

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

ROGER DANIELS and TAMMY)
LYNN WALLACE,)
)
Plaintiffs,)
) CA. No. N10C-10-002 VLR
-vs.-)
)
OPTEK TECHNOLOGY, INC.,)
JOHN DOE I, JOHN DOE II, JOHN)
DOE III, XYZ CORPORATION I,)
XYZ CORPORATION II, and XYZ)
CORPORATION III,)
)
Defendants.)

OPINION

Date Submitted: September 13, 2013

Date Decided: December 30, 2013

*Upon Consideration of Plaintiffs' Motion
For Leave to File Amended Complaint, **GRANTED.***

Ian C. Bifferato, Esquire, Richard S. Gebelein, Esquire, David W. deBruin, Esquire, and J. Zachary Haupt, Esquire, Bifferato, LLC, 800 North King Street, 1st Floor, Wilmington Delaware, 19801, Steven J. Phillips, Esquire, (argued) *pro hac vice* and Nancy A. Perry, Esquire, *pro hac vice*, Levy, Phillips & Konigsberg, LLP, 800 Third Avenue, New York, New York, 10022, Attorneys for Plaintiffs.

R. Stokes Nolte, Esquire, Reilly, Janiczek & McDevitt, P.C., 1013 Centre Road, Suite 210, Wilmington, Delaware, 19805, Attorney for Defendant Optek Technology, Inc.

RAPPOSELLI, J.

INTRODUCTION

Before the Court is Plaintiffs' Motion for Leave to File Amended Complaint ("Plaintiffs' Motion"). Defendant Optek Technologies, Inc. ("Optek") opposes Plaintiffs' Motion on grounds that (1) it falls outside the governing standard of permitted amendments set out in Rule 15 of the Rules of Civil Procedure for the Superior Court of the State of Delaware ("Rule 15"), and (2) the disputed amendments are precluded by the doctrine of judicial estoppel. For the reasons set forth below, this Court finds that Plaintiffs' Motion is permissible under Rule 15 and not precluded by the doctrine of judicial estoppel. Therefore, Plaintiffs' Motion is **GRANTED**.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Roger Daniels ("Daniels") is the son of Plaintiff Tammy Lynn Wallace ("Wallace"). Wallace began her employment at Optek in March of 1983, gave birth to Daniels on December 31, 1985, and ended her employment with Optek in June of 1986. Daniels suffers from a variety of birth defects which Plaintiffs allege were caused by exposure to hazardous chemicals during Wallace's employment at Optek.

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Plaintiffs filed a Complaint against Optek on October 1, 2010 (“Original Complaint”). The Original Complaint (¶30) asserts a derivative theory of liability as to Daniels as follows:

Tammy Wallace sustained an insult to her reproductive system as a result of her employment at Optek that caused injuries to Plaintiff Roger Daniels.

The Original Complaint also states that Daniels was harmed *in utero* during the exposure period (¶1) and alleges Optek is directly liable to Daniels (¶18):

At all relevant times, Defendants failed to . . . comply with reasonable standards and regulations to protect and promote the health and safety . . . [of] those using or who would foreseeably use or be harmed . . . including Tammy Lynn Wallace and her offspring.

On June 21, 2013, pursuant to Superior Court Rule 15, Plaintiffs filed this Motion for Leave to File First Amended Complaint (“FAC”), which alleges Daniels’ direct (not derivative) exposure as the basis of Plaintiffs’ claims. On July 1, 2013, Defendant filed an Opposition to Plaintiffs’ Motion to Amend Complaint. After additional filings were submitted by the parties, a hearing was held before this Court on September 13, 2013.

I. *Rule 15(a) Amended Pleading*

Superior Court Civil Rule 15(a) generally “directs the liberal granting of amendments when justice so requires.”¹ Rule 15 amendments may be denied if sought in bad faith or if the non-moving party would be prejudiced by suffering an increased burden.² This Court has considered both arguments and finds that Optek has failed to establish either as a basis to deny Plaintiffs’ Motion.

