." 995 F. Supp. 2d at 129. All Services argues that a mistake does not occur when one proper party is sued and the plaintiff is seeking to add an additional party to the complaint. That is not so.

¶14 Although Richardson is seeking to add a defendant as a party, that does not mean that he did not make a cognizable "mistake" under Rule 15(c). The evidence shows that Richardson mistakenly believed Bellemont was solely responsible for the property and that he did not believe the project had a general contractor. Therefore, Richardson was mistaken about who was responsible for the property where his injury occurred. Under

Rule 15(c)—including *Flynn*'s interpretation of the rule—an additional defendant may be added to a complaint if that defendant knew or should have known that the plaintiff mistakenly failed to name him or her. *See Flynn*, 243 Ariz. at 79 ¶ 1 ("[a]n amended complaint *naming a new defendant* relates back to the original complaint if the newly added defendant knew or should have known the plaintiff mistakenly failed to name him or her as a party in the original complaint.") (emphasis added). Accordingly, and with the other Rule 15(c) factors met, Richardson's amended complaint related back to the original complaint and was not time-barred.

CONCLUSION

¶15 For the foregoing reasons, we reverse and remand for further proceedings consistent with this opinion.

AMY M. WOOD • Clerk of the Court
FILED: AA