

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

MICHAEL R. BAIZE, :
 : C.A. No. K13C-04-034 WLW
Plaintiff, :
 :
v. :
 :
JOSEPH VINCENT and DANIELLE :
VINCENT, Husband and Wife, :
BETH B. MILLER, ESQUIRE and :
MORRIS JAMES, LLP, :
 :
Defendants. :

Submitted: February 5, 2015

Decided: May 27, 2015

ORDER

Upon Defendants Beth B. Miller and Morris James, LLP's
Motion to Dismiss the Amended Complaint.

Granted.

Mark M. Billion, Esquire and Peter K. Schaeffer, Jr., Esquire, of Avenue Law, Dover, Delaware; attorneys for the Plaintiff.

Paul M. Lukoff, Esquire, of Wilks, Lukoff & Bracegirdle, LLC , Wilmington, Delaware; attorneys for Defendants Beth Miller and Morris James, LLP.

Daniel C. Herr, Esquire of The Norman Law Firm, Wilmington, Delaware; attorney for the Defendants Vincent (who are not directly involved in this action)

WITHAM, R.J.

HISTORY OF CASE PRIOR TO FILINGS IN THIS COURT

In 1999, Plaintiff Michael R. Baize (hereinafter “Plaintiff”) and his wife were appointed guardians of Defendant Joseph Vincent (hereinafter “Joseph”) and Joseph’s sister.¹ In 2007, Joseph joined his sister in a civil suit filed in the Court of Chancery against Baize and his wife, alleging financial mismanagement of guardianship property held in trust by the Plaintiff for the benefit of Joseph and his sister.

On September 30, 2011, the Court of Chancery dismissed the suit, and no damages were awarded.² Less than one month later, on October 21, 2011, Joseph and his wife, Danielle Vincent (hereinafter “Danielle,” collectively “the Vincents”) went to the Dover Police Department and accused Plaintiff of forging Joseph’s name on six checks.

Based on the Vincents’ report, the Justice of the Peace issued an arrest warrant for Plaintiff, and the Dover Police Department arrested Plaintiff and charged him with six counts of Forgery in the Second Degree. On July 6, 2012 the State *nolle prosequi’d* all six counts against Plaintiff, and filed for expungement of the charges.

Plaintiff filed a complaint with this Court on April 22, 2013, pleading claims of defamation and malicious prosecution against the Vincents. Plaintiff alleges that following the dismissal of the Court of Chancery action in 2011, the Vincents

¹ Joseph’s sister and wife are both named Danielle Vincent. The Danielle Vincent who is a co-defendant in the instant case is Joseph’s wife. Joseph’s sister is not a party to this case. Use of “Danielle” will refer to Joseph’s wife.

² *Vincent v. Baize*, C.A. No. 3423-VCN (Del. Ct. Ch. Sept. 30, 2011).

Michael Baize v. Joseph Vincent, et al.
C.A. No. K13C-04-034 WLW
May 27, 2015

colluded to impute criminal acts toward Plaintiff that they knew to be false. Specifically, Plaintiff alleges that of the six checks the Vincents claimed the Plaintiff forged, two were acknowledged by Joseph in his deposition in the Court of Chancery action as being made for Joseph's benefit and with Joseph's knowledge. Plaintiff alleges that the other four checks were all ultimately deposited into Joseph's account, eliminating any claim for injury, deceit, or fraud. Plaintiff further relies on the alleged statements of the Attorney General in the State's motion to expunge to show that Joseph knew the criminal charges lacked merit when the Vincents reported Plaintiff to the Dover Police Department.

