

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

PAMELA SMITH, :
 :
 :
 Plaintiff, :
 :
 v. : C.A. No. 05C-12-178 SCD
 :
 :
 FREDDIE L. HAWKINS, :
 MURRAY TRANSPORTATION INC, and :
 ADVANCED STUDENT :
 TRANSPORTATION INC, a Delaware :
 corporation, :
 :
 Defendants. :

Submitted: August 10, 2007
Decided: January 31, 2008

*Decision upon Defendant Advanced Student Transportation's
Motion for Limited Reargument – GRANTED
Defendant Advanced Student Transportation's
Motion to Dismiss -- GRANTED*

ORDER

This 31st day of January, 2008, the defendant Advanced Student Transportation, Inc.'s ("defendant") Motion for Limited Reargument and the plaintiff's response having been considered, it appears:

1. On September 11, 2006, plaintiff filed an amended complaint adding the defendant. Plaintiff's action is for personal injuries arising from an automobile accident on January 30, 2004, when a bus in which she was a passenger collided with a parked car.
2. On December 15, 2006, the defendant filed a motion to dismiss pursuant to Superior Court Civil Rule 12(b)(6). The defendant argued that the plaintiff's claim should be

dismissed because it is barred by the applicable statute of limitations and because the doctrine of *respondeat superior* does not apply. On February 7, 2007, the Court denied the defendant's motion without prejudice, citing no affidavits to support the factual allegations.

3. On February 14, 2007, the defendant timely filed a Motion for Limited Reargument in accordance with Superior Court Civil Rule 59(e), again arguing that the plaintiff's motion should be barred by the applicable statute of limitations.¹ Plaintiff filed a response to the defendant's motion on August 10, 2007.

4. Title 10, Section 8119 of the Delaware Code provides:

No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained.

5. The action against the defendant was filed more than two years after the plaintiff's alleged injuries were sustained. The statute of limitations bars the claim unless Superior Court Civil Rule 15(c) permits the amended pleading to relate back.

6. Superior Court Civil Rule 15(c) has three requirements:

- (1) the claim must arise out of the same conduct, transaction, or occurrence;
- (2) the party to be added must have received notice of the institution of the action, so that the party will not be prejudiced; and
- (3) within the time provided by the rules, the party to be added must have known or should have known that, but for the mistake concerning the identity of the proper party, the action would have been brought against the party to be added.²

7. The plaintiff has the burden to demonstrate that the requirements of Superior Court Civil Rule 15(c) have been met.³

¹ Docket entry number 23 reflects that the motion was to be "renoticed." No renotice was filed. The motion did not appear on the Court's calendar and it was not presented to the Judge.

² *Taylor v. Champion*, 693 A.2d 1072, 1074 (Del. 1997).

³ *Id.* See *Flowers v. WITCO Chemicals Corporation*, 2000 WL 1727229, at *1 (Del. Nov. 16, 2000).

8. Plaintiff notified the defendant of the underlying action in August 2006, more than six months after the expiration of the statute of limitations. Plaintiff has failed to show that the defendant received notice of the institution of the action before the statute of limitations expired. Plaintiff also has failed to show that the defendant knew or should have known that the action would have been brought against them before the expiration of the statute of limitations.

WHEREFORE, the defendant's motion for limited reargument is GRANTED; the defendant's motion to dismiss is also GRANTED.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

Original to Prothonotary

xc: Christopher W. Componovo, Esquire
Chad M. Shandler, Esquire