First, Optek argues that Plaintiffs’ Motion is a bad faith attempt to elude the consequences of *Peters v. Texas Instruments, Inc.* and, as such, leave to amend would not achieve justice pursuant to Rule 15.³ In *Peters*, a minor plaintiff alleged to have suffered birth defects as a result of his father’s exposure to hazardous substances at his place of work. The *Peters* Court held that the minor plaintiff’s claim was derivative of his father’s claim; the claim was barred and subject to the exclusive remedies provided under the Texas Workers’ Compensation Act.⁴ Optek argues that the Original Complaint limits Daniels to a derivative theory of liability,

¹ *Abdi v. NVR, Inc.*, 945 A.2d 1167 (Del. 2008).

² *Martinez v. E.I. DuPont de Nemours & Co., Inc.*, 2012 WL 4479164 (Del. Super. Sept. 21, 2012).

³ *Peters v. Texas Instruments Inc.*, 2011 WL 4686518 (Del. Super. Sept. 30, 2011).

⁴ *Id.*

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and that Plaintiffs' Motion is a bad faith tactic intended to avoid the inevitable consequences of a *Peters*-based summary judgment analysis.⁵

Rule 15 "bad faith" considerations are of the type alleged in *Northpointe Holdings LLC v. Nationwide Emerging Managers*: amendments intended "to further harass and drive up [defendants'] costs of litigating [a] baseless law suit."⁶ The bad faith alleged by Optek stems from its assumption that the Original Complaint limits Daniels to a derivative theory of liability, and would thus be more vulnerable in defending against a summary judgment action. Optek did not establish that an amendment made in an attempt to avoid summary judgment constitutes bad faith. Even if there was support for that legal position, Optek's argument would still not be persuasive since this Court finds that the Original Complaint includes allegations of both direct and derivative claims and Plaintiffs' Motion is merely a clarification of the same.

In determining whether a Rule 15 amendment would prejudice the non-moving party by increasing its burden, this Court considers whether the non-moving party has "identified any amendment in the [FAC] that would require

⁵ While the pertinent summary judgment motion is not before this Court, it should be noted that the *Peters* decision distinguished the derivative action in that case from claims, as in this case, involving direct damages to plaintiffs *in utero*.

⁶ *Northpointe Holdings, LLC v. Nationwide Emerging, Managers, LLC*, 2012 WL 2005453 (Del. Super. May 24, 2012).

additional discovery or depositions.”⁷ Since the FAC rests on the same occurrences as the Original Complaint, and the matter is still in its early stages from a scheduling standpoint, this Court finds that Optek has not established an increased burden sufficient to warrant denial of Plaintiffs’ Motion.

II. *Judicial Estoppel*

Optek further argues that Plaintiffs’ Motion should be denied on the basis of judicial estoppel. Judicial estoppel “operates only where the litigant’s [present position] contradicts another position that the litigant previously took *and* that the Court was successfully induced to adopt in a judicial ruling.”⁸

Optek contends that judicial estoppel precludes the Court from granting Plaintiffs’ Motion because such a ruling would contradict the basis of the Court’s prior decision on Optek’s Motion for Summary Judgment. In support of this argument, Optek reiterates its position that the Original Complaint did not allege direct claims as to Daniels and points to Plaintiffs’ Brief in Opposition to Defendant’s Motion for Summary Judgment (“Plaintiffs’ Brief”) to argue that Plaintiffs had previously implied that Daniels’ claims were solely derivative of his mother’s.

⁷ *Id.*

⁸ *Motorola Inc. v. Amkor Tech., Inc.*, 958 A.2d 852, 859-60 (Del. 2008).

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The Court is not persuaded by Optek's judicial estoppel argument. First, as previously stated, this Court finds that the Original Complaint alleged that Daniels had both direct and derivative theories of liability. Second, Optek's claim that Plaintiffs' Brief implies a derivative cause of action fails to establish that the Court relied on that position as a basis for its ruling on Defendant's Motion for Summary Judgment. The Court's decision did not depend on whether Daniels' claims were derivative or direct in nature. Rather, the Court denied Optek's motion based on a determination that the "time of discovery" exception applied to Daniels' injuries and that his claims were not time-barred.

CONCLUSION

Having considered Plaintiffs' Motion, Optek's Reply, and Plaintiffs' Response, this Court finds that the amendments are permitted under Rule 15 and do not implicate the doctrine of judicial estoppel. Therefore, Plaintiffs' Motion for Leave to File Amended Complaint is **GRANTED**.

IT IS SO ORDERED.

/s/ Vivian L. Rapposelli
Judge Vivian L. Rapposelli

cc: Prothonotary