The Vincents filed a Motion to Dismiss both of Plaintiff's claims pursuant to Superior Court Civil Rule 12(b)(6) on May 28, 2013. As to the defamation claim, the Vincents contend that the reporting of a crime constitutes a statement made in the course of judicial proceedings, and thus are entitled to the absolute privilege to defamation. As to the malicious prosecution claim, the Vincents argued that the Plaintiff failed to plead the element of malice in his complaint. The Vincents further contend that Plaintiff's complaint fails to show that there was no probable cause at the time of Plaintiff's arrest. Now the Plaintiff sues the Vincents' former attorney, Beth Miller, Esquire, (hereinafter "Defendant-Miller") and her employer, Morris James, LLP ("Defendant-Employer" or collectively "Defendants") on the same claims of defamation and malicious prosecution. The Defendants filed a motion to dismiss the amended complaint on November 19, 2014.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff amended his complaint to include the Defendants. The Plaintiff believes that had it not been for Ms. Miller, that the other Defendants, Joseph and Danielle Vincent, would not have contacted the Dover Police Department.

The Plaintiff argues that it is because of the Defendants that the Vincents went to the police to file a report regarding the allegedly criminal behavior of the Plaintiff in the first place. Plaintiff argues that the Vincents have stated that their “tortious actions resulting in the felony arrests of Plaintiff” were because of Defendant-Miller. Further, the Plaintiff alleges that:

“Any and all tortious acts complained of in this matter were done at the direction of, with the authorization of, and/or with the cooperation, participation and acceptance of Beth Miller acting in capacity of a licensed attorney providing legal services to [the Vincents].”

The Plaintiff lastly argues that the Vincents have stated that Defendant-Miller “aided, abetted, and directed their tortious conduct against [Plaintiff].”³ Further, Plaintiff argues that the law firm of Morris James, LLP is liable, based on their role as employer for Defendant-Miller, and as such they can be liable for the Plaintiff’s damages. The claims are below:

Count I: Defamation

The Plaintiff argues that the Vincents made false and defamatory communications regarding the Plaintiff and would not have done so if it were not at

³ Amen. Comp. At 44.

Michael Baize v. Joseph Vincent, et al.
C.A. No. K13C-04-034 WLW
May 27, 2015

the direction of their attorney, Defendant-Miller, and her employer, Morris James, LLP. The Plaintiff alleges that during the Chancery Court proceeding, the Vincents knew they were making defamatory statements, and that Defendant-Miller had knowledge of the falsity of the statements. Plaintiff argues these statements were made with malice and caused great harm to Plaintiff's reputation in trade, business, and his profession, resulting in a loss of income, an arrest, and legal fees. The Plaintiff also argues that the Defendants are *per se* guilty of defamation because the intentionally false statements imputed felony criminal offenses against the Plaintiff.

Count II: Malicious Prosecution

As a result of the Vincents reporting allegedly criminal activity to the Dover police regarding the Plaintiff, he was arrested on six counts of felony fraud. The Plaintiff believes that there was no known basis for the Vincent's accusations, and as such the Vincents acted intentionally, which the Plaintiff believes is further supported by the State's entry of a *nolle prosequi* on all charges. Plaintiff alleges damages as a result of the criminal proceedings in the form of a possible loss of military pension as a result of felony charges, mental anguish, possible loss of obtaining government contracts, and possible loss of national security clearance. The Plaintiff is asking for \$5,000 in legal fees incurred in the criminal matter, damages in the amount of loss of time at work, nominal damages for defamation *per se*, punitive damages, and special damages. Lastly, the Plaintiff asks for the Defendants to jointly and severally pay all relief requested.

Defendants' (Beth Miller and Morris James, LLP) Motion to Dismiss

Amended Complaint

The Defendants move for a motion to dismiss pursuant to Delaware Superior Court Civil Rule 12(b)(6) on the grounds that (1) Plaintiff's claims are barred by the applicable statute of limitations and that (2) the Plaintiff has not adequately pleaded claims of defamation, malicious prosecution, or aiding and abetting against the Defendant-Employer and Defendant-Miller. The Defendants argue three reasons why the Court should dismiss the Amended Complaint:

1. Plaintiffs Actions Are Time-Barred

The Plaintiff's causes of action accrued July 6, 2012, the date the criminal charges were adjudicated, and the Plaintiff filed his amended complaint September 29, 2014. Because the Plaintiff waited longer than two (2) years to file the amended complaint against the Defendants, the claim is barred under 10 *Del. C.* § 8119.⁴

The Defendants argue that the relation back doctrine is not applicable because there is no way the Defendants knew or could have known they would be a party to the action. Defendants argue they are prejudiced because they did not receive notice of the suit within the statutory limitation, and would now be forced to defend an action where depositions and dispositive motions have already been adjudicated.

2. Plaintiff Has Not Properly Pled Both Counts

⁴ No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of two (2) years from the date upon which it is claimed that such alleged injuries were sustained.

Defendants assert that in order to sustain a claim for malicious prosecution, because such claims are viewed with disfavor by the Delaware courts, the former proceeding “must have been by, or at instance of the defendant in the action for malicious prosecution.” The Defendants argue that because Defendant-Miller merely suggested that the Vincents contact the police, instead of telling them what to say or to seek the Plaintiff’s arrest, that Plaintiff’s claims are too vague. Defendants argue this type of claim is argued poorly because an attorney merely suggested to a client that they contact the police if they felt they were the victim of a criminal act, and such action is well within the reasonable behavior of an attorney.

Also, the Defendants argue that although Plaintiff has listed the claim of defamation, their amended complaint fails to allege that Defendant-Miller actually made a defamatory statement.

3. Plaintiff Cannot Premise Liability on an Aiding and Abetting Theory

“Liability for aiding and abetting requires proof of three elements: underlying tortious conduct, knowledge and substantial evidence.”⁵ Defendants argue that even if the Vincents committed tortious acts, the Plaintiff has failed to plead that Defendant-Miller had the requisite knowledge for liability, and that the Plaintiff must show that Defendant-Miller had knowledge she was assisting the Vincents in wrongful conduct.

Further, in order for Defendant-Miller to have aided and abetted the Vincents, she would have had to substantially assisted in the wrongful act that proximately

⁵ *Anderson v. Airco, Inc.* 2004 WL 2827887, at *4 (Del. Super. Nov. 30, 2004).

caused direct or reasonably foreseeable harm. It appears that Plaintiff rests this portion of his argument on Defendant-Miller telling the Vincents to “go to” the police constituted as assistance. The Defendants disagree and argue that this was not a proximate cause of the alleged harm.

STANDARD OF REVIEW

When deciding a motion to dismiss, all factual allegations in the complaint are accepted as true.⁶ If the complaint and facts alleged are sufficient to support a claim on which relief may be granted, the motion is not proper and should be denied.⁷ That is, a motion to dismiss is decided on “whether a plaintiff may recover under any conceivable set of circumstances susceptible to proof under the complaint.”⁸ Consequently, dismissal will only be warranted when “under no reasonable interpretation of the facts could the complaint state a claim for which relief might be granted.”⁹ Stated differently, a complaint will not be dismissed unless it clearly lacks factual or legal merit.¹⁰

DISCUSSION

The Court finds that Plaintiff’s claims are time-barred, as the statute of

⁶ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁷ *Id.*

⁸ *Id.*

⁹ *Hedenberg v. Raber*, 2004 WL 2191164, at *1 (Del. Super.).

¹⁰ *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

limitations has run to add Defendant-Miller and Defendant-Employer to the instant action. As such, the Court will only discuss this portion of Defendants' motion, as it renders other issues moot.

The Defendants argue that Plaintiff's cause of action accrued July 6, 2012, which was the date Plaintiff's criminal charges were adjudicated.¹¹ Defendants state that because Plaintiff filed the amended complaint to include Defendant-Miller and Defendant-Employer on September 29, 2014, the claims are barred pursuant to 10 *Del.C.* § 8119 because it was filed after the statute of limitations had run.

The Court first needs to decide when the statute of limitations began for the Defendants to be added to the suit. The Court finds that the Plaintiff amended his complaint more than two years after the statute of limitation began to run, as the Court uses the date the Plaintiff received a *nolle prosequi* from the State, on July 6, 2012.¹²

While the Defendants argue that the two year statute of limitations precludes the filing of the amended complaint, and thus incorporates Delaware Superior Court Rule 15(c) to show that the amendment is not valid, the Plaintiff argues that it is only 10 *Del. C.* § 8119 that is relevant to the case at bar. The Plaintiff's counsel argues that a deposition taken of the Vincents rendered testimony that should have allowed

¹¹ The Court finds that the Plaintiff's cause of action accrued on the date Plaintiff's criminal charges were adjudicated. This means that Plaintiff had until July 6, 2014 to add Beth B. Miller, Esquire, and Morris James LLP to the case.

¹² Complaint at 32.

for the Defendants to be impleaded, and it is at that point that Defendant-Miller was made aware of the possibility of being a named party in the case. The Plaintiff argues that the Vincents knew, prior to their deposition where they waived privilege, that Defendant-Miller was involved in the case.

The parties are correct in that Superior Court Civil Rule 15(c) “depends on what the party to be added knew or should have known” but, contrary to Plaintiff’s assertion, the rule does *not* concern itself with “the amending party’s knowledge or timeliness in seeking to amend the pleading.”¹³ The United States Supreme Court has held that a Plaintiff’s information “is relevant only if it bears on the defendant’s understanding of whether the plaintiff made a mistake regarding the proper party’s identity.”¹⁴ Although the Court previously granted Plaintiff’s motion for leave to amend the complaint on September 25, 2014, the Court finds that amending the complaint now to add the Defendants is in direct contrast with the aims of Rule 15(c).¹⁵

The parties argue that 10 *Del.C.* § 8119 governs as it provides the applicable statute of limitations for both defamation and malicious prosecution claims. While

¹³ *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 539, 130 S. Ct. 2485, 2488, 177 L. Ed. 2d 48 (2010).

¹⁴ *Id.*

¹⁵ On September 25, 2014, the Commissioner granted Plaintiff’s Motion for Leave to File an Amended Complaint. On September 29, 2014, the Plaintiff filed the Amended Complaint to include Beth B. Miller, Esquire, and Morris James, LLP as Defendants. On October 14, 2014, the Defendants filed their Answer to the Amended Complaint.

Michael Baize v. Joseph Vincent, et al.
C.A. No. K13C-04-034 WLW
May 27, 2015

true, Rule 15(c) provides that “when an amended pleading “relates back” to the date of a timely filed original pleading and is thus itself timely even though it was filed outside an applicable statute of limitations.”¹⁶ The Court finds that Rule 15(c) is applicable in the instant scenario, and that the amended complaint does not appropriately relate back to the original complaint due to the additionally named Defendants.

There are three prongs to Superior Court Rule 15(c):

“First, the claim asserted by the amendment must arise out of the same conduct, transaction or occurrence asserted in the original pleading. Second, within the time provided by the rules, the party to be added must have received notice of the institution of the action, so that the party will not be prejudiced. Third, within the time provided by the rules, 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.”¹⁷

The parties do not argue over whether the adding of the Defendants arises out of the same transaction or occurrence. The Defendants, however, argue that prongs two (2) and three (3) are not satisfied. The Defendants argue that no notice was given and that they will be prejudiced as a result (speaking to prong two), and that the Plaintiff did not make a mistake when choosing to exclude Defendant-Miller and Defendant-

¹⁶ *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 541, 130 S. Ct. 2485, 2489, 177 L. Ed. 2d 48 (2010).

¹⁷ *Atwood v. Cameron*, 2012 WL 3642707, at *1 (Del. Super. July 31, 2012) *citing* Del. Super.Ct.R. 15(c).

Employer in the suit (speaking to prong three), and thus the amended complaint does not appropriately relate back to the original complaint. Although the Plaintiff does not agree that Rule 15 is the governing standard in this case, there was no argument raised by Plaintiff nor Defendants that the naming of Defendant-Miller or Defendant-Employer arises out of the same transaction or occurrence, pursuant to prong one (1). The Court will analyze prongs two (2) and three (3) in turn.

A. Notice Requirement

The Plaintiffs argue that the Defendants were on notice at the time of the deposition (and possibly before then), when Plaintiff believes that the Vincents revealed that Defendant-Miller had committed an intentional tort by urging her clients to go to the police if they had suspicions of any illegal activity or wrongdoing by the Plaintiff. This information was not contained in the pleadings, but was discussed at oral arguments before the Court. The Plaintiff stated that this situation is based on if a cause of action is knowable to the *plaintiffs*, however this is not the case.¹⁸ Plaintiff's Counsel, during oral arguments, argued that his client was put on notice of the possibility of adding Defendant-Miller and Defendant-Employer only during a deposition that occurred after the filing of the original complaint, and that the Defendants were on notice when they allegedly committed the tortious acts for which they are being accused.

¹⁸ *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 539, 130 S. Ct. 2485, 2488, 177 L. Ed. 2d 48 (2010). "Relation back under Rule 15(c) depends on what the party to be added knew or should have known, not on the amending party's knowledge or timeliness in seeking to amend the pleading."

The Court recognizes that notice is liberally construed and need not be formal, however, it must “ensure the new party receives sufficient notice of the proceedings.”¹⁹ There is nothing in the pleadings to suggest that Defendant-Miller should have been made aware at the time of the original complaint that she herself would be a named party to the litigation. Further, the amended complaint is filled with only conclusory statements by the Plaintiff intended to show that Defendant-Miller should have been on notice that she was going to be sued “[a]s Defendants’ imputation of a criminal act toward Plaintiff was known to be false by Defendants at the time it was made...”²⁰ Plaintiff does not put forth any facts to suggest that Defendant-Miller was put on notice prior to the amended complaint, either through actual or constructive notice. From the pleadings, Defendants only received notice when it was served on September 29, 2014. Nothing in the record shows that Defendants received timely notice, thus failing Rule 15(c)’s second prong. Of note is that the Defendants were served after the statute of limitations had run pursuant to 10 *Del.C.* § 8119.

B. Mistake in Naming of Party

Even if the Defendants had notice of being named in the suit, prong three of Rule 15(c) still fails because the complaint fails to show that Defendant-Miller and Defendant-Employer “must have known or should have known that but for a mistake

¹⁹ *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 264 (Del. 1993).

²⁰ Amend. Comp. At 33.

concerning [their] identity, [they] would have been added as a party.”²¹

Here, Plaintiff argues that the reason the Defendants were not added to the action in the first place was because they had not waived their attorney-client privilege until a deposition that took place on June 23, 2014, whereby the Vincents claimed that Defendant-Miller instructed them to take the allegedly forged checks to the Dover Police Department. Rule 15(c) does not allow for a party to be added to litigation merely because the Plaintiff failed to recognize it may have a cause of action after the statute of limitations has run. Lack of knowledge does not constitute as a “mistake.”²²

In analyzing the requirements of Delaware Superior Court Rule 15(c), the Court must be cognizant of the fact that it does not have discretion pursuant to the rule, and thus the amended complaint must “completely comport[] with the dictates of Rule 15(c)(3)...”²³ The Court is unable to find that pursuant to the rule, all requirements set forth have been met by the Plaintiff.

²¹ *Atwood v. Cameron*, 2012 WL 3642707, at *2 (Del. Super. July 31, 2012)

²² *Id.* (citing *Lovett v. Pietlock*, 2011 WL 149349, at *4 (Del. Super. Jan. 5, 2011) (“[W]here the plaintiff cannot demonstrate an intent to include the unnamed party before the limitations period expired, the court will hold that this element is not satisfied.”), *aff’d*, 32 A.3d 398 (Del.2011) (TABLE); see also 6A Charles Alan Wright, et al., *Federal Practice and Procedure* § 1498.3 (3d ed.) (“If Plaintiff’s failure to name the defendant being proposed by amendment resulted from a lack of knowledge, then it was not the result of a “mistake” and thus did not fall under the rule.”).”

²³ *Taylor v. Champion*, 693 A.2d 1072, 1074 (Del. 1997).

Michael Baize v. Joseph Vincent, et al.
C.A. No. K13C-04-034 WLW
May 27, 2015

Conclusion

For the forgoing reasons, the Defendant's Motion to Dismiss the Amended Complaint is **granted**.

IT IS SO ORDERED.

William L. Witham, Jr.
Resident Judge

WLW/dmh